

West's Annotated California Codes [Currentness](#)
Welfare and Institutions Code ([Refs & Annos](#))
Division 9. Public Social Services
Part 2. Administration
Chapter 7. Hearings

GENERAL NOTES

2001 Main Volume

<Chapter 7 was added by Stats.1965, c. 1784, p. 3992, § 5.>

CROSS REFERENCES

Administrative hearings, generally, see [Government Code § 11370 et seq.](#)
Adult day health care programs, grievance procedures, see [Welfare and Institutions Code § 14555](#).
Medi-Cal drug treatment program, service providers, assistance to Medi-Cal beneficiaries, see [Health and Safety Code § 11758.47](#).
Prepaid health plans, grievance procedure, see [Welfare and Institutions Code § 14450](#).
Residential care facilities for persons with chronic life-threatening illness, order to remove resident, notice to resident and licensee, review and determination of relocation plan, see [Health and Safety Code § 1568.073](#).
Residential care facilities, removal of resident with health condition which cannot be cared for within limits of license or requires inpatient health facility care, see [Health and Safety Code § 1569.54](#).
Support services, complaint resolution, state hearing, see [Family Code § 17801](#).
Work incentive programs, laws applicable to proceedings, see [Unemployment Insurance Code § 5300](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal eligibility and share of cost,
Right to state hearing, see [22 Cal. Code of Regs. § 50951](#).
State hearing procedures, see [22 Cal. Code of Regs. § 50953](#).

West's Ann. Cal. Welf. & Inst. Code D. 9, Pt. 2, Ch. 7, Refs & Annos, CA WEL & INST D. 9, Pt. 2, Ch. 7, Refs & Annos

Current with urgency legislation through Ch. 763 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., Prop. 99, and Props. 1A-12

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Effective:[See Text Amendments]

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Welfare and Institutions Code ([Refs & Annos](#))

Division 9. Public Social Services ([Refs & Annos](#))

Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10950. Opportunity for hearing; priorities; recipient defined

If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services, if his or her application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefor, and is dissatisfied with that refusal, he or she shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a state hearing.

Priority in setting and deciding cases shall be given in those cases in which aid is not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and state law.

Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct state hearings in order to secure approval of a state plan under applicable federal law.

The State Director of Health Services may contract with the State Department of Social Services for the provisions of state hearings in accordance with this chapter.

As used in this chapter, "recipient" means an applicant for or recipient of public social services except aid exclusively financed by county funds or aid under Article 1 (commencing with [Section 12000](#)) to Article 6 (commencing with [Section 12250](#)), inclusive, of Chapter 3 of Part 3, and under Article 8 (commencing with [Section 12350](#)) of Chapter 3 of Part 3, or those activities conducted under Chapter 6 (commencing with [Section 18350](#)) of Part 6, and shall include any individual who is an approved adoptive parent, as described in [subdivi-](#)

sion (C) of Section 8708 of the Family Code, and who alleges that he or she has been denied or has experienced delay in the placement of a child for adoption solely because he or she lives outside the jurisdiction of the department.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3992, § 5. Amended by Stats.1973, c. 1216, p. 2897, § 7, eff. Dec. 5, 1973; Stats.1975, c. 171, p. 316, § 21, eff. June 30, 1975; Stats.1977, c. 1252, p. 4653, § 789, operative July 1, 1978; Stats.1978, c. 429, § 238.5, eff. July 17, 1978, operative July 1, 1978; Stats.1981, c. 1, p. 3, § 1, eff. Dec. 4, 1980; Stats.1985, c. 1274, § 13, eff. Sept. 30, 1985; Stats.1986, c. 415, § 2, eff. July 17, 1986; Stats.1991, c. 820 (S.B.475), § 6; Stats.1998, c. 1056 (A.B.2773), § 19.5.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1973 amendment added “or aid under Chapter 3 (commencing with Section 1200) of Part 3 of this division” to the provision defining “recipient.”

Operative date of Stats.1973, c. 1216, see Historical and Statutory Notes under [Welfare and Institutions Code § 10551](#).

The 1975 amendment added the provisions relating to the Director's powers and duties to conduct and contract for fair hearings; deleted “or services” following “aid” in the provision relating to dissatisfaction with county department actions and following “except aid” in the provision defining “recipient.”

The 1977 amendment rewrote the section, which previously read:

“If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his application for or receipt of aid, or if his application is not acted upon with reasonable promptness, or if any person who desires to apply for such aid is refused the opportunity to submit a signed application therefor, and is dissatisfied with such refusal, he shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the department, be accorded an opportunity for a fair hearing.

“For the purposes of administering services, the Director of Health shall have those powers and duties conferred on the Director of Benefit Payments by this chapter to conduct fair hearings in order to secure approval of a state plan under the provisions of applicable federal law.

“The Director of Health may contract with the Department of Benefit Payments for the provisions of fair hearings in accordance with this chapter.

“As used in this chapter, “recipient” means an applicant for or recipient of aid or services except aid exclusively financed by county funds or aid under Chapter 3 (commencing with Section 12000) of Part 3 of this division.”

The 1978 amendment deleted “in which case ‘department’ for purposes of this chapter shall mean the State Department of Health Services” from the end of the provision relating to the Director's ability to contract for the

provisions of fair hearings.

The 1981 amendment added the provisions relating to rights to a state hearing.

The 1985 amendment added “or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6” to the provision defining recipient.

The 1986 amendment added the provisions relating to priorities in setting and deciding cases.

Stats.1998, c. 1056, added, at the end of the section, “, and shall include any individual who is an approved adoptive parent, as described in [subdivision \(C\) of Section 8708 of the Family Code](#), and who alleges that he or she has been denied or has experienced delay in the placement of a child for adoption solely because he or she lives outside the jurisdiction of the department.”

An amendment of this section by § 19.6 of Stats.1998, c. 1056, failed to become operative under the provisions of §38 of that Act.

Section 11 of Stats.1999, c. 803 (A.B.472), provides:

“Sections 1 and 2 of this bill shall become operative only if either Assembly Bill 196 [Stats.1999, c. 478] or Senate Bill 542 [Stats.1999, c. 480], or both, are enacted into law during the 1999-2000 Regular Session, and as enacted, either or both bills add Division 17 (commencing with Section 17000) to the Family Code, in which case Sections 3, 4, 5, [amending Welfare and Institutions Code §§ 10950, [10951](#), and [10963](#)] and 6 [The bill did not contain a Section 6] of this bill shall not become operative.”

Section affected by two or more acts at the same session of the legislature, see [Government Code § 9605](#).

Derivation: Former § 104.1, added by Stats.1951, c. 925, p. 2454, § 1, amended by Stats.1953, c. 1562, p. 3241, § 1; Stats.1957, c. 702, p. 1891, § 1.

Former § 425, added by Stats.1961, c. 1883, p. 3982, § 1, amended by Stats.1963, c. 43, p. 658, § 1.2; Stats.1963, c. 2173, p. 4560, § 1.

Former § 445, added by Stats.1963, c. 1916, p. 3930, § 54.5.

Former § 1511, added by Stats.1937, c. 374, p. 1185, § 1.

Former § 1551, added by Stats.1937, c. 389, p. 1204, amended by Stats.1939, c. 1037, p. 2845, § 10; Stats.1945, c. 1395, p. 2601, § 10.

Former § 3086, added by Stats.1937, c. 376, p. 1186, amended by Stats.1937, c. 406, p. 1351; Stats.1939, c. 916, p. 2571, § 10.

Stats.1929, c. 529, p. 911, § 5; Stats.1931, c. 882, p. 1894, § 1; Stats.1936, Ex.Sess., c. 6, p. 9, § 3; Stats.1937, c. 84, p. 180, § 1.

CROSS REFERENCES

Conduct of hearings, see [Welfare and Institutions Code § 10953 et seq.](#)

Hearings, delegation of power to conduct, see [Government Code § 11182](#).
 Hearings by department heads, see [Government Code § 11184 et seq.](#)
 Hospital fair pricing policies, see [Health and Safety Code § 127400 et seq.](#)
 Public social services defined, see [Welfare and Institutions Code § 10051](#).
 Report on administration of appeals, see [Welfare and Institutions Code § 10612](#).
 Report on officers administering funds used for public social services, see [Welfare and Institutions Code § 10602](#).
 Right of appeal, applicant under relief law of 1945, see [Welfare and Institutions Code § 18494](#).
 Time for request for hearing, see [Welfare and Institutions Code § 10951](#).
 Words and phrases, generally, see [Welfare and Institutions Code §§ 9 et seq., 10050 et seq.](#)

CODE OF REGULATIONS REFERENCES


Geographic managed care program, problem resolution process for members, see [22 Cal. Code of Regs. § 53926](#).
 Health care services, fair hearing related to denial, termination or reduction in medical services, see [22 Cal. Code of Regs. § 51014.1](#).
 Medi-Cal specialty mental health services,
 “Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).
 “Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).
 Prepaid health plans, information to new members, see [22 Cal. Code of Regs. § 53452](#).
 Primary care case management plans, information to new members, see [22 Cal. Code of Regs. § 56452](#).
 Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).
 Two-plan model managed care program, problem resolution process for members, see [22 Cal. Code of Regs. § 53892](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative collateral estoppel in California: A critical evaluation of *People v. Sims*. Thomas F. Crosby, Jr., 40 *Hastings L.J.* 907 (July, 1989).
 Administrative collateral estoppel in California--*People v. Sims*. Thomas F. Crosby, Jr., 40 *Hastings L.J.* 907 (1989).
 Asserting confidentiality: Need for a lay representative-claimant privilege. (1984) 15 *Pac.L.J.* 245.
 California supreme court survey; a review of decisions: July 1982-November 1982. (1983) 10 *Pepp.L.Rev.* 835.
 Fair procedure in welfare hearings. David R. Packard (1969) 42 *S.Cal.L.Rev.* 600.
 Organizations and administrative practice. Gene Livingston (1974) 26 *Hastings L.J.* 91.
 Supreme court of California, 1981-1982 foreword: Emerging court. Stephen R. Barnett (1983) 71 *Cal.L.Rev.* 1134.
 Welfare fair hearings: Legal problems of administrative practice. (1972) 5 *U.C.Davis L.Rev.* 542.

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2001 Main Volume

[Social Security and Public Welfare](#)  8.5.
Westlaw Topic No. 356A.
[C.J.S. Social Security and Public Welfare § 13](#).

RESEARCH REFERENCES

ALR Library

[130 ALR 882](#), Exhaustion of Administrative Remedies as Condition of Resort to Court in Respect of Right Claimed Under Social Security or Old Age Acts.

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 58](#), Right to Administrative Hearing--State Statutory Right.

[CA Jur. 3d Public Aid and Welfare § 61](#), Filing of Request; Priority, Setting and Notice of Hearing.

[CA Jur. 3d Public Aid and Welfare § 67](#), Judicial Review--Exhaustion of Administrative Remedies as Prerequisite.

[Cal. Civ. Prac. Family Law Litigation § 21:112](#), Grievance Procedures.

Forms

[California Transactions Forms--Family Law § 6:92](#), Grievance Procedures.

Treatises and Practice Aids

[Rutter, Cal. Practice Guide: Civil Trials & Evidence Ch. 8E-A, A. Privileges](#).

[Simons California Evidence Manual § 5:25](#), Who Qualifies as a Lawyer?

[2 Witkin Cal. Evid. 4th Witnesses § 103](#), (S 103) Exception: Representative in AFDC Hearing.

[1 Witkin Cal. Proc. 4th Attorneys § 85](#), (S 85) Allocation of Functions.

[8 Witkin Cal. Proc. 4th Extraordinary Writs § 264](#), Decision Applying Invalid Regulation.

[7 Witkin Cal. Proc. 4th Judgment § 339](#), (S 339) Collateral Estoppel Applied.

[24 Wright & Miller: Federal Prac. & Proc. § 5480](#), "Lawyer".

