

## DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814  
(916) 323-3401



May 2, 1986

ALL-COUNTY LETTER NO. 86-34

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: JACKSON V. McMAHON - CONTINUATION OF IN-HOME SUPPORTIVE SERVICES  
(IHSS) DURING TEMPORARY ABSENCES FROM THE STATE

On November 8, 1985, the Superior Court of Alameda County issued an Order for Stipulated Judgment in Jackson v. McMahon (copy attached). The Department stipulated that its interpretation of Manual of Policies and Procedures (MPP) Section 30-770.41, which prohibited the provision of IHSS to persons temporarily absent from the State, conflicted with Welfare and Institutions Code (W&IC) Section 11100 and was, therefore, invalid.

Effective immediately, when an IHSS recipient is absent from the State, IHSS eligibility shall continue as described below:

- (A) If the recipient gives the county prior notice of impending temporary absence from California, IHSS will be continued without interruption.
- (B) If the recipient is temporarily absent without prior notice, the county must contact him/her if the absence exceeds or is expected to exceed 30 days.
  - (1) IHSS must be discontinued, after proper notice, if:
    - (a) County contact indicates that the recipient has established out-of-state residency, or has no intent to return to California; or
    - (b) The recipient remains out of state for more than 60 days and has not established good cause, such as illness, for doing so.
  - (2) IHSS must be continued if:
    - (a) County contact indicates that the recipient has not established out-of-state residency and intends to return to California; or

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- (b) The recipient remains out of state for more than 60 days but has established good cause, such as illness, for doing so.
- (3) Under the circumstances specified in (2) above, the county must:
1. Reassess the IHSS recipient's need by telephone or written contact while the recipient is in the other state as soon as possible; and
  2. Perform a face-to-face reassessment immediately upon the recipient's return to California.
- (C) If IHSS is continued while the recipient is temporarily out of state, the following provisions apply:
- (1) The recipient shall continue to receive the same number of hours of IHSS authorized prior to his/her temporary absence until reassessment occurs.
  - (2) The recipient's out-of-state individual provider (IP) shall be reimbursed at the county's lowest current IP base rate.
  - (3) The recipient must continue to mail timesheets to the county as scheduled.

The Department will be amending MPP Section 30-770.41 to accurately reflect the requirements described in W&IC Section 11100. Until such regulations are filed, in order to comply with the order in Jackson v. McMahon, counties must follow the requirements described in this letter.

If you have any questions, please contact your Adult and Family Services Operations consultant at (916) 445-0623.



LOREN D. SYTER  
Deputy Director  
Adult and Family Services Division

Attachment

ENDORSED  
FILED

NOV 8 1985

RENE C. DAVIDSON, County Clerk  
By DELAINE WILLIAMS, Deputy

EVELYN R. FRANK  
LEGAL AID SOCIETY OF ALAMEDA COUNTY  
2357 San Pablo Avenue  
Oakland, California 94612  
Telephone: (415) 465-4376  
Attorney for Petitioner

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

JANE JACKSON,	)	NO. 572895-4
	)	
Petitioner,	)	STIPULATION AND ORDER
	)	<u>FOR ENTRY OF JUDGMENT</u>
vs.	)	
	)	
LINDA S. McMahon, Director of	)	
the State Department of Social	)	
Services; DEPARTMENT OF SOCIAL	)	
SERVICES, an Agency of the	)	
State of California; LIBRADO	)	
PEREZ, Director of the Alameda	)	
County Social Services Agency;	)	
ALAMEDA COUNTY SOCIAL SERVICES	)	
AGENCY,	)	
	)	
Respondents.	)	

This action for a writ of mandate pursuant to C.C.P. §1094.5 and §1085 was filed on May 31, 1983. Petitioner challenges the validity of Eligibility and Assistance Manual ("EAS") §30-470.41 (now found at EAS §30-770.41), which requires that, in order to be eligible for In Home Supportive Services, a recipient must be "physically residing in the state with the intention to continue residing here." In view of the fact that the foregoing regulation is inconsistent with and in violation of Welfare & Institutions Code §11100, the parties wish to resolve this matter without the necessity of further litigation.

1 Therefore, IT IS HEREBY STIPULATED by and between Petitioner  
2 Jane Jackson and Respondents Linda S. McMahon and Department of  
3 Social Services [hereinafter "DSS"], through their respective  
4 counsel, that the court shall enter judgment against said  
5 respondents, as follows:

6 1. Respondent McMahon shall immediately set aside her  
7 decision in the matter of Jane Jackson, State Hearing No.  
8 82028381 ALA (May 24, 1982), and shall direct the Alameda County  
9 Social Services Agency to pay In Home Supportive Services  
10 benefits to petitioner from February 1, 1982 forward, as  
11 otherwise eligible.

12 2. Within seventy-five (75) days from the date upon which  
13 this stipulation is executed by counsel for petitioner and  
14 respondents McMahon and DSS, said respondents shall issue an All  
15 County Letter, instructing the county welfare departments to  
16 implement Welfare & Inst. Code §11100 according to its terms,  
17 without regard to and despite the provisions of Eligibility and  
18 Assistance Manual ["EAS"] §30-770.41. Respondents shall provide  
19 petitioner's attorney with a draft of said All County Letter no  
20 later than thirty (30) days prior to issuing it.

21 3. After issuing said All County Letter, respondents  
22 McMahon and DSS will commence rulemaking proceedings in order to  
23 amend EAS §30-770.41 so that it is consistent with state law, and  
24 in particular, with Welfare & Inst. Code §11100.

25 4. Pending issuance of the All County Letter referred to  
26 in paragraph 2, respondents will instruct the Alameda County  
27 Welfare Department to continue to provide In Home Supportive  
28 Services benefits to petitioner, so long as she is a resident of

1 the State of California within the meaning of Welfare & Inst.  
2 Code §11100.

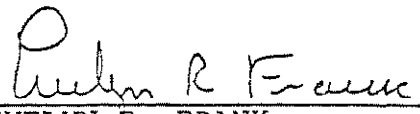
3 5. The court may retain jurisdiction to enforce this  
4 stipulation and its judgment entered pursuant thereto, and to  
5 award attorneys' fees, as provided for by law, upon a properly  
6 noticed motion therefor.

7 6. The petition against Librado Perez and against Alameda  
8 County Social Services Agency may be dismissed without prejudice.

9 SO STIPULATED.

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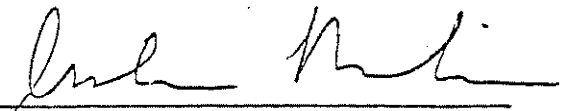
11 DATED: October 30, 1985

  
EVELYN R. FRANK  
Attorney for Petitioner

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14 DATED: October 31, 1985

  
ASHER RUBIN  
Deputy Attorney General

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LET JUDGMENT BE ENTERED ACCORDINGLY.

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SO ORDERED. NOV 08 1985

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19 DATED:

WINTON McKIBBEN  
JUDGE OF THE SUPERIOR COURT

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