



CDSS

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EDMUND G. BROWN JR.
GOVERNOR

December 5, 2012

ALL COUNTY LETTER NO. 12-66

REASON FOR THIS TRANSMITTAL

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

TO: ALL COUNTY WELFARE DIRECTORS
ALL CALWORKS PROGRAM SPECIALISTS
ALL CALFRESH COORDINATORS
ALL CONSORTIUM PROJECT MANAGERS
ALL COUNTY TAX-OFFSET PROGRAM COORDINATORS
ALL COUNTY IEVS COORDINATORS AND COLLECTION MANAGERS

SUBJECT: CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS (CalWORKs) OVERPAYMENT COLLECTIONS: SETTLEMENT OF THE *HARTLEY V. LIGHTBOURNE* LITIGATION

REFERENCES: WELFARE AND INSTITUTIONS CODE SECTION (WIC)11004, 11466.24; MANUAL OF POLICIES AND PROCEDURES (MPP) SECTIONS 22-071.12 (QR), 42-101.2, 44-350, 44-352.3, 44-352.3(c), 44-352.312, 44-352.32-.331, 45-304-45-306, 82-832; ALL COUNTY LETTER (ACL) 12-02, ACL 12-23

This ACL provides implementation instructions to County Welfare Departments (CWDs) for the final stipulated settlement in *Hartley v. Lightbourne*, Alameda County Superior Court Case No.RG11605702. While the case was pending, the California Department of Social Services (CDSS) issued two ACLs that provided preliminary instructions related to CalWORKs overpayment (OP) recoupment policy changes established in the settlement. ACL 12-02, effective January 6, 2012, provided initial instructions regarding changes to CalWORKs OP collections against adults, emancipated minors and minor Heads of Household (HoH) who were minors receiving cash aid in an assistance unit (AU) when an OP occurred. On May 10, 2012, CDSS issued ACL 12-23 directing CWDs, as of January 6, 2012, to no longer recoup prior OPs from any minor who becomes a member of a new AU when the OP occurred while the minor was a member of a previous AU.

Through these two ACLs, CDSS directed CWDs to cease and desist, as of January 6, 2012, all current collection actions via grant adjustment or any other collection methods against these populations and also to prospectively forego pursuit of OP repayment from these groups.

This letter provides follow-up instructions to ACLs 12-02 and 12-23 and final implementation guidelines for the settlement in the *Hartley v. Lightbourne* litigation. These are provided in six sections, as described below:

- A) Affected Populations: A description of who is affected by this settlement.
- B) Identification of and Notice to Affected Populations: The requirement for CWDs to ensure affected individuals are properly identified and notified that they are no longer responsible for repayment of OPs if the client had an open collection or recoupment case on or after January 5, 2012 (i.e. open cases as of the date of the change in policy).
- C) Prior Collection Attempts: Description of corrective actions that CWDs and CWD collection agencies will need to take to address prior collection attempts against the population described in ACL 12-02.
- D) Grant Adjustments and Amounts Collected in Error On/After January 6, 2012: Instructions relating to reimbursement for OPs recouped via grant adjustment, or other collection methods, and refunds of any amounts collected on or after January 6, 2012 for the populations identified in ACL 12-02 and ACL 12-23, and in Section A, below.
- E) New Notices of Action (NOAs): Messages specifically related to this settlement.
- F) Questions and Answers Regarding Certain Groups Affected by the New Policies: Questions and answers posed by CWDs regarding particular OP circumstances.

CWDs are reminded that they are to continue collection of OPs from the responsible relative in the original overpaid AU via all appropriate collection methods described in Manual of Policies and Procedures (MPP) Section 44-352.3. As described in the regulation, CWDs shall first collect OPs from the caretaker relative who was a member of the AU at the time the OP was established. Recoupment should be through grant adjustment if the AU is receiving CalWORKs cash aid and via post-aid recovery efforts if the AU is no longer aided. CWDs are also directed to continue collecting OPs via grant

adjustment when the children who were in the overpaid AU are receiving aid in the same AU in which the OP was established.