NOTES OF DECISIONS

Administrative remedies, exhaustion of [17](#)
Attachment of right [10](#)

Authorized representative 13
 Child support 9
 Confrontation rights 8
 Construction with other laws 2
 County representative 12
 Criminal prosecutions 14
 Due process 1
 Evidentiary hearing 6
 Exhaustion of administrative remedies 17
 Fair hearing 4
 Hearing officer 7
 Informal hearing 5
 Interim or temporary services 11
 Jurisdiction 16
 Notice requirements 3
 Prosecutions, criminal 14
 Rehearing 15
 Review 18
 Temporary services 11

1. Due process

Administrative hearings regarding public social services benefits must be meaningful and encompass all applicant's public assistance claims, when Department of Social Services (DSS) administrative hearing process is applicant's exclusive remedy, since administrative process is federal due process right which state "fair hearing" statute was enacted to implement. *Knight v. McMahon* (App. 2 Dist. 1994) 31 Cal.Rptr.2d 832, 26 Cal.App.4th 747, review denied. *Administrative Law And Procedure* ⚙️ 469.1; *Social Security And Public Welfare* ⚙️ 8.5

2. Construction with other laws

Where mandatory duty placed upon director of state department of benefit payments was to act within 60 days after referee submitted report and not necessarily to act by awarding benefits to a particular applicant, alleged injuries in the nature of injury to applicant's health and mental pain and suffering and emotional distress undergone by applicant did not result from failure of director to comply with regulations making it mandatory for him to render decision within 60 days so that liability of the state could not be predicated on *Gov.C. § 815.6* which declares that failure to comply with applicable statutory or regulatory standards is negligence. *Williams v. State, Bd. of Control* (App. 1 Dist. 1976) 133 Cal.Rptr. 539, 62 Cal.App.3d 960. *States* ⚙️ 112.2(2)

In determining whether petitioners were "needy" persons within § 12000 et seq. (repealed), procedure set forth in this code, rather than that in *Gov.C. § 11501 et seq.*, was properly followed. *Bertch v. Social Welfare Dept. of Cal.* (1955) 45 Cal.2d 524, 289 P.2d 485. *Social Security And Public Welfare* ⚙️ 177

3. Notice requirements

Welfare department regulation providing pretermination procedure for terminating benefits being received under categorical assistance programs was violative of due process provisions of State and Federal Constitutions

Const. Art. 1, § 7; U.S.C.A.Const. Amend. 14) insofar as allowing only three days' notice in which to prepare for hearing and insofar as failing to provide that recipient might present his case before person making decision. [McCullough v. Terzian \(1970\) 87 Cal.Rptr. 195, 2 Cal.3d 647, 470 P.2d 4. Constitutional Law](#) 🔑 4116

4. Fair hearing

“Fair hearing” mechanism provided to applicants and recipients of public social services is intended to provide speedy and informed manner of challenging administrative action which may reduce or terminate vitally needed benefits. [Knight v. McMahon \(App. 2 Dist. 1994\) 31 Cal.Rptr.2d 832, 26 Cal.App.4th 747, review denied. Administrative Law And Procedure](#) 🔑 469.1; [Social Security And Public Welfare](#) 🔑 8.5

In “fair hearing” provided to applicants and recipients of public social services, only limitation upon issues, factual or legal, which may be raised is that they must be reasonably related to request for hearing or other issues mutually agreed upon by either party prior to or at hearing. [Knight v. McMahon \(App. 2 Dist. 1994\) 31 Cal.Rptr.2d 832, 26 Cal.App.4th 747, review denied. Administrative Law And Procedure](#) 🔑 469.1; [Social Security And Public Welfare](#) 🔑 8.5

5. Informal hearing

District attorney's participation in informal administrative “fair hearing” challenging county's determination that it made overpayments of Aid to Families with Dependent Children (AFDC) and food stamp benefits did not deprive benefits recipients of due process of law, based upon alleged “chilling” effect that district attorney's presence had on recipients' assertion of their rights. [Rauber v. Herman \(App. 1 Dist. 1991\) 280 Cal.Rptr. 785, 229 Cal.App.3d 942, rehearing denied. Constitutional Law](#) 🔑 4117; [District And Prosecuting Attorneys](#) 🔑 9

6. Evidentiary hearing

State welfare termination regulations, which did not afford recipient an evidentiary hearing at which he could personally appear to offer oral evidence and confront and cross-examine the witnesses against him, did not satisfy requirements of due process clause. [Wheeler v. Montgomery, N.D.Cal.1968, 296 F.Supp. 138, probable jurisdiction noted 89 S.Ct. 1452, 394 U.S. 970, 22 L.Ed.2d 751, reversed 90 S.Ct. 1026, 397 U.S. 280, 25 L.Ed.2d 307, dissenting opinion 90 S.Ct. 1028, 397 U.S. 280, 25 L.Ed.2d 307.](#)


Due process right of public assistance recipients to a pretermination evidentiary hearing before actual cessation or reduction of aid intervenes to prevent a “grievous loss” without a prior opportunity for contest. [Webb v. Swoap \(App. 3 Dist. 1974\) 114 Cal.Rptr. 897, 40 Cal.App.3d 191. Constitutional Law](#) 🔑 4116

7. Hearing officer



Use of law student employed by county counsel as hearing officer did not deny due process to welfare recipients whose benefits were terminated for fixed duration due to their failure to comply with various aspects of county's work-for-relief program, where law student did not participate in decision to terminate benefits. [Jennings v. Jones \(App. 1 Dist. 1985\) 212 Cal.Rptr. 134, 165 Cal.App.3d 1083, review denied. Constitutional Law](#) 🔑 4130

8. Confrontation rights


General assistance recipients' rights of confrontation and cross-examination were impermissibly denied by regu-


lations governing termination of general assistance benefits, where caseworker who made decision to terminate benefits did not appear at pretermination hearing and no procedure existed by which his or her appearance could be required. [Jennings v. Jones \(App. 1 Dist. 1985\) 212 Cal.Rptr. 134, 165 Cal.App.3d 1083](#), review denied. [Criminal Law](#)  662.3



9. Child support


Former welfare recipient's due process rights were not violated by lack of administrative hearing to contest calculations of county district attorney, acting as administrator of Child Support Enforcement Services (CSES) program, about amounts payable to her on her claim for enforcement of prior accruals of child support obligations under Social Security Act, where district attorney provided written review of her claims and detailed accounting of proceeds from support enforcement action. [Pereira-Goodman v. Anderson \(App. 1 Dist. 1997\) 63 Cal.Rptr.2d 197, 54 Cal.App.4th 864](#), review denied. [Constitutional Law](#)  4120; [Social Security And Public Welfare](#)  8.5

10. Attachment of right


Former welfare recipient was not entitled to administrative fair hearing under social services statute to contest calculations of county district attorney, acting as administrator of Child Support Enforcement Services (CSES) program, about amounts payable to recipient on her claim for enforcement of prior accruals of child support obligations under Social Security Act as statute limited hearing right to applicants for, or recipients of, public assistance who were contesting decisions of county welfare department regarding assistance payments. [Pereira-Goodman v. Anderson \(App. 1 Dist. 1997\) 63 Cal.Rptr.2d 197, 54 Cal.App.4th 864](#), review denied. [Social Security And Public Welfare](#)  8.5


Referral of case involving woman, alleged to have fraudulently obtained welfare payments, to Department of Social Services special investigation unit, investigation, and subsequent referral by unit to district attorney were internal actions having no immediate or direct impact on woman's application for receipt of benefits; therefore, they were not actions which could be challenged by "fair hearing." [Madrid v. McMahon \(App. 4 Dist. 1986\) 228 Cal.Rptr. 14, 183 Cal.App.3d 151](#), review denied. [Social Security And Public Welfare](#)  194.19

Unsuccessful applicant for welfare benefits may contest the validity of regulation which mandates the denial of his application both in the fair hearing provided pursuant to this section and in subsequent judicial review pursuant to a writ of administrative mandamus. [Woods v. Superior Court of Butte County \(1981\) 170 Cal.Rptr. 484, 28 Cal.3d 668, 620 P.2d 1032](#). [Social Security And Public Welfare](#)  8.5; [Social Security And Public Welfare](#)  8.20


In proceeding brought by county district attorney to enjoin collection agency from taking assignments for collecting past-due child and/or spousal support from persons who had received public assistance in county unless county first collected amount due it, no error occurred in granting demurrer of California state department of benefit payments to collection agency's cross complaint with respect to right of a former welfare recipient to a fair hearing before department, since merely providing an accounting of actual welfare expenditures to district attorney was not an action of county welfare department relating to a person's application for or receipt of aid, which established right to fair hearing described in this section. [Santa Clara County v. Support, Inc. \(App. 1 Dist. 1979\) 152 Cal.Rptr. 754, 89 Cal.App.3d 687](#). [Social Security And Public Welfare](#)  194.19


Hearing under provision of this section providing that dissatisfied recipient of public social services shall, upon

filing request with the department of public social services, be accorded opportunity for fair hearing was not prerequisite to discharge hearing by civil service commission concerning alleged overpayment of AFDC benefits to eligibility worker with department of public social services. [Rivera v. Los Angeles County Civil Service Commission \(App. 2 Dist. 1979\) 151 Cal.Rptr. 480, 87 Cal.App.3d 1001. Officers And Public Employees](#)  72.20


One, who had been a recipient of aid for needy children under § 11200 et seq. (repealed), but whose aid had been terminated by county for failure to list any employer or any earnings, had right under this section to a hearing before director of department of social welfare. [Madera County v. Holcomb \(App. 5 Dist. 1968\) 66 Cal.Rptr. 428, 259 Cal.App.2d 226. Social Security And Public Welfare](#)  194.16(2)

11. Interim or temporary services

Even if initial fair hearing decision were found to be erroneous on rehearing or direct review, county would remain liable for interim payments as the right to receive benefits vests when the initial decision is adopted by the director of the state agency. [Blackburn v. Sarsfield \(App. 1 Dist. 1981\) 178 Cal.Rptr. 15, 125 Cal.App.3d 143. Social Security And Public Welfare](#)  9.1

Petitioner, who applied for aid to the needy disabled and who was given immediate financial assistance pending decision on his application and whose application was thereafter denied, was not entitled to continue to receive temporary benefits pending decision on his administrative appeal from denial of application. [Jackson v. Carleson \(App. 3 Dist. 1974\) 113 Cal.Rptr. 890, 39 Cal.App.3d 12. Social Security And Public Welfare](#)  181


12. County representative

District attorney's representation of county in informal administrative "fair hearing" challenging county's determination that it made overpayments of Aid to Families with Dependent Children (AFDC) and food stamp benefits does not exceed district attorney's prosecutorial authority, even if county has county counsel, despite civil nature of proceeding. [Rauber v. Herman \(App. 1 Dist. 1991\) 280 Cal.Rptr. 785, 229 Cal.App.3d 942, rehearing denied. District And Prosecuting Attorneys](#)  9

13. Authorized representative

Use of term "authorized representative" rather than "counsel" or "attorney" in this section made clear that claimants have right to be represented by lay representatives as well as by members of the bar, and recognized that assistance through representative was necessary to insure the meaningfulness of the "fair hearing" right provided by this section. [Welfare Rights Organization v. Crisan \(1983\) 190 Cal.Rptr. 919, 33 Cal.3d 766, 661 P.2d 1073.](#)

14. Criminal prosecutions

Prosecution for fraudulently obtaining AFDC benefits was not precluded on ground that an administrative finding that defendant had not received any overpayment rendered the county's restitution demand void and thus precluded the prosecution because the requirement under § 11483 that restitution be sought prior to bringing a criminal action was not met. [People v. Sims \(1982\) 186 Cal.Rptr. 77, 32 Cal.3d 468, 651 P.2d 321. Fraud](#)  69(1)

15. Rehearing

Section 10950 et seq., as implemented by regulations, makes it mandatory that decision be rendered within 90

days of request for fair hearing and requires immediate implementation of the decision notwithstanding the fact that a local welfare agency may be granted a rehearing; granting of local welfare agency's request for rehearing will not postpone payment of benefits to a qualified recipient so that California rehearing procedure permitting decision of rehearing to be made more than 90 days after original request for fair hearing does not conflict with federal regulation. [Westfall v. Swoap \(App. 4 Dist. 1976\) 129 Cal.Rptr. 750, 58 Cal.App.3d 109. Social Security And Public Welfare](#) 🔑 194.16(2)

16. Jurisdiction

Department of Social Services did not have jurisdiction to conduct hearing on adequacy of child support enforcement services by family support division of county district attorney's office (FSD); enforcement services were not "public social services" within meaning of statute providing for hearing if applicant for or recipient of public social services is dissatisfied with county department's action relating to application for or receipt of public social services, and FSD was not "county department". [Campos v. Anderson \(App. 3 Dist. 1997\) 67 Cal.Rptr.2d 350, 57 Cal.App.4th 784, review denied. Child Support](#) 🔑 470

17. Exhaustion of administrative remedies

No exception to requirement of exhaustion of administrative remedies applied to permit juvenile court to order Department of Children and Family Services to make retroactive Aid to Families with Dependent Children-Foster Care (AFDC-FC) payments to relative caregiver of detained children who was denied AFDC-FC funding due to lack of criminal background check results for caregiver and an adult nephew living in home, and who had not made an effort to challenge the denial of AFDC-FC funding directly with Department of Social Services (DSS), where there was no indication that such a determination would have been outside the scope of DSS's authority or would necessarily have rendered a denial. [In re Darlene T. \(App. 2 Dist. 2008\) 78 Cal.Rptr.3d 119. Social Security And Public Welfare](#) 🔑 194.21

Where plaintiffs in class action did not seek to secure payment of welfare benefits but sought declaratory and injunctive relief and mandate in order to establish the illegality of grant adjustments and to prohibit continued resort to that method of recouping overpayments due to administrative error where the recipient has fully reported, which relief was not provided for by statute, doctrine of exhaustion of administrative remedies was not applicable and was not a jurisdictional bar to the action. [Oliva v. Swoap \(App. 3 Dist. 1976\) 130 Cal.Rptr. 411, 59 Cal.App.3d 130. Declaratory Judgment](#) 🔑 204

Recipients of aid to families with dependent children and of aid to blind, in seeking damages and injunctive and declaratory relief for class of minors allegedly wrongfully coerced to work, were not first required to exhaust any administrative remedies, in view of fact that such remedies did not exist. [Ramos v. Madera County \(1971\) 94 Cal.Rptr. 421, 4 Cal.3d 685, 484 P.2d 93. Declaratory Judgment](#) 🔑 209

Relief sought by welfare applicants who, on their own behalf and as representatives of all persons eligible for benefits, sought writ of mandamus commanding county welfare department to advise all persons requesting welfare aid of their rights to make written application for benefits and to administrative appeal could not have been obtained by administrative appeal and applicants were not precluded from seeking writ of mandamus in superior court on theory that they failed to exhaust administrative remedies. [Diaz v. Quitariano \(App. 3 Dist. 1969\) 74 Cal.Rptr. 358, 268 Cal.App.2d 807. Mandamus](#) 🔑 4(5)

18. Review

Where act reviewed was adjudicatory in that aid to families with dependent children recipient exercised her right under this section to demand “fair hearing” of decision to reduce grant, and that hearing resulted in adverse decision, her “exclusive remedy” was to file action for writ of administrative mandate in superior court pursuant to [C.C.P. § 1094.5](#), and in both proceedings she was entitled to challenge validity of underlying regulation. [Green v. Obledo \(1981\) 172 Cal.Rptr. 206, 29 Cal.3d 126, 624 P.2d 256. Mandamus ↪ 100](#)

West's Ann. Cal. Welf. & Inst. Code § 10950, CA WEL & INST § 10950

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Chapter 7. Hearings ([Refs & Annos](#))

§ 10951. Request; time; good cause for late filing; implementation

(a) No person shall be entitled to a hearing pursuant to this chapter unless he or she files his or her request for the same within 90 days after the order or action complained of.

