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## **CCWRO Litigation Report**

### **SHEYKO v. SAENZ (Sacramento County Case # 99CSO2696.**

This writ of mandate challenged the policies of DSS that require adult family members in a household who are not applicants for or recipients of CalWORKS or Food Stamp benefits to be finger-imaged and photo-imaged as a condition precedent for receipt of Food Stamps or CalWORKS benefits by eligible family members.

Bay Area Legal Aid and Asian Law Alliance requested that CCWRO pursue the litigation and prosecution of this action. Co-counsel to Legal Services of Northern California.

**CASE STATUS-** Oral argument scheduled for July 23, 2003. Research in preparation for argument.

### **KING v. SAENZ, Sacramento County Superior Court Case No. 03CS00016**

This petition for a writ of administrative mandamus under Code of Civil Procedure §1094.5 challenges Fresno County's failure to advance Ms. King her CalWORKS transportation expenses.

**CASE STATUS-** DSS offered settlement in case. Waiting for client's expenses

### **MEDINA v. SAENZ, Sacramento County Superior Court Case No. 03CS00015**

This petition for a writ of administrative mandamus under Code of Civil Procedure §1094.5 challenges the decision to allow Fresno County to recover a CalWORKS overpayment which occurred in 1997. The overpayment occurred for the failure to report income. Fresno County learned about the overpayment in May 1998 but did nothing until July 2001. Recovery of the CalWORKS overpayment should be barred by the statute of limitations. The ALJ found that Fresno County could recover the CalWORKS overpayment even though recoupment of the commiserate Food Stamp overissuance was bared by the statute of limitations.

**CASE STATUS-** Awaiting preparation of the administrative record.

### **McFARLAND V. SAENZ Sacramento County Superior Court Case No. 03CS)**

This petition for writ of administrative mandamus challenges the ALJ's finding that Kern County could impose a sanction for refusing to sign a Welfare to Work plan for which the activity is to attend a third party assessment. The normal process is for the counties to schedule the third party assessment and notify the participant of the date and time of the appointment. Kern County also proposed to count the receipt of \$1,999 (which Kern County Department of Human Services paid petitioner as a settlement in a court action for misconduct in

administering her CalWORKs case) as countable income for purposes of food stamps. The ALJ concurred. This decision is contrary to M.P.P. § 63-502.2(j).

**CASE STATUS-** Awaiting preparation of administrative record and updating research in case.

***SNEED v. SAENZ (San Diego County Superior Court Case No. GIC 764797)***

LASSDC requested that we co-counsel on this case. The Legislature enacted Welfare and Institutions Code § 11450.04(a) to provide that if a child is born into a family unit who has received cash assistance continuously for the ten months prior the child's birth, the child's needs is not considered and is excluded from cash benefits. Such child is referred to as a MFG child. When the MFG child has a parent not related to the other child(ren) and the parent is unemployed and lives in the home, the parent's needs are also not considered.

**CASE STATUS-** Appealed. The Appellate Record is being prepared.

***KISELEV v. SAENZ- (Sacramento County Case No. 02CS00951)***

This lawsuit was filed at the request of LSNC. This writ of mandate challenges the policies of DSS to circumvent the adequate notice requirement and the Stipulated Settlement Agreement in *Asociacion Mixta Progresista v. U.S. Department of Health, Education and Welfare*, U.S.D.C. (N.D.Cal.) Civil No. C 72-852 SAW, requires that CDSS (formerly the State Department of Benefit payments) translate necessary forms and written materials into the applicants'/recipients' primary language when they constituted a substantial number (i.e., five percent or more of the applicant/recipient population) within a particular county.

Petitioner Kiselev received a notice of action denying his In Home Supportive Services application in the English language. Mr. Kiselev speaks Russian and DSS admitted that the denial notice had been translated in to Russian. Mr. Kiselev did not request a hearing within the 90 days of receiving the notice. When he did request the hearing, Sacramento County argued that there was no jurisdiction because he waited too long to request the hearing.

**CASE STATUS:** Reviewed Administrative Record.

***DEPARINI, POLISHCHUK v. BONTA, DIRECTOR, CALIFORNIA DHA,***

A federal class action for declaratory and injunctive relief, was filed in Federal Court in the Eastern District in Sacramento on March 17, 2000. Case No. Civ. S.-00-655 FCD JFM. As a result of this lawsuit DHS uses 45 new notice codes in denying dental treatment authorization requests (TARs).

