

## Cal Wel & Inst Code § 10950

Deering's California Codes are current through the 2023 Extra Session Ch 1, 2023 Regular Session Ch. 12.

*Deering's California Codes Annotated* > **WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200)** > **Division 9 Public Social Services (Pts. 1 — 6)** > **Part 2 Administration (Chs. 1 — 10)** > **Chapter 7 Hearings (§§ 10950 — 10967)**

### **§ 10950. Right of applicant or recipient to hearing; Filing of request; Notice requirements; Adoption of regulations by department**

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(a) 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 Care Services, whichever department administers the public social service, be accorded an opportunity for a state hearing.

(b)

(1) The requirements of [Sections 100506.2 and 100506.4 of the Government Code](#) apply to state hearings regarding eligibility for or enrollment in an insurance affordability program administered by the State Department of Health Care Services to the extent that those sections conflict with the state hearing requirements under this chapter.

(2) Notwithstanding Chapter 3.5 (commencing with [Section 11340 of Part 1 of Division 3 of Title 2 of the Government Code](#)), the department, without taking any further regulatory action, shall implement, interpret, or make specific this subdivision by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions until the time regulations are adopted. The department shall adopt regulations by July 1, 2017, in accordance with the requirements of Chapter 3.5 (commencing with [Section 11340 of Part 1 of Division 3 of Title 2 of the Government Code](#)). Notwithstanding [Section 10231.5 of the Government Code](#), beginning July 1, 2015, the department shall provide a semiannual status report to the Legislature, in compliance with [Section 9795 of the Government Code](#), until regulations have been adopted.

(3) This subdivision shall be implemented only to the extent it does not conflict with federal law.

(c) 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.

(d) 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.

(e) For the purposes of administering health care services and medical assistance, the Director of Health Care 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.

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

(g) For purposes of this chapter, the following terms have the following meanings:

(1) Adverse benefit determination means, in the case of a Medi-Cal managed care plan, any of the following:

(A) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit.

(B) The reduction, suspension, or termination of a previously authorized service.

(C) The denial, in whole or in part, of payment for a service.

(D) The failure to provide services in a timely manner, as described in *Section 14197*.

(E) The failure of a Medi-Cal managed care plan to act within the timeframes provided in [Section 438.408\(b\)\(1\)](#) and [Section 438.408\(b\)\(2\) of Title 42 of the Code of Federal Regulations](#) regarding the standard resolution of grievances and appeals.

(F) For a resident of a rural area with only one Medi-Cal managed care plan, excluding a Medi-Cal managed care plan defined in subparagraphs (H) and (I) of paragraph (2), the denial of an enrollee's request to exercise his or her right under [Section 438.52\(b\)\(2\)\(ii\) of Title 42 of the Code of Federal Regulations](#) to obtain services outside the network.

(G) The denial of an enrollee's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

(2) Medi-Cal managed care plan means any individual, organization, or entity that enters into a contract with the department to provide services to enrolled Medi-Cal beneficiaries pursuant to any of the following:

(A) Article 2.7 (commencing with [Section 14087.3](#)) of Chapter 7 of Part 3, including dental managed care programs developed pursuant to [Section 14087.46](#).

(B) Article 2.8 (commencing with [Section 14087.5](#)) of Chapter 7 of Part 3.

(C) Article 2.81 (commencing with [Section 14087.96](#)) of Chapter 7 of Part 3.

(D) Article 2.82 (commencing with [Section 14087.98](#)) of Chapter 7 of Part 3.

(E) Article 2.9 (commencing with [Section 14088](#)) of Chapter 7 of Part 3.

- (F) Article 2.91 (commencing with [Section 14089](#)) of Chapter 7 of Part 3.
- (G) Chapter 8 (commencing with [Section 14200](#)) of Part 3, including dental managed care plans.
- (H) Chapter 8.9 (commencing with [Section 14700](#)) of Part 3.
- (I) A county Drug Medi-Cal organized delivery system authorized under the California Medi-Cal 2020 Demonstration, Number 11-W-00193/9, as approved by the federal Centers for Medicare and Medicaid Services and described in the Special Terms and Conditions. For purposes of this subdivision, Special Terms and Conditions shall have the same meaning as set forth in subdivision (o) of [Section 14184.10](#).
- (3) 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 paragraph (3) of subdivision (a) 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.

## History

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Added Stats 1965 ch 1784 § 5. Amended Stats 1973 ch 1216 § 7, effective December 5, 1973, operative January 1, 1974; Stats 1975 ch 171 § 21, effective June 30, 1975; Stats 1977 ch 1252 § 789, operative July 1, 1978; Stats 1978 ch 429 § 238.5, effective July 17, 1978, operative July 1, 1978; Stats 1981 ch 1 § 1, effective December 4, 1980; Stats 1985 ch 1274 § 13, effective September 30, 1985; Stats 1986 ch 415 § 2, effective July 17, 1986; [Stats 1991 ch 820 § 6](#); [Stats 1998 ch 1056 § 19.5](#); [Stats 2014 ch 869 § 7 \(AB 617\)](#), effective January 1, 2015; [Stats 2017 ch 738 § 2 \(AB 205\)](#), effective January 1, 2018.

Annotations

## Notes

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**Editor's Note—**

**Amendments:**

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Senate Bill 171 of the 2017-18 Regular Session was enacted as [Stats 2017 ch 768](#), effective January 1, 2018.

**Amendments:****1973 Amendment:**

Added “or aid under Chapter 3 (commencing with Section 12000) of Part 3 of this division” at the end of the section.

**1975 Amendment:**

(1) Deleted “or services” after “receipt of aid” and after “such aid” in the first paragraph; (2) added the second and third paragraphs; and (3) deleted “or services” after “except aid” in the fourth paragraph.

**1977 Amendment:**

(1) Amended the first paragraph by substituting (a) “public social services” for “aid or” after “recipient of”; (b) “public social services” for “such aid” after “apply for”; and (c) “State Department of Social Services or the State Department of Health Services, whichever department administers the public social service” for “department”; (2) amended the second paragraph by substituting (a) “health care services and medical assistance, the State Director of Health Services” for “the Director of Health”; and (b) “Director of Social Services” for “Director of Benefit Payments”; (3) amended the third paragraph by (a) substituting “State Director of Health Services” for “Director of Health”; (b) substituting “State Department of Social Services” for “Department of Benefit Payments”; and (c) adding “in which case ‘department’ for the purposes of this chapter shall mean the State Department of Health Services” at the end of the paragraph; and (4) substituted “public social” for “aid or” in the fourth paragraph.

**1978 Amendment:**

Deleted “in which case ‘department’ for purposes of this chapter shall mean the State Department of Health Services” at the end of the third paragraph.

**1981 Amendment:**

Added the second paragraph.

**1985 Amendment:**

Added “, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6” at the end of the section.

**1986 Amendment:**

Added the second paragraph.

**1991 Amendment:**

In addition to making technical changes, substituted (1) “state” for “fair” after “opportunity for a” in the first paragraph, after “to conduct” in the fourth paragraph, and after “provisions of” in the fifth paragraph; and (2) adding “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” for “Chapter 3 (commencing with Section 12000) of Part 3 of this division” in the last paragraph.

**1998 Amendment:**

Added the language beginning “, and shall include any individual who is an approved adoptive parent,” at the end of the last paragraph.

**2014 Amendment:**

(1) Added subdivision designations (a) and (c)–(g); (2) substituted “State Department of Health Care Services” for “State Department of Health Services” in subd (a); (3) added subd (b); and (4) substituted “Director of Health Care Services” for “State Director of Health Services” in subds (e) and (f).

**Note—**

[Stats 2017 ch 738](#) provides:

**SECTION 1.** It is the intent of the Legislature to implement the revisions to federal regulations governing Medicaid managed care plans at Parts 431, 433, 438, 440, 457, and 495 of Title 42 of the Code of Federal Regulations, as amended May 6, 2016, as published in the [Federal Register \(81 Fed. Reg. 27498\)](#).

SEC. 8. This act shall become operative only if Senate Bill 171 of the 2017–18 Regular Session is enacted and becomes effective on or before January 1, 2018.

**Notes to Decisions**

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**1. Generally**

**2. Construction**

**3. Due Process**

**4. Privileged Communication**

**5. Applicant Rights**

**6. Wrongful Denial of Aid**

**7. Exhaustion of Remedies**

**8. Judicial Review**

**1. Generally**

In proceeding in mandamus to compel auditor to draw warrant in payment of monthly aid for needy children, claim that Social Welfare Board had no authority for jurisdiction to order payment, on ground that act was judicial one, was immaterial where petition clearly stated grounds for relief without resorting

to allegations concerning submission of question to board and its decision thereon. [\*Social Welfare Board v. Johnson\* \(Cal. App. 1940\), 38 Cal. App. 2d 717, 101 P.2d 1116, 1940 Cal. App. LEXIS 713.](#)

An unsuccessful applicant for welfare benefits may contest the validity of a regulation which mandates the denial of his application both in the “fair hearing” provided by [\*W & I C § 10950\*](#), and in the subsequent judicial review under [\*CCP § 1094.5\*](#). (Disapproving language in to the extent it may be interpreted as approval of [\*CCP § 1094.5\*](#), review of regulations which have not been applied to applicants within specific factual settings. [\*Rosas v. Montgomery\* \(1970, Cal App 1st Dist\) 10 Cal App 3d 77, 88 Cal Rptr 907, 1970 Cal App LEXIS 1820, 43 ALR3d 537](#)[\*Woods v. Superior Court of Butte County\* \(Cal. 1981\), 28 Cal. 3d 668, 170 Cal. Rptr. 484, 620 P.2d 1032, 1981 Cal. LEXIS 108.](#)

## 2. Construction

The California Department of Social Services did not have jurisdiction under [\*W & I C § 10950\*](#), to conduct a state administrative hearing into the adequacy of the child support enforcement services provided by the family support division of a county district attorney’s office to a mother who had requested such services. [\*W & I C § 10950\*](#), provides an opportunity for a state hearing to any recipient of “public social services” (further defined in [\*W & I C §§ 10051\*](#) and [\*10052\*](#), as “aid” and “financial assistance”) who is dissatisfied with any action of a “county department.” The family support division provides parents with child support enforcement services, not financial assistance; any payments recovered are provided by the errant parent. Furthermore, the child support services provided by the division do not qualify as “services” as defined by [\*W & I C § 10053\*](#), since they are not provided by social work staff, but by attorneys. Nor is the district attorney a “county department” ([\*W & I C § 10058\*](#)).[\*Campos v. Anderson\* \(Cal. App. 3d Dist. 1997\), 57 Cal. App. 4th 784, 67 Cal. Rptr. 2d 350, 1997 Cal. App. LEXIS 721.](#)

## 3. Due Process

The only exception to a welfare recipient’s right to demand a hearing under § 10950, relating to hearings by the State Department of Social Welfare, is in the case of a person receiving “public social services” financed exclusively by county funds. [\*County of Madera v. Holcomb\* \(Cal. App. 5th Dist. 1968\), 259 Cal. App. 2d 226, 66 Cal. Rptr. 428, 1968 Cal. App. LEXIS 1965.](#)

A fair hearing under [\*W & I C § 10950\*](#), requiring an opportunity for a fair hearing for a dissatisfied recipient of public social services, is not a prerequisite to a discharge hearing before a civil service commission for an employee of a county department of public social services who has allegedly received public benefit overpayments. [\*Rivera v. Los Angeles County Civil Service Com.\* \(Cal. App. 2d Dist. 1979\), 87 Cal. App. 3d 1001, 151 Cal. Rptr. 480, 1979 Cal. App. LEXIS 1264.](#)

Under [\*W & I C § 10950\*](#), the right to a fair hearing is limited to action by a county welfare department with respect to applicants for or current recipients of public aid. The statute is not applicable to former recipients. [\*Brandstetter v. City Investment Corp.\* \(Cal. App. 1st Dist. 1988\), 197 Cal. App. 3d 1120, 243 Cal. Rptr. 431, 1988 Cal. App. LEXIS 34.](#)

In enacting Gov C § 10950, providing for a welfare recipient’s right to an administrative hearing to challenge the action of a welfare agency affecting the recipient’s claim to benefits, the Legislature could

not have intended that every event occurring during the processing of welfare claims—no matter how trivial or inconsequential—could be the subject of such a hearing. For example, merely providing an accounting of actual welfare expenditures to the district attorney could not reasonably be said to create such a due process entitlement. [\*Madrid v. McMahon\* \(Cal. App. 4th Dist. 1986\), 183 Cal. App. 3d 151, 228 Cal. Rptr. 14, 1986 Cal. App. LEXIS 1799.](#)

A former welfare recipient who was not currently receiving public assistance, and was not an applicant for such assistance, was not entitled to an administrative “fair hearing” under the provisions of [\*W & I C § 10950\*](#), in order to contest the calculations of a county’s district attorney concerning the amounts payable to plaintiff on her claim for enforcement of prior accruals of child support obligations under title IV-D of the Social Security Act, [\*42 USCS §§ 651\*](#) et seq. Neither [\*W & I C § 10950\*](#), nor title IV-D granted her a right to an administrative hearing. The language of [\*W & I C § 10950\*](#), limits the right to a hearing to a person who is an “applicant for or recipient of public social services [who] is dissatisfied with any action of the county department relating to his [or her] application for or receipt of aid.” Where there are expressed limitations, additional limitations will not be implied, unless there is a clear legislative intent to the contrary; *expressio unius est exclusio alterius*. It was never intended that [\*W & I C § 10950\*](#), would provide a right to a hearing to every person who wanted something from or was helped by the district attorney, and the language of the statute does not support such a reading. Plaintiff was not without a remedy, however, as she could have sought a petition for a writ of mandate contesting the district attorney’s calculations. [\*Pereira-Goodman v. Anderson\* \(Cal. App. 1st Dist. 1997\), 54 Cal. App. 4th 864, 63 Cal. Rptr. 2d 197, 1997 Cal. App. LEXIS 331.](#)

