

## In Brief

✓ **Kelly Blue Book and DMV Values** - On March 17, 2005, Kris Wallace of Solano County asked the following question of DSS: "If we have a Blue Book and DMV value are we permitted to use DMV values instead of Blue book? DMV values are usually less & can make a difference sometimes in whether a family is eligible or not."

Rosie Avena of DSS responded as follows: "If your county had made the decision to use that specific resource to determine the value of vehicles, then the county must continue to use that specific resource on all determinations for the value of vehicles."

**CCWRO COMMENT:** There is no state regulation supporting the DSS rule that once the county elects to use Kelly Blue Book, it cannot switch to DMV valuation. MPP 63-501.511 states that the county shall make the value determination based upon the value listed in "publications" written for this purpose. "Publications" is plural. MPP 63-501.511 states:

63-501.511 The fair market value of automobiles, trucks and vans shall be determined by the value of those vehicles as listed in publications written for the purpose of providing guidance to automobile dealers and loan companies. Publications listing the value of vehicles are usually referred to as "blue books". The CWD shall insure that the blue book used to determine the value of vehicles has been updated within the last six months. The CWD shall assign the wholesale value to vehicles.

✓ **Family Illegally Denied Homeless Assistance** - On March 7, 2005, Linda Shoutz of Tehema County asked DSS whether or not a family who became homeless because of domestic abuse is eligible for Homeless Assistance if the mother is homeless and still staying with the abuser?

CDSS answered that the family is not eligible for Homeless Assistance Exception because the mother is living with the abuser.

**CCWRO COMMENT:** This is another underground rule by DSS. There is nothing in 44-211.54 that provides homeless exception shall be denied if the victim of domestic abuse is remains with the abuser. The regulations define the exception to be families who become homeless due to domestic abuse. If the family becomes homeless due to domestic abuse, they are eligible for homeless assistance, even if they are or are not living with the abuser.

✓ **Treatment of Welfare Benefits from Other States** - On March 4, 2005, Scott Dilard of San Francisco County Welfare Department asked DSS how to treat welfare benefits received by an applicant from another state.

DSS responded that MPP 44-101(a) provides that the welfare benefits shall be counted as unearned income for the month of application.

**CCWRO COMMENT:** The practice for years has been to prorate welfare benefits from the other state, then pay the difference. For example: If a person received \$300 in aid from Alabama in May and then applies for aid in California on 5/15/05, where she is eligible for \$900 a month, the new county will divide the \$300 Alabama aid by 30 and multiply it by 15, which is \$150. The family will be eligible for \$450 in benefits from California. Thus, the May grant would be \$450 minus \$140, which is \$300. Under the DSS underground rule scenario the family would receive \$150.

➤ **In Brief**  
➤ **CalWIN Update**  
➤ **County Client Abuse Report**  
➤ **Statute of Limitations for CalWORKs Overpayments**

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✓ **Los Angeles County IEVS Report**

- On March 15, 2005, Teena Arneson of the DSS Fraud Bureau mailed a letter to LADPSS regarding the results of DSS's monitoring of the County's Integrated Earning Verification System (IEVS). The report reveals that as of July, 2004, there were 33,630 CalWORKs claims and 25,009 Food Stamp claim backlogged in Los Angeles County.

The report also revealed that Los Angeles County is mailing out unlawful repayment notices to active food stamp cases in violation of MPP 63-801.431A. The notices fail to explain what caused the overpayments and how they were computed.

**OVERPAYMENT FILE RETRIEVAL PROBLEM** - The report also notes that L.A. County often loses fair hearings on overpayments because they do not have the case file. L.A. case files are kept by "File Keeper Incorporated". The county is not able to retrieve the cases because retrieving cases costs money.

The IEVS reports are done by consultants. DPSS is training employees to also complete these reports. The report also states that (checks and) "...balances are done on the data for accuracy by launching the data using a program called "Cool Ice" into an access database."

**FNS SUPPORTS STATE COUNTY TRAVEL CLAIMS**

According to letter from U.S. Department of Agriculture Food Nutrition Services (FNS), after all of the federal money that the state and counties get for administering the Food Stamp program, they are able to get more money from FNS under the State Exchange Program (SEP) designed to give state and county food stamp bureaucrats money to travel. According to the documents secured by CCWRO fifteen large counties applied for travel money. CDSS asked for \$63,075 for a statewide Food Stamp Program conference in Monterey.