A) Affected Populations:

Effective January 6, 2012, CWDs shall not collect by *any means*, including, but not limited to, grant adjustment, tax intercept, administrative or civil action or voluntary repayment agreement, CalWORKs OPs from adults, emancipated minors, or HoHs, who were minors in an overpaid CalWORKs AU at the time the OP was incurred.

Also effective January 6, 2012, CWDs will no longer recoup CalWORKs OPs from any minor who becomes a member of a new AU if the overpayment occurred while the minor was a member of the previous AU. In other words, if a child in an overpaid AU moves to a different AU, and the responsible relative in the first (overpaid) AU cannot be located (pursuant to MPP Section 44-352.3), the OP will not follow the child to the new AU, and CWDs may not grant adjust or otherwise recoup the OP (that occurred in a previous AU) from that new AU.

CWDs shall also ensure that, in accordance with these instructions, a minor shall not be listed as a responsible party for the OP that occurred when he or she was a minor in an AU, regardless of whether the minor enters a new AU, becomes an aided adult, or remains unaided.

CWDs are reminded that once a minor becomes an adult or minor head of household or is emancipated, that individual will be responsible for repayment of any OPs that are established in their own separate AU in accordance with standard OP collection rules at MPP Section 44-352.

CWDs are also advised to review ACL 12-02 and 12-23 for more information.

B) Identification of and Notice to Affected Populations:

CWDs shall identify by all means reasonably available, including appropriate record searches, all individuals in Section A who, as of January 5, 2012, still had or has an open OP case in which the CWD has pursued collection via grant adjustment, written demand letter, tax intercept, voluntary repayment agreement, or any other method. The CWD shall, as soon as administratively possible, but no later than February 1, 2013, provide that person with notice that he or she is no longer legally responsible for repaying the OP, and that they are entitled to the return of any monies received on or after January 6, 2012. This notice should be sent, among others, to all persons whose 2011 tax intercepts were stopped as a result of ACL 12-02. This notice is informative

and not considered to be a NOA; however, it must include specific language and information as directed below.

To assist CWDs in this effort, this ACL includes sample language for CWD collections staff to utilize in the notice described in this section. The informative notice issued by the CWD shall also provide contact information or a returnable form to be used by an individual who believes he or she was wrongfully collected against after January 6, 2012, to request a refund. CWDs may modify this language to suit particular needs and/or CWD forms, with prior approval from CDSS:

We previously told you that you had to repay an overpayment of cash aid that occurred when you were a minor living in a CalWORKs household. This is to inform you that because you were a minor when that overpayment occurred, you are not legally responsible for repaying that overpayment. The County will take no further action to collect that overpayment against you.

If you gave the County any money to repay this overpayment ***on or after January 6, 2012***, the County owes you a refund.

You may also use this letter to resolve any problems with credit reporting agencies or other financial institutions who claim that you owe this money.

C) Prior Collection Attempts

In the course of prior collections against the individuals described in ACL 12-02, CWDs may have established collection actions that were reported to the Franchise Tax Board (FTB) or a consumer credit bureau. To prevent further tax interceptions, CWDs are instructed to promptly send in (fax or secure zip email) a DPS 249 and 1722A forms to the CDSS Offset Program Coordinator, with a Record Type 3 (Delete) selected, along with the words "FTB Rush Minor Delete" written on both forms. The CWD shall submit these forms as to individuals identified in Section A who have been reported to the FTB, as soon as administratively possible, but no later than February 1, 2013. Upon receipt, the CDSS Offset Program Coordinator will submit a "Rush" delete request to the FTB. If CWDs have contacted credit bureaus, the CWD is required to promptly notify the credit bureaus to remove any adverse or negative information regarding the obligation from the individual's credit report.

In addition, if an individual requests written documentation that he or she is no longer a responsible party as to an OP described above, the CWD shall make reasonable efforts to provide the individual with that documentation. The sample letter provided in Section B can serve this purpose.

