

ENDORSED
FILED

SEP 14 1987

RENE C. DAVIDSON, County Clerk
By Peggy Waller Deputy

EDWARD BARNES
CLIFFORD SWEET
LEGAL AID SOCIETY OF ALAMEDA COUNTY
2357 San Pablo Avenue
Oakland, California 94612
Telephone: (415) 465-4376

Attorneys for Petitioners

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ROSE KING; MERLINE CRAWFORD;)
and PAMELA HILDING, Individually)
and on behalf of all others)
similarly situated,)

No. 398769

Petitioners,)

NOTICE OF ENTRY OF
JUDGMENT OR ORDER
[C.C.P. §664.5]

vs.)


LINDA McMAHON, as Director of)
the California Department of)
Social Services,)

Respondent.)

TO: Linda McMahon, the Department of Social Services, and
John Klee, Deputy Attorney General, her attorney of record:

NOTICE IS HEREBY GIVEN that on August 31, 1987, an order
enforcing a writ of mandate was entered in the above-entitled
action in favor of petitioners and against respondents. A copy
of said order is attached hereto.

DATED: September 10, 1987


EDWARD BARNES
Attorney for Petitioners

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AUG 31 1987

RENE C DAVIDSON, County Clerk
By LAINE WILLIAMS, Deputy

1 EDWARD BARNES
2 CLIFFORD SWEET
3 LEGAL AID SOCIETY OF ALAMEDA COUNTY
4 2357 San Pablo Avenue
5 Oakland, California 94612
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7 Attorney for Petitioners

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 ROSE KING; MERLINE CRAWFORD; and)
11 PAMELA HILDING, Individually and)
12 on behalf of all others similarly)
13 situated,)

No. 398769

~~RECEIVED~~ ORDER

14 Petitioners,)

Date: August 31, 1987

15 vs.)

Time: 2:00 p.m.

Dept: 1

16 LINDA McMAHON, as Director of)
17 the California Department of)
18 Social Services,)

19 Respondent.)
20)
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Petitioners' Motion for Order Enforcing Writ of Mandate
having come on regularly for hearing on August 31, 1987, at 2:00
in Department 1 of the above-entitled court, and the court having
considered the arguments of the parties, the memoranda,
declarations, and papers filed in support thereof, and the record
of the case, and good cause appearing;

IT IS THEREFORE ORDERED that:

1. The court's orders of August 27, 1981 and August 26,
1985, shall remain in full force and effect except as modified
herein;

2. Commencing on December 1, 1987, in each case in which
respondent fails to comply with paragraph 2 of this court's order

1 of August 27, 1981, she shall pay, or cause to be paid, a penalty
2 to each claimant who has requested a fair hearing, who has
3 prevailed in whole or in part, and who has not received a timely
4 decision within the meaning of paragraph 4 of the order of August
5 27, 1981. Said penalty shall be in addition to any amount which
6 the claimant recovers as a result of the fair hearing. The
7 penalty shall not be considered income or resources, nor shall it
8 reduce or affect the amount of any benefits otherwise received or
9 to be received. The penalty shall be calculated as provided in
10 paragraph 4 of this order.

11 3. Respondent shall comply with the timetable set forth in
12 paragraph 2 of the August 20, 1985 order. The extent of
13 compliance on the first day of any month shall be calculated from
14 respondents' compliance reports by comparing, for the immediately
15 prior month, the number of timely decisions to the total number of
16 decisions rendered. For example, the extent of compliance on
17 September 1 would be computed by dividing the number of timely
18 decisions issued in August by the total number of decisions issued
19 in August. If Respondent, at any time, fails to meet and maintain
20 the measure of compliance set forth in the timetable, the penalty
21 paid to claimants shall increase as provided in paragraph 4 of
22 this order.

23 4. The penalty payable pursuant to paragraph 2 of this
24 order shall be paid to claimants for each day during which the
25 hearing decision was untimely and shall be in an amount determined
26 as follows:

1 (a). Commencing on December 1, 1987, the amount of the
2 per day fine shall be \$5.00.

3 (b). In any month in which Respondent fails to achieve
4 or maintain the compliance levels set forth in paragraph 3, the
5 penalty shall increase by \$2.50 over the penalties being paid to
6 recipients the previous month. For example, if on 12/1/87,
7 Respondent did not meet the 95% compliance required, the penalty
8 paid to claimants receiving untimely hearing decisions in the
9 month of December would increase from \$5.00 to \$7.50 per day. If
10 on 1/1/88, Respondent continued to fail to meet the 95% compliance
11 required, the penalty would increase to \$10.00 per day for
12 claimants receiving untimely decisions during January.