California DSS asked for \$213,000 for 2004-2005, but FNS in a 3/28/05 letter informed DSS that this request was half of the entire allocation for the FNS Western Region. FNS approved funding for government meetings, such as:

- ❖ Big 10 States Meeting in New York City - \$1,255;
- ❖ NPMC meeting in Monterey, California - \$7,110;
- ❖ Big 10 States Meeting in Washington D.C. City - \$3,000;
- ❖ Statewide Food Stamp Conference for Counties in August-September of 2005 - \$25,000;
- ❖ Fresno County welfare worker travel to Olympia, Washington regarding waivers and on-line FSP application process - \$2,000;
- ❖ Sacramento County welfare worker travel to Riverside to review quality assurance - \$750;
- ❖ Santa Clara welfare worker travel to San Bernardino County - \$590;
- ❖ San Bernardino County welfare worker travel to Orange County - \$80;
- ❖ San Diego County welfare worker travel to Orange County - \$80.

All travel for state and county welfare workers funded by FNS added up to \$61,471.



☒ George was in a hit and run accident in 1987. As a result, he was forced to rely on SSDI and SSI for income. George is now 68 and tries to aid his wife, Martha, who suffered a stroke and is paralyzed. In 2004, SSA became convinced that George had resources beyond the SSI limit since his family owns a vineyard in Placer County. SSA can't prove

excess resources since George's name is nowhere on the property records or business records. Still, SSA terminated the SSI benefits and George filed for reconsideration.

Fast forward to April 15, 2005. Sacramento County has a super duper computer that does everything except issue benefits or meaningful and adequate notices of action. You see, on April 15, 2005, while George was in the hospital for a serious illness, and his wife needed supportive services and medication to keep her alive, CalWIN issued a notice discontinuing George and Martha's Medi-Cal benefits effective May 1, 2005. One might think the discontinuance was because of the alleged excess resources that SSA believes to exist. Nope. CalWIN's reason for discontinuance "undetermined reasons."

CalWIN strikes again.

☒ In Sacramento County Mr. A.A. applied for CalWORKs and had a face-to-face interview on 5/17/05 @ 8:30.

Mr. and Mrs. A.A. kept their appointment and turned in all required documents. On 5/18/05 the A.A. family received a notice of action alleging that they failed to keep their appointment and suggested they reschedule the appointment they had already kept.

☒ Ms. Z.N 's baby was born on 3/3/05 in Sacramento County. She reported the birth to her welfare worker on 3/16/05. She was hoping to get a Medi-Cal card to get the necessary health care for her baby such as vaccinations, etc.

She called her worker two to three times a week, but no answer. She even called his supervisor, who also failed to return her call. After 63 days of waiting for a Medi-Cal card she finally requested a fair hearing.

## STATUTE OF LIMITATIONS FOR CALWORKS OVERPAYMENTS by Grace Galligher & Steve Godlberg

It is not unusual to have a person appear at a local legal services office with a demand for overpayment or a tax intercept for an overpayment that happened years ago.

This article examines the propriety of the county's attempt to recoup overpayments or initiate tax intercepts for overpayments that are barred by the three-year statute of limitations of California Code of Civil Procedure § 338(a) and (d).

Code Civ. Proc. 338(a) creates a three-year statute of limitations for "an action upon a liability created by statute . . ." California courts have consistently held that actions to recoup welfare benefits are created by statute and governed by the three-year limitations period in Code Civ. Proc. 338(a). (County of Santa Cruz v. McLeod (1961) 189 Cal.App.2d 222, 229; Amie v. Superior Court (1979) 99 Cal.App.3d 421, 421- 427 [holding that action for recoupment of AFDC benefits from child support is governed by 3 year statute of limitations of Code Civ. Proc. § 338(a)]; County of San Mateo v. Booth (1982) 135 Cal.App.3d 388, 398-401 [same as Amie]; City and County of San Francisco v. Thompson (1985) 172 Cal.App.3d 652, 658 [same as Amie].)

In Amie, id., the court made clear that all attempts to recover welfare benefits are governed by the 3 year limitations period. The court stated that "The Legislature has decided that a limitations period of three years . . . is a reasonable length of time to allow for an action by a county to recover the cost of various welfare benefits, where such recovery is authorized by statute." (Amie, id. at 427.)

