

In Brief

✓ **Child Care Workers to be Unionized - Minimum Wage lawsuits may be coming** - At a recent County Welfare Directors Association (CWDA) meeting there was a great deal of discussion of unionization and the threat of lawsuits related to child care providers. CDSS is seeking information about unionizing child care workers who get less than minimum wage for providing in-home care to children of WtW participants.

✓ **CDSS Issues Katrina ACINs** - CDSS has issued three All County Information Notices dealing with Katrina, Food Stamps and CalWORKs.

ACIN I-51-05 states that San Diego is prepared to accept 600 evacuees. San Francisco will accept 300 and San Jose will accept 100. ACIN 52-05 provides that the county should be making homeless assistance available to families applying for CalWORKs. The ACIN does not mention the improbability of finding affordable housing in California markets such as San Diego, San Francisco or San Jose on meager CalWORKs benefits levels. A family of three would have to find an apartment for less than \$578 a month to qualify for homeless assistance in California. Remember, the State Legislature and the Governor suspended the COLA for two years and kept CalWORKs benefits at 1990 levels.

ACIN 52-05 also states:

“ When an individual or family displaced by Hurricane Katrina applies for CalWORKs, counties shall do the following:

- Establish that the evacuee was living in an area affected by Hurricane Katrina when the hurricane struck (a listing of the affected areas is attached);...”

- Show that they have not been on TANF for 60 months. The ACIN also states that Louisiana has a 24 month time limit for TANF.

How does one who lost everything PROVE they are from Louisiana? For Food Stamps ACIN 05-53 also suggests that counties contact Alabama, Mississippi or Louisiana to verify whether or not the applicant was getting food stamps for the month of September, 2005.

✓ **Poverty Up In America 12.7%** - Poverty has increased under Bush. In 2003, the poverty level was 12.5%. In 2004 it climbed to 12.7%. This is evidence that welfare reform (also known as welfare deform) is not helping America's poor. Bush's TANF proposal will further increase poverty in America.

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County Client Abuse Report

Ms. N. of Sacramento County received several notices of action from Sacramento County's infamous CalWIN program computer on the same day.

The first notice of action (NOA) dated 8/24/05 stated that Ms. N.'s Medi-Cal benefits had been approved effective April 1, 2005 with a \$412 a month share of cost.

The next NOA, also dated 8/24/05, stated that the share of cost had been changed to \$428. The notice did not state what the previous share of cost was.

Yet another 8/24/05 NOA stated that food stamps for Ms. N. did not change. The next page was a DFA 377.7E1 that wanted Ms. N. to sign an agreement to pay a food stamp overissuance of \$1,585.

Another 8/24/05 NOA stated that Ms. N.'s 1931(b) Medi-Cal benefits will be stopped effective 9/30/05.

A final NOA dated 8/24/05 stated that Ms. N.'s food stamps "are changed from \$70 to \$70 each month."

Of course, Ms. N. being totally confused with all the NOAs, requested a hearing to see if a administrative law judge could figure out the mess created by a computer system that cost taxpayers several hundred million dollars.

There are thousands of such notices polluting the homes of welfare recipients in California who unfortunately live in counties that have opted for this "lemon" CalWIN system, also known as CalHELL.

ADVOCATES MEET WITH DSS STATE HEARINGS DIVISION TO TALK ABOUT STATE HEARING ISSUES

The meeting was attended by Lonnie Carlson, Presiding Judge for Northern California, Tom Wilcock, Presiding Judge of Bay Area, Bruce Barber, Presiding Judge of Child Support and Rosalie Morefield, DSS super-analyst.

The advocates present were Kevin Aslanian and Grace Galligher of CCWRO, Jodie Berger of LSNC, Dora Lopez of Western Center on Law & Poverty, Michelle Morrow of CRLA, Steve Weiss of BALA and Yolanda Arias of LAFLA.

Lonnie Carlson said that the Department is moving towards telephone hearings provided that it is OK with the claimant because of the severe shortages of ALJs in California. One of the major reasons for this shortage is that DSS is only given the federal share of the medicaid dollars for fair hearings, while the general fund matching dollars are not spent for state hearings. This is called "constructive budgeting" and it is outright fraud in CCWRO's view.