(b)(1) Notwithstanding subdivision (a), a person shall be entitled to a hearing pursuant to this chapter if he or she files the request more than 90 days after the order or action complained of and there is good cause for filing the request beyond the 90-day period. The director may determine whether good cause exists.

(2) For purposes of this subdivision “good cause” means a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language compliant notice, in and of itself, shall not constitute good cause. In no event shall the department grant a request for a hearing where the request is filed more than 180 days after the order or action complained of.

(3) Nothing in this section shall preclude the application of the principles of equity jurisdiction as otherwise provided by law.

(c) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with [Section 11340](#)) of [Part 1 of Division 3 of Title 2 of the Government Code](#)), the department shall implement this section through an all-county information notice no later than January 1, 2008. The department may also provide further instructions through training notes.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3992, § 5. Amended by Stats.1979, c. 1170, § 7; [Stats.2007, c. 502 \(A.B.921\), § 1.](#))

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2007 Legislation

Stats.2007, c. 502 (A.B.921), redesignated the former text of the section as subd. (a); made gender neutral changes; and added subds. (b) and (c).

2001 Main Volume

The 1979 amendment substituted “90 days” for “one year”.

An amendment of this section by § 4 of Stats.1999, c. 803, failed to become operative under the provisions of § 11 of that Act.

Section 11 of Stats.1999, c. 803 (A.B.472), provides:

“Sections 1 and 2 of this bill shall become operative only if either Assembly Bill 196 [Stats.1999, c. 478] or Senate Bill 542 [Stats.1999, c. 480], or both, are enacted into law during the 1999-2000 Regular Session, and as enacted, either or both bills add Division 17 (commencing with Section 17000) to the Family Code, in which case Sections 3, 4, 5, [amending [Welfare and Institutions Code §§ 10950](#), 10951, and [10963](#)] and 6 [The bill did not contain a Section 6] of this bill shall not become operative.”

Derivation: Former § 104.5, added by Stats.1939, c. 302, p. 1575, § 3, amended by Stats.1945, c. 307, p. 766, § 1; Stats.1945, c. 876, p. 1645, § 1; Stats.1953, c. 1562, p. 3242, § 2; Stats.1957, c. 702, p. 1893, § 4; Stats.1959, c. 1523, p. 3813, § 1; Stats.1961, c. 97, p. 1103, § 1.

Former § 445.1, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CROSS REFERENCES

Computation of time, see [Code of Civil Procedure §§ 12 and 12a](#) and [Government Code § 6800 et seq.](#)

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Medical assistance program, notice of action, see [22 Cal. Code of Regs. § 50179.5](#).
Notice of action-Medi-Cal-only determinations or redeterminations, see [22 Cal. Code of Regs. § 50179](#).
Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Special project: [Annotated California Statutes of Limitation](#). 23 Sw.U.L.Rev. 689 (1994).

LIBRARY REFERENCES

2001 Main Volume

[Social Security and Public Welfare](#)  8.5.

Westlaw Topic No. [356A](#).

[C.J.S. Social Security and Public Welfare § 13](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 61](#), Filing of Request; Priority, Setting and Notice of Hearing.

West's Ann. Cal. Welf. & Inst. Code § 10951, CA WEL & INST § 10951

Current with urgency legislation through Ch. 763 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., Prop. 99, and Props. 1A-12

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Division 9. Public Social Services ([Refs & Annos](#))

Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10952. Setting; notice

The department shall set the hearing to commence within 30 working days after the request is filed, and, at least 10 days prior to the hearing, shall give all parties concerned written notice of the time and place of the hearing.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3992, § 5. Amended by Stats.1982, c. 110, p. 330, § 1.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1982 amendment substituted “30 working” for “45” prior to “days.”

Derivation: Former § 104.1, added by Stats.1951, c. 925, p. 2454, § 1, amended by Stats.1953, c. 1562, p. 3241, § 1; Stats.1957, c. 702, p. 1891, § 1.

Former § 104.5, added by Stats.1939, c. 302, p. 1575, § 3, amended by Stats.1945, c. 307, p. 766, § 1; Stats.1945, c. 876, p. 1645, § 1; Stats.1953, c. 1562, p. 3242, § 2; Stats.1957, c. 702, p. 1893, § 4; Stats.1959, c. 1523, p. 3813, § 1; Stats.1961, c. 97, p. 1103, § 1.

Former § 445.2, added by Stats.1963, c. 1916, p. 3930, § 54.5.

Former § 1511, added by Stats.1937, c. 374, p. 1185, § 1.

Former § 1551, added by Stats.1937, c. 389, p. 1204, amended by Stats.1939, c. 1037, p. 2845, § 10; Stats.1945, c. 1395, p. 2601, § 10.

Former § 3086, added by Stats.1937, c. 376, p. 1186, amended by Stats.1937, c. 406, p. 1351; Stats.1939, c. 916, p. 2571, § 10.

Stats.1929, c. 529, p. 911, § 5; Stats.1931, c. 882, p. 1894, § 1; Stats.1936, Ex.Sess., c. 6, p. 9, § 3; Stats.1937, c. 84, p. 180, § 1.

CROSS REFERENCES

Computation of time, see [Code of Civil Procedure §§ 12 and 12a](#) and [Government Code § 6800 et seq.](#)
Investigations and hearings by state departments, see [Government Code § 11180 et seq.](#)

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4.](#)

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6.](#)

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1.](#)

LIBRARY REFERENCES

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[Social Security and Public Welfare](#)  8.5.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare § 13.](#)

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 61](#), Filing of Request; Priority, Setting and Notice of Hearing.

West's Ann. Cal. Welf. & Inst. Code § 10952, CA WEL & INST § 10952

Current with urgency legislation through Ch. 763 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess.,
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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10952.5. Position statement; availability

If regulations require a public or private agency to write a position statement concerning the issues in question in a fair hearing, or if the public or private agency chooses to develop such a statement, not less than two working days prior to the date of a hearing provided for pursuant to this chapter, the public or private agency shall make available to the applicant for, or recipient of, public social services requesting a fair hearing, a copy of the public or private agency's position statement on the forthcoming hearing. The public or private agency shall make the copy available to the applicant or recipient at the county welfare department. A public or private agency shall be required to comply with the provisions of this section only if the public or private agency has received a 10-day prior notice of the date and time of the scheduled hearing.

If the public or private agency does not make the position statement available not less than two working days prior to the hearing or if the public or private agency decides to modify the position statement, the hearing shall be postponed upon the request of the applicant or recipient, provided an applicant or recipient agrees to waive the right to obtain a decision on the hearing within the deadline that would otherwise be applicable under regulations. A postponement for reason of the public or private agency not making the position statement available within not less than two working days shall be deemed a postponement for good cause for purposes of determining eligibility to any applicable benefits pending disposition of the hearing.

For purposes of this section "public or private agency" shall not include the State Department of Health Services.

CREDIT(S)

(Added by Stats.1982, c. 933, p. 3391, § 1. Amended by Stats.1986, c. 415, § 2.5, eff. July 17, 1986.)

HISTORICAL AND STATUTORY NOTES**2001 Main Volume**

The 1986 amendment substituted "public or private agency" for "county" throughout the section; substituted "public or private agency's" for "county's" in the first sentence of the first paragraph; substituted "10-day" for "ten-day" in the last sentence of the first paragraph; and added the third paragraph.

CODE OF REGULATIONS REFERENCES


Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Opportunity to document satisfactory immigration status, see [22 Cal. Code of Regs. § 50301.5](#).
Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).
Verification of satisfactory immigration status, see [22 Cal. Code of Regs. § 50301.6](#).

LIBRARY REFERENCES

2001 Main Volume

[Social Security and Public Welfare](#)  8.5.
Westlaw Topic No. 356A.
[C.J.S. Social Security and Public Welfare § 13](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 62](#), Issues at Hearing; Continuance; Manner of Reporting Proceedings.

West's Ann. Cal. Welf. & Inst. Code § 10952.5, CA WEL & INST § 10952.5

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10953. Conduct

A hearing under this chapter shall be conducted by administrative law judges employed by the department, unless the director orders that it shall be conducted by himself or herself. However, the director may contract with the Office of Administrative Hearings to conduct hearings.

Chapter 5 (commencing with [Section 11500](#)) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any hearing conducted under this chapter.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3992, § 5. Amended by Stats.1970, c. 1093, p. 1939, § 1; Stats.1977, c. 1252, p. 4654, § 790, operative July 1, 1978; Stats.1986, c. 415, § 3, eff. July 17, 1986.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1970 amendment added the proviso to the first sentence of the first paragraph, added the second sentence of such paragraph, and added the second paragraph.

The 1977 amendment substituted "Office of Administrative Hearings" for "Office of Administrative Procedure".

The 1986 amendment rewrote the first paragraph, which had read:

"A hearing under this chapter shall be conducted by referees employed by the department, unless the director orders that it shall be conducted by himself or by the administrative adviser of the department in behalf of the director; provided, however, the director may contract with the Office of Administrative Hearings to conduct hearings in cases involving complicated issues of fact or law, or to reduce the backlog of cases. The limitations placed upon the kinds of cases conducted by the Office of Administrative Hearings under this section shall not be considered jurisdictional."

Derivation: Former § 104.5, added by Stats.1939, c. 302, p. 1575, § 3, amended by Stats.1945, c. 307, p. 766, § 1; Stats.1945, c. 876, p. 1645, § 1; Stats.1953, c. 1562, p. 3242, § 2; Stats.1957, c. 702, p. 1893, § 4; Stats.1959,

c. 1523, p. 3813, § 1; Stats.1961, c. 97, p. 1103, § 1.

Former § 445.3, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CROSS REFERENCES

Administrative law judge proposed decision, see [Welfare and Institutions Code §§ 10958, 10959](#).

Conduct of rehearing, see [Welfare and Institutions Code §§ 10959, 10960](#).

Hearings, delegation of power to conduct, see [Government Code § 11182](#).

Hearings by department heads, see [Government Code § 11184 et seq.](#)

Office of administrative hearings, see [Government Code § 11370 et seq.](#)

Report on administration, see [Welfare and Institutions Code § 10602](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

LAW REVIEW AND JOURNAL COMMENTARIES

Administrative collateral estoppel in California: Critical evaluation of *People v. Sims*. Thomas F. Crosby, Jr., 40 [Hastings L.J. 907 \(1989\)](#).

LIBRARY REFERENCES

2001 Main Volume

[Social Security and Public Welfare](#)  8.5.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare § 13](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 60](#), Additional Due Process Requirements--Scope of Hearing; Informality of Proceedings.

Treatises and Practice Aids

[9 Witkin Cal. Proc. 4th Administrative Proceedings § 45](#), (S 45) Office of Administrative Hearings.

West's Ann. Cal. Welf. & Inst. Code § 10953, CA WEL & INST § 10953

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Part 2. Administration ([Refs & Annos](#))
Chapter 7. Hearings ([Refs & Annos](#))

§ 10953.5. Administrative law judges; appointment; qualifications

- (a) The director has authority to appoint the department's administrative law judges as provided in [Section 10555](#).
- (b) Each administrative law judge shall have been admitted to practice law in this state and shall possess any other qualifications prescribed by the State Personnel Board. All persons in the office of the chief referee employed as hearing officers by the department prior to the effective date of this section shall be deemed to be administrative law judges.

CREDIT(S)

(Added by Stats.1986, c. 415, § 4, eff. July 17, 1986.)

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).
“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).
Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

West's Ann. Cal. Welf. & Inst. Code § 10953.5, CA WEL & INST § 10953.5
Current with urgency legislation through Ch. 763 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess.,
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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10954. Powers of person conducting

The director or administrative law judge conducting the hearing, shall have all of the powers and authority conferred upon the head of a department in Article 2 (commencing with [Section 11180](#)) of [Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code](#).

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3992, § 5. Amended by Stats.1986, c. 415, § 5, eff. July 17, 1986.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1986 amendment substituted “director or administrative law judge” for “director, administrative adviser, or referee.”.

Derivation: Former § 104.5, added by Stats.1939, c. 302, p. 1575, § 3, amended by Stats.1945, c. 307, p. 766, § 1; Stats.1945, c. 876, p. 1645, § 1; Stats.1953, c. 1562, p. 3242, § 2; Stats.1957, c. 702, p. 1893, § 4; Stats.1959, c. 1523, p. 3813, § 1; Stats.1961, c. 97, p. 1103, § 1.

Former § 445.4, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,

“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, fair hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

LIBRARY REFERENCES

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[Social Security and Public Welfare](#)  8.5.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare § 13.](#)

West's Ann. Cal. Welf. & Inst. Code § 10954, CA WEL & INST § 10954

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10955. Impartiality; informality; evidence; appearance; counsel

The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. All testimony shall be submitted under oath or affirmation. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings. At the hearing the applicant or recipient may appear in person with counsel of his own choosing, or in person and without such counsel.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3992, § 5.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Derivation: Former § 104.1, added by Stats.1951, c. 925, p. 2454, § 1, amended by Stats.1953, c. 1562, p. 3241, § 1; Stats.1957, c. 702, p. 1891, § 1.