13 (c). In any month in which Respondent achieved or
14 maintained the compliance level set forth in paragraph 3, the
15 penalty shall decrease by \$2.50 from the penalty being paid to
16 recipients the previous month, to a minimum penalty of \$5.00 per
17 day. For example, if Respondent were paying \$20.00 per day
18 penalties in June 1988, but achieved compliance on 7/1/88, the
19 penalty for claimants receiving untimely decisions in July would
20 be reduced to \$17.50 per day.

21 (d). Notwithstanding any other provisions of paragraph
22 4, in no event shall the fine paid exceed \$100 per day, and in no
23 event shall it be less than \$50 per decision.

24 5. Nothing herein shall be construed to either change the
25 terms of the Writ or Respondent's duties thereunder, nor to deny
26 to petitioners the right to complete compliance with the Writ.

1 6. Respondent shall, at reasonable times to be agreed by
2 the parties, inform petitioners of the steps it takes, or plans to
3 take, to comply with this order. . On or before October 15, 1987,
4 Respondent shall file with this court, and serve upon attorneys
5 for petitioners, a detailed plan describing those steps she has
6 taken and will take to comply with this order, together with all
7 notices and letters, to whomever addressed, and all forms to be
8 used for that purpose.

9 7. The monthly reports provided to petitioners' attorneys
10 pursuant to paragraph 7 of the court's order of August 27, 1981,
11 shall, in addition to all information presently contained therein,
12 also supply sufficient information to enable petitioners'
13 attorneys to determine the extent of Respondent's compliance with
14 this order.

15 8. This court retains jurisdiction for the purpose of
16 enabling any party to apply for such further orders as may be
17 necessary or appropriate for complete enforcement of the
18 peremptory writ of mandate herein or of the provisions of this
19 order, or for sanctions for failure to comply either with the
20 peremptory writ of mandate or with this order, or to modify any
21 provision of this order.

22 9. Petitioners may apply to this court for an award of
23 attorneys' fees by motion to be filed within 60 days of the date
24 on which the time for appeal of this order expires or, if an

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1 appeal is taken, within 60 days of the date that this order is
2 affirmed by the Court of Appeals.

3

4 DATED: APR 11 1967

H Jacqueline Taber
JUDGE OF THE SUPERIOR COURT

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PROOF OF SERVICE BY MAIL

I, the undersigned, state that I am a citizen of the United States and a resident of Alameda County, over 18 years of age, and not a party to the within action. My business address is

2357 San Pablo Avenue, Oakland, CA 94612

On 9/10/87 I served the foregoing document(s):

Notice of Entry of Judgment or Order

by placing a copy in an envelope address as follows:

John Klee
Deputy Attorney General
350 McAllister Street, Room 6000
San Francisco, CA 94102

Said envelope was then sealed and postage fully prepaid thereon and deposited in the United States mail at Oakland, Alameda County, California. There is regular delivery of the United States mail between said places of deposit and address.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 10, 1987 in Oakland, Alameda County, California.

Leslie Dawson

1 RHODA SHAPONIK
2 CALIFORNIA RURAL LEGAL ASSISTANCE
3 P.O. Box 5316
4 Modesto, California 95352
5 Telephone: (209) 577-3811

ENDORSED
FILED

DEC 4 1987

4 ALAN LIEBERMAN
5 LEGAL SERVICES OF NORTHERN CALIFORNIA
6 P.O. Box 3728
7 Chico, California 95927
8 Telephone: (916) 345-9491

RENE C. DAVIDSON, County Clerk
C. M. Keturi, Deputy

7 EDWARD BARNES
8 LEGAL AID SOCIETY OF ALAMEDA COUNTY
9 2357 San Pablo Avenue
10 Oakland, California 94612
11 Telephone: (415) 465-4376

12 Attorneys for Petitioners and Plaintiffs

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 IN AND FOR THE COUNTY OF ALAMEDA

15 NANCY BALL, et al.,

16 Petitioners,

17 vs.

18 DAVID SWOAP, et al.,

19 Respondents.

)
) No. H 105716-0

)
) ORDER

20 Petitioners' Motion for Order Enforcing Writ of Mandate
21 having come on regularly for hearing on December 4, 1987, at 9:30
22 a.m. in Department 30 of the above-entitled court, and the court
23 having considered the arguments of the parties, the memoranda,
24 declarations, and papers filed in support thereof, and the record
25 of the case, and good cause appearing;

26 IT IS THEREFORE ORDERED that:

27 1. The court's orders issued May 21, 1985 and June 23, 1986,
28 shall remain in full force and effect except as modified herein;

1 2. Commencing on April 1, 1988, in each case in which
2 respondents fail to comply with paragraph 1 of this court's order
3 issued May 21, 1985, they shall pay, or cause to be paid, a
4 penalty to each claimant who has requested a fair hearing, who has
5 prevailed in whole or in part, and who has not received a timely
6 decision within the meaning of paragraph 6(d) of the order of June
7 23, 1986. Said penalty shall be in addition to any amount which
8 the claimant recovers as a result of the fair hearing. The
9 penalty shall not be considered income or resources, nor shall it
10 reduce or affect the amount of any benefits otherwise received or
11 to be received. The penalty shall be calculated as provided in
12 paragraph 4 of this order.

