



CDSS

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August 21, 2014

ALL COUNTY LETTER NO. 14-59

TO: ALL COUNTY WELFARE DIRECTORS
ALL CalWORKs PROGRAM SPECIALISTS
ALL COUNTY WELFARE-TO-WORK COORDINATORS
ALL COUNTY REFUGEE PROGRAM COORDINATORS
ALL COUNTY CONSORTIA PROJECT MANAGERS

SUBJECT: CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO
KIDS (CalWORKs) DOMESTIC ABUSE WAIVER POLICY
CLARIFICATION

REFERENCE: WELFARE AND INSTITUTIONS CODE (WIC) §11320.3(f),
§11320.3(f)(2), AND §11495 et seq.; MANUAL OF POLICIES AND
PROCEDURES (MPP) §42-713.21, §42-713.221, §42-715.1, §42-
715.13, §42-715.2, §42-715.3, §42-715.4, §42-715.5, AND §42-715.511

The purpose of this All County Letter (ACL) is to provide County Welfare Departments (CWDs) clarification regarding the domestic abuse protocols, regulations, and allowable program waivers for CalWORKs program applicants and recipients. This guidance supersedes the previous guidance provided in All County Information Notice (ACIN) I-02-06. Standard CalWORKs welfare-to-work (WTW) domestic abuse waiver request and determination forms are currently in development and will be released under separate cover. Additional form and notice updates related to this policy clarification are also in progress and will be forthcoming.

IDENTIFYING AND INFORMING VICTIMS OF DOMESTIC ABUSE

Identification of individuals who are past or present victims of domestic abuse is critical in order to provide the services individuals need to overcome this barrier and become self-sufficient. Manual of Policies and Procedures (MPP) §42-715.1 provides CWDs with the information and guidelines necessary to serve victims of past or present domestic abuse.

REASON FOR THIS TRANSMITTAL

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

Pursuant to MPP §42-715.13, CWDs must provide information on domestic abuse, including resource materials, to applicants and recipients during the application process, when the applicant or recipient enters the county's WTW program, and at annual redetermination. This information must be provided both verbally and in writing. Information and resource materials are to be provided to the applicant or recipient in a private location to ensure a safe and confidential environment to allow the applicant or recipient to disclose any abuse.

CWDs should provide materials that include domestic abuse resources in the county, information on confidentiality and any required limits on confidentiality, available waivers of program requirements that may be requested, safety planning, and information regarding county assistance on tailoring WTW plans to meet the needs of past or present abuse victims. CWDs should also provide information on exceptions to alien sponsor deeming requirements and on applying for legal alien status for aliens who are victims of domestic abuse.

Individuals must be provided a safe and private physical space to confidentially self-identify or disclose domestic abuse. CWDs are reminded that a sworn statement by a past or present victim of abuse is sufficient to establish abuse unless the CWD documents an independent and reasonable basis to find that the individual is not credible. MPP §42-715.1 lists acceptable evidence of domestic abuse that an individual could provide, as necessary.

CWDs are strongly encouraged to maintain written policies and procedures on county department websites in order to maximize access of information for all applicants and recipients of the CalWORKs program. CWDs are also encouraged to maintain county information on domestic abuse, including resource materials, on county department websites.

INDIVIDUAL CASE ASSESSMENT

Individual case assessment by staff trained to serve victims of abuse is crucial to develop WTW plans that meet the individual's needs, and to determine the need for waivers of program requirements that may be requested. MPP §42-715.2 specifies that each individual who has been identified as a victim of domestic abuse must be referred to staff trained in serving recipients who are victims of domestic abuse. Each recipient must be assessed on an individual basis to develop a WTW plan that will not place the individual or his/her children at further risk and with which the recipient agrees. If the recipient and the CWD cannot agree on a WTW plan, the recipient must be referred to a third party for resolution.

WTW plans must include consideration of 1) the degree to which domestic abuse is a barrier to obtaining employment, 2) flexibility to accommodate legal obligations, 3) cultural or religious needs, 4) protection for individuals in immediate danger, (5) the need for a waiver from program requirements that may be requested, and 6) other

services the victim and his or her children need. If necessary supportive services are not available, the CWD may waive certain WTW requirements pursuant to good cause (MPP §42-713.21).