Former § 445.5, added by Stats.1963, c. 1916, p. 3930, § 54.5.

Former § 1511, added by Stats.1937, c. 374, p. 1185, § 1.

Former § 1551, added by Stats.1937, c. 389, p. 1204, amended by Stats.1939, c. 1037, p. 2845, § 10; Stats.1945, c. 1395, p. 2601, § 10.

Former § 3086, added by Stats.1937, c. 376, p. 1186, amended by Stats.1937, c. 406, p. 1351; Stats.1939, c. 916, p. 2571, § 10.

Stats.1929, c. 529, p. 911, § 5; Stats.1931, c. 882, p. 1894, § 1; Stats.1936, Ex.Sess., c. 6, p. 9, § 3; Stats.1937, c. 84, p. 180, § 1.

CROSS REFERENCES

Affirmation in lieu of oath, see [Code of Civil Procedure § 2015.6](#).

Counsel,

Fees, see [Welfare and Institutions Code § 10962](#).

Relief law of 1945, see [Welfare and Institutions Code § 18494](#).

Right to, see [Const. Art. I, § 15](#).

Oaths, administration of, see [Code of Civil Procedure §§ 128, 177](#) and [Government Code § 1225](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,

“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

LAW REVIEW AND JOURNAL COMMENTARIES

California supreme court survey; a review of decisions: July 1982-November 1982. (1983) 10 Pepp.L.Rev. 835.

Fair procedure in welfare hearings. David R. Packard (1969) 42 S.Cal.L.Rev. 600.

Hearsay and administrative process: A review and reconsideration of state of law of certain evidentiary procedures applicable in California administrative proceedings. Ronald K. L. Collins (1975) 8 Loy.L.Rev. (Calif.) 632.

Organizations and administrative practice. Gene Livingston (1974) 26 Hastings L.J. 91.

Welfare fair hearings: Legal problems of administrative practice. (1972) 5 U.C.Davis L.Rev. 542.

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[Social Security and Public Welfare](#)  8.5, 8.10.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare §§ 10, 13](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 59](#), Additional Due Process Requirements.

[CA Jur. 3d Public Aid and Welfare § 60](#), Additional Due Process Requirements--Scope of Hearing; Informality of Proceedings.

West's Ann. Cal. Welf. & Inst. Code § 10955, CA WEL & INST § 10955

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Chapter 7. Hearings ([Refs & Annos](#))

§ 10956. Perpetuation of proceedings

The proceedings at the hearing shall be reported by a phonographic reporter or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3992, § 5.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Derivation: Former § 445.6, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CROSS REFERENCES

Official records and other official writings, see [Evidence Code § 1280 et seq.](#)

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4.](#)

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6.](#)

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1.](#)

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Westlaw Topic No. [356A.](#)

[C.J.S. Social Security and Public Welfare § 12.](#)

RESEARCH REFERENCES

Encyclopedias


[CA Jur. 3d Public Aid and Welfare § 62](#), Issues at Hearing; Continuance; Manner of Reporting Proceedings.

NOTES OF DECISIONS


Electronic recording [1](#)

Supplementary evidence [2](#)

1. Electronic recording

It is not unlawful for director of state department of social welfare to use an audible electronic record rather than a paper transcript in reviewing proposed decision made by referee. [Henderling v. Carleson \(App. 1 Dist. 1974\) 111 Cal.Rptr. 612, 36 Cal.App.3d 561. Social Security And Public Welfare](#)  [8.15](#)

2. Supplementary evidence

In mandamus proceeding in superior court by county to challenge authority of director of department of social welfare to hold a hearing at request of one whose aid for needy children had been terminated, and challenging decision of director, superior court did not err in refusing to permit county to introduce additional evidence because certain portions of tape recording device used before referee were unintelligible, where inaudible portions were intelligible by resort to remarks preceding and following inaudible portions. [Madera County v. Holcomb \(App. 5 Dist. 1968\) 66 Cal.Rptr. 428, 259 Cal.App.2d 226. Mandamus](#)  [173](#)

West's Ann. Cal. Welf. & Inst. Code § 10956, CA WEL & INST § 10956

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Chapter 7. Hearings ([Refs & Annos](#))

§ 10957. Continuance; commencement of payments on award of aid

The person conducting the hearing, upon good cause shown, may continue the hearing for a period of not to exceed 30 days. When the refusal of a county to accept a signed application for aid or services is an issue, the director may require the county to accept the application, and may continue the case until the results of the investigation have been reported to him or her. In any such case in which aid is awarded by the director or his or her designee, the payments shall commence at the time indicated by the director or his or her designee.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3992, § 5. Amended by Stats.1986, c. 415, § 6, eff. July 17, 1986.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1986 amendment inserted “or her” at the end of the second sentence; and twice inserted “or his or her designee” in the third sentence.

Derivation: Former § 104.1, added by Stats.1951, c. 925, p. 2454, § 1, amended by Stats.1953, c. 1562, p. 3241, § 1.

Former § 445.7, added by Stats.1963, c. 1916, p. 3930, § 54.5.

Former § 1511, added by Stats.1937, c. 374, p. 1185, § 1.

Former § 1551, added by Stats.1937, c. 389, p. 1204, amended by Stats.1939, c. 1037, p. 2845, § 10; Stats.1945, c. 1395, p. 2601, § 10.

Former § 3086, added by Stats.1937, c. 376, p. 1186, amended by Stats.1937, c. 406, p. 1351; Stats.1939, c. 916, p. 2571, § 10.

Stats.1929, c. 529, p. 911, § 5; Stats.1931, c. 882, p. 1894, § 1; Stats.1936, Ex.Sess., c. 6, p. 9, § 3; Stats.1937, c. 84, p. 180, § 1.

CROSS REFERENCES

Investigation of applications, see [Welfare and Institutions Code § 11055](#).
Investigations by department heads, see [Government Code § 11180 et seq.](#)

CODE OF REGULATIONS REFERENCES


Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

LIBRARY REFERENCES

2001 Main Volume

[Social Security and Public Welfare](#)  [8.5](#), [8.15](#), [9.1](#).
Westlaw Topic No. [356A](#).
[C.J.S. Social Security and Public Welfare](#) §§ [12](#) to [15](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 62](#), Issues at Hearing; Continuance; Manner of Reporting Proceedings.

West's Ann. Cal. Welf. & Inst. Code § 10957, CA WEL & INST § 10957

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10958. Administrative law judge; proposed decision

If the hearing is conducted by an administrative law judge, he or she shall prepare a fair, impartial, and independent proposed decision, in writing and in such format that it may be adopted as the director's decision and, after approval of the decision by the chief administrative law judge of the department, the chief administrative law judge shall file a copy of the proposed decision, within 75 days after the conclusion of the hearing, with the director.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3993, § 5. Amended by Stats.1981, c. 498, p. 1851, § 2; Stats.1986, c. 415, § 7, eff. July 17, 1986.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1981 amendment inserted “fair, impartial, and independent” preceding “decision”.

The 1986 amendment rewrote the section, which had read:

“If the hearing is conducted by a referee, he shall prepare a fair, impartial, and independent proposed decision, in writing and in such form that it may be adopted as the decision in the case, and, after approval of the decision by the chief referee of the department, shall file a copy of the proposed decision, within 75 days after the conclusion of the hearing, with the director.”

Derivation: Former § 104.5 added by Stats.1939, c. 302, p. 1575, § 3, amended by Stats.1945, c. 307, p. 766, § 1; Stats.1945, c. 876, p. 1645, § 1; Stats.1953, c. 1562, p. 3242, § 2; Stats.1957, c. 702, p. 1593, § 4; Stats.1959, c. 1523, p. 3813, § 1; Stats.1961, c. 97, p. 1103, § 1.

Former § 445.8, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CROSS REFERENCES

Hearing officer, see [Government Code § 11370.3](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
 “Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

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[Social Security and Public Welfare](#)  8.15.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare §§ 14 to 15](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 63](#), Proposed Decision; Further Hearing.

NOTES OF DECISIONS

Due process [1](#)


Final decision [2](#)

Review [3](#)

1. Due process


State welfare termination regulations, which did not afford recipient an evidentiary hearing at which he could personally appear to offer oral evidence and confront and cross-examine the witnesses against him, did not satisfy requirements of due process clause. [Wheeler v. Montgomery, N.D.Cal.1968, 296 F.Supp. 138](#), probable jurisdiction noted [89 S.Ct. 1452, 394 U.S. 970, 22 L.Ed.2d 751](#), reversed [90 S.Ct. 1026, 397 U.S. 280, 25 L.Ed.2d 307](#), dissenting opinion [90 S.Ct. 1028, 397 U.S. 280, 25 L.Ed.2d 307](#).

2. Final decision

Legislative scheme within which director of state department of social welfare must act after a fair hearing before a referee establishes that director, and not referee, must issue final decision, whether or not he has complied with 30-day time limit of § 10959. [Henderling v. Carleson \(App. 1 Dist. 1974\) 111 Cal.Rptr. 612, 36 Cal.App.3d 561](#). [Social Security And Public Welfare](#)  8.15

3. Review

Provisions of § 10959 and this section dealing with time limit within which director of department of social welfare shall provide a record of hearing before referee for purpose of determining whether aid for needy children under § 11200 et seq. has properly been terminated are directory and not jurisdictional, and recipient of aid

should not lose his right to review after a hearing before a referee because of director's neglect of duty. [Madera County v. Holcomb](#) (App. 5 Dist. 1968) 66 Cal.Rptr. 428, 259 Cal.App.2d 226. [Social Security And Public Welfare](#)  194.16(2)

West's Ann. Cal. Welf. & Inst. Code § 10958, CA WEL & INST § 10958

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Division 9. Public Social Services ([Refs & Annos](#))

Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10958.1. Issues addressed at hearing

The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either party which they have mutually agreed, prior to or at the hearing, to discuss. All of those issues shall be addressed in the hearing decisions.

CREDIT(S)

(Added by Stats.1986, c. 415, § 7.5, eff. July 17, 1986.)

CODE OF REGULATIONS REFERENCES


Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Opportunity to document satisfactory immigration status, see [22 Cal. Code of Regs. § 50301.5](#).
Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).
Verification of satisfactory immigration status, see [22 Cal. Code of Regs. § 50301.6](#).

LIBRARY REFERENCES

2001 Main Volume

[Social Security and Public Welfare](#)  8.5.
Westlaw Topic No. [356A](#).
[C.J.S. Social Security and Public Welfare](#) § 13.

RESEARCH REFERENCES


Encyclopedias

[CA Jur. 3d Public Aid and Welfare](#) § 62, Issues at Hearing; Continuance; Manner of Reporting Proceedings.

NOTES OF DECISIONS

Findings 1

1. Findings

In proceeding on application for Medi-Cal benefits on the basis of disability, there was no requirement of specific findings by administrative law judge or Department of Health Services as to credibility of claimant's testimony regarding disabling pain, particularly in light of dearth of testimony regarding pain at administrative hearing; adequate record for review was provided by issuance of statement of decision. [Cooper v. Kizer \(App. 2 Dist. 1991\) 282 Cal.Rptr. 492, 230 Cal.App.3d 1291](#), rehearing denied , modified. [Social Security And Public Welfare](#)  181

West's Ann. Cal. Welf. & Inst. Code § 10958.1, CA WEL & INST § 10958.1

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10959. Director's powers after receipt of proposed decision; rehearing

Within 30 days after the department has received a copy of the administrative law judge's proposed decision, the director may adopt the decision in its entirety; decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence; or order a further hearing to be conducted by himself or herself, or another administrative law judge on behalf of the director. Failure of the director to adopt the proposed decision, decide the matter himself or herself on the record, including the transcript, with or without taking additional evidence or order a further hearing within the 30 days shall be deemed an affirmation of the proposed decision. If the director decides the matter, a copy of his or her decision shall be served on the applicant or recipient and on the affected county, and, if his or her decision differs materially from the proposed decision of the administrative law judge, a copy of that proposed decision shall also be served on the applicant or recipient and on the affected county. If a further hearing is ordered, it shall be conducted in the same manner and within the same time limits specified for the original hearing.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3993, § 5. Amended by Stats.1974, c. 1056, p. 2275, § 1; Stats.1986, c. 415, § 8, eff. July 17, 1986.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1974 amendment added the second sentence; and substituted “the department has received a copy” for “receiving a copy” in the first sentence.

The 1986 amendment rewrote the section, which had read:

“Within 30 days after the department has received a copy of the referee's proposed decision, the director may adopt the decision in its entirety; decide the matter himself on the record, including the transcript, with or without taking additional evidence; or order a rehearing to be conducted by himself, the administrative adviser of the department or another referee in behalf of the director. Failure of the director to adopt the proposed decision, decide the matter himself on the record, including the transcript, with or without taking additional evidence or order a rehearing within the 30 days shall be deemed an affirmation of the proposed decision. If the director de-

cides the matter, a copy of his decision shall be served on the applicant or recipient and on the affected county, and, if his decision differs materially from the proposed decision of the referee, a copy of that proposed decision shall also be served on the applicant or recipient and on the affected county. If a rehearing is ordered, it shall be conducted in the same manner and within the same time limits specified for the original hearing.”

Derivation: Former § 104.5, added by Stats.1939, c. 302, p. 1575, § 3, amended by Stats.1945, c. 307, p. 766, § 1; Stats.1945, c. 876, p. 1645, § 1; Stats.1953, c. 1562, p. 3242, § 2; Stats.1957, c. 702, p. 1593, § 4; Stats.1959, c. 1523, p. 3813, § 1; Stats.1961, c. 97, p. 1103, § 1.

