

December 20, 2024

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 24-86

The purpose of this All County Letter is to clarify whether the Emergency Caregiver Funding payment should continue or should stop for a caregiver when: 1) a county placing agency has issued a Notice of Action or similar administrative action regarding its denial of Resource Family Approval, or 2) the Tribe has not approved the caregiver as a Tribally Approved Home.



JENNIFER TROIA
DIRECTOR

CALIFORNIA HEALTH & HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



GAVIN NEWSOM
GOVERNOR

December 20, 2024

ALL COUNTY LETTER NO. 24-86

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL COUNTY CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL COUNTY FOSTER CARE MANAGERS
ALL COUNTY ELIGIBILITY SUPERVISORS
ALL TRIBES WITH A TITLE IV-E AGREEMENT WITH CDSS

SUBJECT: **EMERGENCY CAREGIVER FUNDING AND DUE PROCESS NOTIFICATION COORDINATION RELATED TO THE DENIAL OF A RESOURCE FAMILY APPROVAL APPLICATION, OR DENIAL BY A TRIBE AS A TRIBALLY APPROVED HOME**

REFERENCE: [SENATE BILL \(SB\) 187 \(CHAPTER 50, STATUTES OF 2022\)](#),
[SB 80 \(CHAPTER 27, STATUTES OF 2019\)](#);
[ASSEMBLY BILL \(AB\) 153 \(CHAPTER 86, STATUTES OF 2021\)](#),
[AB 79 \(CHAPTER 11, STATUTES OF 2020\)](#),
[AB 110 \(CHAPTER 8, STATUTES OF 2018\)](#), AND
[AB 1811 \(CHAPTER 35, STATUTES OF 2018\)](#);
[WELFARE AND INSTITUTIONS CODE \(WIC\) 224.1](#), [WIC 309](#),
[WIC 361.4](#), [WIC 361.45](#), [WIC 727.05](#), [WIC 11461.36](#), AND
[WIC 16519.5](#); [ALL COUNTY LETTER \(ACL\) NO. 05-38](#),
[ACL NO. 14-89](#), [ACL NO. 16-92](#), [ACL NO. 17-75](#), [ACL NO. 18-33](#),
[ACL NO. 18-75](#), [ACL NO. 18-128](#), [ACL NO. 19-24](#), [ACL NO. 19-71](#),
[ACL NO. 19-84](#), [ACL NO. 20-93](#), [ACL NO. 21-88](#) AND
[ACL NO. 22-89](#); [COUNTY FISCAL LETTER \(CFL\) NO. 17/18-41](#);
[CFL NO. 17/18-59](#); AND [CFL NO. 18/19-81](#)

The purpose of this All County Letter (ACL) is to clarify whether the Emergency Caregiver (EC) Funding payment should continue or should stop for a caregiver when: 1) a county placing agency has issued a Notice of Action (NOA) or similar administrative action regarding its denial of Resource Family Approval (RFA), or 2) the Tribe has not approved the caregiver as a Tribally Approved Home (TAH). It also provides frequently

asked questions and best practice considerations applicable to the administration of the required EC Funding NOA.

EMERGENCY CAREGIVER FUNDING PROGRAM

The EC Funding Program was established in 2018 pursuant to [Assembly Bill \(AB\) 1811](#), to mitigate the financial stressors caregivers incur when they receive placement of a child, prior to the commencement of the applicable approval process (RFA or TAH), with little notice and minimal opportunity to pre-plan for the range of physical needs, services, and supports necessary to provide care and supervision for children and non-minor dependents (NMDs). For purposes of this ACL, any reference to a child or children will also include NMDs.

The EC Funding statute, [Welfare & Institutions Code \(WIC\) 11461.36](#), is clear in its intent and requires each county to provide a payment, equal to the basic level foster care rate, on behalf of a child placed in the home, of a caregiver who is pending approval as a Resource Family (RF) or TAH as described in [ACL 19-71](#). The beginning date of aid for the EC payment is the date of placement into the home. For more information regarding EC Funding's core provisions and current and historical information relative to onset of funding, funding duration, good cause determinations, claiming instructions, etc., please refer to [ACL 19-84](#) and [ACL 22-89](#).

DUE PROCESS AND NOTICE OF ACTIONS

Due process rights are afforded to caregivers through the fair hearing process via an NOA form. The NOA is a written notice which informs the individual of an action the county intends to take, the reasons for the intended action, the specific laws and/or regulations supporting such action, and an explanation of the individual's right to request a hearing. When the county denies an RFA application, the notification of the RFA denial must include the RFA-specific NOA form ([RFA 09](#)).

The TAH application process conducted by a Tribe may or may not include formal or informal due process under tribal law, policy, or custom. If a Tribe offers formal or informal due process the county should consult with the Tribe to determine the final date of the TAH denial. See Scenario Six below for more information.