Language of [\*W & I C § 10950\*](#) is in the present tense and that fact presupposes that an aggrieved applicant for public social services is alive at the time the request for a hearing is made, whether made personally or through an agent. [\*Smith v. Shewry\* \(Cal. App. 2d Dist. 2009\), 173 Cal. App. 4th 1163, 93 Cal. Rptr. 3d 436, 2009 Cal. App. LEXIS 759.](#)

Trial court erred in issuing a writ of mandate that ordered a rehearing on a denied application for Medi-Cal benefits where the applicant’s authorization of a law firm to act as his agent was revoked by his death, and the firm was required to obtain new authorization from either the applicant’s estate or his heirs to contest the denial of his Medi-Cal application, but had failed to obtain that authorization in a timely manner. Moreover, the firm did not present new evidence requiring a grant of a rehearing. [\*Smith v. Shewry\* \(Cal. App. 2d Dist. 2009\), 173 Cal. App. 4th 1163, 93 Cal. Rptr. 3d 436, 2009 Cal. App. LEXIS 759.](#)

This provision does not require the California Department of Health Care Services to provide a hearing or notice whenever it assigns a new or different OHC (other health coverage) code, including codes pertaining to the type or scope of coverage. Coding events are not actions that trigger a hearing, in part because a coding event, even if erroneous, does not deprive a beneficiary of the service. [\*Marquez v. State Dept. of Health Care Services\* \(Cal. App. 1st Dist. 2015\), 240 Cal. App. 4th 87, 192 Cal. Rptr. 3d 391, 2015 Cal. App. LEXIS 780, modified, \(Cal. App. 1st Dist. Sept. 30, 2015\), 2015 Cal. App. LEXIS 862.](#)

#### **4. Privileged Communication**

Communications between welfare claimants and lay representatives authorized to represent them in administrative fair hearings under the aid to families with dependent children program are privileged. [\*W &\*](#)

[IC § 10950](#), providing for such fair hearings in person or through an “authorized representative,” makes clear that claimants have a right to be represented by lay representatives as well as by members of the bar, and by necessary implication includes a guarantee of confidentiality in its extension of the right of representation to include representation by lay persons. The considerations which support the attorney-client privilege are so generally accepted that the Legislature must have implied its existence as an integral part of the right to representation by lay persons. Otherwise that right would be a trap by inducing confidential communications and then allowing them to be used against the claimant. Thus, in an action for declaratory and injunctive relief arising when a county welfare department sought to compel a lay representative to testify and produce documents at a fair hearing requested by his clients regarding advice he had given them in connection with an earlier fair hearing, the trial court erred in denying a preliminary injunction and in sustaining a demurrer to the complaint without leave to amend. [Welfare Rights Organization v. Crisan \(Cal. 1983\), 33 Cal. 3d 766, 190 Cal. Rptr. 919, 661 P.2d 1073, 1983 Cal. LEXIS 179](#).

## 5. Applicant Rights

In a mandamus proceeding to compel a county welfare department and its director to advise all applicants’ for aid of their right to make written application therefor ([W & IC § 10500](#)), and of their right to a fair hearing in case of dissatisfaction ([W & IC § 10950](#)), the trial court erred in dismissing the petition on the ground that plaintiffs had failed to exhaust their administrative remedies, where the petition was framed as a class action alleging that defendants failed to so advise plaintiffs, that they failed to so advise others, and that they would continue such nonaction in the future, where, although it was obvious that by the time the petition was filed plaintiffs were aware of their rights, the performance by defendants of their duty to advise welfare applicants was a matter of public right ([W & IC, §§ 10000, 10600](#)), where the relief sought was unavailable on administrative appeal under [W & IC §§ 10950–10965](#), and where remedies provided by [W & IC § 10605](#), for failure of a county to comply with code provisions or regulations, were available only to the Department of Social Welfare. [Diaz v. Quitoriano \(Cal. App. 3d Dist. 1969\), 268 Cal. App. 2d 807, 74 Cal. Rptr. 358, 1969 Cal. App. LEXIS 1743](#).

## 6. Wrongful Denial of Aid

Under [W & IC § 10961](#), requiring that if an administrative fair hearing decision is in favor of a recipient of benefits, the county department shall pay to the recipient the amount of aid he is entitled to receive pursuant to the director’s decision, and [W & IC § 10961](#), requiring the county director to comply with and execute every decision of the director, a county human resources agency was required to immediately implement an adverse administrative decision ordering retroactive reinstatement of benefits to recipients of Aid to Families with Dependent Children, where the referee’s proposed decision had been adopted by the director of the Department of Benefit Payments, and despite the fact a rehearing had been requested by the county and granted. The fair hearing statutes ([W & IC § 10950– 10965](#)), indicate an intent and purpose, in view of the overall objectives of the public social services programs, for mandatory prompt compliance with the director’s initial fair hearing decision. [Taylor v. McKay \(Cal. App. 1st Dist. 1975\), 53 Cal. App. 3d 644, 126 Cal. Rptr. 204, 1975 Cal. App. LEXIS 1595](#).

Loans made to an applicant who has been wrongfully denied Aid to Families with Dependent Children ([CCP § 1094.5](#); [W & IC §§ 10950](#) et seq., §§ 11200 et seq.), the proceeds of which are used for current



expenses, are not to be considered as income for the purposes of reducing the amount of the aid grant and retroactive payments to the date of the wrongful denial. Thus, the trial court erroneously denied the petition for a writ of mandate by an applicant, who had been wrongfully denied such aid, to review a final administrative decision which reduced the amount of her grant and retroactive payment by the amount of a loan, the proceeds of which were used for current expenses. [\*Burch v. Prod \(Cal. App. 4th Dist. 1979\), 90 Cal. App. 3d 987, 153 Cal. Rptr. 751, 1979 Cal. App. LEXIS 1544.\*](#)

## 7. Exhaustion of Remedies

The rule requiring a person to exhaust his administrative remedies prior to seeking relief in the courts does not make a request for a hearing under [\*W & I C § 10950\*](#), a prerequisite to a tort action for damages arising out of defendant county's disposition of county aid claims, since such hearing does not constitute an administrative remedy for tort damage claims. [\*Ramos v. County of Madera \(Cal. 1971\), 4 Cal. 3d 685, 94 Cal. Rptr. 421, 484 P.2d 93, 1971 Cal. LEXIS 351.\*](#)

The rule requiring a person to exhaust his administrative remedies prior to seeking relief in the courts does not make a request for a hearing under [\*W & I C § 10950\*](#), a prerequisite to the maintenance of a judicial action for class relief, with respect to a county's disposition of county aid claims, since such hearing does not constitute an administrative remedy for class relief. [\*Ramos v. County of Madera \(Cal. 1971\), 4 Cal. 3d 685, 94 Cal. Rptr. 421, 484 P.2d 93, 1971 Cal. LEXIS 351.\*](#)

Juvenile court did not have authority to order a county social services agency to make retroactive Aid to Families with Dependent Children - Foster Care payments to a maternal grandmother without an administrative determination of eligibility. The grandmother was required to exhaust her administrative remedies before the juvenile court could consider the issue of funding. [\*In re Darlene T. \(Cal. App. 2d Dist. 2008\), 163 Cal. App. 4th 929, 78 Cal. Rptr. 3d 119, 2008 Cal. App. LEXIS 841.\*](#)

## 8. Judicial Review

A judgment of the trial court denying a county's petition for writ of mandate challenging the evidentiary sufficiency of a referee's decision adopted by the Director of the Department of Social Welfare as to the eligibility of a recipient of aid to needy children was not required to be reversed, on appeal by the county, upon the ground the director failed to provide a record of the hearing in the time required by statute (§§ 10958, 10959), although the delay was considerable; the time limit specified by statute is directory, not jurisdictional, and, in any event, the welfare recipient should not lose his right to a review after a hearing before a referee (§ 10950), because of the director's neglect of duty. [\*County of Madera v. Holcomb \(Cal. App. 5th Dist. 1968\), 259 Cal. App. 2d 226, 66 Cal. Rptr. 428, 1968 Cal. App. LEXIS 1965.\*](#)

## Research References & Practice Aids

### Cross References:

“Public social services”: [\*W & I C § 10051.\*](#)

Appeal by dissatisfied applicant for, or recipient of, assistance under Relief Law of 1945: [W & I C § 18494](#).

Investigations and hearings by heads of state departments: [Gov C §§ 11180](#) et seq.

### **Forms:**

Suggested forms are set out below, following Notes of Decisions.

### **Law Review Articles:**

Operations partially subject to California Administrative Procedure Act; public welfare administration. 44 Cal LR 242.

Welfare in 1957 legislature. 46 Cal LR 331.

Child labor as a condition of welfare payments. 60 Cal LR 1016.

Organizations and administrative practice. 26 Hast LJ 89.

Requirement of evidentiary hearing before discontinuance or suspension of welfare benefits. 26 Stan LR 549.

Adequacy of remedy under California welfare fair hearings; local relief programs. 5 UCD LR 582.

Scaling the welfare bureaucracy: Expanding concepts of governmental employee liability. [21 UCLA LR 624](#).

### **Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 12B “Adoptions: Unmarried Minors”](#).

[Cal. Points & Authorities \(Matthew Bender\) ch 195 “Public Administrative Law,” § 195.40](#).

[Cal. Fam. Law Practice & Procedure 2d \(Matthew Bender\), ch 172, Adoption of Unmarried Minors § 172.152](#).

[2](#) Witkin Cal. Evidence (5th ed) Witnesses § 105.

### **Annotations:**

Admissibility of records or report of welfare department or agency relating to payment to or financial condition of particular person. [42 ALR2d 752](#).

Sufficiency of notice or hearing required prior to termination of welfare benefits. [47 ALR3d 277](#).

Propriety of telephone testimony or hearings in public welfare proceedings. [88 ALR4th 1094](#).

### **Hierarchy Notes:**

[Cal Wel & Inst Code Div. 9](#)

Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7**Forms**

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**SUGGESTED FORMS****Request by Applicant or Recipient for State Hearing**

To the State Department of \_\_\_\_\_ [Health Care Services *or* Social Services]:

I, \_\_\_\_\_, living at \_\_\_\_\_ [address], in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of California, hereby request a state hearing before the State Department of \_\_\_\_\_ [Health Care Services *or* Social Services] from the action taken on \_\_\_\_\_ [date], by \_\_\_\_\_ County regarding my \_\_\_\_\_ [application for *or* receipt of] \_\_\_\_\_ [designate assistance program].

The reasons for my request for a state hearing are as follows: \_\_\_\_\_.

Dated \_\_\_\_\_.

[Signature]

**Conditional Withdrawal of Request for State Hearing**

I, \_\_\_\_\_, the undersigned, hereby withdraw my request to present evidence at a state hearing before the State Department of \_\_\_\_\_ [Health Care Services *or* Social Services] or before a referee, and I ask that my case be handled instead as a complaint so that the possibility of an adjustment may be considered informally.

I understand that if I am not satisfied with the adjustment process I may renew my request for a state hearing if I apply not later than \_\_\_\_\_ [60 days] after the county notifies me of the action taken upon reconsideration of my case. Upon such renewal, I shall have the same rights I would have had if I had not signed this conditional withdrawal.

Dated \_\_\_\_\_.

[Signature]

**Withdrawal of Request for State Hearing**

I, \_\_\_\_\_, the undersigned, hereby withdraw the request for a hearing that I filed with the State Department of \_\_\_\_\_ [Health Care Services *or* Social Services] on \_\_\_\_\_ [date] \_\_\_\_\_, in connection with the action taken by \_\_\_\_\_ County regarding my \_\_\_\_\_ [application for *or* receipt of] \_\_\_\_\_ [designate type of aid].

I wish to withdraw the request for a hearing in that \_\_\_\_\_.

Dated \_\_\_\_\_.

[Signature]

**Designation by Applicant or Recipient of Authorized Representative**

I, \_\_\_\_\_, residing at \_\_\_\_\_ [address], in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of California, have requested \_\_\_\_\_, who resides at \_\_\_\_\_ [address], in the City of \_\_\_\_\_, County of \_\_\_\_\_, to act on my behalf in my appeal regarding my \_\_\_\_\_ [application for and receipt of or application for or receipt of] \_\_\_\_\_ [designate type of aid].

I hereby authorize the Department of \_\_\_\_\_ [Social Services or Health Care Services] to release any or all information pertaining thereto to my representative.

Dated \_\_\_\_\_.

[Signature]

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End of Document

## Cal Wel & Inst Code § 10951.5

Deering's California Codes are current through the 2023 Extra Session Ch 1, 2023 Regular Session Ch. 12.

*Deering's California Codes Annotated* > **WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200)** > **Division 9 Public Social Services (Pts. 1 — 6)** > **Part 2 Administration (Chs. 1 — 10)** > **Chapter 7 Hearings (§§ 10950 — 10967)**

### **§ 10951.5. Criteria for expedited resolution; Administrative action**

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(a) For a beneficiary of a Medi-Cal managed care plan who meets the criteria for an expedited resolution of an appeal as set forth in subdivision (c) of Section 14197.3 or [Section 438.410 of Title 42 of the Code of Federal Regulations](#), the department shall take final administrative action as expeditiously as the individual's health condition requires, but no later than three working days after the department receives, from the Medi-Cal managed care plan, the case file and information for any appeal of an adverse benefit determination that, as indicated by the Medi-Cal managed care plan or determined by the administrative law judge, meets either of the following criteria:

- (1) Meets the criteria for expedited resolution as set forth in [Section 438.410\(a\)](#) of Title 42 of the Code of Federal Regulations, but was not resolved within the timeframe for expedited resolution.
- (2) Was resolved within the timeframe for expedited resolution, but reached a decision wholly or partially adverse to the beneficiary.

(b) Upon notice from the department that a Medi-Cal managed care plan's beneficiary has requested a state fair hearing, the Medi-Cal managed care plan shall provide to the department a copy of the following information within three business days of the Medi-Cal managed care plan's receipt of the department's notice of a request by a beneficiary for a state fair hearing:

- (1) The case file.
- (2) Information for any appeal of an adverse benefit determination that, as indicated by the Medi-Cal managed care plan, meets either of the criteria described in paragraph (1) or (2) of subdivision (a).