D) Grant Adjustments and Amounts Collected in Error After January 6, 2012:

ACLs 12-02 and 12-23 directed CWDs to stop grant adjusting to recoup OPs from minors moving to new AUs and former minors in an overpaid AU. This letter serves as direction to the CWDs to ensure any grant adjustments deducted from grants in order to collect OPs from the population described in ACL 12-23 on or after February 1, 2012, are refunded to the AU as underpayments in accordance with MPP Section 44-340. In addition, the CWD must send NOA message M44-340C (underpayment adjustment) to the AU. If the CWD has not yet initiated identification of and repayments to this population, the CWD should begin this correction of CalWORKs grants and provide refunds as appropriate, beginning with cash aid (grants) provided to these AUs on January 1, 2013.

In addition, if a CWD recouped an OP from a member of the described population via any other method (e.g. voluntary cash repayment, tax intercept, etc.) after January 6, 2012, the CWD must provide the individual and/or AU a refund of the repaid amount, in accordance with underpayment policies at MPP Section 44-340. For non-grant adjustment methods of collection, the CWD shall refund those amounts to the individual, as soon as possible, but no later than 90 days after the CWD identifies or is provided with information regarding the collection that is being stopped, and shall issue an informing notice informing him or her of the amount of the refund.

E) New Notices of Action:

New OP NOA Message:

This new OP NOA message, described below, must be used to notify the AU that was previously subject to an OP, as described in ACLs 12-02, 12-23 and this ACL, that as a result of this settlement, they are no longer responsible for repayment of the OP.

M44-350J: Use to notify clients that an OP recoument that was previously being collected from his or her AU will stop for the reasons described in ACL 12-02 or 12-23. The affected population consists of adults, minor HoH and emancipated minors who formerly received aid as children in an overpaid AU, and minors who became members of a new AU and the OP occurred while the minor was a member of a previous AU.

CWDs shall utilize current practices for treatment of underpayments as described in MPP Sections 44-340.4 entitled, "Correction of the Underpayment."

This new NOA message will ensure that CWDs have the appropriate NOA message to be used for the situation described above and will also ensure that clients are being

informed adequately of the change to his or her cash aid. For additional information regarding adequate noticing requirements, please see MPP Section 22-071.12 (QR).

New Underpayment Message:

M44-340C: Use to notify clients of an underpayment of aid, for any month(s) on or after February 2012 in which the AU's grant was reduced for an OP collection against one of the types of individuals described in Section A.

In ACL 12-23, we indicated that instructions would follow regarding the treatment of CalWORKs aid payments previously collected via grant adjustments for the months of February 2012 through May 2012. M44-340C shall be used for this purpose. CWDs may also use this notice to notify clients who are entitled to a refund because the CWD was unable to correct the budget for AUs containing a person described in ACL 12-23 prior to issuing the June 2012 grant.

F) Questions and Answers (Q&A) Regarding Certain Groups Affected by the New Policies

This section transmits a series of questions initiated by CWDs regarding the new policies and CDSS' responses to those questions.

All of the following Q&As presume that the CWD has exhausted all efforts to collect the OP from any aided parents and caretaker relatives first, in accordance with MPP Section 44-352.3.

1. Question: Is it appropriate to collect OPs from emancipated minors, as well as from minors who are HoHs?

Answer: Whether a CWD can collect OPs from emancipated minors and minors who are HoH depends on the individual's status at the time the OP occurred. CWDs shall recoup an OP from a minor HoH or from an emancipated minor only if the OP occurred while the minor was a HoH or emancipated minor.

- a) If the OP was incurred when the minor was *aided as a child* in an AU with an adult caretaker relative, CWDs shall not take any action to collect that OP from the minor when he or she later becomes the HoH in his or her own AU.
- b) If the OP occurred in the minor's own AU for which they are the HoH, then it would be appropriate to recoup the OP from the minor HoH. It would also be appropriate to recoup an OP from an emancipated minor if the OP was established in

- c) the emancipated minor's own AU. However, the minor HoH or emancipated minor is *not* responsible for any OP incurred before the minor became emancipated or HoH.
- d) If the AU is a two-parent household where both parents are under 18 (i.e. there is no senior parent), and an OP is incurred within that AU, it is appropriate to collect an OP from the AU, because at least one or both of them were HoH at the time the OP occurred.

