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February 4, 2009

ALL COUNTY INFORMATION NO. I-12-09

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY APPEALS SUPERVISORS

SUBJECT: AUTHORITY OF COUNTY APPEALS REPRESENTATIVES  
TO SETTLE A CASE

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

The purpose of this notice is to confirm the authority of county appeals representatives to resolve a request for state hearing by entering into a conditional withdrawal agreement on behalf of the county prior to or during a state fair hearing. This notice does not transmit new policy but simply restates existing Manual of Policies and Procedures (MPP) regulations found at Division 22.

Division 22 regulations establish that after a state hearing request has been filed, it shall be assigned to a county appeals representative who shall assume the major responsibility for researching, communicating with the claimant, preparing and presenting the case at the state hearing. The county representative shall not have had immediate prior involvement with the case. (MPP §22-073.13).

These responsibilities include determining the issues raised (MPP §22-073.21), reviewing the applicable statutes and regulations involved (MPP §22-073.22), and resolving the case at the lowest possible administrative level (MPP §22-073.23). If the county representative determines that the county action was incorrect, it is not supported by sufficient evidence, or the claimant has additional information that would change the outcome, that representative must have the authority and the responsibility to resolve the case with a conditional withdrawal. The text of the regulation is stated, in part, below:

MPP §22-073.23. After conducting the initial review, the county representative shall make a determination concerning the appropriateness of the county action and the need for and advisability of a hearing. **Disagreements and misunderstandings shall be resolved quickly, at the lowest possible administrative level, thereby avoiding unnecessary hearings.**

.231. If the county representative concludes that the county action was incorrect, the county representative shall contact the claimant and attempt to resolve the case without a hearing.

- (a) **The county representative shall have the authority to make such a decision. The conditional withdrawal procedure described in Section 22-054.21 is usually appropriate in such instances.**

The reason the county appeals representative function was segregated from other county welfare program implementation duties was to ensure an objective, expert review of the facts of the case so that only those cases in which the county position is correct and defensible would be presented at a state hearing. A county appeals representative is uniquely qualified, based upon their hearing experiences, training in evidentiary issues, and program background, to evaluate whether the county will prevail in a hearing. Moreover, the county appeals representative will know the results of other state hearings for their county, and use these decisions as a basis to determine whether future cases with similar facts have sufficient evidence to go forward. Finally, the county appeals representatives have a statewide network of appeals representatives, who can provide counsel and input to other county appeals representatives on unique factual and policy questions. Accordingly, it is in the county's best interest to assure that county appeals representatives have full authority to resolve a hearing request, as even a correct county action that is not supported by sufficient evidence must be overturned in a state hearing. Although county appeals officers certainly should consult with local program specialists or supervisors regarding the reason for the action taken, it is the county appeals officer who ultimately has the authority to determine whether to settle the case.

The authority to resolve hearing issues in advance of a state hearing also promotes the county interest in efficiently using its resources. By allowing the county appeals representative to decide which issues should not go to hearing in advance of a state hearing, the county avoids unnecessary county witness time spent in collecting documents, preparing position statements, preparing to testify and providing testimony at the hearing. The county appeals workload should be heavily weighted towards pre-hearing case resolutions, rather than hearing preparations. Representatives who can settle a meritless or insufficiently documented case save the county resources that would have been required to prepare a county Statement of Position, coordinate county witnesses, and prepare for and present the county position at a hearing. Finally, by resolving issues at the lowest level, the level of animosity between the county and its clients is also minimized; leading to fewer and more beneficial contacts following the resolution of the hearing request. However, this authority must not be misconstrued as permission to pressure a claimant into withdrawing their request for hearing. Further information about conditional withdrawals will be forthcoming in a future ACIN.

When evaluating the county action, the county appeals representative examines the county record to determine whether there is sufficient evidence and merit to enable the county to prevail. Other county staff may believe there is reason to proceed, but the county appeals representative is responsible for evaluating the strength of the evidence. This means that personal opinions of other county employees about whether the claimant is telling the truth, is complying with regulations, or whether the county is justified in its policy position must be disregarded to the extent that they are not supported by evidence.

One factor a county appeals representative must weigh is that the county has the burden of proof. (MPP §22-073.36). If the county cannot meet the burden of proof, then the county appeals workers shall rescind the proposed action of the county.

The authority to resolve a case on behalf of the county is to be used by a county representative before a case is heard. This avoids unnecessary and costly hearings. However, if the claimant chooses to exercise his/her right to proceed to hearing, MPP §22-073.37 states that this authority is also present during a hearing, as the county representative shall have the authority “at the hearing to make binding agreements and stipulations on behalf of the CWD.”

Please review the current practices in your county’s appeals section in light of this information to ensure that all personnel have the appropriate authority that is granted them by these state regulations. If you have any questions about implementing these sections, please contact your local Presiding Judge.

Sincerely,

***Original Document Signed By:***

MANUEL A. ROMERO  
Chief Administrative Law Judge  
State Hearings Division