(c)

- (1) The department shall take final administrative action on a fair hearing request within the time limits set forth in this section except under either of the following unusual circumstances:
  - (A) The department cannot reach a decision because the beneficiary requests a delay or fails to take a required action.
  - (B) There is an administrative or other emergency beyond the department's control.
- (2) The department shall document the reasons for any delay in the beneficiary's record.

### **History**

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Added [Stats 2017 ch 738 § 4 \(AB 205\)](#), effective January 1, 2018. Amended [Stats 2018 ch 92 § 230 \(SB 1289\)](#), effective January 1, 2019.

Annotations

## Notes

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### Amendments:

#### 2018 Amendment (ch 92):

Deleted “Any” at the beginning of (b)(2).

## Research References & Practice Aids

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### Hierarchy Notes:

[Cal Wel & Inst Code Div. 9](#)

[Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7](#)

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## Cal Wel & Inst Code § 10951

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### **§ 10951. Time for filing request; “Good cause”**

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(a)

- (1) A person is not 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.
- (2) Notwithstanding paragraph (1), 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. The department shall not grant a request for a hearing for good cause if the request is filed more than 180 days after the order or action complained of.

(b)

- (1) Notwithstanding subdivision (a), a person who is enrolled in a Medi-Cal managed care plan and who has received an adverse benefit determination from the Medi-Cal managed care plan shall, to the extent required by federal law or regulation, appeal the adverse benefit determination to the Medi-Cal managed care plan before requesting a state fair hearing pursuant to this chapter. After appealing to the Medi-Cal managed care plan, the enrollee may request a hearing pursuant to this chapter involving a Medi-Cal managed care plan within 120 calendar days after either of the following:
  - (A) The enrollee receives notice from the Medi-Cal managed care plan that the adverse benefit determination is upheld.
  - (B) The enrollee's appeal is deemed exhausted because the Medi-Cal managed care plan failed to comply with state or federal requirements for notice and timeliness related to the disputed action or the appeal, including when a Medi-Cal managed care plan fails to respond to an appeal within 30 days as required pursuant to subdivision (b) of [Section 14197.3](#).
- (2) Notwithstanding paragraph (1), a person shall be entitled to a hearing pursuant to this chapter if he or she files the request more than 120 calendar days after receiving notice from the Medi-Cal managed care plan that the adverse benefit determination is upheld and there is good cause for filing the request beyond the 120-calendar day period. The director may determine whether good cause exists. The department shall not grant a request for a hearing for good cause if the request is filed more than 180 days after receipt of the notice from the Medi-Cal managed care plan that the adverse benefit determination is upheld.

(c) For purposes of this section, “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. The department shall not grant a request for a hearing for good cause if the request is filed more than 180 days after the order or action complained of.

(d) This section shall not preclude the application of the principles of equity jurisdiction as otherwise provided by law.

(e) 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, until January 1, 2019, may implement this section through an all-county information letter or similar instruction. The department may also provide further instructions through training notes.

(f) Notwithstanding subdivision (e), the department, by January 1, 2019, shall implement the amendments made to this section by the act that added this subdivision by adopting any necessary rules and regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with [Section 11340](#)) of Part 1 of Division 3 of Title 2 of the Government Code).

## History

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Added Stats 1965 ch 1784 § 5. Amended Stats 1979 ch 1170 § 7; [Stats 2007 ch 502 § 1 \(AB 921\)](#), effective January 1, 2008; [Stats 2014 ch 869 § 8 \(AB 617\)](#), effective January 1, 2015; [Stats 2017 ch 738 § 3 \(AB 205\)](#), effective January 1, 2018.

Annotations

## Notes

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### Derivation:

### Amendments:

### Note—

### Derivation:

(a) Former W & I C § 445.1, as added Stats 1963 ch 1916 § 54.5.

(b) Former W & I C § 104.5, as added Stats 1939 ch 302 § 3, amended Stats 1945 ch 307 § 1, ch 876 § 1, Stats 1953 ch 1562 § 2, Stats 1957 ch 702 § 4, Stats 1959 ch 1523 § 1, Stats 1961 ch 97 § 1.

### Editor's Note—

Senate Bill 171 of the 2017-18 Regular Session was enacted as [Stats 2017 ch 768](#), effective January 1, 2018.



**Amendments:****1979 Amendment:**

Substituted “90 days” for “one year”.

**2007 Amendment:**

(1) Designated the former section to be subd (a); (2) substituted “he or she files his or her request” for “he files his request” in subd (a); and (3) added subds (b) and (c).

**2014 Amendment:**

(1) Substituted “A person is not” for “No person shall be” in subd (a); (2) substituted “language-compliant” for “language compliant” in the second sentence of subd (b)(2); (3) amended the last sentence of subd (b)(2) by substituting (a) “The department shall not” for “In no event shall the department”; and (b) “for good cause if” for “where”; and (4) substituted “This section shall not” for “Nothing in section shall” in subd (b)(3).

**Note—**

[Stats 2017 ch 738](#) provides:

SECTION 1. It is the intent of the Legislature to implement the revisions to federal regulations governing Medicaid managed care plans at Parts 431, 433, 438, 440, 457, and 495 of Title 42 of the Code of Federal Regulations, as amended May 6, 2016, as published in the [Federal Register \(81 Fed. Reg. 27498\)](#).

SEC. 8. This act shall become operative only if Senate Bill 171 of the 2017–18 Regular Session is enacted and becomes effective on or before January 1, 2018.

Stats 1979 ch 1170 provides:

SECTION 1. This act shall be known and may be cited as the Welfare Reform Act of 1979.

**Notes to Decisions**

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**1. Generally**

Administrative regulations must conform to applicable legislative provisions, and an administrative agency has no discretion to exceed the authority conferred upon it by statute. Thus, a welfare recipient’s request to the Department of Health for a fair hearing following a county’s decision reducing benefits was timely under [W & I C § 10951](#) (request to be filed within one year), where the request was filed more than 90 days, but less than 1 year, after the county’s order, notwithstanding a department regulation requiring such requests to be filed within 90 days of the county’s order. [County of Alameda v. Lackner \(Cal. App. 1st Dist. 1978\)](#), [79 Cal. App. 3d 274](#), [144 Cal. Rptr. 840](#), [1978 Cal. App. LEXIS 1513](#).

## Research References & Practice Aids

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### Law Review Articles:

Los Angeles County v State Social Welfare Dept.—a criticism. 41 Cal. L. Rev. 499.

Operations partially subject to California Administrative Procedure Act; public welfare administration. 44 Cal. L. Rev. 242.

Welfare in 1957 Legislature. 46 Cal. L. Rev. 331.

Review of Selected 1979 California Legislation. 11 Pacific LJ 271.

### Treatises:

[\*Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 “Social Services”\*](#).

### Hierarchy Notes:

[\*Cal Wel & Inst Code Div. 9\*](#)

[\*Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7\*](#)

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## [Cal Wel & Inst Code § 10952.5](#)

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### § 10952.5. Availability of public or private agency's position statement

(a) 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 that statement, not less than two business days before 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 or via United States mail, or, upon request, through electronic means. Except as provided in subdivision (c), if the applicant or recipient requests a position statement to be delivered through electronic means, the position statement shall be delivered through secure electronic means if required by state or federal privacy laws. A public or private agency shall be required to comply with 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.

(b)

(1) For a hearing to review the agency's action or inaction regarding aid under the Aid to Families with Dependent Children-Foster Care program, the Approved Relative Caregiver Funding Program, the Emergency Caregiver Funding Program, the Kinship Guardianship Assistance Payment Program, and the Adoption Assistance Program, or for a hearing to review the agency's denial of an application to be approved as a resource family, the agency shall include as attachments to the position statement copies of the portions of the juvenile case file that it used in making its decision to take the action that is being appealed. The attached portions of the juvenile case file shall remain confidential for purposes of the hearing, shall be available only to the judge or hearing officer and to the parties to the case, and shall not subsequently be released except in accordance with *Section 827*.

(2) 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, until January 1, 2024, may implement this subdivision through an all-county letter or similar instruction. The instruction shall classify the sections of the juvenile case file that will or may be pertinent to an administrative proceeding, and shall provide a process for the fair and prompt exchange of documents between the agency and attorney representatives receiving documents pursuant to subparagraph (S) of paragraph (1) of subdivision (a) of *Section 827*. The department may provide further instructions through training notes.

(3) Notwithstanding paragraph (2), the department, by January 1, 2024, shall implement this subdivision by adopting any necessary rules and regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with [Section 11340](#)) of [Part 1 of Division 3 of Title 2 of the Government Code](#)).

(c) If the public or private agency does not make the position statement or documentary evidence available not less than two business days before 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, if 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 business days shall be deemed a postponement for good cause for purposes of determining eligibility to any applicable benefits pending disposition of the hearing.

(d)

(1) A public or private agency shall not be required to make a copy of its position statement available to an applicant or recipient through electronic means if the agency submits a report by December 31 of each year to the State Department of Social Services that includes both of the following:

(A) The barriers the agency has identified that substantially impede or prohibit the electronic provision of hearing documents.

(B) The steps the agency is taking to address these barriers.

(2) This subdivision shall become inoperative on the date that the statewide electronic case management system administered by the State Department of Social Services becomes operational and has the capacity to provide position statements to claimants through secure electronic means.

## History

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Added Stats 1982 ch 933 § 1. Amended Stats 1986 ch 415 § 2.5, effective July 17, 1986; [Stats 2016 ch 522 § 1 \(AB 2346\)](#), effective January 1, 2017; [Stats 2022 ch 613 § 3 \(SB 1071\)](#), effective January 1, 2023.

Annotations

## Notes

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**Amendments:**

**Amendments:**

**1986 Amendment:**

(1) Changed all references to county to refer to public or private agency, except for “county” appearing near the end of the second sentence of the first paragraph; and (2) added the last paragraph.

**2016 Amendment:**

(1) Added subdivision designations (a)-(c); (2) substituted “that statement” for “such a statement” in the first sentence of subd (a); (3) substituted “business days before” for “working days prior to” in the first sentence of subds (a) and (b); (4) added “or via United States mail, or, upon request, through electronic means” in the second sentence of subd (a); (5) added the third sentence of subd (a); (6) deleted “the provisions of” after “comply with” in the last sentence of subd (a); (7) substituted “if an” for “provided an” in the first sentence of subd (b); (8) substituted “business days” for “working days” in the second sentence of subd (b); and (9) substituted subd (c) for former subd (c) which read: “(c) For purposes of this section ‘public or private agency’ shall not include the State Department of Health Services.”

**2022 Amendment (ch 613):**

Added (b); redesignated former (b) and (c) as (c) and (d); and added “or documentary evidence” in (c).

**Research References & Practice Aids**

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**Treatises:**

[\*Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 “Social Services”\*](#).

**Hierarchy Notes:**

[\*Cal Wel & Inst Code Div. 9\*](#)

[\*Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7\*](#)

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## Cal Wel & Inst Code § 10952

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### **§ 10952. Time for hearing; Notice; Availability of record for inspection**

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(a) 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.

(b) The 30 working day and 10-day requirements described in subdivision (a) shall not apply to a request filed by a beneficiary of a Medi-Cal managed care plan who meets the criteria for an expedited resolution of an appeal as described in subdivision (a) of [Section 10951.5](#).

(c) If regulations require a public or private agency to allow the applicant for, or recipient of, public social services to examine the case record or other relevant nonprivileged information, and the agency has been made aware of the issues in the appeal, the records and information shall be available for inspection by the applicant or recipient no later than five working days prior to the hearing. If the applicant requests the records and information to be delivered through electronic means, the records and information shall be delivered through secure electronic means if required by state or federal privacy laws.

### **History**

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Added Stats 1965 ch 1784 § 5. Amended Stats 1982 ch 110 § 1; [Stats 2017 ch 738 § 5 \(AB 205\)](#), effective January 1, 2018; [Stats 2022 ch 613 § 2 \(SB 1071\)](#), effective January 1, 2023.

Annotations

### **Notes**

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#### **Derivation:**

#### **Amendments:**

#### **Derivation:**

(a) Former W & I C § 445.2, as added Stats 1963 ch 1916 § 54.5.

(b) Former W & I C § 104.5, as added Stats 1939 ch 302 § 3, amended Stats 1945 ch 307 § 1, ch 876 § 1, Stats 1953 ch 1562 § 2, Stats 1957 ch 702 § 4, Stats 1959 ch 1523 § 1, Stats 1961 ch 97 § 1.

**Amendments:****1982 Amendment:**

Substituted “30 working days” for “45 days”.

**2022 Amendment (ch 613):**

Added (c).

**Research References & Practice Aids**

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**Cross References:**

Computation of time: [CCP §§ 12](#) et seq.; [Gov C §§ 6800](#) et seq.

Process for state departmental hearing: [Gov C § 11184](#).

**Treatises:**

[\*Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 “Social Services”\*](#).

**Hierarchy Notes:**

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### **§ 10953.5. Administrative law judges; Appointment; Qualifications**

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(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.

### **History**

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Added Stats 1986 ch 415 § 4, effective July 17, 1986.

Annotations

### **Notes to Decisions**

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#### **1. Attorney Fees**

Social service claimant who prevailed in a superior court writ proceeding could recover attorney fees incurred in the writ proceeding only; no statutory authority provides for an award of fees incurred in connection with the underlying administrative fair hearing. Although exhaustion of the administrative remedy is required, a necessary and useful standard does not apply in this context. [K.I. v. Wagner \(Cal. App. 4th Dist. 2014\)](#), [225 Cal. App. 4th 1412](#), [170 Cal. Rptr. 3d 916](#), [2014 Cal. App. LEXIS 398](#).

### **Research References & Practice Aids**

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**Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services"](#).

**Hierarchy Notes:**



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### **§ 10953. Conduct of hearing**

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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.

### **History**

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Added Stats 1965 ch 1784 § 5. Amended Stats 1970 ch 1093 § 1; Stats 1977 ch 1252 § 790, operative July 1, 1978; Stats 1986 ch 415 § 3, effective July 17, 1986.