Former § 445.9, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CROSS REFERENCES

Digest of decisions, see [Welfare and Institutions Code § 10964](#).

Director's decision, see [Welfare and Institutions Code § 10961](#).

Judicial review, see [Welfare and Institutions Code § 10962](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

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[Social Security and Public Welfare](#)  8.15.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare §§ 14 to 15](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 61](#), Filing of Request; Priority, Setting and Notice of Hearing.

[CA Jur. 3d Public Aid and Welfare § 63](#), Proposed Decision; Further Hearing.

NOTES OF DECISIONS

Further hearing [3](#)

Questions of fact [5](#)

Review [6](#)

Statement of reasons [4](#)

Thirty-day time limit [2](#)

Validity 1

1. Validity

Statute which permits Director of Department of Human Services to order further hearings in Medi-Cal disability case based solely upon his disagreement with administrative law judge's recommendation, and without limitation on number of hearings that can be ordered, was not unconstitutional delegation of power to Director, as Director's exercise of delegated power was subject to judicial review, and as lack of restriction on number of further hearings did not confer any additional power on Director, who was not bound by administrative law judge's decision and could decide matter himself. [Chatterjee v. Kizer \(App. 2 Dist. 1991\) 283 Cal.Rptr. 60, 231 Cal.App.3d 1348](#), review denied. [Social Security And Public Welfare](#) 🔑 181

2. Thirty-day time limit

Substantial evidence supported trial court's judgment that administrative law judge correctly determined that agency received prior administrative law judge's proposed decision on Medi-Cal benefits application less than 30 days prior to agency's decision ordering a further hearing; although evidence presented by agency was subject to justifiable suspicion, its receipt of proposed decision on date claimed was not physically impossible or wholly unreasonable. [Oldham v. Kizer \(App. 2 Dist. 1991\) 1 Cal.Rptr.2d 195, 235 Cal.App.3d 1046](#). [Social Security And Public Welfare](#) 🔑 181

Third administrative law judge to consider applicant's request for Medi-Cal benefits correctly found that he and thus the agency were bound by the decision of the first administrative law judge that the applicant was not eligible for retroactive medical benefits under the medically indigent program, which became final when applicant failed to timely request a rehearing or petition the court for review of the decision. [Oldham v. Kizer \(App. 2 Dist. 1991\) 1 Cal.Rptr.2d 195, 235 Cal.App.3d 1046](#). [Social Security And Public Welfare](#) 🔑 181

Director of state department of social welfare maintained power to decide case involving application for aid to needy disabled, even though director failed to comply with mandatory 30-day time limit for deciding matter after receiving copy of referee's proposed decision, since director, and not referee, had to make final decision; director's tardiness is no reason for depriving either applicant or taxpayers of right to final decision. [Millen v. Swoap \(App. 1 Dist. 1976\) 130 Cal.Rptr. 387, 58 Cal.App.3d 943](#). [Social Security And Public Welfare](#) 🔑 181

Time limit under this section of 30 days within which director of state department of social welfare must act after receiving a copy of referee's proposed decision is mandatory. [Henderling v. Carleson \(App. 1 Dist. 1974\) 111 Cal.Rptr. 612, 36 Cal.App.3d 561](#). [Social Security And Public Welfare](#) 🔑 8.15

3. Further hearing

Amendment to statute allowing director of agency to order a "further hearing" on an application for Medi-Cal benefits, rather than a "rehearing" as used in prior version of statute, merely indicated legislative intent to clarify previous language but did not indicate an intent to change the meaning of the statute or support a presumption that different meanings for the terms were intended; the terms were interchangeable, both referring to a new hearing on all or some of the issues raised in the previous hearing, with introduction of new evidence but possibly relying on evidence presented at previous hearing as well. [Oldham v. Kizer \(App. 2 Dist. 1991\) 1 Cal.Rptr.2d 195, 235 Cal.App.3d 1046](#). [Social Security And Public Welfare](#) 🔑 181

Fact that director ordered a further hearing to obtain review of durational denial to obtain disability file so that hearing officer could review evidence in Medi-Cal benefits case was not invalid because it ordered a “further hearing” rather than “rehearing” which would have had the same result, that is, a new hearing on both issues addressed at previous hearing. *Oldham v. Kizer* (App. 2 Dist. 1991) 1 Cal.Rptr.2d 195, 235 Cal.App.3d 1046. [Social Security And Public Welfare ↪ 181](#)

4. Statement of reasons

Decision of director of state department of social welfare denying assistance to claimant in form of aid to the needy disabled would be annulled where director did not specify reasons for his decision or identify evidence relied on by him. *Henderling v. Carleson* (App. 1 Dist. 1974) 111 Cal.Rptr. 612, 36 Cal.App.3d 561. [Social Security And Public Welfare ↪ 181](#)

Director of department of social welfare, who, after applicants were found eligible by referee, denied “Aid to the Needy Disabled” to such applicants on grounds that their impairments were not total and permanent and did not prevent their employment, was required, as he would have been if he had overruled a determination by referee that a claimant was not totally and permanently disabled, to state reasons for his decision, though he was not required to indicate why he disagreed with referee. *Rogers v. Carleson* (App. 3 Dist. 1973) 106 Cal.Rptr. 140, 30 Cal.App.3d 54. [Social Security And Public Welfare ↪ 181](#)

5. Questions of fact

Determination of question of need in proceeding upon application for benefits under the Old Age Security Act is one of fact for social welfare board, but board must act in accordance with statutory definitions set by legislature for the standard of need. *Bertch v. Social Welfare Dept. of Cal.* (1955) 45 Cal.2d 524, 289 P.2d 485. [Social Security And Public Welfare ↪ 177](#)

6. Review

Provisions of § 10958 and this section dealing with time limit within which director of department of social welfare shall provide a record of hearing before referee for purpose of determining whether aid for needy children under § 11200 et seq. has properly been terminated are directory and not jurisdictional, and recipient of aid should not lose his right to review after a hearing before a referee because of director's neglect of duty. *Madera County v. Holcomb* (App. 5 Dist. 1968) 66 Cal.Rptr. 428, 259 Cal.App.2d 226. [Social Security And Public Welfare ↪ 194.16\(2\)](#)

West's Ann. Cal. Welf. & Inst. Code § 10959, CA WEL & INST § 10959

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10960. Request for rehearing; time; grounds; final decision; good cause for late filing; implementation

(a) Within 30 days after receiving the decision of the director, which is the proposed decision of an administrative law judge adopted by the director as final, a final decision rendered by an administrative law judge, or a decision issued by the director himself or herself, the affected county or applicant or recipient may file a request with the director for a rehearing. The director shall immediately serve a copy of the request on the other party to the hearing and that other party may within five days of the service file with the director a written statement supporting or objecting to the request. The director shall grant or deny the request no later than the 35th working day after the request is made to ensure the prompt and efficient administration of the hearing process. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing.

(b) The grounds for requesting a rehearing are as follows:

(1) The adopted decision is inconsistent with the law.

(2) The adopted decision is not supported by the evidence in the record.

(3) The adopted decision is not supported by the findings.

(4) The adopted decision does not address all of the claims or issues raised by the parties.

(5) The adopted decision does not address all of the claims or issues supported by the record or evidence.

(6) The adopted decision does not set forth sufficient information to determine the basis for its legal conclusion.

(7) Newly discovered evidence, that was not in custody or available to the party requesting rehearing at the time of the hearing, is now available and the new evidence, had it been introduced, could have changed the hearing

decision.

(8) For any other reason necessary to prevent the abuse of discretion or an error of law, or for any other reason consistent with the provisions of [Section 1094.5 of the Code of Civil Procedure](#).

(c) The notice granting or denying the rehearing request shall explain the reasons and legal basis for granting or denying the request for rehearing.

(d) The decision of the director, which is the proposed decision of an administrative law judge adopted by the director as final, a final decision rendered by an administrative law judge, or a decision issued by the director himself or herself, remains final pending a request for a rehearing. Only after rehearing is granted is the decision no longer the final decision in the case.

(e) Notwithstanding any other provision of law, a rehearing request or decision shall not be a prerequisite to filing an action under [Section 10962](#).

(f)(1) Notwithstanding subdivision (a), an applicant or recipient may otherwise be entitled to a rehearing pursuant to this chapter if he or she files a request more than 30 days after the decision of the director is issued, or if he or she did not receive a copy of the decision of the director, or if there is good cause for filing beyond the 30-day period. The director may determine whether good cause exists.

(2) For purposes of this subdivision “good cause” means a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language compliant notice, in and of itself, shall not constitute good cause. In no event shall the department grant a request for a hearing where the request is filed more than 180 days after the order or action complained of.

(3) Nothing in this section shall preclude the application of the principles of equity jurisdiction as otherwise provided by law.

(g) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with [Section 11340](#)) of [Part 1 of Division 3 of Title 2 of the Government Code](#)), the department shall implement this section through an all-county information notice no later than January 1, 2008. The department may also provide further instructions through training notes.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3993, § 5. Amended by Stats.1968, c. 1008, p. 1958, § 1; Stats.1969, c. 1255, p. 2454, § 1; Stats.1970, c. 444, p. 892, § 1; Stats.1986, c. 415, § 9, eff. July 17, 1986; [Stats.2007, c. 502 \(A.B.921\), § 2.](#))

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2007 Legislation

Stats.2007, c. 502 (A.B.921), rewrote this section, which had read:

“Within 30 days after receiving the proposed decision of an administrative law judge adopted by the director, a final decision rendered by an administrative law judge or a decision issued by the director himself or herself, the affected county or applicant or recipient may file a request with the director for a rehearing. The director shall immediately serve a copy of the request on the other party to the hearing and such other party may within five days of the service file with the director a written statement supporting or objecting to the request. The director shall grant or deny the request no earlier than the fifth nor later than the 15th working day after the receipt of the request. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing. If action is not taken by the director within the time allowed, the request shall be deemed denied.”

2001 Main Volume

As added in 1965, the section read:

“Within 30 days after adoption by the director of the proposed decision of a referee or the issuance by the director of his own decision, the affected county or applicant or recipient may file a request with the director for a rehearing and the director, within 10 days after receipt of the request, shall grant or deny the request. If the director grants the request, the rehearing shall be conducted in the same manner and subject to the same time limits as the original hearing.”

The 1968 amendment revised the first part of the first sentence to read: “Within 30 days after receiving the proposed decision of a referee adopted by the director or a decision issued by the director himself,” and it added the last sentence.

The 1969 amendment formed the first and third sentences from the former first sentence; added the second sentence; and required a ruling between 5 and 15 days instead of within 10 days.

The 1970 amendment, in the third sentence in reference to the time limit, substituted “working day” for “day.”

The 1986 amendment rewrote the first sentence, which had read: “Within 30 days after receiving the proposed decision of a referee adopted by the director or a decision issued by the director himself, the affected county or applicant or recipient may file a request with the director for a rehearing.”

Derivation: Former § 104.5, added by Stats.1939, c. 302, p. 1575, § 3, amended by Stats.1945, c. 307, p. 766, § 1; Stats.1945, c. 876, p. 1645, § 1; Stats.1953, c. 1562, p. 3242, § 2; Stats.1957, c. 702, p. 1593, § 4; Stats.1959, c. 1523, p. 3813, § 1; Stats.1961, c. 97, p. 1103, § 1.

Former § 445.10, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CROSS REFERENCES

Judicial review, see [Welfare and Institutions Code § 10962](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Opportunity to document satisfactory immigration status, see [22 Cal. Code of Regs. § 50301.5](#).
Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).
Verification of satisfactory immigration status, see [22 Cal. Code of Regs. § 50301.6](#).

LAW REVIEW AND JOURNAL COMMENTARIES

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Westlaw Topic No. 356A.
[C.J.S. Social Security and Public Welfare §§ 14 to 15](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 64](#), Rehearing.


NOTES OF DECISIONS

Construction with other laws [1](#)
Due process [2](#)
Exhaustion of administrative remedies [3](#)
Mandamus [4](#)


1. Construction with other laws

Term “final administrative action” as used in federal AFDC regulation requiring that such action be taken within 90 days from date of request for hearing on question of benefits does not include completion of rehearings authorized under state law. [Westfall v. Swoap \(App. 4 Dist. 1976\) 129 Cal.Rptr. 750, 58 Cal.App.3d 109](#). [Social Security And Public Welfare](#) 🔑 194.16(1)


Section 10950 et seq., as implemented by regulations, makes it mandatory that decision be rendered within 90 days of request for fair hearing and requires immediate implementation of the decision notwithstanding the fact that a local welfare agency may be granted a rehearing; granting of local welfare agency's request for rehearing will not postpone payment of benefits to a qualified recipient so that California rehearing procedure permitting

decision of rehearing to be made more than 90 days after original request for fair hearing does not conflict with federal regulation. [Westfall v. Swoap \(App. 4 Dist. 1976\) 129 Cal.Rptr. 750, 58 Cal.App.3d 109. Social Security And Public Welfare](#)  194.16(2)



2. Due process

During time of pending administrative appeal by public assistance recipients from decision to terminate or reduce existing grants of aid, due process called for continued livelihood, not continued eligibility. [Webb v. Swoap \(App. 3 Dist. 1974\) 114 Cal.Rptr. 897, 40 Cal.App.3d 191. Constitutional Law](#)  4116

3. Exhaustion of administrative remedies

Implicit in statutory and regulatory requirements that county welfare agencies give advice to welfare applicants with respect to their right to submit written application for aid and of their right to administrative appeal from county agency to department of social welfare is recognition by both legislature and department of social welfare that welfare applicants cannot be expected to exhaust administrative remedies they do not know and are denied means of finding out about. [Diaz v. Quitariano \(App. 3 Dist. 1969\) 74 Cal.Rptr. 358, 268 Cal.App.2d 807. Social Security And Public Welfare](#)  5

4. Mandamus

Federal regulation requiring that final decision be rendered within 90 days of request for hearing concerning AF-DC benefits mandates prompt administrative action but does not foreclose late administrative action; remedy for violation is a petition for writ of mandate to compel timely action and not to terminate the administrative process altogether. [Westfall v. Swoap \(App. 4 Dist. 1976\) 129 Cal.Rptr. 750, 58 Cal.App.3d 109. Mandamus](#)  81; [Social Security And Public Welfare](#)  194.16(1)

West's Ann. Cal. Welf. & Inst. Code § 10960, CA WEL & INST § 10960

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Chapter 7. Hearings ([Refs & Annos](#))

§ 10961. Director's decision; contents; effect

The decision of the director need not specify the amount of the award to be paid unless the amount of the award is an issue. If the decision is in favor of the applicant or recipient, the county department shall pay to the applicant or recipient, without the necessity of establishing his or her present need, the amount of aid the director finds he or she is entitled to receive pursuant to the director's decision, payment to commence as of the date the person was first entitled thereto, or grant to him or her the services to which he or she is entitled.