CONFIDENTIALITY

Safety is of paramount concern for domestic abuse victims. MPP §42-715.3 states that information with respect to domestic abuse victims and their dependents must not be released to any outside party, governmental agency, or employee of the CWD who is not directly involved in the applicant's or recipient's case, unless the information is required to be disclosed by law or the individual provides written authorization. Further, all efforts must be made to preserve the confidentiality of the service provider and recipient relationship when reviewing the individual's participation in domestic abuse services which are part of his or her WTW plan.

NOTICING REQUIREMENTS

MPP §42-715.4 requires that CWD staff trained in serving recipients who are past or present domestic abuse victims must discuss personal safety with such victims and provide them with an opportunity to decide how they will receive communications and correspondence from the county. Case files must include documentation of any need for alternative notice requirements such as telephone calls, alternate mailing addresses, or hand delivery. Case files must have documentation, including a written statement signed by the individual, indicating the chosen method.

As mentioned above, the CDSS is currently developing CalWORKs WTW domestic abuse waiver request and determination forms. These forms will be released under separate cover. Additional form and notice updates related to domestic abuse are also in progress and will be forthcoming.

DOMESTIC ABUSE WAIVERS OF PROGRAM REQUIREMENTS

Domestic Abuse Waiver Criteria

CWDs are reminded that all recipients are required to participate in WTW activities to the full extent of the participant's abilities unless there is good cause. Participation in WTW activities may include counseling, treatment programs, and other barrier removal services that may be necessary in order to assist past or present domestic abuse victims to move into the full array of work and education opportunities available in the CalWORKs program with the goal of supporting their movement towards self-sufficiency.

CWDs are also reminded that any program requirement, except those listed in MPP §42-715.511, may be waived temporarily for a past or present victim of domestic abuse when it has been determined that good cause exists (Welfare and Institutions Code

(WIC) § 11495.15). Good cause exists when a CWD has determined there is a condition or other circumstance that temporarily prevents or significantly impairs the recipient's ability to be regularly employed or to participate in WTW activities (WIC §11320.3(f) and MPP §42-713.221).

It is important to note that the applicable laws do not require that the applicant or recipient be currently involved in a domestic abuse situation. The law authorizes a past or present victim of domestic abuse to request and be granted a temporary domestic abuse waiver from a CalWORKs rule or requirement if good cause exists.

Domestic Abuse Waiver Reevaluation

A domestic abuse waiver of a CalWORKs rule or requirement may not be granted permanently by a CWD. CWDs are required by WIC §11320.3(f) to review the continuing appropriateness of a good cause determination as necessary, but at least every three months. Please note, a domestic abuse waiver may continue for an indeterminate period as long as the CWD affirms that the conditions or circumstances that supported the granting of the domestic abuse waiver remain applicable. Please see the example below for additional clarification.

EXAMPLE: Mary is a past victim of domestic abuse and has left her abuser. Mary has two children, one of whom was previously determined by the CWD to be a child subject to the MFG rule (WIC §11450.04). Currently, Mary is depressed and suffering from post-traumatic stress disorder as a result of her prior abusive relationship and her current condition prevents her from being regularly employed or participating in WTW activities. Mary asks her CWD for a temporary domestic abuse waiver of the requirement to provide proof of immunization for her children, CalWORKs participation requirements, and the MFG rule for her MFG child. The CWD determines that Mary's current condition, caused by her past domestic violence situation, meets the good cause requirement of WIC §11320.3(f). That is, currently, it would be detrimental for Mary and her recovery efforts to be required to participate in WTW activities and to obtain the immunization records, and a temporary waiver of the MFG rule which would allow for her to receive additional cash assistance for her MFG child, will benefit Mary at this time.

After granting the temporary domestic abuse waivers, the CWD is required by statute to review the status of Mary's temporary domestic abuse waivers, no less than every three months. There is no time limit as to how long Mary may receive the domestic abuse waivers as long as the CWD verifies that Mary continues to be unable to work or participate in WTW activities based on her

domestic abuse condition or circumstances. Once Mary is determined by the CWD to be capable of participating in employment and/or WTW activities, the CWD will terminate the temporary domestic abuse waivers and require Mary to participate, provide the immunization records, and the temporary additional cash assistance for her MFG child would be discontinued.

This example demonstrates that there must be a linkage between the applicant's or recipient's past or present domestic abuse circumstances that temporarily prevents him/her from working or participating in WTW activities. If an applicant or recipient is requesting a domestic abuse waiver of a CalWORKs program rule or requirement, the analysis is not whether the program rule or requirement is detrimental to or unfairly penalizes the applicant, recipient or his/her family, but rather if the applicant or recipient's domestic abuse circumstance is determined by the CWD to temporarily prevent or significantly impair his or her ability to be regularly employed or participate in WTW activities.