Annotations

### **Notes**

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#### **Amendments:**

##### **1970 Amendment:**

##### **1970 Amendment:**

Added (1) the proviso at the end of the first sentence; (2) the second sentence; and (3) the second paragraph.

##### **1977 Amendment:**

Substituted “Hearings” for “Procedure” after “Administrative” wherever it appears in the first paragraph.

##### **1986 Amendment:**

(1) Amended the first sentence by substituting (a) “administrative law judges” for “referees”; and (b) “herself. However” for “by the administrative advisor of the department in behalf of the director;

provided, however”; (2) deleted “in cases involving complicated issues of fact or law, or to reduce the backlog of cases” at the end of the second sentence; and (3) deleted the former last sentence of the first paragraph which read: “The limitations placed upon the kinds of cases conducted by the Office of Administrative Hearings under this section shall not be considered jurisdictional.”

## Notes to Decisions

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### 1. Attorney Fees

Social service claimant who prevailed in a superior court writ proceeding could recover attorney fees incurred in the writ proceeding only; no statutory authority provides for an award of fees incurred in connection with the underlying administrative fair hearing. Although exhaustion of the administrative remedy is required, a necessary and useful standard does not apply in this context. [\*K.I. v. Wagner \(Cal. App. 4th Dist. 2014\)\*](#), [225 Cal. App. 4th 1412](#), [170 Cal. Rptr. 3d 916](#), [2014 Cal. App. LEXIS 398](#).

## Research References & Practice Aids

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### Cross References:

Referee’s proposed decision, and approval, filing, and adoption thereof: [W & I C §§ 10958, 10959](#).

State departmental head’s delegation of powers in conducting investigation or hearing: [Gov C § 11182](#).

Office of Administrative Hearings: [Gov C §§ 11370](#) et seq.

### Law Review Articles:

California welfare fair hearings; referees. 5 UCD LR 590.

### Treatises:

[\*Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 “Social Services”\*](#).

### Hierarchy Notes:

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### **§ 10954. Application of powers conferred on head of department generally**

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](#).

### **History**

Added Stats 1965 ch 1784 § 5. Amended Stats 1986 ch 415 § 5, effective July 17, 1986.

Annotations

### **Notes**

#### **Derivation:**

#### **Amendments:**

#### **Derivation:**

(a) Former W & I C § 445.4, as added Stats 1963 ch 1916 § 54.5 p 3931.

(b) Former W & I C § 104.5, as added Stats 1939 ch 302 § 3, amended Stats 1945 ch 307 § 1, ch 876 § 1, Stats 1953 ch 1562 § 2, Stats 1957 ch 702 § 4, Stats 1959 ch 1523 § 1, Stats 1961 ch 97 § 1.

#### **Amendments:**

#### **1986 Amendment:**

Substituted “or administrative law judge” for “, administrative advisor, or referee, in”.

### **Research References & Practice Aids**

**Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services".](#)

**Hierarchy Notes:**

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### **§ 10955. Informal hearing; Oath or affirmation; Inapplicability of judicial procedure; Appearance with or without counsel**

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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.

### **History**

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Added Stats 1965 ch 1784 § 5.

Annotations

### **Notes**

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#### **Derivation:**

Former W & I C § 445.5, as added Stats 1963 ch 1916 § 54.5.

### **Notes to Decisions**

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#### **1. Generally**

#### **2. Procedure**

#### **3. Attorney Fees**

#### **1. Generally**

Public Social Services Manual, Reg. 44-325.43, fails to provide that a welfare recipient may present his case orally to the decision maker and permits the person who holds the hearing as to his right to further

payments to transmit the substance of the proceeding to the person who decides if, indeed, these functions are actually distinct; and the regulation is invalid in failing to provide that the recipient may present his case before the person who will decide his eligibility for future benefits. [\*McCullough v. Terzian\* \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

## 2. Procedure

Procedural safeguards required before terminating welfare payments include timely and adequate notice, the right to appear personally before the official who will make the decision, and the right to present evidence and confront and cross-examine witnesses. The welfare recipient must be permitted to retain an attorney, and the decision must rest solely on the legal rules and evidence adduced at the hearing; the decision maker must be an impartial official and must state the reasons for his determination and indicate the evidence relied on, though his statement need not amount to a full opinion or formal findings of fact and conclusions of law. [\*McCullough v. Terzian\* \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

The power to issue subpoenas and administer oaths are not required formalities at the pretermination stage for welfare payments. Informal procedures will suffice at a hearing prior to termination of payments because the subsequent fair hearing will provide the recipient with a full administrative review. [\*McCullough v. Terzian\* \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

## 3. Attorney Fees

Social service claimant who prevailed in a superior court writ proceeding could recover attorney fees incurred in the writ proceeding only; no statutory authority provides for an award of fees incurred in connection with the underlying administrative fair hearing. Although exhaustion of the administrative remedy is required, a necessary and useful standard does not apply in this context. [\*K.I. v. Wagner\* \(Cal. App. 4th Dist. 2014\), 225 Cal. App. 4th 1412, 170 Cal. Rptr. 3d 916, 2014 Cal. App. LEXIS 398.](#)

## Research References & Practice Aids

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### Cross References:

Administration of oaths, by whom: [CCP §§ 128](#) subd (a)(7), 177 subd (4); [Gov C § 1225](#).

Affirmation in lieu of oath: [CCP § 2015.6](#).

### Law Review Articles:

Organizations and administrative practice. 26 Hast LJ 89.

California welfare fair hearings; due process and the regulations. 5 UCD LR 543.

### Treatises:

*Cal. Forms Pleading & Practice (Matthew Bender) ch 527 "Social Services"*.

**Hierarchy Notes:**

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## Cal Wel & Inst Code § 10956

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### **§ 10956. Report of proceedings**

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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.

### **History**

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Added Stats 1965 ch 1784 § 5.

Annotations

### **Notes**

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#### **Derivation:**

Former W & I C § 445.6, as added Stats 1963 ch 1916 § 54.5.

### **Notes to Decisions**

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#### **1. Generally**

#### **2. Procedure**

#### **1. Generally**

In a mandamus proceeding by a county challenging the evidentiary sufficiency of a referee's decision adopted by the Director of the Department of Social Welfare as to the eligibility of a recipient of aid to needy children, it was not reversible error for the trial court not to permit the county to introduce additional evidence at the hearing pursuant to [CCP § 1094.5](#), where there was no constitutional question or vested right at issue justifying a trial de novo, where the record made by a recording device as required by § 10956 left much to be desired but was admitted by stipulation, and where, when viewed in its entirety with anonymous statements viewed in context, the record was not unintelligible but could be

made clear by reference to the transcript. [County of Madera v. Holcomb \(Cal. App. 5th Dist. 1968\), 259 Cal. App. 2d 226, 66 Cal. Rptr. 428, 1968 Cal. App. LEXIS 1965.](#)

## 2. Procedure

A complete record and comprehensive opinion, which would serve primarily to facilitate judicial review and guide future decisions, need not be provided at the pretermination stage of welfare payments. Relatively speedy solutions to eligibility problems are desirable, and only minimal procedural safeguards are required. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

Procedural safeguards required before terminating welfare payments include timely and adequate notice, the right to appear personally before the official who will make the decision, and the right to present evidence and confront and cross-examine witnesses. The welfare recipient must be permitted to retain an attorney, and the decision must rest solely on the legal rules and evidence adduced at the hearing; the decision maker must be an impartial official and must state the reasons for his determination and indicate the evidence relied on, though his statement need not amount to a full opinion or formal findings of fact and conclusions of law. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

## Research References & Practice Aids

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### Cross References:

Photographic copies, introduction of: *Ev C §§ 1550, 1551.*

Reproduction and certification of records: [Gov C § 12276.](#)

Evidentiary value of recording by microphotography: [Gov C § 27323.](#)

Vital statistics, evidentiary effect of record or certified copy: [H & S C § 103550.](#)

### Law Review Articles:

California welfare fair hearings; decision on the record. 5 UCD LR 554.

### Treatises:

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services".](#)

### Hierarchy Notes:

[Cal Wel & Inst Code Div. 9](#)

[Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7](#)

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## *Cal Wel & Inst Code § 10957*

Deering's California Codes are current through the 2023 Extra Session Ch 1, 2023 Regular Session Ch. 12.

*Deering's California Codes Annotated* > *WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200)* > *Division 9 Public Social Services (Pts. 1 — 6)* > *Part 2 Administration (Chs. 1 — 10)* > *Chapter 7 Hearings (§§ 10950 — 10967)*

### **§ 10957. Continuance of hearings; Acceptance of application for aid, and commencement of payments**

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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.

### **History**

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Added Stats 1965 ch 1784 § 5. Amended Stats 1986 ch 415 § 6, effective July 17, 1986.

Annotations

### **Notes**

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#### **Derivation:**

#### **Amendments:**

#### **Derivation:**

Former W & I C § 445.7, as added Stats 1963 ch 1916 § 54.5.

#### **Amendments:**

#### **1986 Amendment:**

Added (1) “or her” at the end of the second sentence; and (2) “or his or her designee” wherever it appears in the last sentence.

## Research References & Practice Aids

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### Law Review Articles:

Child labor as a condition of welfare payments. 60 Cal. L. Rev. 1016.

### Treatises:

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services"](#).

### Hierarchy Notes:

[Cal Wel & Inst Code Div. 9](#)

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## [Cal Wel & Inst Code § 10958.1](#)

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### **§ 10958.1. Issues at hearing; Issues to be addressed in hearing decision**

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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.

### **History**

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Added Stats 1986 ch 415 § 7.5, effective July 17, 1986.

Annotations

### **Research References & Practice Aids**

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#### **Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services"](#).

#### **Hierarchy Notes:**

[Cal Wel & Inst Code Div. 9](#)

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## *Cal Wel & Inst Code § 10958*

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### **§ 10958. Proposed decision of administrative law judge; Approval and filing**

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.

### **History**

Added Stats 1965 ch 1784 § 5. Amended Stats 1981 ch 498 § 2; Stats 1986 ch 415 § 7, effective July 17, 1986.

Annotations

### **Notes**

#### **Derivation:**

#### **Amendments:**

#### **Derivation:**

(a) Former W & I C § 445.8, as added Stats 1963 ch 1916 § 54.5.

(b) Former W & I C § 104.5, as added Stats 1939 ch 302 § 3, amended Stats 1945 ch 307 § 1, ch 876 § 1, Stats 1953 ch 1562 § 2, Stats 1957 ch 702 § 4, Stats 1959 ch 1523 § 1, Stats 1961 ch 97 § 1.

#### **Amendments:**

#### **1981 Amendment:**

Added "fair, impartial, and independent".

**1986 Amendment:**

(1) Substituted “an administrative law judge, he or she” for “a referee, he”; (2) substituted “format” for “form”; (3) substituted “director’s decision” for “decision in the case,”; (4) substituted “administrative law judge” for “referee” the second time it appears; and (5) added “the chief administrative law judge” the last time it appears.

**Notes to Decisions**

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**1. Generally****2. Procedure****3. Appellate Review****1. Generally**

In determining eligibility for Medi-Cal aid, [W & I C § 10958](#), requires the administrative law judge to prepare a fair, impartial, and independent proposed decision, in writing. However, it does not require any specific findings. The state is not required to follow Social Security Administration policies in conducting hearings to determine Medi-Cal eligibility, even though Medi-Cal is administered in accordance with the Social Security Act. Even where federal statutory law is involved, the law of the state, in the absence of contrary provisions in the federal statute, is controlling in all matters of practice and procedure. Moreover, the trial court applies its independent judgment in reviewing the administrative record for evidence of disability, including making its own determination as to the credibility of witnesses, in contrast to the federal system, wherein the trial court reviews the administrative decision according to the substantial evidence rule. Thus, the value of a need for specific findings by an administrative law judge is not the same in the state trial courts as it is in the federal. [Oldham v. Kizer \(Cal. App. 2d Dist. 1991\), 235 Cal. App. 3d 1046, 1 Cal. Rptr. 2d 195, 1991 Cal. App. LEXIS 1272.](#)

**2. Procedure**

A complete record and comprehensive opinion, which would serve primarily to facilitate judicial review and guide future decisions, need not be provided at the pretermination stage of welfare payments. Relatively speedy solutions to eligibility problems are desirable, and only minimal procedural safeguards are required. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

Procedural safeguards required before terminating welfare payments include timely and adequate notice, the right to appear personally before the official who will make the decision, and the right to present evidence and confront and cross-examine witnesses. The welfare recipient must be permitted to retain an attorney, and the decision must rest solely on the legal rules and evidence adduced at the hearing; the decision maker must be an impartial official and must state the reasons for his determination and indicate the evidence relied on, though his statement need not amount to a full opinion or formal findings of fact



and conclusions of law. [\*McCullough v. Terzian\* \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

### 3. Appellate Review

A judgment of the trial court denying a county's petition for writ of mandate challenging the evidentiary sufficiency of a referee's decision adopted by the Director of the Department of Social Welfare as to the eligibility of a recipient of aid to needy children was not required to be reversed, on appeal by the county, upon the ground the director failed to provide a record of the hearing in the time required by statute (§§ 10958, 10959), although the delay was considerable; the time limit specified by statute is directory, not jurisdictional, and, in any event, the welfare recipient should not lose his right to a review after a hearing before a referee (§ 10950), because of the director's neglect of duty. [\*County of Madera v. Holcomb\* \(Cal. App. 5th Dist. 1968\), 259 Cal. App. 2d 226, 66 Cal. Rptr. 428, 1968 Cal. App. LEXIS 1965.](#)

## Research References & Practice Aids

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### Cross References:

Conduct of hearing by referees: [W & I C § 10953.](#)

Hearing officers and other personnel: [Gov C § 11370.3.](#)

### Forms:

Suggested form is set out below, following Notes of Decisions.

### Law Review Articles:

California welfare fair hearings; decision on the record. 5 UCD LR 554.