The award shall be determined no later than 30 days following the date that the hearing decision is received by the county, or 30 days from the date the additional information needed for compliance with the decision is provided to the county. After the award is made, the county and the claimant shall be notified by the department of its determination regarding the county's compliance with the decision.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3993, § 5. Amended by Stats.1986, c. 415, § 9.5, eff. July 17, 1986.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1986 amendment, in the second sentence of the first paragraph, inserted gender neutral language, inserted "the director finds" following "the amount of aid", and deleted "the director finds" following "the services to which"; and added the second paragraph.

Derivation: Former § 104.1, added by Stats.1951, c. 925, p. 2454, § 1, amended by Stats.1953, c. 1562, p. 3241, § 1.

Former § 445.11, added by Stats.1963, c. 1916, p. 3930, § 54.5.

Former § 1511, added by Stats.1937, c. 374, p. 1185, § 1.

Former § 1551, added by Stats.1937, c. 389, p. 1204, amended by Stats.1939, c. 1037, p. 2845, § 10; Stats.1945, c. 1395, p. 2601, § 10.

Former § 3086, added by Stats.1937, c. 376, p. 1186, amended by Stats.1937, c. 406, p. 1351; Stats.1939, c. 916, p. 2571, § 10.

Stats.1929, c. 529, p. 911, § 5; Stats.1931, c. 882, p. 1894, § 1; Stats.1936, Ex.Sess., c. 6, p. 9, § 3; Stats.1937, c. 84, p. 180, § 1.

CROSS REFERENCES

Basic health care, see [Welfare and Institutions Code § 14000 et seq.](#)

Indigents, county aid, see [Welfare and Institutions Code § 17000 et seq.](#)

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4.](#)

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6.](#)

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1.](#)

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Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare §§ 14 to 15.](#)

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 65](#), Award; Compliance With Decision.

NOTES OF DECISIONS

County welfare departments [1](#)

Delay in proceedings, generally [2](#)

Supplemental security income recipients [4](#)

Thirty-day time limit [3](#)

Weight and sufficiency of evidence [5](#)

[1. County welfare departments](#)

Decision by state department of benefit payments is binding on county welfare department even if it is adminis-

tratively appealed. [People v. LaMotte \(App. 1 Dist. 1979\) 155 Cal.Rptr. 5, 92 Cal.App.3d 604. Social Security And Public Welfare](#) 🔑 8.1

2. Delay in proceedings, generally

The provisions of § 2182 (repealed) for appeal to state social welfare board from determination of county board of supervisors of application for old age aid, and for payments, if awarded, to commence from date applicant was first entitled thereto, subserved a clear public purpose by securing to those entitled to aid the full payment thereof from date they were first entitled thereto, regardless of errors or delays by local authorities. [Board of Social Welfare v. Los Angeles County \(1945\) 27 Cal.2d 81, 162 P.2d 630. Social Security And Public Welfare](#) 🔑 178

3. Thirty-day time limit

Decision of referee in respect to claim for aid to the needy disabled was not subject to treatment as a final decision in case by mere reason of fact that director of state department of social welfare did not act on decision within 30-day time limit of § 10959. [Henderling v. Carleson \(App. 1 Dist. 1974\) 111 Cal.Rptr. 612, 36 Cal.App.3d 561. Social Security And Public Welfare](#) 🔑 181

4. Supplemental security income recipients

Named and unnamed members of class consisting of families applying for aid to families with dependent children where sole or only children also received supplemental security income were entitled to retroactive relief arising from determination that state was precluded from denying AFDC to such families. [Zapata v. Woods \(App. 2 Dist. 1982\) 187 Cal.Rptr. 351, 137 Cal.App.3d 858, certiorari denied 104 S.Ct. 101, 464 U.S. 827, 78 L.Ed.2d 105. Social Security And Public Welfare](#) 🔑 194.21

5. Weight and sufficiency of evidence

Evidence before the director of the state department of benefit payments was insufficient to sustain finding that cash that applicant received from her parents for current needs was a gift; record supported a finding only that the cash was a loan for needs incurred after denial of claimant's application for aid to families with dependent children. [Burch v. Prod \(App. 4 Dist. 1979\) 153 Cal.Rptr. 751, 90 Cal.App.3d 987. Social Security And Public Welfare](#) 🔑 194.20

West's Ann. Cal. Welf. & Inst. Code § 10961, CA WEL & INST § 10961

Current with urgency legislation through Ch. 763 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., Prop. 99, and Props. 1A-12

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Effective:[See Text Amendments]

West's Annotated California Codes [Currentness](#)

Welfare and Institutions Code ([Refs & Annos](#))

Division 9. Public Social Services ([Refs & Annos](#))

Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10962. Judicial review

The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of [Section 1094.5 of the Code of Civil Procedure](#), praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. The director shall be the sole respondent in such proceedings. Immediately upon being served the director shall serve a copy of the petition on the other party entitled to judicial review and such party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3993, § 5. Amended by Stats.1968, c. 1008, p. 1958, § 2; Stats.1969, c. 1255, p. 2454, § 2.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

The 1968 amendment deleted "After having exhausted the administrative remedy provided for in Section 10960," from the beginning of the section.

The 1969 amendment added the last sentence of the first paragraph.

Derivation: Former § 104.2, added by Stats.1951, c. 925, p. 2454, § 2, amended by Stats.1957, c. 702, p. 1892, § 3.

Former § 104.3, added by Stats.1951, c. 925, p. 2455, § 3, amended by Stats.1957, c. 702, p. 1892, § 3.

Former § 445.12, added by Stats.1963, c. 1916, p. 3930, § 54.5.

Former § 2182.1, added by Stats.1943, c. 358, p. 1589, § 19.

Former § 3086.1, added by Stats.1945, c. 634, p. 1167, § 1.

Former § 3473.1, added by Stats.1945, c. 770, p. 1454, § 1.

CROSS REFERENCES

Cases arising under this section excluded from county's right to seek injunction, see [Welfare and Institutions Code § 10605](#).

Judicial review, see [Government Code § 11523](#).

Writ of mandate to review administrative orders or decisions, see [Code of Civil Procedure § 1094.5](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

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Administrative collateral estoppel in California: Critical evaluation of *People v. Sims*. Thomas F. Crosby, Jr., 40 *Hastings L.J.* 907 (1989).

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The Supreme Court of California, 1981-1982. Foreword: The emerging court. Stephen R. Barnett, 71 *Cal-if.L.Rev.* 1134 (July, 1983).

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Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare](#) § 16.

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[CA Jur. 3d Public Aid and Welfare § 70](#), Attorney's Fees and Costs.

Treatises and Practice Aids

[Rutter, Cal. Practice Guide: Civil Appeals & Writs Ch. 14-B](#), B. Recovery of Appellate Costs and Attorney Fees.

[9 Witkin Cal. Proc. 4th Administrative Proceedings § 110](#), (S 110) Statutes of Limitations.

[1 Witkin Cal. Proc. 4th Attorneys § 182](#), (S 182) in General.

[8 Witkin Cal. Proc. 4th Extraordinary Writs § 264](#), Decision Applying Invalid Regulation.

[7 Witkin Cal. Proc. 4th Judgment § 196](#), Welfare Determination.

NOTES OF DECISIONS

Administrative remedies, exhaustion of [5](#)

Admissibility of evidence [10](#)

Amount, attorney fees [17](#)

Attorney fees [15-19](#)

Attorney fees - In general [15](#)

Attorney fees - Amount [17](#)

Attorney fees - Discretion of court [16](#)

Attorney fees - Forfeiture [18](#)

Attorney fees - Publicly financed legal service organizations [19](#)

Benefits, payment of [6](#)

Construction with other laws [1](#)

Discretion of court, attorney fees [16](#)

Evidence, admissibility of [10](#)

Evidence, weight and sufficiency of [11](#)

Exclusive remedy [4](#)

Exhaustion of administrative remedies [5](#)

Forfeiture, attorney fees [18](#)

Interest [14](#)

Legislative intent [2](#)

Medical care benefits [7](#)

Parties [8](#)

Payment of benefits [6](#)

Publicly financed legal service organizations, attorney fees [19](#)

Purpose [2](#)

Record [12](#)

Regulations, validity of regulations [3](#)

Remedies, exclusivity [4](#)

Review, scope of [13](#)

Scope of review [13](#)

Sufficiency of evidence [11](#)

Trial de novo 9
 Validity of regulations 3
 Weight and sufficiency of evidence 11

1. Construction with other laws

Petition, challenging both the results of the administrative hearings denying Medi-Cal recipients direct reimbursement, for covered expenses paid while Medi-Cal application was pending and for copayments erroneously paid to provider, and the practice of the Department of Health Services of refusing to directly reimburse Medi-Cal recipients under circumstances in which DHS assertedly is required to do so, could be brought under statute providing for administrative mandamus or statute providing for ordinary mandamus. [Conlan v. Bonta \(App. 1 Dist. 2002\) 125 Cal.Rptr.2d 788, 102 Cal.App.4th 745](#), modified on denial of rehearing. [Mandamus](#) 🔑 105

In determining whether petitioners were “needy” persons within provisions of § 12000 et seq. (repealed), procedure set forth in this code rather than that in [Gov.C. § 11501 et seq.](#), was properly followed. [Bertch v. Social Welfare Dept. of Cal. \(1955\) 45 Cal.2d 524, 289 P.2d 485. Social Security And Public Welfare](#) 🔑 177

2. Purpose

Purpose of this section is to insure access to judicial review rather than defining extent of recipient's recovery and thus fact that legislature did not specifically mention interest, which relates to extent of recovery inasmuch as it constitutes element of damages, does not mean that a successful recipient is precluded from receiving award of interest. [Tripp v. Swoap \(1976\) 131 Cal.Rptr. 789, 17 Cal.3d 671, 552 P.2d 749.](#)

3. Validity of regulations

Unsuccessful applicant for welfare benefits may contest the validity of regulation which mandates the denial of his application both in the fair hearing provided pursuant to § 10950 and in subsequent judicial review pursuant to a writ of administrative mandamus. [Woods v. Superior Court of Butte County \(1981\) 170 Cal.Rptr. 484, 28 Cal.3d 668, 620 P.2d 1032. Social Security And Public Welfare](#) 🔑 8.5; [Social Security And Public Welfare](#) 🔑 8.20

4. Exclusive remedy

Where act reviewed was adjudicatory in that aid to families with dependent children recipient exercised her right under § 10950 to demand “fair hearing” of decision to reduce grant, and that hearing resulted in adverse decision, her “exclusive remedy” was to file action for writ of administrative mandate in superior court pursuant to [C.C.P. § 1094.5](#), and in both proceedings she was entitled to challenge validity of underlying regulation. [Green v. Obledo \(1981\) 172 Cal.Rptr. 206, 29 Cal.3d 126, 624 P.2d 256. Mandamus](#) 🔑 100

This section making judicial review under [CCP § 1094.5](#) of determinations of eligibility for welfare benefits “exclusive remedy” without specifically providing for interest refers only to manner in which aggrieved party may seek review of adverse determination and scope of review to which he is entitled, and thus, inasmuch as aggrieved party must proceed by way of administrative mandamus, availability of interest as element of damages remains open. [Tripp v. Swoap \(1976\) 131 Cal.Rptr. 789, 17 Cal.3d 671, 552 P.2d 749. Social Security And Public Welfare](#) 🔑 8.20

5. Exhaustion of administrative remedies

Where plaintiffs in class action did not seek to secure payment of welfare benefits but sought declaratory and injunctive relief and mandate in order to establish the illegality of grant adjustments and to prohibit continued resort to that method of recouping overpayments due to administrative error where the recipient has fully reported, which relief was not provided for by statute, doctrine of exhaustion of administrative remedies was not applicable and was not a jurisdictional bar to the action. [Oliva v. Swoap \(App. 3 Dist. 1976\) 130 Cal.Rptr. 411, 59 Cal.App.3d 130. Declaratory Judgment ↗ 204](#)

Rule that party must exhaust his administrative remedies prior to seeking relief in courts has no application in situation where administrative remedy is not available or inadequate. [Diaz v. Quitariano \(App. 3 Dist. 1969\) 74 Cal.Rptr. 358, 268 Cal.App.2d 807. Administrative Law And Procedure ↗ 229](#)