As noted previously, there is no statutory authority to grant a permanent domestic abuse waiver of the MFG rule or any program rule or requirement pursuant to the domestic abuse statutes (WIC §11495). However, a 'temporary' domestic abuse waiver of the MFG rule may be granted, if applicable.

Domestic Abuse Waiver Retroactivity

Domestic abuse waivers may be granted retroactively for up to three months prior to the date the victim of past or present abuse requests a domestic abuse waiver and the CWD determines that good cause exists. The three month retroactive application of a waiver is based on the statutory time period in which a waiver for good cause is required to be reviewed by the CWD.

A domestic abuse waiver may be granted retroactively for more than three months only if the failure to grant the temporary domestic waiver, at the time it was requested, was due to an error by the CWD. In this circumstance, the recipient would need to demonstrate that he or she placed the CWD on notice that he/she was a domestic abuse victim and had requested a temporary waiver of a CalWORKs rule or requirement but the CWD failed to act and the condition or circumstances during the time period at issue temporarily prevented or significantly impaired the recipient from being regularly employed or participating in WTW activities. The domestic abuse waiver of the CalWORKs requirement would be effective retroactively to the date when the CWD was placed on notice by the recipient.

Domestic Abuse Waivers and Ineligible Adults

An adult who is undocumented or ineligible for CalWORKs benefits (i.e. Supplemental Security Income (SSI) recipient, non-needy caregiver relative, etc.) is not authorized to

be granted a temporary domestic abuse waiver. This is based on the law that a domestic abuse waiver may only be granted pursuant to a finding of good cause as specified in WIC §11320.3(f) which requires the domestic abuse condition (present/past) to temporarily prevent or significantly impair the applicant's or recipient's ability to be regularly employed or participate in WTW activities. Undocumented or ineligible adults are not subject to program requirements and are not required to comply with CalWORKs WTW activities. Therefore, they are ineligible for temporary domestic abuse waivers.

DOMESTIC ABUSE TRAINING

In order to appropriately serve victims of domestic abuse, it is critical to train and retrain staff regarding the special needs of these families. MPP §42-715.6 requires that staff who are responsible for working with CalWORKs recipients be trained to assist them in working with domestic abuse victims. However, CWDs have flexibility in determining which staff will be trained, when they will be trained, and how often the training will occur. CWDs are encouraged to use domestic abuse experts from the local community, such as domestic abuse advocates, to deliver, or to assist in delivering, this training and to provide an awareness of the availability of resources within the local community.

Training must provide staff with an awareness of the dynamics of domestic abuse and the impact of violence on the family. Training must be culturally competent and include, at a minimum, the following information:

- How to interview victims, the indicators of domestic abuse, the prevalence of drug and alcohol abuse and mental health issues among victims of domestic abuse, how to obtain information about the abusers, and possible referrals to appropriate services and available resources.
- How abuse can interfere with an individual's ability to meet CalWORKs program requirements, and how the services provided through the CalWORKs program assist victims of domestic abuse in becoming self-sufficient.
- CWD policies regarding treatment of victims of domestic abuse including, but not limited to, confidentiality rules, provisions for a safe and private physical space for disclosing abuse, requirements for monitoring the individual's progress, amending the WTW plan, informing requirements, and the criteria for granting waivers.
- The impact of domestic abuse on recipients and their families, domestic abuse provisions applicable to non-citizens, coordination on family support issues, crisis management/risk assessment, and recognition and management of the CWD worker's own biases.

CWDs are reminded that it is critical to continue to provide domestic abuse training for new staff and retrain staff as appropriate. CWDs may develop their own training tools or use CDSS's two-day training curriculum for identifying and serving domestic abuse victims in the CalWORKs program. This training, developed by the University of California, Davis, is an excellent resource for CWDs. The Statewide Domestic Abuse Training for CalWORKs Staff was released in 2001 and was presented to CWD staff through a series of training forums beginning in May of 2002. The materials from this training are available on the CDSS website at the CalWORKs Training and Resources page: <http://www.cdss.ca.gov/calworks/PG3585.htm>.

If you have any questions regarding this letter, please contact your CDSS Employment Bureau County Consultant at (916) 654-2137.

Sincerely,

Original Document Signed By:

TODD R. BLAND
Deputy Director
Welfare to Work Division

c: CWDA