### Treatises:

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services".](#)

### Hierarchy Notes:

[Cal Wel & Inst Code Div. 9](#)

[Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7](#)

## Forms

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### SUGGESTED FORMS

#### Proposed Decision of Administrative Law Judge Following Fair Hearing

*[Caption]*

1. On \_\_\_\_\_ *[date]* \_\_\_\_\_ [applicant *or* recipient] requested a fair hearing to determine the validity of \_\_\_\_\_ County's action relating to \_\_\_\_\_ [his *or* her] application for \_\_\_\_\_ benefits.
2. The following evidence was introduced at the fair hearing on \_\_\_\_\_, *[date]* , \_\_\_\_\_.
3. Based on the above-described evidence, the administrative law judge has determined that the action taken by \_\_\_\_\_ County was \_\_\_\_\_ [proper *or* improper] for the following reasons: \_\_\_\_\_.

Dated \_\_\_\_\_.

*[Signature]*

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## Cal Wel & Inst Code § 10959

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### **§ 10959. Director's decision; Service; Further hearings**

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(a) After an administrative law judge has held a hearing and issued a proposed decision, within 30 days after the department has received a copy of the administrative law judge's proposed decision, or within the three business days for an expedited resolution of an appeal of an adverse benefit determination described in [Section 10951.5](#) after any extensions that may apply under subdivision (c) of [Section 10951.5](#), the director may take any of the following actions:

- (1) Adopt the decision in its entirety.
- (2) Decide the matter themselves on the record after reviewing the transcript or recording of the hearing without taking additional evidence.
- (3) Order a further hearing to be conducted by the director or another administrative law judge on their behalf that affords the parties the opportunity to present and respond to additional evidence.

(b) A proposed decision shall be deemed affirmed and adopted if the director fails to adopt the proposed decision, decide the matter on the record after reviewing the transcript or recording of the hearing without taking additional evidence, or order a further hearing within the 30 days or within the three business days for an expedited resolution of an appeal of an adverse benefit determination described in [Section 10951.5](#) after any extensions that may apply under subdivision (c) of [Section 10951.5](#). If the director decides the matter, a copy of the director's alternated decision shall be served on the applicant or recipient and on the affected county, and, if the director's 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. The director's alternated decision shall contain a statement of the facts and evidence, including references to the applicable sections of law and regulations, and the analysis that supports the director's decision. 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.

### **History**

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Added Stats 1965 ch 1784 § 5. Amended Stats 1974 ch 1056 § 1; Stats 1986 ch 415 § 8, effective July 17, 1986; [Stats 2017 ch 738 § 6 \(AB 205\)](#), effective January 1, 2018; [Stats 2022 ch 944 § 1 \(AB 1355\)](#), effective January 1, 2023.

Annotations

## Notes

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### **Derivation:**

### **Amendments:**

### **Derivation:**

Former W & I C § 445.9, as added Stats 1963 ch 1916 § 54.5.

### **Amendments:**

#### **1974 Amendment:**

(1) Substituted “the department has received” for “receiving” after “30 days after” in the first sentence; and (2) added the second sentence.

#### **1986 Amendment:**

(1) Generally added feminine pronouns; (2) substituted “administrative law judge’s” for “referees” the first time it appears in the first sentence, and “administrative law judge” for “referee” in the third sentence; (3) substituted “further hearing” for “rehearing” wherever it appears; and (4) substituted “or another administrative law judge on” for “the administrative advisor of the department or another referee in” in the first sentence.

#### **2022 Amendment (ch 944):**

Rewrote the section.

## Notes to Decisions

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### **1. Generally**

### **2. Construction**

### **3. Due Process**

### **4. Compliance**

### **5. Appellate Review**

### **1. Generally**

Under the California hearing procedure relating to welfare ([W & I C §§ 10950](#) et seq.), as implemented by the regulations of the Director of State Department of Benefit Payments in the Manual of Policies and Procedures, governing the administration of federally assisted programs under the Social Security Act, if a party requests a hearing, it is mandatory that the director's decision be rendered within the 90 days of the request of the hearing (MPP § 22-056) and that such decision be immediately acted upon (MPP § 22-027), even though a local welfare agency may have been granted a rehearing. Thus, the granting of a local welfare agency's request for a rehearing will not postpone the payment of benefits to a qualified recipient. [Westfall v. Swoap \(Cal. App. 4th Dist. 1976\)](#), [58 Cal. App. 3d 109, 129 Cal. Rptr. 750, 1976 Cal. App. LEXIS 1553](#).

## 2. Construction

In determining an applicant's eligibility for retroactive Medi-Cal benefits, the Director of Social Services was authorized to order that a "further hearing" be conducted by a hearing officer following a proposed decision favorable to the applicant. [W & I C § 10959](#), then provided that within the 30 days after reception of a proposed decision, the director may order a rehearing, and the Legislature's substitution of "further hearing" for "rehearing" 2 months later was not intended to change the director's authority to order that additional evidence be taken on a matter through a further hearing. The two terms are interchangeable, both referring to a new hearing, on all or some of the issues raised in the previous hearing, with the introduction of new evidence but possibly relying on evidence presented at the previous hearing as well. Thus, the fact the director ordered a "further hearing" at a time when § 10959 provided for a "rehearing" would not void his order so long as the hearing ordered was on issues raised in the previous hearing and not resolved to the director's satisfaction in the proposed decision. [Oldham v. Kizer \(Cal. App. 2d Dist. 1991\)](#), [235 Cal. App. 3d 1046, 1 Cal. Rptr. 2d 195, 1991 Cal. App. LEXIS 1272](#).

## 3. Due Process

[W & I C § 10959](#), providing that the Director of the Department of Health Services may adopt the proposed decision of an administrative law judge (ALJ) on a claim for Medi-Cal benefits, decide the matter himself, or order a further hearing, does not violate due process by giving the director unbridled discretion to order multiple hearings. Under the statute, the director may reject an administrative law judge's decision and deny the claim himself. Thus, while the statute does not limit the number of hearings the director may order or set standards for when a further hearing may be ordered, the statute does not give the director any more power to render a decision against a claimant than he would have if such standards were in place. Moreover, the director's actions are subject to judicial review ([W & I C § 10962](#); [CCP § 1094.5](#)) by which a court will exercise its independent judgment in reviewing the director's decision, and a director's action in repeatedly ordering further hearings and failing to render a decision in a reasonable time would be subject to such review. [Chatterjee v. Kizer \(Cal. App. 2d Dist. 1991\)](#), [231 Cal. App. 3d 1348, 283 Cal. Rptr. 60, 1991 Cal. App. LEXIS 740](#).

## 4. Compliance

There is no material distinction between a person's "refusal" or "failure" to comply with the California Statewide Fingerprint Imaging System (SFIS) program, and because of the ease of compliance and the

many chances to comply before aid is cut off, persons will not be cut off by innocently missing a couple of SFIS appointments, and when a person persistently fails to comply, he or she may be deemed to have refused to comply; further, because SFIS compliance is an eligibility requirement, a person who has not complied is not yet eligible for aid. [\*Sheyko v. Saenz\* \(Cal. App. 3d Dist. 2003\), 112 Cal. App. 4th 675, 5 Cal. Rptr. 3d 350, 2003 Cal. App. LEXIS 1532.](#)

## 5. Appellate Review

A judgment of the trial court denying a county's petition for writ of mandate challenging the evidentiary sufficiency of a referee's decision adopted by the Director of the Department of Social Welfare as to the eligibility of a recipient of aid to needy children was not required to be reversed, on appeal by the county, upon the ground the director failed to provide a record of the hearing in the time required by statute (§§ 10958, 10959), although the delay was considerable; the time limit specified by statute is directory, not jurisdictional, and, in any event, the welfare recipient should not lose his right to a review after a hearing before a referee (§ 10950), because of the director's neglect of duty. [\*County of Madera v. Holcomb\* \(Cal. App. 5th Dist. 1968\), 259 Cal. App. 2d 226, 66 Cal. Rptr. 428, 1968 Cal. App. LEXIS 1965.](#)

In a mandamus proceeding to set aside a decision of the State Director of the Department of Social Welfare denying an application for assistance under the Aid to the Needy Disabled program, the trial court applied the correct standard of judicial review by determining that substantial evidence, in the light of the whole record, supported the director's findings that plaintiff had a serious problem of alcoholism which undoubtedly affected his employability and that he had no other impairment within the meaning of [\*W & IC § 13501\(b\)\*](#) (now repealed), but reversal of the trial court's determination upholding the director's decision was required, where such decision was based on a regulation made by the director which, as applied, categorically excluded alcoholics from assistance under the program and resulted in the omission of findings concerning the permanence of the applicant's condition and whether he was "totally disabled," both of which findings were reasonably required by the statute; thus the decision was not supported by the findings actually made and constituted an abuse of discretion. [\*Rosas v. Montgomery\* \(Cal. App. 1st Dist. 1970\), 10 Cal. App. 3d 77, 88 Cal. Rptr. 907, 1970 Cal. App. LEXIS 1820.](#)

## Research References & Practice Aids

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### Law Review Articles:

California welfare fair hearings; decision on the record. 5 UCD LR 554.

### Treatises:

[\*Cal. Forms Pleading & Practice\* \(Matthew Bender\) ch 527 "Social Services".](#)

### Hierarchy Notes:

[\*Cal Wel & Inst Code Div. 9\*](#)

[\*Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7\*](#)

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## [Cal Wel & Inst Code § 10960](#)

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### **§ 10960. Request for rehearing; Grounds; Notice granting or denying the rehearing**

- (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 [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 a 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 otherwise may 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. The department shall not grant a request for a rehearing for good cause if the request is filed more than 180 days after the order or action complained of.

(3) This section shall not 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.

## History

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Added Stats 1965 ch 1784 § 5. Amended Stats 1968 ch 1008 § 1; Stats 1969 ch 1255 § 1; Stats 1970 ch 444 § 1; Stats 1986 ch 415 § 9, effective July 17, 1986; [Stats 2007 ch 502 § 2 \(AB 921\)](#), effective January 1, 2008; [Stats 2008 ch 179 § 242 \(SB 1498\)](#), effective January 1, 2009; [Stats 2014 ch 869 § 9 \(AB 617\)](#), effective January 1, 2015.

Annotations

## Notes

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### Amendments:

**1968 Amendment:**

**1968 Amendment:**

(1) Substituted “receiving the proposed decision of a referee adopted by the director or a decision issued by the director himself” for “adoption by the director of the proposed decision of a referee or the issuance by the director of his own decision” in the first sentence; and (2) added the last sentence.

**1969 Amendment:**

(1) Deleted “and the director, within 10 days after receipt of the request, shall grant or deny the request” at the end of the first sentence; and (2) added the second and third sentences.

**1970 Amendment:**

Added “working” before “day” in the third sentence.

**1986 Amendment:**

Amended the first sentence by (1) substituting “an administrative law judge” for “a referee” the first time it appears; (2) adding “, a final decision rendered by an administrative law judge”; and (3) adding “or herself” after “himself”.

**2007 Amendment:**

(1) Designated the former section to be subd (a); (2) amended the first sentence of subd (a) by adding (a) “decision of the director, which is the”; (b) “as final” before “a final decision”; and (c) the comma after “administrative law judge”; (3) substituted “that” for “such” after “party to the hearing” in the second sentence; (4) substituted “no later than the 35th working day after the request is made to ensure the prompt and efficient administration of the hearing process” for “no earlier than the fifth nor later than the 15th working day after the receipt of the request” in the third sentence; (5) deleted the former last sentence which read: “If action is not taken by the director within the time allowed, the request shall be deemed denied.”; and (6) added subds (b)–(g).

**2008 Amendment:**

(1) Deleted “the provisions of” after “consistent with” in subd (b)(8); (2) substituted “after a rehearing” for “after rehearing” in the last sentence of subd (d); (3) substituted “recipient otherwise may be entitled” for “recipient may otherwise be entitled” in subd (f)(1); (4) amended subd (f)(2) by (a) adding the comma after “this subdivision” near the beginning of the first sentence; (b) substituting “language-compliant notice” for “language compliant notice” in the second sentence; and (c) substituting “The department shall not grant a request for a hearing if” for “In no event shall the department grant a request for a hearing where” in the last sentence; and (5) substituted “This section shall not preclude” for “Nothing in this section shall preclude” at the beginning of subd (f)(3).

**2014 Amendment:**

Substituted “rehearing for good cause” for “hearing” in the last sentence of subd (f)(2).

**Commentary**

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**Legislative Counsel’s Opinions:**

1968 AJ 6560 (court appeals).

1968 AJ 6561 (welfare—judicial review).

## Notes to Decisions

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### 1. Generally

### 2. New Evidence

#### 1. Generally

Under the California hearing procedure relating to welfare ([W & IC §§ 10950](#) et seq.), as implemented by the regulations of the Director of State Department of Benefit Payments in the Manual of Policies and Procedures, governing the administration of federally assisted programs under the Social Security Act, if a party requests a hearing, it is mandatory that the director's decision be rendered within the 90 days of the request of the hearing (MPP § 22-056) and that such decision be immediately acted upon (MPP § 22-027), even though a local welfare agency may have been granted a rehearing. Thus, the granting of a local welfare agency's request for a rehearing will not postpone the payment of benefits to a qualified recipient. [Westfall v. Swoap \(Cal. App. 4th Dist. 1976\), 58 Cal. App. 3d 109, 129 Cal. Rptr. 750, 1976 Cal. App. LEXIS 1553.](#)

#### 2. New Evidence

Trial court erred in issuing a writ of mandate that ordered a rehearing on a denied application for Medi-Cal benefits where the applicant's authorization of a law firm to act as his agent was revoked by his death, and the firm was required to obtain new authorization from either the applicant's estate or his heirs to contest the denial of his Medi-Cal application, but had failed to obtain that authorization in a timely manner. Moreover, the firm did not present new evidence requiring a grant of a rehearing. [Smith v. Shewry \(Cal. App. 2d Dist. 2009\), 173 Cal. App. 4th 1163, 93 Cal. Rptr. 3d 436, 2009 Cal. App. LEXIS 759.](#)

## Research References & Practice Aids

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### Forms:

Suggested form is set out below, following Notes of Decisions.