6. Payment of benefits

Though immunity from repayment of grants paid to public assistance recipients pending unsuccessful administrative appeals from decision to terminate or reduce existing grants permitted recipients to extend their time on assistance rolls through expedient of filing a meritless appeal, answers to problem were through a statutory approach by legislature or through administrative and budgetary arrangements which minimized the time consumed by appeal process. [Webb v. Swoap \(App. 3 Dist. 1974\) 114 Cal.Rptr. 897, 40 Cal.App.3d 191. Constitutional Law ↗ 2500; Constitutional Law ↗ 2563](#)

7. Medical care benefits

Medi-Cal regulations prescribing calculation to be used as prerequisite to state aid in determining share of cost of medical expenses to be paid by married Medi-Cal applicants in medically needy category was consistent with federal requirements and was valid, even though if wife, who continued to live in couple's home after husband was placed in convalescent home for long-term medical care, were to obtain a dissolution she would presumably be awarded a substantially larger amount as her share of husband's annuity than she was allowed under the regulation. [Granneman v. Myers \(App. 3 Dist. 1981\) 171 Cal.Rptr. 583, 115 Cal.App.3d 846. Health ↗ 471\(5\)](#)

8. Parties

Welfare claimant, who was aggrieved by judgment of administrative mandamus proceeding, became a party of record to the administrative mandamus proceeding for purposes of appeal by filing a motion to vacate judgment. [Alameda County v. Lackner \(App. 1 Dist. 1978\) 144 Cal.Rptr. 840, 79 Cal.App.3d 274. Mandamus ↗ 187.3](#)

9. Trial de novo

Applicant for social services who sought mandamus to enforce fair hearing decision was not required to prove eligibility de novo in the mandamus proceeding. [Blackburn v. Sarsfield \(App. 1 Dist. 1981\) 178 Cal.Rptr. 15, 125 Cal.App.3d 143. Mandamus ↗ 168\(2\)](#)

Petitioners, who sought old age security benefits, were not possessed of a vested right, but of right to make application for such benefits provided they were able to comply with statutory prerequisites therefor, and, therefore, were not entitled to trial de novo in superior court following denial of their petitions by the social welfare board. [Bertch v. Social Welfare Dept. of Cal. \(1955\) 45 Cal.2d 524, 289 P.2d 485. Social Security And Public Welfare ↗ 176.1](#)

10. Admissibility of evidence

In mandamus proceeding in superior court by county to challenge authority of director of department of social welfare to hold a hearing at request of one whose aid for needy children had been terminated, and challenging decision of director, superior court did not err in refusing to permit county to introduce additional evidence because certain portions of tape recording device used before referee were unintelligible, where inaudible portions were intelligible by resort to remarks preceding and following inaudible portions. [Madera County v. Holcomb \(App. 5 Dist. 1968\) 66 Cal.Rptr. 428, 259 Cal.App.2d 226. Mandamus ↪ 173](#)

11. Weight and sufficiency of evidence

Since review of a referee's proposed decision by director of state department of social welfare is limited to questions of law, a trial court's function in considering evidence is limited to determining whether director's findings are supported by substantial evidence in light of whole record. [Henderling v. Carleson \(App. 1 Dist. 1974\) 111 Cal.Rptr. 612, 36 Cal.App.3d 561. Social Security And Public Welfare ↪ 8.15](#)

In an administrative mandamus proceeding to review a decision of the director of department of social welfare denying welfare benefits, the trial court and the court of appeal apply the substantial evidence rule and look to the record to ascertain if there is substantial evidence to support the administrative findings and if the decision is in conformance with law. [Madera County v. Carleson \(App. 5 Dist. 1973\) 108 Cal.Rptr. 515, 32 Cal.App.3d 764. Mandamus ↪ 168\(4\); Mandamus ↪ 187.9\(6\)](#)

In view of fact that court of appeal was not trier of fact with respect to administrative mandamus proceeding to review denial of application for welfare benefits on disability grounds, such court would not reweigh medical evidence adverse to applicant. [Taylor v. Martin \(App. 1 Dist. 1972\) 105 Cal.Rptr. 211, 28 Cal.App.3d 1057. Mandamus ↪ 187.9\(6\)](#)

12. Record


Welfare department was not required at pretermination hearing to issue subpoenas and administer oaths so long as hearing after termination of benefits being received under categorical assistance programs would provide basis for full administrative review. [McCullough v. Terzian \(1970\) 87 Cal.Rptr. 195, 2 Cal.3d 647, 470 P.2d 4. Social Security And Public Welfare ↪ 8.5](#)


13. Scope of review


In reviewing decisions denying applications for public assistance such as Medi-Cal benefits, superior court exercises its independent judgment, i.e., it reconsiders evidence presented at administrative hearing and makes its own independent findings of fact. [Ruth v. Kizer \(App. 1 Dist. 1992\) 10 Cal.Rptr.2d 274, 8 Cal.App.4th 380, re-hearing denied. Health ↪ 507](#)


Independent judgment review was appropriate standard for trial court to review administrative decision denying benefits under the aid to the totally disabled program in light of significance of right of needy disabled to public assistance; overruling [Tripp v. Swoap, 17 Cal.3d 671, 131 Cal.Rptr. 789, 552 P.2d 749](#); and [Bertch v. Social Welfare Dept., 45 Cal.2d 524, 289 P.2d 485](#). (Per Broussard, J., with two Judges concurring, one Judge concurring in a separate opinion, and three Judges dissenting.) [Frink v. Prod \(1982\) 181 Cal.Rptr. 893, 31 Cal.3d 166, 643 P.2d 476. Social Security And Public Welfare ↪ 181](#)



The role of the trial court and of the appellate court in reviewing a decision of the social welfare department dir-

ector begins and ends with a determination of whether substantial evidence, contradicted or uncontradicted, supports the decision. [Ferreira v. Swoap \(App. 1 Dist. 1976\) 133 Cal.Rptr. 449, 62 Cal.App.3d 875. Social Security And Public Welfare](#)  8.20


Phrase “in the light of the whole record,” as found in provision of [CCP § 1094.5](#) incorporated in provision of this section authorizing an applicant or recipient or the affected county to file a petition with the superior court for a review of the entire proceedings in the matter within one year after receiving notice of a final decision of the social welfare department director, is analogous to the expression “based upon the entire record” and means that, in reviewing evidence, court must review entire record to determine whether decision of director is supported by substantial evidence. [Ferreira v. Swoap \(App. 1 Dist. 1976\) 133 Cal.Rptr. 449, 62 Cal.App.3d 875. Social Security And Public Welfare](#)  8.20


Where there was substantial evidence in record made before hearing officer to support the findings as basis for denying AFDC benefits, the review was limited to question of law whether under the facts found to be true the claimant was legally entitled to AFDC payments; such issue is to be determined solely by interpretation of statutes and departmental regulations, not in conflict with the statutes, issued at the state level. [Madera County v. Carleson \(App. 5 Dist. 1973\) 108 Cal.Rptr. 515, 32 Cal.App.3d 764. Social Security And Public Welfare](#)  194.21

In an administrative mandamus proceeding to review denial of welfare benefits, trial court applies substantial evidence rule, i.e., looks to evidence before administrative tribunal only to ascertain whether it includes evidence of substance to support the administrative finding. [Taylor v. Martin \(App. 1 Dist. 1972\) 105 Cal.Rptr. 211, 28 Cal.App.3d 1057. Mandamus](#)  168(4)



Review by superior court and by district court of appeal of the decision of state board of social welfare relative to old age aid is confined to questions of law involved. [Kelley v. State Bd. of Social Welfare \(App. 2 Dist. 1947\) 82 Cal.App.2d 627, 186 P.2d 429. Administrative Law And Procedure](#)  784.1; [Social Security And Public Welfare](#)  178

14. Interest


Claimant who was entitled to receive retroactive payments to aid to families with dependent children benefits which had been unlawfully withheld was entitled to prejudgment interest and reasonable attorney fees as well. [Burch v. Prod \(App. 4 Dist. 1979\) 153 Cal.Rptr. 751, 90 Cal.App.3d 987. Social Security And Public Welfare](#)  194.21


Applicant for aid to the needy disabled, successful on his petition for a writ of mandamus requiring social welfare department director to set aside an order and decision determining that applicant was ineligible for benefits, was entitled to prejudgment interest under authority of [Civ.C. § 3287](#) providing that every person who is entitled to recover damages certain, or capable of being made certain by calculation, and right to recover which is vested in him upon a particular day, is entitled to recover interest thereon from that day, except during such time as debtor is prevented by law, or by act of creditor from paying debt. [Ferreira v. Swoap \(App. 1 Dist. 1976\) 133 Cal.Rptr. 449, 62 Cal.App.3d 875. Interest](#)  39(2.20)


Where recipient of welfare benefits is adjudged entitled to retroactive payment of benefits pursuant to statutory obligation of state, such recipient is entitled to award of prejudgment interest at legal rate from time each payment becomes due; disapproving [Luna v. Carleson, 119 Cal.Rptr. 711, 45 Cal.App.3d 670. Tripp v. Swoap](#)


(1976) 131 Cal.Rptr. 789, 17 Cal.3d 671, 552 P.2d 749. Interest  31; Social Security And Public Welfare  9.1


15. Attorney fees--In general


Applicant for social services who obtained favorable decision and court enforcement was entitled to attorney fees incurred in the action brought to enforce the initial fair hearing decision. *Blackburn v. Sarsfield* (App. 1 Dist. 1981) 178 Cal.Rptr. 15, 125 Cal.App.3d 143. Social Security And Public Welfare  12


Plaintiff, who sought writ of mandate reversing decision which terminated her welfare benefits under aid to needy disabled program and who prevailed in superior court and in court of appeal, while entitled to attorney fees in respect to those appellate proceedings which undertook to secure her right to welfare benefits under this section, was not entitled under this section, to attorney fees incurred in connection with supreme court review which was sought to obtain more favorable legal precedent. *Le Blanc v. Swoap* (1976) 129 Cal.Rptr. 304, 16 Cal.3d 741, 548 P.2d 704. Mandamus  190


Trial court is most appropriate forum for determination of award of attorney fees. *Le Blanc v. Swoap* (1976) 129 Cal.Rptr. 304, 16 Cal.3d 741, 548 P.2d 704. Costs  197

Award of attorneys' fees in favor of those who were found eligible to receive retroactive benefits in form of aid to families with dependent children by reason of an invalid regulation of the department of social welfare was not improper by reason of fact that it also favored others who were similarly entitled to benefits but who had not followed same administrative course. *Hypolite v. Carleson* (App. 1 Dist. 1975) 125 Cal.Rptr. 221, 52 Cal.App.3d 566. Social Security And Public Welfare  194.21

Welfare recipient who successfully intervenes in judicial proceedings brought by county to review decision of director of department of social welfare may be said to have obtained a "decision in his favor," and if the recipient's interests were safe-guarded through the assistance of counsel, award of reasonable attorney fee is required. *Humboldt County v. Swoap* (App. 1 Dist. 1975) 124 Cal.Rptr. 510, 51 Cal.App.3d 442. Social Security And Public Welfare  12

Attorney's fees in public assistance cases are provided in order to enable needy person to establish through judicial proceedings his or her right to statutory benefits. *Silberman v. Swoap* (App. 4 Dist. 1975) 123 Cal.Rptr. 456, 50 Cal.App.3d 568. Social Security And Public Welfare  12

Where claimant for public assistance obtained writ of mandate to compel director of state department of social welfare to issue his decision after administrative fair hearing on claim, award of attorney's fees was not improper. *Silberman v. Swoap* (App. 4 Dist. 1975) 123 Cal.Rptr. 456, 50 Cal.App.3d 568. Mandamus  190

While award of attorney fees in welfare cases is in nature of costs, which are allowable only to extent to which they are reasonably incurred, such attorney fees are to permit claimant to establish his right to statutory benefit that by its character is obtainable only by needy person whose financial condition does not leave margin for such occasional necessities as attorney fees. *Trout v. Carleson* (App. 4 Dist. 1974) 112 Cal.Rptr. 282, 37 Cal.App.3d 337. Social Security And Public Welfare  12

AFDC mother who sought individual relief against administrative decision was not entitled to statutory attorney fees where she did not obtain favorable decision, regardless of whether her class action allegations took cause of

action outside scope of this section permitting award of attorney fees. [Russell v. Carleson \(App. 3 Dist. 1973\) 111 Cal.Rptr. 497, 36 Cal.App.3d 334. Costs ↪ 194.25](#)

16. ---- Discretion of court, attorney fees

Attorneys' fees may be awarded to publicly financed legal service organizations pursuant to provisions of this section and amount thereof rests within trial court's traditionally broad discretion in fixing such fees when they are properly awarded. [Hypolite v. Carleson \(App. 1 Dist. 1975\) 125 Cal.Rptr. 221, 52 Cal.App.3d 566. Social Security And Public Welfare ↪ 12](#)

Award of \$975 as attorney's fees to recipient challenging welfare regulations was not an abuse of discretion. [Horn v. Swoap \(App. 2 Dist. 1974\) 116 Cal.Rptr. 113, 41 Cal.App.3d 375. Social Security And Public Welfare ↪ 12](#)

17. ---- Amount, attorney fees

Awards of \$26,186 and \$14,995 to attorneys representing applicants for AFDC foster care payments were not excessive, where amounts were substantiated by the evidence; spending a total of approximately 200 hours on two petitions was not excessive given novelty of issues presented and need for exhaustion of administrative remedies. [Land v. Anderson \(App. 2 Dist. 1997\) 63 Cal.Rptr.2d 717, 55 Cal.App.4th 69, review denied, certiorari denied 118 S.Ct. 692, 522 U.S. 1048, 139 L.Ed.2d 637. Social Security And Public Welfare ↪ 194.21](#)