**CASE STATUS-** CCWRO receives quarterly report for Health Services and is monitoring and reviewing quarterly reports.

***DURAN v. DURAN (Sacramento County Superior Court Case No. 95FL02624.)***

During November 1997, Mr. Duran was ordered to appear at a child support hearing. When he arrived with his 16 year old girlfriend, the deputy district attorney gave him a copy of the complaint for child support and told him that this is what you have to agree to. Since Mr. Duran is blind, his girlfriend, who had a limited education, read the complaint to him. Mr. Duran had no access to legal counsel or anyone who understood the complaint. Mr. Duran agreed to pay a child support arrearage of \$5,290 which occurred during the period in which Mr. Duran was employed. CCWRO obtained employment records from EDD and the Social Security Administration.

**CASE STATUS-** case settled.

**GAVRILENKO v. SAENZ (Sacramento County Superior Court Case No. 00CS01547)**

CCWRO is amending the petition for writ of administrative mandamus to a class action petition for writ of mandate; complaint for declaratory and injunctive relief along with the writ of administrative mandate.

This action challenges the validity of the practice and policy of the California Department of Social Services ("CDSS") that allows counties to impose the Maximum Family Grant limitation when the English language notice of action is issued to non-English speaking recipients when the CDSS has translated the notice of action into the recipient's primary language. This policy and practice is inconsistent with state laws and regulations.

**CASE STATUS:** CCWRO has represented potential plaintiffs in administrative hearings in order to exhaust the administrative remedies. When the individual cases are taken to hearing, the judge rules in the client's favor. CCWRO is still looking for clients. Additional representative class members have administrative hearings in February.

**ROBLES v. SAENZ Sacramento County Case No. 03CSO0996**

Lead Counsel is Jacquelyn Maruhashi of Asian Law Alliance who requested that CCWRO co-counsel on this case. This case was filed in Sacramento County because the Court has judges dedicated to hearing writ cases. The judges in Santa Clara County are not familiar with writ proceedings.

This writ of administrative mandate and petition for writ of mandate pursuant to C.C.P. § 1085 challenges the validity of the policy of the California Department of Social Services ("DSS") that the indigent exception which exempts the

income and resources of the immigrant's sponsor for purposes of establishing eligibility for the Cash Assistance Program for Immigrants ("CAPI") does not apply before August 29, 2002, the date that DSS issued All-County Letter No. 02-63. This policy is inconsistent with Welfare and Institutions Code section 18940(b) which requires that federal deeming rules and exemptions governing the Supplemental Security Income ("SSI") Program, including all federal and state laws and regulations designed to protect SSI recipients and their resources, shall govern CAPI.

Saenz has a duty under the law to conform DSS' policies and practices in administering the CAPI program to the provisions of applicable statutes and their own duly promulgated regulations. The Social Security POMs which promulgated the Indigence exception to sponsor deeming for the SSI program existed prior to September 1, 2002, the date of ACL No. 02-63. The failure to apply the Indigence Exception to pre-September 1, 2002 CAPI applications where the applicant's sponsor abandoned the applicant with no means of support which conflicts with Welfare and Institutions Code section 18940(b).

**CASE STATUS:** Awaiting for the Administrative record.

**County Welfare Department  
Victim Report**

• A 72 year old man was served with a complaint for child support by Alameda County. We wondered how old is the poor child being deprived of child support. To our amazement the child was only 50 years old. Now Alameda must have been in deep hibernation for a while - a whole 30 years.

•A noncustodial male parent was paying child support to Los Angeles County. The custodial parent moved to San Bernardino County. The noncustodial parent continued to pay child support to Los Angeles County. Several months later, he gets a complaint for failing to pay child support from San Bernardino County. He does not answer the complaint and San Bernardino enters default judgement and takes away his teaching credentials.

He is now on CalWORKs, because he can no longer provide for himself and a child living with him.

In 1998 the State of California should have had a statewide distribution system, but has failed to do so. The state is paying penalties for their deviant behavior, but those penalties present no relief to this victim. He still cannot teach and provide for his family and none of that penalty money goes to the real victims.

***Welfare Advocate  
ALERT  
Medi-Cal Overpayments***

Daniel Benson of San Diego Legal Aid has informed us that San Diego County has been pursuing Medi-Cal overpayments.

The authority to collect Medi-Cal overpayments can be found in Welfare and Institutions Code Section 14009.

Subsection (c) states that the .."Amount of overpayment shall be based on the amount of excess income or resources and computed in accordance with overpayment regulations promulgated by the director.

The regulations are embodied in the Medi-Cal handbook Article 16, section 50781 through 500793.

Persons who need a copy of these regulations can e-mail CCWRO at [ccwro@aol.com](mailto:ccwro@aol.com) asking for a copy of these regulations.

**CCWRO SERVICES  
FOR  
LEGAL SERVICES PROGRAMS**

**Types of Services Offered:** Litigation,  
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**Programs Covered:** CalWORKs,  
Welfare to Work (WtW),  
Food Stamps, Medi Cal,  
General Assistance &  
Refugee/Immigrant Eligibility