### Treatises:

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services".](#)

### Hierarchy Notes:

[Cal Wel & Inst Code Div. 9](#)

Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7**Forms**

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**SUGGESTED FORMS****Request for Rehearing**

To \_\_\_\_\_, Director of the State Department of  
 \_\_\_\_\_ [Health Care Services *or* Social Services]:

Subject: Request by \_\_\_\_\_ for rehearing of Decision No. \_\_\_\_\_

1. On \_\_\_\_\_ [date], pursuant to a request for a fair hearing filed under the provisions of Sections 10950 et seq., of the Welfare and Institutions Code of the State of California by \_\_\_\_\_, the \_\_\_\_\_ [applicant for *or* recipient of] \_\_\_\_\_ [indicate assistance program], the Director of the Department of \_\_\_\_\_ [Health Care Services *or* Social Services] issued its Decision No. \_\_\_\_\_ adverse to \_\_\_\_\_ [applicant *or* recipient].
2. Section 10960 of the Welfare and Institutions Code provides that within \_\_\_\_\_ [30 days] after receiving \_\_\_\_\_ [the proposed decision of a referee adopted *or* a decision issued] by the director, the affected \_\_\_\_\_ [applicant *or* recipient] may file a request with the director for a rehearing by a referee or by the director or by the administrative advisor of the State Department of Social Services on behalf of the director.
3. A rehearing of the matter would be in the interest of justice in that \_\_\_\_\_ [set out facts supporting grounds for rehearing].

Wherefore, the above-named \_\_\_\_\_ [applicant *or* recipient] respectfully requests that the director of the State Department of \_\_\_\_\_ [Social Services *or* Health Care Services] grant this request for rehearing, and that the same be set before a referee or the director or his administrative advisor pursuant to the provisions of [Section 10960 of the Welfare and Institutions Code](#) of the State of California.

Dated \_\_\_\_\_.

[Signature]

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## *Cal Wel & Inst Code § 10961*

Deering's California Codes are current through the 2023 Extra Session Ch 1, 2023 Regular Session Ch. 12.

*Deering's California Codes Annotated* > *WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200)* > *Division 9 Public Social Services (Pts. 1 — 6)* > *Part 2 Administration (Chs. 1 — 10)* > *Chapter 7 Hearings (§§ 10950 — 10967)*

### **§ 10961. Specification of award; Payment**

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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.

### **History**

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Added Stats 1965 ch 1784 § 5. Amended Stats 1986 ch 415 § 9.5, effective July 17, 1986.

Annotations

### **Notes**

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#### **Derivation:**

#### **Amendments:**

#### **Derivation:**

Former W & I C § 445.11, as added Stats 1963 ch 1916 § 54.5.

#### **Amendments:**

#### **1986 Amendment:**

(1) Generally added feminine pronouns; (2) amended the second sentence of the first paragraph by (a) adding “the director finds”; and (b) deleting “the director finds” after “services to which”; and (3) added the last paragraph.

## Notes to Decisions

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### 1. Generally

### 2. Procedure

#### 1. Generally

Under [W & I C § 10961](#), requiring that if an administrative fair hearing decision is in favor of a recipient of benefits, the county department shall pay to the recipient the amount of aid he is entitled to receive pursuant to the director’s decision, and [W & I C § 10963](#), requiring the county director to comply with and execute every decision of the director, a county human resources agency was required to immediately implement an adverse administrative decision ordering retroactive reinstatement of benefits to recipients of Aid to Families with Dependent Children, where the referee’s proposed decision had been adopted by the director of the Department of Benefit Payments, and despite the fact a rehearing had been requested by the county and granted. The fair hearing statutes ( [W & I C § 10950– 10965](#)), indicate an intent and purpose, in view of the overall objectives of the public social services programs, for mandatory prompt compliance with the director’s initial fair hearing decision. [Taylor v. McKay \(Cal. App. 1st Dist. 1975\), 53 Cal. App. 3d 644, 126 Cal. Rptr. 204, 1975 Cal. App. LEXIS 1595.](#)

#### 2. Procedure

A complete record and comprehensive opinion, which would serve primarily to facilitate judicial review and guide future decisions, need not be provided at the pretermination stage of welfare payments. Relatively speedy solutions to eligibility problems are desirable, and only minimal procedural safeguards are required. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

Procedural safeguards required before terminating welfare payments include timely and adequate notice, the right to appear personally before the official who will make the decision, and the right to present evidence and confront and cross-examine witnesses. The welfare recipient must be permitted to retain an attorney, and the decision must rest solely on the legal rules and evidence adduced at the hearing; the decision maker must be an impartial official and must state the reasons for his determination and indicate the evidence relied on, though his statement need not amount to a full opinion or formal findings of fact and conclusions of law. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

## Research References & Practice Aids

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**Law Review Articles:**

Child labor as a condition of welfare payments. 60 Cal. L. Rev. 1016.

**Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services"](#).

**Hierarchy Notes:**

[Cal Wel & Inst Code Div. 9](#)

[Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7](#)

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## [Cal Wel & Inst Code § 10962](#)

Deering's California Codes are current through the 2023 Extra Session Ch 1, 2023 Regular Session Ch. 12.

*Deering's California Codes Annotated* > **WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200)** > **Division 9 Public Social Services (Pts. 1 — 6)** > **Part 2 Administration (Chs. 1 — 10)** > **Chapter 7 Hearings (§§ 10950 — 10967)**

### **§ 10962. Judicial review**

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The applicant, recipient, respondent, or the affected county, within one year after receiving notice of the department'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, recipient, or respondent, or county for review of the department'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.

### **History**

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Added Stats 1965 ch 1784 § 5. Amended Stats 1968 ch 1008 § 2; Stats 1969 ch 1255 § 2; [Stats 2017 ch 732 § 58 \(AB 404\)](#), effective January 1, 2018.

Annotations

### **Notes**

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#### **Derivation:**

#### **Amendments:**

#### **Derivation:**

(a) Former W & I C § 445.12, as added Stats 1963 ch 1916 § 54.5.



(b) Former W & I C §§ 104.2, 104.3, as added Stats 1951 ch 925 §§ 2, 3, amended Stats 1957 ch 702 §§ 2, 3.

(c) Former W & I C § 3473.1, as added Stats 1945 ch 770 § 1.

## **Amendments:**

### **1968 Amendment:**

Deleted “After having exhausted the administrative remedy provided for in Section 10960,” at the beginning of the first paragraph.

### **1969 Amendment:**

Added the fourth sentence of the first paragraph.

### **2017 Amendment:**

In the first paragraph, substituted “applicant, recipient, respondent,” for “applicant or recipient” and “the department’s final decision” for “the director’s final decision” in the first sentence, substituted “the applicant, recipient, or respondent, or county for review of the department’s decision” for “the applicant or recipient or county for review of the director’s decision” in the second sentence, and added comma following “upon being served” in the second sentence.

## **Commentary**

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### **Legislative Counsel’s Opinions:**

1968 AJ 6560 (court appeals).

1968 AJ 6561 (welfare—judicial review).

## **Notes to Decisions**

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### **1. Generally**

### **2. Construction**

### **3. Legislative Intent**

### **4. Attorney Fees: Generally**

### **5. Attorney Fees: Proper**

### **6. Attorney Fees: Improper**

### **7. Standard of Review**

## 1. Generally

Invalid regulations promulgated by the Department of Social Services need not be applied or enforced in statutory “fair hearings,” and if they are, judicial review may be invoked by “administrative” mandamus pursuant to [CCP § 1094.5 \(W & I C § 10962\)](#). Furthermore, interested persons who are not entitled to such “fair hearings” because they are neither applicants for, nor recipients of, public social service benefits, and who otherwise have standing to complain, still may challenge invalid regulations by mandamus pursuant to [CCP § 1085](#), or by action for declaratory relief pursuant to [CCP § 1060 \(Gov C § 11350\)](#). [Woods v. Superior Court of Butte County \(Cal. 1981\), 28 Cal. 3d 668, 170 Cal. Rptr. 484, 620 P.2d 1032, 1981 Cal. LEXIS 108.](#)

## 2. Construction

In an administrative mandamus proceeding pursuant to [CCP § 1094.5](#), by persons evicted from apartments declared unfit for habitation by a city who sought review of a decision of the Director of the Department of Social Services denying them relocation assistance on the basis of an assertedly invalid administrative regulation, the trial court properly overruled the director’s demurrer to the petition, where the petitioners had, on denial of their application by the county department of social welfare, sought and obtained a “fair hearing” pursuant to [W & I C §§ 10950–10965](#), and on receipt of the director’s final decision rejecting their applications, had timely filed their petition for administrative mandamus, as directed by [W & I C § 10962](#). The fact that one of the issues in the “fair hearing” involved an attack on the validity of administrative regulations did not transform the essentially adjudicatory determination into a “quasi-legislative” one so as to preclude review by administrative mandamus. The hearing was “a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal,” within the meaning of [CCP § 1094.5\(a\)](#). [Woods v. Superior Court of Butte County \(Cal. 1981\), 28 Cal. 3d 668, 170 Cal. Rptr. 484, 620 P.2d 1032, 1981 Cal. LEXIS 108.](#)

Juvenile court did not have authority to order a county social services agency to make retroactive Aid to Families with Dependent Children - Foster Care payments to a maternal grandmother without an administrative determination of eligibility. The grandmother was required to exhaust her administrative remedies before the juvenile court could consider the issue of funding. [In re Darlene T. \(Cal. App. 2d Dist. 2008\), 163 Cal. App. 4th 929, 78 Cal. Rptr. 3d 119, 2008 Cal. App. LEXIS 841.](#)

## 3. Legislative Intent

The Legislature, by expressly authorizing either the county or an applicant or recipient of welfare to intervene in mandamus proceedings brought against the director of the State Department of Social Welfare, reflected the Legislature’s judgment that an applicant or recipient has an interest in the director’s decision. [County of Humboldt v. Swoap \(Cal. App. 1st Dist. 1975\), 51 Cal. App. 3d 442, 124 Cal. Rptr. 510, 1975 Cal. App. LEXIS 1385.](#)

## 4. Attorney Fees: Generally

On the Supreme Court's remand directing the trial court to modify the findings, conclusions, and judgment in an action involving an indigent's rights, under the Medi-Cal program, to desperately needed individualized nursing care, the trial court had jurisdiction to make an award of attorney's fees for services rendered to the indigent on appeal, where the Supreme Court's opinion clearly implied an intent to give the indigent complete relief, which necessarily included reasonable fees for such services, and indicated that such intent was to be implemented by the trial court through modification of the findings, conclusions, and judgment. [\*Roberts v. Brian\* \(Cal. App. 2d Dist. 1973\), 30 Cal. App. 3d 427, 106 Cal. Rptr. 360, 1973 Cal. App. LEXIS 1171.](#)

The legislative intent of [W & I C § 10962](#), providing for an award of attorney's fees in an action by a claimant or recipient of aid to the needy disabled ([W & I C §§ 13500](#) [repealed], 13701) against the Director of the State Department of Social Welfare, does not bar an award of attorney's fees where the claimant was represented by an attorney, who is acting in a private capacity, would be entitled to compensation, although in fact the attorney was the salaried employee of a corporation which furnished his services without cost to the claimant, and the claimant had agreed to donate the amount awarding to that corporation. [\*Trout v. Carleson\* \(Cal. App. 4th Dist. 1974\), 37 Cal. App. 3d 337, 112 Cal. Rptr. 282, 1974 Cal. App. LEXIS 1136.](#)

On appeal from a judgment in administrative mandamus in proceedings to review a decision of the Director of the Department of Social Welfare, the appellate court would not disturb the trial court's award of attorney fees on the ground of alleged excessiveness, where the Director failed to show that the award constituted an abuse of discretion. [\*Horn v. Swoap\* \(Cal. App. 2d Dist. 1974\), 41 Cal. App. 3d 375, 116 Cal. Rptr. 113, 1974 Cal. App. LEXIS 797.](#)

[W & I C § 10962](#), relating to judicial review of decisions of the Director of the Department of Social Welfare, and providing that an applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor, does not prohibit as award of attorney fees to a legal services organization, even though its services are rendered at no charge to the client and its attorneys are on salary. [\*Horn v. Swoap\* \(Cal. App. 2d Dist. 1974\), 41 Cal. App. 3d 375, 116 Cal. Rptr. 113, 1974 Cal. App. LEXIS 797.](#)

Social service claimant who prevailed in a superior court writ proceeding could recover attorney fees incurred in the writ proceeding only; no statutory authority provides for an award of fees incurred in connection with the underlying administrative fair hearing. Although exhaustion of the administrative remedy is required, a necessary and useful standard does not apply in this context. [\*K.I. v. Wagner\* \(Cal. App. 4th Dist. 2014\), 225 Cal. App. 4th 1412, 170 Cal. Rptr. 3d 916, 2014 Cal. App. LEXIS 398.](#)

## **5. Attorney Fees: Proper**

Under [W & I C § 10962](#), giving an applicant for public aid the right, after receiving notice of the decision of the director of the State Department of Social Welfare, to file a petition in the superior court under [CCP § 1094.5](#), for judicial review of that decision, and, if the applicant obtains a favorable decision, to receive reasonable attorney fees and costs, an applicant for public assistance who was granted a peremptory writ of mandate directing the Director of the State Department of Social Welfare to issue his decision after an administrative "fair hearing" on the applicant's claim, was entitled to an award of attorney fees, where the director had not complied with federal and state regulations requiring him to issue his decision within 90

days after a request for a “fair hearing.” Attorney fees are provided for by [W & I C § 10962](#), in order to enable a needy person to establish through judicial proceedings his or her right to a statutory benefit, and since the remedy pursued by the applicant was occasioned by the director’s inaction and was essential to make the right granted by [W & I C § 10962](#), meaningful, attorney fees were properly awarded under the authority of that section. [Silberman v. Swoap \(Cal. App. 4th Dist. 1975\), 50 Cal. App. 3d 568, 123 Cal. Rptr. 456, 1975 Cal. App. LEXIS 1324](#), aff’d, [Lezine v. Security Pacific Fin. Services, Inc. \(Cal. 1996\), 14 Cal. 4th 56, 58 Cal. Rptr. 2d 76, 925 P.2d 1002, 1996 Cal. LEXIS 6102](#).