Awards of attorneys' fees to publicly financed legal service organizations were not subject to challenge that they were made at rates which reflected value of services rendered by private attorneys where trial court determined that rates at which it calculated amounts awarded was within lower range of prevailing compensation awarded by courts in geographical area for similar services. [Hypolite v. Carleson \(App. 1 Dist. 1975\) 125 Cal.Rptr. 221, 52 Cal.App.3d 566. Costs ↪ 194.18](#)

Reasonable value of services rendered by publicly financed legal service agencies on appeal in suit brought pursuant to this section was to be fixed and awarded by trial court when it determined costs on appeal. [Hypolite v. Carleson \(App. 1 Dist. 1975\) 125 Cal.Rptr. 221, 52 Cal.App.3d 566. Social Security And Public Welfare ↪ 12](#)

In determining value of legal services rendered to welfare recipient who intervenes in proceeding challenging decision of director of department of social welfare, courts should insure that a recipient's legal representative is not compensated for making a merely nominal appearance or by duplicating the efforts of the Attorney General in representing the director. [Humboldt County v. Swoap \(App. 1 Dist. 1975\) 124 Cal.Rptr. 510, 51 Cal.App.3d 442. Social Security And Public Welfare ↪ 12](#)

Attorney fees in amount of \$350, awarded to plaintiff who has obtained ruling ordering payment to her of withheld aid to dependent children payments, were not excessive. [Luna v. Carleson \(App. 3 Dist. 1975\) 119 Cal.Rptr. 711, 45 Cal.App.3d 670. Social Security And Public Welfare ↪ 194.21](#)

18. ---- Forfeiture, attorney fees

An individual who is entitled to attorneys' fees under provisions of this section may not be held to have forfeited such fees because he had successfully represented a class as well as his own interests. [Hypolite v. Carleson \(App. 1 Dist. 1975\) 125 Cal.Rptr. 221, 52 Cal.App.3d 566. Social Security And Public Welfare ↪ 12](#)

19. ---- Publicly financed legal service organizations, attorney fees

Petitioner, successful on his petition for a writ of mandamus requiring social welfare department director to set aside an order and decision determining that petitioner was ineligible for aid to the needy disabled, was entitled to reasonable costs and attorney's fees in trial court and on appeal, but to extent that he was represented during a portion of proceedings by an attorney who was a salaried employee of a corporation that furnished his services without cost, petitioner was required to donate a proportionate amount of award received to a neighborhood legal assistance foundation. [Ferreira v. Swoap \(App. 1 Dist. 1976\) 133 Cal.Rptr. 449, 62 Cal.App.3d 875. Mandamus](#) ↩ 190

Fees awarded for legal services pursuant to provisions of this section are not somehow abridged when they are to be awarded a publicly financed legal service organization. [Hypolite v. Carleson \(App. 1 Dist. 1975\) 125 Cal.Rptr. 221, 52 Cal.App.3d 566. Social Security And Public Welfare](#) ↩ 12

A publicly financed legal service organization is not required to show a hypothetical cost accounting to court when making a request for attorneys' fees pursuant to provisions of this section. [Hypolite v. Carleson \(App. 1 Dist. 1975\) 125 Cal.Rptr. 221, 52 Cal.App.3d 566. Social Security And Public Welfare](#) ↩ 12

Awards of attorneys' fees to publicly financed legal service organizations were not subject to challenge on ground that organizations failed to submit a "correct cost accounting" to court in order to insure that they would not realize a "profit" where trial court determined that amount awarded each organization did not represent a "net profit" in excess of actual cost of services. [Hypolite v. Carleson \(App. 1 Dist. 1975\) 125 Cal.Rptr. 221, 52 Cal.App.3d 566. Social Security And Public Welfare](#) ↩ 12

Attorney fees were properly awarded to plaintiff by trial court which had ordered payment of aid for dependent children payments previously withheld, although plaintiff had been represented without charge by county legal aid society. [Luna v. Carleson \(App. 3 Dist. 1975\) 119 Cal.Rptr. 711, 45 Cal.App.3d 670. Social Security And Public Welfare](#) ↩ 194.21

Attorney's fees may be awarded to recipient challenging welfare regulations even though recipient may be represented by a legal services organization. [Horn v. Swoap \(App. 2 Dist. 1974\) 116 Cal.Rptr. 113, 41 Cal.App.3d 375. Social Security And Public Welfare](#) ↩ 12

West's Ann. Cal. Welf. & Inst. Code § 10962, CA WEL & INST § 10962

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10963. Compliance with decision

The county director shall comply with and execute every decision of the director rendered pursuant to this chapter.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3994, § 5.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

An amendment of this section by § 5 of Stats.1999, c. 803, failed to become operative under the provisions of § 11 of that Act.

Section 11 of Stats.1999, c. 803 (A.B.472), provides:

“Sections 1 and 2 of this bill shall become operative only if either Assembly Bill 196 [Stats.1999, c. 478] or Senate Bill 542 [Stats.1999, c. 480], or both, are enacted into law during the 1999-2000 Regular Session, and as enacted, either or both bills add Division 17 (commencing with Section 17000) to the Family Code, in which case Sections 3, 4, 5, [amending [Welfare and Institutions Code §§ 10950, 10951](#), and 10963] and 6 [The bill did not contain a Section 6] of this bill shall not become operative.”

Derivation: Former § 104.6, added by Stats.1945, c. 1319, p. 2474, § 1, amended by Stats.1953, c. 1562, p. 3242, § 3; Stats.1961, c. 1227, p. 2974, § 6.

Former § 445.12, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CROSS REFERENCES

Cases arising under this section excluded from county's right to seek injunction, see [Welfare and Institutions Code § 10605](#).

County director, duties of, see [Welfare and Institutions Code § 10803](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Medical assistance program, county department responsibilities, see [22 Cal. Code of Regs. § 50101](#).
Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

LIBRARY REFERENCES

2001 Main Volume

[Social Security and Public Welfare](#)  8.15.

Westlaw Topic No. [356A](#).

[C.J.S. Social Security and Public Welfare §§ 14 to 15](#).

RESEARCH REFERENCES



Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 65](#), Award; Compliance With Decision.

NOTES OF DECISIONS

Mandamus [1](#)

[1. Mandamus](#)

This section, providing that county director shall comply with and execute every decision of the director of the state agency is mandatory and applies to initial fair hearing decisions pending rehearing; traditional mandamus is the remedy by which compliance may be compelled. [Blackburn v. Sarsfield \(App. 1 Dist. 1981\) 178 Cal.Rptr. 15, 125 Cal.App.3d 143. Mandamus](#)  [100](#); [Social Security And Public Welfare](#)  [8.5](#)

West's Ann. Cal. Welf. & Inst. Code § 10963, CA WEL & INST § 10963

Current with urgency legislation through Ch. 763 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., Prop. 99, and Props. 1A-12

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10964. Digest of decisions

The department shall compile and distribute to each county department a current digest of decisions, properly indexed, rendered under this chapter, and each such digest shall be open to public inspection, subject, however, to the confidentiality requirements set forth in federal and state laws and regulations.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3994, § 5.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Derivation: Former § 445.14, added by Stats.1963, c. 1916, p. 3930, § 54.5.

CROSS REFERENCES

Availability of copies of laws, bulletins and regulations for public inspection, see [Welfare and Institutions Code § 10608](#).

Confidential records, see [Welfare and Institutions Code § 10850](#).

Informational pamphlets, see [Welfare and Institutions Code § 10607](#).

Inspection of public records, see [Government Code § 6250 et seq.](#)

“Pregnancy tests” to “Pupil records”, exemptions from disclosure, see [Government Code § 6276.36](#).

Publication and distribution of regulations, see [Welfare and Institutions Code § 10606](#).

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,

“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, fair hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

LIBRARY REFERENCES

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[Social Security and Public Welfare](#)  8.1.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare § 12.](#)

West's Ann. Cal. Welf. & Inst. Code § 10964, CA WEL & INST § 10964

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10965. Request on behalf of decedent's estate

Nothing in this chapter shall prevent the filing of the request for a hearing by the legal representative, or, if there is no authorized legal representative, by an heir of a deceased applicant or recipient, in behalf of the decedent's estate, to the end that rights not determined at the time of death shall accrue to the estate of the applicant or recipient.

CREDIT(S)

(Added by Stats.1965, c. 1784, p. 3994, § 5.)

HISTORICAL AND STATUTORY NOTES

2001 Main Volume

Derivation: Former § 104.1, added by Stats.1951, c. 925, p. 2454, § 1, amended by Stats.1953, c. 1562, p. 3241, § 1; Stats.1957, c. 702, p. 1891, § 1.

Former § 445.15, added by Stats.1963, c. 1916, p. 3930, § 54.5.

Former § 1511, added by Stats.1937, c. 374, p. 1185, § 1.

Former § 1551, added by Stats.1937, c. 389, p. 1204, amended by Stats.1939, c. 1037, p. 2845, § 10; Stats.1945, c. 1395, p. 2601, § 10.

Former § 3086, added by Stats.1937, c. 376, p. 1186, amended by Stats.1937, c. 406, p. 1351; Stats.1939, c. 916, p. 2571, § 10.

Stats.1929, c. 529, p. 911, § 5; Stats.1931, c. 882, p. 1894, § 1; Stats.1936, Ex.Sess., c. 6, p. 9, § 3; Stats.1937, c. 84, p. 180, § 1.

CODE OF REGULATIONS REFERENCES

Medi-Cal specialty mental health services,
“Expedited fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.4](#).

“Fair hearing” defined, see [9 Cal. Code of Regs. § 1810.216.6](#).

Specialty mental health services, Fair Hearing, see [9 Cal. Code of Regs. § 1810.216.1](#).

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[Social Security and Public Welfare](#)  8.1.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare § 12](#).

RESEARCH REFERENCES

Encyclopedias

[CA Jur. 3d Public Aid and Welfare § 61](#), Filing of Request; Priority, Setting and Notice of Hearing.

West's Ann. Cal. Welf. & Inst. Code § 10965, CA WEL & INST § 10965

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Part 2. Administration ([Refs & Annos](#))
Chapter 7. Hearings ([Refs & Annos](#))

§ 10966. Delegation of director's powers; decisions by administrative law judges

(a) In addition to any other delegation powers granted to the director under law, the director may delegate his or her powers to adopt final decisions under this chapter to all administrative law judges within specified ranges in the department, in the types of cases deemed appropriate by the director. The authority to adopt final decisions shall not be contingent upon the outcome of the judge's resolution of the case or issue, nor upon the identity of a particular administrative law judge. The defined areas of delegation shall be published by the department after interested groups such as the Coalition of California Welfare Rights Organizations, legal aid societies, and the County Welfare Directors Association have had a reasonable amount of time to review and comment.

(b) Notwithstanding any other provisions of this chapter, decisions rendered by the administrative law judges under the authority of this section shall be treated, for all purposes, as the decision of the director. The affected county, recipient, or applicant has the right to request a rehearing pursuant to [Section 10960](#), and the right to petition for judicial review pursuant to [Section 10962](#).

(c) If the director chooses to exercise the authority to delegate his or her powers to adopt final decisions to administrative law judges, the delegation shall be in writing. Any such delegation instrument shall be a public record available at all times, including the time of hearing, from each administrative law judge to whom that authority has been delegated. The written delegation instrument shall include paragraphs (1) and (2) of the following, and may include paragraph (3) of the following:

(1) It shall specify the administrative law judges that are authorized to render final decisions on his or her behalf, including the effective date of the authorization.

(2) It shall specify the types of cases or issues that are subject to his or her delegation of final authority.

(3) It may include any other implementation instructions which he or she determines are necessary for the effective implementation of this section.

(d) Decisions rendered by administrative law judges pursuant to the provisions of this section shall be fair, im-

partial, independent, in writing, and in the format prescribed by the Chief Administrative Law Judge.

CREDIT(S)

(Added by Stats.1986, c. 415, § 10, eff. July 17, 1986.)

LIBRARY REFERENCES

2001 Main Volume

[Social Security and Public Welfare](#)  8.15.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare §§ 14 to 15.](#)

West's Ann. Cal. Welf. & Inst. Code § 10966, CA WEL & INST § 10966

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Part 2. Administration ([Refs & Annos](#))

Chapter 7. Hearings ([Refs & Annos](#))

§ 10967. Adequacy of notice

At the time of the hearing the recipient has a right to raise the adequacy of the county's notice of action as an issue. If the administrative law judge determines that adequate notice was provided, the recipient shall agree to discuss the substantive issue or issues or the case shall be dismissed. If the administrative law judge determines that adequate notice was not provided, the case will be postponed unless the recipient waives the adequate notice requirement and agrees to discuss the substantive issue or issues at the hearing. If the notice was not adequate and involved termination or reduction of aid, retroactive action shall be taken by the county to reinstate aid pending.

CREDIT(S)

(Added by Stats.1986, c. 415, § 10.5, eff. July 17, 1986.)

CROSS REFERENCES

Due process, generally, see [Const. Art. 1, § 7](#).

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[Social Security and Public Welfare](#)  8.5.

Westlaw Topic No. 356A.

[C.J.S. Social Security and Public Welfare](#) § 13.

RESEARCH REFERENCES

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[CA Jur. 3d Public Aid and Welfare](#) § 62, Issues at Hearing; Continuance; Manner of Reporting Proceedings.

West's Ann. Cal. Welf. & Inst. Code § 10967, CA WEL & INST § 10967

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