Independent of the county's obligation to issue an NOA when an RFA application is denied or the Tribe denies a TAH, the county must provide an EC Funding-related NOA whenever EC Funding is initiated, changed (increased or decreased), or terminated.

Attachment A compares an RFA NOA ([RFA 09](#)) for purposes of denying an RFA application and an EC Funding NOA ([RFA 105A](#)) and provides pertinent notification and administrative timeframes associated with each NOA. For a TAH denial, the applicant who is receiving EC Funding would receive the EC Funding NOA but would not receive the RFA 09. Please see Attachment A for more information.

Considerations and Best Practices:

- The issuance of the RFA NOA or the denial as a TAH is the key determinant of the issuance of the EC Funding NOA.
- The issuance of the EC Funding NOA should not occur until the 90-day timeframe an applicant has to exercise their due process rights to appeal the RFA denial or the TAH denial, if applicable, has run out/expired.
- An appeal of RFA denial or a TAH denial may result in payments to the caregiver that exceed 120 days, or possibly an overpayment. Note that good cause for EC Funding to be continued beyond 120 days of payments, and up to 365 days includes, “delays [in RFA approval] as a result of the applicant exercising due process rights.” ([WIC section 11461.36\(e\)\(5\)\(E\)\(i\)](#))

As a reminder, if EC Funding is no longer available for a relative caregiver, the relative may be eligible for funding under the Approved Relative Caregiver (ARC) Program despite denial of the RFA application, and should be assessed for ARC eligibility, as appropriate ([WIC section 11461.3](#)).

COMMON SCENARIOS

Underlying the following scenarios and responses are two key premises provided in law and/or specified in the RFA Written Directives.

- The date of an RFA denial is either 1) the effective date of the final decision on the appeal of the RFA denial if the denial is upheld, or 2) if no appeal is submitted, or is later withdrawn, the date of the RFA NOA.
- Good cause for EC Funding to be continued beyond 120 days of payments, and up to 365 days of payments includes, “delays [in RFA approval] as a result of the applicant exercising due process rights”. ([WIC section 11461.36\(e\)\(5\)\(E\)\(i\)](#)). Therefore, in practice, EC Funding eligibility (and thus payments) may continue until the date certain for RFA denial, consistent with EC Funding statutory timeframes.

The following scenarios are intended to provide guidance whether the EC Funding payment should continue or should end when a caregiver’s RFA application has been denied or when the Tribe has not approved the caregiver as a TAH, and to ensure the EC Funding payments are not prematurely discontinued. If the child is removed from the caregiver’s home, the EC Funding payment should be terminated effective the date of removal. Please note the following scenarios presume that the child remains in the placement following the issuance of the RFA denial NOA and that the county has issued all relevant NOAs.

SCENARIO ONE-A

An RFA applicant was receiving EC Funding until the denial of the RFA application. The applicant timely appealed the RFA denial, but not the termination of the EC Funding. Is the applicant eligible for EC Funding pending the decision on the appeal of the RFA denial?

Response: Yes, the applicant will continue to be eligible for EC Funding because they submitted the appeal, consistent with statutory funding timeframe limitations. Per [WIC section 11461.36\(g\)\(2\)](#), EC Funding must be terminated upon RFA denial. The date of the RFA denial is either: 1) the date of the decision on the appeal of the RFA denial if the denial is upheld, or 2) if no appeal is taken, the date of the RFA NOA.

SCENARIO ONE-B

Like Scenario One-A, an RFA applicant was receiving EC Funding until the denial of the RFA application. The applicant did not timely appeal the RFA denial. Is the applicant eligible for payment?

Response: No, if the applicant did not timely appeal the RFA denial, then EC Funding eligibility would terminate at the end of the applicant's due process right of appeal (90 days from the date of the RFA denial NOA), consistent with statutory EC Funding timeframe limits.

Good cause for EC Funding to be continued beyond 120 days of payments, and up to 365 days of payments includes, "delays [in RFA approval] as a result of the applicant exercising due process rights". ([WIC section 11461.36\(e\)\(5\)\(E\)\(i\)](#)). Therefore, in practice, EC Funding eligibility may continue until the date certain for RFA denial. As in this scenario, in cases where there is no appeal of the RFA denial, EC Funding may be paid up to 90 days from the date of the RFA NOA, which is the end of the timeframe in which the applicant may exercise their due process rights by appealing the RFA denial.

SCENARIO TWO

An RFA applicant was receiving EC Funding until the denial of the RFA application. The applicant timely appealed the RFA denial, and the Administrative Law Judge overturned the denial and ordered the county to continue the RFA application process. The applicant did not appeal the termination of EC Funding. Is the applicant eligible for EC Funding back to the date the county issued the RFA NOA?

Response: Yes, consistent with statutory EC Funding limitation timeframes. Per [WIC section 11461.36\(g\)\(2\)](#), EC Funding must be terminated upon RFA denial. The date of denial is either 1) the date of the decision on the appeal of the RFA denial or 2) if no appeal is taken, the, the date of the RFA NOA. In this scenario, there was no

effective denial of the RFA application as the Administrative Law Judge overturned the county's denial through the appeal process.