Welfare recipients who successfully intervened in a judicial proceeding, which had been brought by a county to review a decision of the director upholding the recipients’ claim, were entitled to reasonable attorney fees pursuant to [W & I C § 10962](#), which provides that in a court proceeding brought to review the director’s disposition of an administrative appeal, the recipient shall be entitled to reasonable attorney fees and costs if he obtains a decision in his favor. The recipient could be said to have obtained “a decision in his favor” by successfully intervening in a suit in which the director’s decision upholding their claim for benefits is sustained, and if the recipients’ interests were safeguarded through the assistance of counsel, the statute requires an award of reasonable attorney fees. However, in determining the value of legal services rendered to an intervener-recipient, the 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. Furthermore, the recipients were entitled to attorney fees on appeal by the county from the decision awarding attorney fees. [County of Humboldt v. Swoap \(Cal. App. 1st Dist. 1975\), 51 Cal. App. 3d 442, 124 Cal. Rptr. 510, 1975 Cal. App. LEXIS 1385](#).

In a class action in which a regulation of the director of the state Department of Social Welfare denying AFDC benefits to plaintiffs and members of their class was held invalid, the trial court properly ordered that the director pay specified attorney fees to each of three entities who had acted as counsel for the named plaintiffs, where plaintiffs had, after exhausting their administrative remedies, sought relief in administrative mandamus under [CCP § 1094.5](#), as permitted by [W & I C § 10962](#), which provides for the allowance of reasonable attorney fees, and the fees were awarded to their counsel. Thus the awards were proper irrespective of the fact that the result plaintiffs achieved was in favor of some others who were similarly entitled to benefits but who had not followed the same administrative course. [Hypolite v. Carleson \(Cal. App. 1st Dist. 1975\), 52 Cal. App. 3d 566, 125 Cal. Rptr. 221, 1975 Cal. App. LEXIS 1490](#).

A welfare recipient was entitled to an award of reasonable attorney fees for services of an attorney in moving to intervene in a mandate proceeding and to vacate a judgment issuing a writ of mandate setting aside a decision of the Department of Health (the department’s decision had reinstated recipient’s benefits, which had been reduced by a county order), and for services in successfully appealing the denial of those motions, where the recipient had not been given notice of the mandate proceeding as required by [W & I C § 10962](#). [County of Alameda v. Lackner \(Cal. App. 1st Dist. 1978\), 79 Cal. App. 3d 274, 144 Cal. Rptr. 840, 1978 Cal. App. LEXIS 1513](#).

On appeal from denial of a peremptory writ in a traditional mandamus proceeding to compel the general manager of San Francisco’s Department of Social Services to comply, as mandated by [W & I C § 10963](#), with a fair hearing decision rendered by the Department of Benefit Payments, petitioner was entitled to recover reasonable attorney fees on remand. Although [W & I C § 10962](#), providing for recovery of attorney fees, did not apply to the mandamus proceeding, the award of such fees was appropriate in that

the enforcement of petitioner's rights would confer a significant nonpecuniary benefit on the general public by vindicating the strong public policy in favor of retroactive payment of welfare benefits, that the necessity and financial burden or private enforcement were such as to make the award appropriate, and that such fees should not in the interest of justice be paid out of the recovery. Furthermore, the trial court was directed to determine a reasonable attorney fee to be awarded petitioner's attorney for his services on appeal. [\*Blackburn v. Sarsfield\* \(Cal. App. 1st Dist. 1981\), 125 Cal. App. 3d 143, 178 Cal. Rptr. 15, 1981 Cal. App. LEXIS 2305.](#)

## 6. Attorney Fees: Improper

Under [\*W & I C § 10962\*](#), which provides for allowance of attorney fees to a welfare recipient who takes an appeal from an administrative decision and obtains a decision in his favor, a recipient who obtained a favorable decision in her mandamus proceeding challenging the action of the Director of the State Department of Social Welfare, terminating her benefits under the aid to the needy disabled program, and on the director's appeal from that decision, was entitled to attorney fees for services in the trial court and in the Court of Appeal, but not for services on a petition by the director for a hearing in the Supreme Court, filed solely to adjudicate an abstract legal question regarding the applicable scope of review. The purpose of the statute, of providing a means to welfare applicants and recipients by which they may enforce their rights, would not be served by an award of attorney fees to a recipient whose rights were already secure. [\*Le Blanc v. Swoap\* \(Cal. 1976\), 16 Cal. 3d 741, 129 Cal. Rptr. 304, 548 P.2d 704, 1976 Cal. LEXIS 255.](#)

In a mandamus proceeding against the director of a county human resources agency by welfare recipients seeking to require the agency to implement a decision of the Director of the Department of Social Welfare ordering the agency to provide them with welfare benefits, plaintiffs were not entitled to an award of attorney fees under [\*W & I C § 10962\*](#), providing that in an action in which the Director of the Department of Social Welfare is the sole respondent and in which a recipient obtains a decision in his favor, he shall be entitled to reasonable attorney fees, where plaintiffs' proceeding was not concerned with a review of the director's decision, the director not even being a party to the action, but, rather, plaintiffs were requesting the implementation of the director's decision and were not challenging it. [\*Taylor v. McKay\* \(Cal. App. 1st Dist. 1977\), 73 Cal. App. 3d 417, 140 Cal. Rptr. 771, 1977 Cal. App. LEXIS 1856.](#)

## 7. Standard of Review

In a mandamus proceeding to set aside a decision of the State Director of the Department of Social Welfare denying an application for assistance under the Aid to the Needy Disabled program, the trial court applied the correct standard of judicial review by determining that substantial evidence, in the light of the whole record, supported the director's findings that plaintiff had a serious problem of alcoholism which undoubtedly affected his employability and that he had no other impairment within the meaning of [\*W & I C § 13501\(b\)\*](#) (now repealed), but reversal of the trial court's determination upholding the director's decision was required, where such decision was based on a regulation made by the director which, as applied, categorically excluded alcoholics from assistance under the program and resulted in the omission of findings concerning the permanence of the applicant's condition and whether he was "totally disabled," both of which findings were reasonably required by the statute; thus the decision was not supported by the

findings actually made and constituted an abuse of discretion. [\*Rosas v. Montgomery\* \(Cal. App. 1st Dist. 1970\), 10 Cal. App. 3d 77, 88 Cal. Rptr. 907, 1970 Cal. App. LEXIS 1820.](#)

In an administrative mandamus proceeding ( [CCP § 1094.5](#)) by an applicant for benefits under the Aid to the Totally Disabled program who sought vacation of an administrative decision denying benefits, the record established reversible error in the trial court's upholding of the administrative decision, where, though the court found the decision was supported by substantial evidence, it also found that the weight of the evidence was contrary to the decision. Though prior appellate rulings required trial courts to apply the substantial evidence standard in reviewing decisions denying applications for welfare benefits, while holding the independent judgment standard applicable with respect to decisions terminating benefits, the right of the needy applicant to welfare benefits is as fundamental as the right of a recipient to continued benefits. Though the right of a welfare applicant may not be a vested property right in the traditional sense, the statutory public assistance programs provide protection to citizens who through economic adversity are in need, and should be viewed as residual rights possessed by all of the citizenry to be exercised when circumstances require. Thus, the independent judgment standard should be applied to decisions denying applications for welfare benefits. ( [Tripp v. Swoap](#) (Cal. 1976), 17 Cal. 3d 671, 131 Cal. Rptr. 789, 552 P.2d 749, 1976 Cal. LEXIS 316, overruled, [Frink v. Prod](#) (Cal. Apr. 8, 1982), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169, [676](#), 131 Cal Rptr 789, 552 P 2d 749, 1976 Cal LEXIS 316 and [Bertch v Social Welfare Dept.](#) (1955) 45 Cal 2d 524, 289 P 2d 485, and disapproving [Ferreria v Swoap](#) (1976) 62 Cal App 3d 875, 881, 133 Cal.Rptr 449; [Millen v. Swoap](#) (Cal. App. 1st Dist. June 2, 1976), 58 Cal. App. 3d 943, 130 Cal. Rptr. 387, 1976 Cal. App. LEXIS 1603, overruled, [Frink v. Prod](#) (Cal. Apr. 8, 1982), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169, [Repko v. Carleson](#) (Cal. App. 1st Dist. May 16, 1975), 48 Cal. App. 3d 249, 122 Cal. Rptr. 29, 1975 Cal. App. LEXIS 1111, overruled, [Frink v. Prod](#) (Cal. Apr. 8, 1982), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169, [Henderling v. Carleson](#) (Cal. App. 1st Dist. Jan. 7, 1974), 36 Cal. App. 3d 561, 111 Cal. Rptr. 612, 1974 Cal. App. LEXIS 699, overruled, [Frink v. Prod](#) (Cal. Apr. 8, 1982), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169, [567](#), 111 Cal. Rptr. 612, 1974 Cal. App. LEXIS 699, [County of Madera v. Carleson](#) (Cal. App. 5th Dist. June 4, 1973), 32 Cal. App. 3d 764, 108 Cal. Rptr. 515, 1973 Cal. App. LEXIS 1017, overruled, [Frink v. Prod](#) (Cal. Apr. 8, 1982), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169, [767](#), 108 Cal. Rptr. 515, 1973 Cal. App. LEXIS 1017, [Taylor v. Martin](#) (Cal. App. 1st Dist. Nov. 14, 1972), 28 Cal. App. 3d 1057, 105 Cal. Rptr. 211, 1972 Cal. App. LEXIS 818, overruled, [Frink v. Prod](#) (Cal. Apr. 8, 1982), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169, [Stratton-King v. Martin](#) (Cal. App. 1st Dist. Oct. 24, 1972), 28 Cal. App. 3d 686, 104 Cal. Rptr. 916, 1972 Cal. App. LEXIS 783, overruled, [Frink v. Prod](#) (Cal. Apr. 8, 1982), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169, [690](#), 104 Cal Rptr 916, 1972 Cal App LEXIS 783, and [County of Contra Costa v. Social Welfare Board](#) (Cal. App. 1st Dist. 1962), 199 Cal. App. 2d 468, 18 Cal. Rptr. 573, 1962 Cal. App. LEXIS 2854, overruled, [Frink v. Prod](#) (Cal. Apr. 8, 1982), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169, [473](#), 18 Cal Rptr 573, 1962 Cal App LEXIS 2854, insofar as they are inconsistent with the views expressed in the opinion.) .

[W & I C § 10962](#), which provides for review under [CCP § 1094.5](#), of a final administrative decision of the Director of the Department of Social Welfare on the petition of the applicant or recipient or the affected county, praying “for a review of the entire proceedings in the matter, upon questions of law involved in the case,” does not require review of a decision on an application for benefits under the substantial evidence standard rather than the independent judgment standard; it leaves to the courts the determination

of the proper standard of review. The term “upon questions of law” in [W & I C § 10962](#), is to be interpreted as commensurate with the inquiry under [CCP § 1094.5\(b\)](#), which extends to whether the administrative agency has proceeded without or in excess of jurisdiction, whether there was a fair trial, and whether there was prejudicial abuse of discretion, and, under § 1094.5(c), it is for the courts to establish the appropriate standard of review in determining whether there has been an abuse of discretion. [Frink v. Prod \(Cal. 1982\), 31 Cal. 3d 166, 181 Cal. Rptr. 893, 643 P.2d 476, 1982 Cal. LEXIS 169.](#)

## **Research References & Practice Aids**

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### **Cross References:**

Cases arising under this section as limitation on right to seek injunctive relief with respect to action taken by director concerning administration of grants-in-aid to counties: [W & I C § 10605](#).

### **Forms:**

Suggested form is set out below, following Notes of Decisions.

### **Jurisprudences**

Cal Jur 3d (Rev) Costs § 101.

### **Law Review Articles:**

Impact of social welfare law—responsibility of relatives. 42 Cal LR 458.

Legal fees in nonbusiness administrative claims. 26 Hast LJ 1127.

California welfare fair hearings; judicial review. 5 UCD LR 555.

### **Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 53 “Appeal: Remittitur And Costs On Appeal”.](#)

[Cal. Points & Authorities \(Matthew Bender\) ch 195 “Public Administrative Law,” § 195.10.](#)

[Cal. Points & Authorities \(Matthew Bender\) ch 217 “Statutory Interpretation,” § 217.43.](#)

### **Hierarchy Notes:**

[Cal Wel & Inst Code Div. 9](#)

[Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7](#)

## **Forms**

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### **SUGGESTED FORMS**

**Petition for Writ of Mandate—To Compel Review of Director’s Decision Following Fair Hearing***[Title of Court and Cause]*

To the Honorable Superior Court of \_\_\_\_\_ County:

The petition of \_\_\_\_\_ *[applicant]* respectfully shows:

1. Petitioner is a resident of the County of \_\_\_\_\_, State of California.
2. Respondent is the director of the \_\_\_\_\_ [State Department of Social Services or State Department of Health Care Services].
3. On \_\_\_\_\_ *[date]*, \_\_\_\_\_ County \_\_\_\_\_ [denied petitioner’s application for \_\_\_\_\_ benefits or as the case may be].
4. On \_\_\_\_\_ *[date]*, following a fair hearing requested by petitioner, respondent issued decision No. \_\_\_\_\_ in which it upheld the action of \_\_\_\_\_ County. A copy of the decision is attached, marked Exhibit “\_\_\_\_\_” and by reference made part hereof.
5. On \_\_\_\_\_ *[date]*, respondent denied petitioner’s request for a rehearing of this matter, and decision No. \_\_\_\_\_ is now final.
6. Respondent’s decision constituted an abuse of discretion as the findings are not supported by the evidence received at the hearing in that \_\_\_\_\_ *[specify]*.
7. The writ of mandate herein requested is petitioner’s sole and exclusive remedy for review of respondent’s decision under the provision of Section 10962 of the Welfare and Institutions Code of the State of California.
8. \_\_\_\_\_ *[If applicable, set forth any further facts supporting issuance of writ]*.