1. SUBPOENA: Advocates suggested that information regarding how to get a subpoena be placed in both the acknowledgement and the notice with the hearing date. DSS agreed to put this information in the acknowledgement letter since that gives more time to issue a subpoena and it should be no cost on subpoena duces tecum.

2. TELEPHONE HEARINGS. 45 CFR 205.10 allows all state hearings to be done by phone at SHD discretion provided that the claimant agrees.

205.10(1)(2) Hearing procedures shall be issued and publicized by the State agency. Such procedures shall provide for a face-to-face hearing or, at State option, a hearing by telephone when the applicant or recipient also agrees.

DSS is doing more and more telephone hearings by necessity to get decisions out in time and it is not a DSS preferred method for hearings. DSS

agreed to consider putting a single state-wide number to access all legal services in the state especially with ADH fraud hearings.

Presiding judges are putting together a phone hearing process, will review at next judge's meeting, Will share with advocates for review on comment before implementing. If person insisted on face-to-face hearing, we have to give it to them. DSS will be piloting something soon linking Los Angeles, Sacramento, Orange via video-conference. Doing this in Mendicino County at this time as a pilot. Claimants would have option of video CD as part of the record.

DIVISION 22 regulation changes will have public hearing in November, 2005.

3. CONDITIONAL WITHDRAWAL (CW) LANGUAGE. DSS won't implement anything before Div 22 regulations are implemented. DSS agreed that it will include language about asking for reopening the CW if county doesn't act within 30 days. New NOA resurrects whatever county was going to do.

Advocates raised the issue of county failure to comply with hearings decisions. CDSS stated that Taylor v. McKay, requires county to comply immediately. What sanction power does state have? Only sanction that is known is under W&IC §10605. No compliance mechanism with CWs but if we enter into stipulated decision, SHD does monitor compliance. It was agreed by the meeting participants that it would make sense to enter into stipulated decision in front of judge rather than CW since that way SHD can monitor if we think may be compliance issues. [A stipulated decision can be entered into by appearing before the ALJ and stating that the parties have agreed to following stipulated decision. The ALJ will take the information and within a week you have a final decision.

4. JURISDICTIONAL ISSUE. Note: Carlson says no statute of limitation on underpayments, (can go back more than 90 days). Look to adequacy of notice before addressing jurisdiction problem, even if hasn't been raised by claimant. Put these issues in Q&A's and we'll "run it up the flagpole." Los Angeles advocates asks that Q&A specify that county can't intentionally delay the hearing because

they are not prepared. But county can rescind and renotice later.

5. COUNTY UNPREPARED. As general rule, county has to be ready to go forward at hearing but there are exceptions. Note, if county doesn't present prima facie case, does judge take further testimony or end it at that point. That's a training issue. The only remedy for no position statement is postponement or go ahead. Regional office presiding judge should maintain good relation with each CWD. Use Tom Wilcock(The presiding Judge of the Bay Area Office) for things like this. Very successful in most cases to get counties to move on things or change tactics. Kevin proposes that county just lose if no position statement prepared. DSS said it would require statutory change.

6. DEFECTIVE TAPES. It's a training issue. As far as process issue, it's a judge responsibility. Willing to put info in benchbook, reminding judges of importance of these issues. Parties can ask that judge listen to tape, agree that this is what judges should be doing, reiterate importance to that. Unaware that we're using any county equipment. We have equipment housed with the county but it's state equipment. If not there, judge brings equipment. There are no standards for recording equipment. It's not high cost which is generally bulky, so it's small, light. Microphone is most important feature, so get powered microphones. Wilcock: tape recorder in SF is same as rest of state. They're old, purchased a while ago. Trying to get better equipment. Do a check of quality at beginning of hearing. Will put at next judges meeting, possibly standards for recording equipment, along with training equipment. Can suggest make and model.

7. REHEARINGS. Legal has insisted on being in charge of entire rehearing process. Lonnie Carlson said that DSS would be willing to look into granting rehearings in cases of defective recordings

8. WEB-BASED HEARING REQUESTS: DSS is planning to have web based hearing requests. The program is being developed at this time and it may be on the DSS State hearing Division web page at the end of the year. **The next meeting is scheduled for October 6, 2005.**