2. Question: Is it appropriate to collect an OP from an AU in which there is an 18 year old who is being aided as a "child" (because he or she is still in high school), and the OP was established in a different AU when the child was under 18?

Answer: No, it is not appropriate to collect from the described AU, because the OP occurred when the 18-year old "child" was in a previous AU, and CWDs have been directed not to collect from children moving from an AU with an OP into a new AU. Even though the individual has turned 18, because (s)he is attending high school and is considered an "eligible child", the new OP recoupment rules established in the Hartley settlement apply to this child.

3. Question: If a client formerly received extended CalWORKs benefits under Assembly Bill (AB) 12, can CWDs collect AB 12 OPs from the individual when that individual reaches age 21 and is no longer a non-minor dependent (NMD)?

Answer: No. AB 12 payments, though paid through CalWORKs, are for foster youth, and former foster youth are not liable for any OP that occurred while the NMD received AB 12 payments. OPs may only be recouped via grant adjustment while a NMD is actively being aided under AB 12. However, if that former AB 12 recipient receives aid after AB 12 benefits end in a new, non-AB 12 AU, that later OP can be recouped, because in that scenario, the former NMD is the adult head of household of his/her child's AU.

4. Question: Is it proper to collect an OP from a grandchild that was in a Senior Parent's AU if the grandchild's parent(s) (a former nested teen parent) reaches age 18, completes high school or vocational training before age 19 or becomes emancipated in accordance with MPP Section 42-101.2 and starts his or her own AU?

Answer: No, in the scenario described above, both the nested teen parent and the grandchild of the Senior Parent were receiving aid as children in the Senior Parent's AU. Thus, they are not considered responsible parties for the prior AU's

OP and the CWD cannot recoup the OP from these individuals. Once the former nested teen starts his or her own AU, the prior OP does not follow him/her to the new AU.

5. Question: Should CWDs stop OP recoupment efforts from former KinGap individuals after they reach age 21 and are no longer eligible for aid since they are not technically “Temporary Aid for Needy Family (TANF) recipients?”

Answer: Whether CWDs cease OP recoupment effort from former KinGap individuals depends on when the OP was established. If the KinGap OP occurred after January 1, 2011, the KinGAP youth are receiving foster care payments and, as such, they are not responsible for repayment of any OPs established in the KinGap case. Prior to January 1, 2011, the KinGAP payments were CalWORKs payments, and as such, they are subject to the new policy established by *Hartley v. Lightbourne*. For additional KinGAP OP information, please refer to WIC section 11466.24 and MPP sections 45-304 through 45-306.

6. Question: For Non-needy caretaker relatives (NNRs) with OPs, if the child moves back with his/her mother, and the child is still under 18, is it proper to collect that previous NNR’s OP from the Mom in the AU that the child joined?

Answer: No, it would not be appropriate to recoup the NNR’s OP from the new AU where the child is receiving aid with Mom. Because the OP occurred in the NNR’s AU, the OP would not “follow” the child from the NNR’s AU to the Mom’s AU.

7. Question: Can CWDs collect OPs from unaided adults in Child-Only (CO) cases?

Answer: No, CWDs cannot collect OPs from unaided adults if the adult was not aided at the time the OP was established. CWDs cannot recoup an OP from a parent who is excluded under MPP 44-352.32-.331 and 82-832, if that adult was not aided in the AU at the time of the OP. This includes adults who are excluded from the AU because they are a sanctioned individual, drug or fleeing felon, undocumented non-citizen, or NNR. However, CWDs are still able to recoup OPs from active Child-Only cases via grant adjustment. Once the case is discontinued, the CWD cannot recoup from the (previously) unaided adult or the child.

8. Question: Now that CWDs can no longer collect in these circumstances, how should new OP claims be handled?

Answer: Affected individuals described in this letter (former minors, minors moving from one AU to another AU) will no longer be responsible for repaying prior OPs, and CWDs must ensure that their procedures for identifying responsible parties and OP recoupment reflect this change. CWDs also need to ensure they do not collect OPs from unaided adults as described in question #7. CWDs shall continue to establish OP claims when an OP is identified. CWDs must recoup OPs in accordance with OP regulations at MPP section 44-350, with the exception of the changes set out in this ACL.