Wherefore, petitioner prays:

1. That there be issued against respondent an alternative writ of mandate, a copy of which is attached hereto, such writ being returnable within some brief period, compelling respondent to instruct \_\_\_\_\_ County to pay petitioner the requested benefits or, in the alternative, to show cause before this court at a specified time and place why respondent has not done so;
2. That a hearing be held before this court wholly independent of the hearing held before respondent, and that the issues involved be adjudicated before this court according to its independent judgment;
3. \_\_\_\_\_ *[If applicable, set forth any further relief requested]*;
4. That petitioner be granted such further relief as the court may deem just and equitable.

Dated \_\_\_\_\_.

*[Signature]**[Verification]*



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## Cal Wel & Inst Code § 10963

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*Deering's California Codes Annotated* > *WELFARE AND INSTITUTIONS CODE (§§ 1 — 25200)* > *Division 9 Public Social Services (Pts. 1 — 6)* > *Part 2 Administration (Chs. 1 — 10)* > *Chapter 7 Hearings (§§ 10950 — 10967)*

### **§ 10963. Compliance with, and execution of, director's decision**

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

#### **History**

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Added Stats 1965 ch 1784 § 5.

Annotations

#### **Notes**

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##### **Derivation:**

(a) Former W & I C § 445.13, as added Stats 1963 ch 1916 § 54.5.

(b) Former W & I C § 104.6, as added Stats 1945 ch 1319 § 1, amended Stats 1953 ch 1562 § 3, Stats 1961 ch 1227 § 6.

#### **Notes to Decisions**

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##### **1. Generally**

##### **2. Remedies**

##### **3. Attorney Fees**

##### **1. Generally**

With respect to [W & I C § 10963](#), providing in effect that the county must comply with and execute every rendered decision of the director of certain state agencies, the state agencies impliedly referred to are either the Department of Social Services or the Department of Health Services, and formerly the state

agency referred to was the Department of Benefit Payments. The language of [W & I C § 10963](#), is mandatory, and applies to initial fair hearing decisions pending rehearing. [Blackburn v. Sarsfield \(Cal. App. 1st Dist. 1981\), 125 Cal. App. 3d 143, 178 Cal. Rptr. 15, 1981 Cal. App. LEXIS 2305.](#)

## 2. Remedies

Traditional mandamus is the remedy to compel a county's compliance, mandated by [W & I C § 10963](#), with the decision of the director of a state agency regarding social services. Additionally, once a petitioner's eligibility for social services has been established, an award of retroactive payments is appropriate even though the services for which payments are sought were never performed. Furthermore, prejudgment interest and costs are also recoverable. [Blackburn v. Sarsfield \(Cal. App. 1st Dist. 1981\), 125 Cal. App. 3d 143, 178 Cal. Rptr. 15, 1981 Cal. App. LEXIS 2305.](#)

In a traditional mandamus proceeding against the General Manager of the San Francisco Department of Social Services, the trial court erred in refusing to issue a peremptory writ commanding respondent to pay retroactive aid to petitioner, together with prejudgment interest, trial costs, and reasonable attorney fees. By a fair hearing decision adopted by the director of the Department of Benefit Payments, the county had been ordered to restore aid to families with dependent children boarding homes and institutions payments to petitioner, and compliance with such decision was mandatory ([W & I C § 10963](#)). The fact that petitioner had received supplemental security income did not preclude his receipt of the benefits sought, and thus the trial court erred in concluding that petitioner was ineligible for such benefits. Furthermore, the fair hearing decision order clearly intended for aid to be restored to petitioner. [Blackburn v. Sarsfield \(Cal. App. 1st Dist. 1981\), 125 Cal. App. 3d 143, 178 Cal. Rptr. 15, 1981 Cal. App. LEXIS 2305.](#)

## 3. Attorney Fees

On appeal from denial of a peremptory writ in a traditional mandamus proceeding to compel the general manager of San Francisco's Department of Social Services to comply, as mandated by [W & I C § 10963](#), with a fair hearing decision rendered by the Department of Benefit Payments, petitioner was entitled to recover reasonable attorney fees on remand. Although [W & I C § 10962](#), providing for recovery of attorney fees, did not apply to the mandamus proceeding, the award of such fees was appropriate in that the enforcement of petitioner's rights would confer a significant nonpecuniary benefit on the general public by vindicating the strong public policy in favor of retroactive payment of welfare benefits, that the necessity and financial burden or private enforcement were such as to make the award appropriate, and that such fees should not in the interest of justice be paid out of the recovery. Furthermore, the trial court was directed to determine a reasonable attorney fee to be awarded petitioner's attorney for his services on appeal. [Blackburn v. Sarsfield \(Cal. App. 1st Dist. 1981\), 125 Cal. App. 3d 143, 178 Cal. Rptr. 15, 1981 Cal. App. LEXIS 2305.](#)

## Research References & Practice Aids

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### Cross References:

Cases arising under this section as limitation on right to seek injunctive relief with respect to action taken by director concerning administration of grants-in-aid to counties: [W & I C § 10605](#).

Powers and duties of county director: [W & I C § 10803](#).

**Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 “Social Services”](#).

**Hierarchy Notes:**

[Cal Wel & Inst Code Div. 9](#)

[Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7](#)

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## *Cal Wel & Inst Code § 10964*

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### **§ 10964. Digest of decisions**

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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.

### **History**

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Added Stats 1965 ch 1784 § 5.

Annotations

### **Notes**

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#### **Derivation:**

Former W & I C § 445.14, as added Stats 1961 ch 1916 § 54.5.

### **Notes to Decisions**

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#### **1. Generally**

Annulment of decisions of the State Director of Social Welfare on applications for Aid to the Needy Disabled, a federal program, was required, where each applicant had been found eligible in a referee's proposed decision, where, though the Director adopted the referee's statement of facts, he denied each claim, where, in each case, he stated only that the applicant's impairments were not total and permanent and did not substantially prevent engaging in employment within his competence, and where he did not point to any evidence relied on or give any reasons for his decisions. The applicable federal regulation provides that decisions rendered in the name of the state agency, shall specify the reasons therefor and identify the supporting evidence, and State Department of Social Welfare Regulation 22-059.2, provides that the decision of the Director shall include a statement of the facts and of the statutes and regulations

involved and of the reasoning which supports the decision. [\*Rogers v. Carleson \(Cal. App. 3d Dist. 1973\), 30 Cal. App. 3d 54, 106 Cal. Rptr. 140, 1973 Cal. App. LEXIS 1134.\*](#)

## **Research References & Practice Aids**

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### **Cross References:**

Department's provision of subscription service with respect to digests of decisions compiled under this section: [W & I C § 10606](#).

Department's printing of informational pamphlets and related materials: [W & I C § 10607](#).

Availability and public inspection of bulletins of department: [W & I C § 10608](#).

Report to Governor on administration of appeals: [W & I C § 10612](#).

Confidentiality, availability, and disclosure of records, communications, etc.: [W & I C § 10850](#).

Inspection of public records: [Gov C §§ 6250](#) et seq.

### **Treatises:**

[\*Cal. Forms Pleading & Practice \(Matthew Bender\) ch 470C "Public Records Act"\*](#).

### **Annotations:**

Confidentiality of records as to recipients of public welfare. [54 ALR3d 768](#).

### **Hierarchy Notes:**

[Cal Wel & Inst Code Div. 9](#)

[Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7](#)

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## Cal Wel & Inst Code § 10965

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### **§ 10965. Request for hearing by legal representative or heir of deceased applicant or recipient**

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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.

### **History**

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Added Stats 1965 ch 1784 § 5.

Annotations

### **Notes**

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#### **Derivation:**

Former W & I C § 445.15, as added Stats 1963 ch 1916 § 54.5 p 3993.

### **Notes to Decisions**

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#### **1. Generally**

#### **2. Procedure**

#### **1. Generally**

Neither a Medi-Cal applicant's estate nor a health care provider is left without a remedy when the applicant dies before a hearing can be requested to contest a post-mortem denial of benefits. Rather, the estate or provider may secure the appointment of a legal representative who can request a hearing. [\*Smith v. Shewry\* \(Cal. App. 2d Dist. 2009\), 173 Cal. App. 4th 1163, 93 Cal. Rptr. 3d 436, 2009 Cal. App. LEXIS 759.](#)

## 2. Procedure

Trial court erred in issuing a writ of mandate that ordered a rehearing on a denied application for Medi-Cal benefits where the applicant's authorization of a law firm to act as his agent was revoked by his death, and the firm was required to obtain new authorization from either the applicant's estate or his heirs to contest the denial of his Medi-Cal application, but had failed to obtain that authorization in a timely manner. Moreover, the firm did not present new evidence requiring a grant of a rehearing. [\*Smith v. Shewry\* \(Cal. App. 2d Dist. 2009\), 173 Cal. App. 4th 1163, 93 Cal. Rptr. 3d 436, 2009 Cal. App. LEXIS 759](#).

## Research References & Practice Aids

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### Treatises:

[\*Cal. Forms Pleading & Practice\* \(Matthew Bender\) ch 527 "Social Services"](#).

### Hierarchy Notes:

[Cal Wel & Inst Code Div. 9](#)

[Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7](#)

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## [Cal Wel & Inst Code § 10966](#)

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### **§ 10966. Delegation of authority to adopt final decisions; Contents of written delegation**

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- (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, impartial, independent, in writing, and in the format prescribed by the Chief Administrative Law Judge.

## History

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Added Stats 1986 ch 415 § 10, effective July 17, 1986.

Annotations

## Research References & Practice Aids

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### Treatises:

[\*Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services"\*](#).

### Hierarchy Notes:

[\*Cal Wel & Inst Code Div. 9\*](#)

[\*Cal Wel & Inst Code Div. 9, Pt. 2, Ch. 7\*](#)

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## [Cal Wel & Inst Code § 10967](#)

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### **§ 10967. Adequacy of county's notice of action as issue**

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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.

### **History**

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Added Stats 1986 ch 415 § 10.5, effective July 17, 1986.

Annotations

### **Research References & Practice Aids**

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#### **Treatises:**

[Cal. Forms Pleading & Practice \(Matthew Bender\) ch 527 "Social Services"](#).

#### **Hierarchy Notes:**

[Cal Wel & Inst Code Div. 9](#)

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## **Chapter 7. Hearings**

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### **History**

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[Added Stats 1965 ch 1784 § 5.

Annotations

### **Notes to Decisions**

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#### **1. Generally**

#### **2. Procedure**

#### **3. Regulations**

#### **4. Estoppel**

#### **1. Generally**

The same governmental interests which counsel that welfare benefits be provided also require its uninterrupted provision to those eligible to receive aid; and pretermination evidentiary hearings are indispensable to the achievement of these goals. [\*McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.\*](#)

#### **2. Procedure**

A complete record and comprehensive opinion, which would serve primarily to facilitate judicial review and guide future decisions, need not be provided at the pretermination stage of welfare payments. Relatively speedy solutions to eligibility problems are desirable, and only minimal procedural safeguards are required. [\*McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.\*](#)

Procedural safeguards required before terminating welfare payments include timely and adequate notice, the right to appear personally before the official who will make the decision, and the right to present evidence and confront and cross-examine witnesses. The welfare recipient must be permitted to retain an attorney, and the decision must rest solely on the legal rules and evidence adduced at the hearing; the decision maker must be an impartial official and must state the reasons for his determination and indicate the evidence relied on, though his statement need not amount to a full opinion or formal findings of fact and conclusions of law. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

The power to issue subpoenas and administer oaths are not required formalities at the pretermination stage for welfare payments. Informal procedures will suffice at a hearing prior to termination of payments because the subsequent fair hearing will provide the recipient with a full administrative review. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

### **3. Regulations**

Public Social Services Manual, Reg. 44-325.43, fails to provide that a welfare recipient may present his case orally to the decision maker and permits the person who holds the hearing as to his right to further payments to transmit the substance of the proceeding to the person who decides if, indeed, these functions are actually distinct; and the regulation is invalid in failing to provide that the recipient may present his case before the person who will decide his eligibility for future benefits. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

Public Social Services Manual, Reg. 44-325.43, concerning a pretermination hearing as to a welfare recipient's right to continued payments, is invalid, but a full administrative hearing is not required prior to the initial termination of aid; and a judgment must be reversed insofar as it holds that benefits are to be continued pending a fair hearing and that a sworn statement is required as a condition of obtaining such a hearing. [McCullough v. Terzian \(Cal. 1970\), 2 Cal. 3d 647, 87 Cal. Rptr. 195, 470 P.2d 4, 1970 Cal. LEXIS 297.](#)

### **4. Estoppel**

In an action by welfare recipients and a welfare rights organization, the trial court properly issued a preliminary injunction and declaratory judgment that found illegal the Department of Social Services' policy of refusing to consider claims of equitable estoppel in administrative hearings seeking recoupment of overpayments. The existence of estoppel is largely a question of fact, although the weighing of policy concerns that must be conducted in a case of estoppel against the government is in part a question of law. In light of the Legislature's purpose in providing a speedy and informal mode of resolving welfare disputes, it is appropriate to construe the statutory fair hearing scheme ([W & I C §§ 10950](#) et seq.) as requiring that these largely factual claims be heard in the administrative hearing. Further, administrative application of equitable estoppel does not constitute an impermissible exercise of a "judicial power" within the meaning of [Cal Const Art VI § 1](#), or [Cal Const Art III § 3](#), since there is nothing inherently "judicial" in the application of the doctrine. [Lentz v. McMahan \(Cal. 1989\), 49 Cal. 3d 393, 261 Cal. Rptr. 310, 777 P.2d 83, 1989 Cal. LEXIS 1594.](#)

## Research References & Practice Aids

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### Cross References:

Rules and regulations under the Administrative Procedure Act: [Gov C §§ 11342.510](#) – 11342.610.

The California Administrative Register and Code: [Gov C §§ 11344](#) et seq.

### Law Review Articles:

Adequacy of remedy under California welfare fair hearings. 5 UCD LR 542.

### Hierarchy Notes:

[Cal Wel & Inst Code Div. 9](#)

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