Recovery of AFDC benefits is authorized by Welf. & Inst. Code § 11004. State Department of Social Services Eligibility Assistance Standards (EAS) Section 44-350.16 states that "The county shall take all reasonable steps necessary to promptly correct and collect any overpayments that are known to the county including recovery of overpayments due to either applicant/recipient and/or county administrative errors..."

EAS § 44-350.2(i) defines the month of discovery of the overpayment, which is when the three-year clock start:

*"44-350.2(i) Month of Discovery - The month of discovery is the month in which the county obtained, or could have obtained by taking prompt action, information sufficient to support a determination both that an overpayment occurred and the amount of such overpayment."*

Most overpayment are a result of unreported income. Each quarter the county receives reports under EAS §20-006 setting forth unreported income from various data basis. EAS § 20-206.121 provides:

*"The databases used in the ongoing IEVS "match" include, but are not limited to:*

*(a) Wage information from the State Wage Information Collection Agency;*

*(b) Unemployment/disability compensation benefits from the agencies administering those programs;*

*(c) Benefits/pensions/wage information from the Social Security Administration (SSA);*

*(d) Internal Revenue Service (IRS)/ Franchise Tax Board (FTB) unearned income data;*

*(e) Social Security number (SSN) verification information from SSA; and  
(f) Inter/intra-county duplicate benefit matches."*

When the county receives information indicating an overpayment, the county has the ministerial duty to act upon this information. EAS §20-206.42 and .424 provide that the county has 45 days from the date that they are notified of the discrepancy to take action to recover the overpayment.

*20-206.42 The CWD shall, within the time frames prescribed by federal rule (See Handbook Section 20-006.424), complete a case action or document in the case record that no case action is necessary.*

*20-206.424 Current federal rules prescribe that action may be delayed beyond the 45-day time frame on no more than 20 percent of the IEVS case matches.*

This statutory authorization and the fact that the county has a ministerial duty to make an overpayment determination as soon as possible mandates the imposition of the three-year statute of limitations in Code Civ. Proc. § 338(a) from the date that the county had or could have had all of the information to make a determination of the overpayment.

### **FRAUD OR COUNTY MISTAKE IS SUBJECT TO CC § 338 PROVISIONS**

County may contend that this action involves fraud or mistake and therefore the three-year statute of limitations of Code Civ. Proc. § 338(a) does not apply. However, even in the case of fraud or mistake, a three-year limitations period applies. Code Civ. Proc. § 338(d) creates a three-year statute of limitations for

actions involving fraud or mistake. Code Civ. Proc. § 338(d) is an alternative reason for applying a three-year statute of limitations to attempts to recoup welfare benefits. (McLeod, supra at pp. 229-235.) That limitations period begins running upon discovery of the fraud or mistake. (Id.)

### **EQUITABLE DOCTRINE OF LATCHES**

The other bar to collecting an overpayment or imposing a tax intercept is the equitable doctrine of latches.

The equitable doctrine of latches requires administrative agencies to diligently pursue actions. (Brown v. State Personnel Board (1985) 166 Cal.App.3d 1151, 1158-1162; accord Robert F. Kennedy Medical Center v. Belshe (1996) 13 Cal.4th 748, 760 n.9.; Steen v. City of Los Angeles (1948) 31 Cal.2d 542, 546-547; Gates v. Department of Motor Vehicles (1979) 94 Cal.App.3d 921, 924-926.)

The latches doctrine is designed “to promote justice by preventing surprises through revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” (Lam v. Bureau of Security and Investigation Services (1995) 34 Cal.App.4th 29,35.) The doctrine applies to actions taken by administrative agencies. (Brown, id., Robert F. Kennedy Medical Center, supra., Steen, id., Gates, id.) The latches defense can be raised in administrative proceedings. (See Lentz v. McMahon (1989) 49 Cal.3d 393 [holding that Department of Social Services Administrative Law Judges must rule on equitable defenses]; McHugh v. Santa Monica Rent Control Board (1989) 49 Cal.3d 348 [holding that administrative law judges can decide equitable issues].) Whether a delay in prosecuting an action constitutes latches is determined by prejudice suffered by the target of the action. Due to the lengthy passage of time, witnesses

will be difficult to locate, memories will have faded and relevant records may have been lost or destroyed.

These problems in defending a claim that deals with a period that extends to at a minimum three or more years certainly constitute prejudice. This prejudice mandates the dismissal of the tax intercept or overpayment collection action under the doctrine of latches.

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