Forms Implementation

CWDs must begin using the new NOA messages M44-350J and M44-340C as soon as administratively possible.

Camera Ready Copies and Translations

For camera-ready copies in English, contact the Forms Management Unit at fmudss@dss.ca.gov. If your office has internet access you may obtain this form from the CDSS webpage at http://www.dss.cahwnet.gov/cdssweb/FormsandPu_271.htm. When all translations are completed per MPP Section 21-115.2, including Spanish form, they are posted on an on-going basis on our web site. Copies of the translated forms can be obtained at http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm. For questions on translated materials, please contact Language Services at (916) 651-8876. Until translations are available, clients who have elected to receive Spanish, Russian, Vietnamese, and written Chinese materials should be sent the GEN 1365 interpretation informing notice with a local contact number.

If you have any questions regarding this letter, please contact the CalWORKs Eligibility Bureau at (916) 654-1322. For questions regarding post-aid recovery procedures, please contact the Program Integrity Branch at (916) 654-2125.

Sincerely,

Original Document Signed By:

TODD R. BLAND
Deputy Director
Welfare to Work Division

Attachments

State of California
Department of Social Services

Noa Msg Doc No.:M44-350J Page 1 of 1
Action : New
Issue: Overpayment
Title: Overpayment to be Stopped
Effective February 1, 2012.

Auto ID No.:
Source
Issued by
Reg Cite 44-350

Use Form No. NA 200
Original Date 03-15-12
Revision Date 03-16-12

MESSAGE:

Effective_____, the County is
increasing your family's cash aid
from\$_____ to\$_____

Here's why:

When you were a child, you were a
member of CalWORKs assistance unit
tht was overpaid. Your monthly cash
aid payments were lowered to pay back
that overpayment.

Because of a state policy change in
January 2012, you are no longer
required to pay for this overpayment.
After that date, we will no longer
collect the overpayment from your
monthly cash aid payment.

Your new cash aid amount is figured
on this page.

If you have any money taken out of
your grant after January 2012 to
repay this overpayment, we may owe
you a refund. If you are owed a
refund, you will get a separate
notice telling you of the amount.

INSTRUCTIONS: Use to stop overpayment grant adjustment from the
adult, or current emancipated minor or minor head of household, who
was a minor in an AU that was overpaid in another case. Specify the
prior grant amount and the new grant amount.

State of California
Department of Social Services

Noa Msg Doc No.: M44-340C Page 1 of 1
Action : Approval
Issue: Underpayments
Title: Underpayment Adjustment
Use Form No. : NA 281
Original Date : 04/01/00
Revision Date : 08/01/12

Auto ID No.:
Source :
Issued by :
Reg Cite : 44-340; 44-351.3, 44-350

MESSAGE:

You were underpaid \$_____ for the period
of _____ through _____.

Here's why:

When you were a child, you were a member of a
CalWORKs assistance unit that got too much
CalWORKs cash aid. We lowered the cash aid
that you get to pay back the overpayment.

Because of a state policy change in January
2012, you are no longer required to pay back
this overpayment. Since _____, the
overpayment should not have been taken out of
your monthly cash aid payment.

Your back cash aid is figured on the next
page. If you are on cash aid, this
amount will not be counted as income or
property in the month paid or in the next
month.

A deposit will be made to your EBT
cash account soon.

A direct deposit will be made to
your bank account.

A check will be sent soon.

A check is enclosed.

You have an overpayment balance.
This underpayment will be subtracted
from the overpayment you owe.

Reference: ACL 12-02, ACL 12-23 and ACL 12-
XX.

INSTRUCTIONS: Use to approve back cash aid to correct an underpayment to either an
adult who was a minor in an AU at the time the AU was overpaid or from a child who
moved from an overpaid AU to a new AU. Specify the new grant amount, the effective
date, the underpayment dates, and the method of reimbursement. Attach continuation
page NA 281 to show the underpayment computation.