SCENARIO THREE

An RFA applicant was receiving EC Funding until the denial of the RFA application. The applicant appealed the termination of funding timely but did not appeal the RFA denial until right before the end of the 90-day appeal time limit. How do we determine the periods of eligibility for the EC payment?

Response: When the appeal of the RFA denial is timely, the applicant continues to be eligible for EC Funding until the date of the decision on the appeal if the denial is upheld, or beyond if the denial is overturned, subject to the statutory EC Funding 365-day timeframe limit.

SCENARIO FOUR

If an RFA applicant submits an RFA and EC Funding appeal and the county issues the EC payment (provided the EC Funding appeal is submitted prior to the EC Funding termination date) and the Administrative Law Judge upholds the county's denial of the RFA application, do we continue the EC Funding payment pending the EC Funding appeal decision?

Response: When the Administrative Law Judge upholds the county's denial of the application in a final decision and order **or** the Office of Administrative Hearings issues a proposed decision to uphold the county's denial and it is adopted by the California Department of Social Services, eligibility for EC Funding terminates. As noted on the EC Funding NOA [RFA 105A](#) form, aid paid pending the EC Funding appeal hearing is permissible. However, as stated on the NOA form, it carries the risk that the applicant/claimant would owe back any aid received after the date of the RFA denial. Therefore, the county should be in contact with the applicant/caregiver to discuss their options to mitigate this risk and investigate other funding options.

SCENARIO FIVE

If an RFA applicant submits an appeal on the RFA denial that results in an agreement between the county and the applicant to resume the RFA application, is the caregiver eligible for continued EC Funding?

Response: The RFA applicant is eligible for EC Funding if the county decides to withdraw the denial based upon a mutually agreed decision to resume the processing of the application. In this instance there is no reason to discontinue EC Funding as RFA denial has not occurred.

Additionally, if the applicant agrees to a conditional withdrawal of their appeal of the RFA denial based on an understanding with the county that the RFA application is still active, then the county must rescind the RFA denial to ensure EC Funding may continue in accordance with the law.

SCENARIO SIX

If the Tribe denies the caregiver as a TAH, and the child remains in the placement, is the caregiver still eligible for continued EC Funding?

Response: If the Tribe provides for formal or informal due process, and the TAH applicant timely appeals the TAH denial, in accordance with the Tribe's due process rules, the EC Funding may continue, consistent with statutory time frames, until such time as the Tribe makes its final decision regarding the denial as provided for in [WIC section 11461.36\(l\)](#).

If the Tribe does not provide for formal or informal due process, pursuant to [WIC section 11461.36\(l\)\(3\)](#), if the TAH approval is denied, payments made pursuant to [WIC section 11461.36\(l\)](#) must cease.

If you have any questions or need additional guidance regarding the information in this letter, contact the Resource Family and Eligibility Support Bureau at (916) 651-1101 or by email at RFA@dss.ca.gov or ECFunding@dss.ca.gov.

Sincerely,

Original Document Signed By

ANGIE SCHWARTZ
Deputy Director
Children and Family Services Division

Attachment

cc: All Federally Recognized Tribes
County Welfare Directors Association

NOTICE OF ACTION (NOA) COORDINATION*
RESOURCE FAMILY APPROVAL (RFA), TRIBALLY APPROVED (TAH) AND EMERGENCY CAREGIVER FUNDING (EC)
**Coordination is based upon child remaining in placement despite the decision to deny the RFA application or approval as a TAH.*

Variable	RFA Application Denial	EC Funding (Discontinue EC Funding payment to denied RFA or TAH ¹ applicant)
Form Number	RFA 09	RFA 105A
Why is NOA sent?	To notify the applicant/individual that their RFA application is being denied.	When a county action will result in the discontinuance, termination, suspension, cancelation or decrease of EC Funding.
When is NOA mailed/served?	Subsequent to a Legal Consult, when the Written Report has been finalized and the NOA has been reviewed and approved by Legal.	The NOA must be mailed to the affected individual at least 10 days before the effective date of action.
Appeal Submission Due Dates	90 days from date of notice	90 days from date of notice
Effective Date of Action if Not Appealed	The date specified in NOA.	The date specified in NOA.
Effective Date of Action if Appealed	The effective date of the final decision or order	<p>If affected individual submits an appeal before an action on EC Funding, the payment will stay the same while the hearing is pending, contingent upon child remaining in placement.</p> <p>Affected individual can also request to lower or stop the EC Funding in order to avoid repayment if they lose their appeal</p>

¹ In instances where a Tribe offers formal or informal due process for a denial of a TAH, the county must consult with the Tribe to determine the final date of the of the denial if the TAH applicant timely appeals the Tribe's denial. Please refer to Scenario Six in ACL.