13 3. Respondents shall comply with the timetable set forth in
14 paragraph 4 of the June 23, 1986 order. The extent of compliance
15 on the first day of any month shall be calculated from respon-
16 dents' compliance reports by comparing, for the immediately prior
17 month, the number of timely decisions to the total number of
18 decisions rendered. For example, the extent of compliance on
19 September 1 would be computed by dividing the number of timely
20 decisions issued in August by the total number of decisions issued
21 in August. If Respondent, at any time, fails to meet and maintain
22 the measure of compliance set forth in the timetable, the penalty
23 paid to claimants shall increase as provided in paragraph 4 of
24 this order.

25 4. The penalty payable pursuant to paragraph 2 of this order
26 shall be paid to claimants for each day during which the hearing
27 decision was untimely and shall be in an amount determined as
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1 follows:

2 (a). Commencing on April 1, 1988, the amount of the per day
3 fine shall be \$5.00.

4 (b). For purposes of this order, there shall be three
5 categories of cases: Medi-Cal decisions, Food Stamp Only decisions
6 (excluding Food Stamp fraud), and all other non-AFDC program
7 decisions in aggregate. For each of these three categories of
8 cases, viewed independently, in any month in which Respondents
9 fail to achieve or maintain the compliance levels set forth in
10 paragraph 3 of this order, the penalty shall increase by \$2.50
11 over the penalties being paid to claimants the previous month.
12 For example, if on 5/1/88, Respondents did not meet 95% compliance
13 in the Medi-Cal program, the penalty paid to Medi-Cal claimants
14 who prevailed at least in part and who received untimely hearing
15 decisions rendered during the month of May would increase from
16 \$5.00 to \$7.50 per day. If on 6/1/88, Respondent continued to
17 fail to meet the 95% compliance required, the penalty would
18 increase to \$10.00 per day for such Medi-Cal claimants.

19 (c). For each of the three categories of cases, viewed
20 independently, in any month in which Respondents achieved or
21 maintained the compliance level set forth in paragraph 3 of this
22 order, the penalty shall decrease by \$2.50 from the penalty being
23 paid to recipients the previous month, to a minimum penalty of
24 \$5.00 per day. For example, if, for late food stamp decisions,
25 respondents were paying \$20.00 per day penalties in September,
26 1988, but achieved compliance on 10/1/88, the penalty for untimely
27 food stamp decisions rendered during October would be reduced to

1 \$17.50 per day.

2 (d). Notwithstanding any other provisions of paragraph 4, in
3 no event shall the fine paid exceed \$100 per day, and in no event
4 shall it be less than \$50 per decision.

5 5. Nothing herein shall be construed to either change the
6 terms of the Writ or Respondents' duties thereunder, nor to deny
7 to Petitioners the right to complete compliance with the Writ.

8 6. Respondents shall, at reasonable times to be agreed by
9 the parties, inform Petitioners of the steps they take, or plan to
10 take, to comply with this order. On or before January 15, 1988,
11 Respondents shall file with this court, and serve upon attorneys
12 for Petitioners, a detailed plan describing those steps they have
13 taken and will take to comply with this order, together with all
14 notices and letters, to whomever addressed, and all forms to be
15 used for that purpose.

16 7. The monthly reports provided to Petitioners' attorneys
17 pursuant to paragraph 2 of the court's order of May 21, 1985,
18 shall, in addition to all information presently contained therein,
19 also supply sufficient information to enable Petitioners' attor-
20 neys to determine the extent of Respondents' compliance with this
21 order.

22 8. This court retains jurisdiction for the purpose of
23 enabling any party to apply for such further orders as may be
24 necessary or appropriate for complete enforcement of the peremp-
25 tory writ of mandate herein or of the provisions of this order, or
26 for sanctions for failure to comply either with the peremptory
27 writ of mandate or with this order, or to modify any provision of
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1 this order.

2 9. Petitioners may apply to this court for an award of
3 attorneys' fees by motion to be filed within 60 days of the date
4 on which the time for appeal of this order expires or, if an
5 appeal is taken, within 60 days of the date that this order is
6 affirmed by the Court of Appeal.

7 10. This order is applicable to respondents, their agents
8 and employees, and to their successors in office and, in addition,
9 to all persons acting in concert or participation with them who
10 receive actual notice of this order by personal service or
11 otherwise.

12 DATED: DEC - 4 1987

MICHAEL E. DALLACHEY
13 JUDGE OF THE SUPERIOR COURT
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JUN 23 1980

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

STIPULATION AND ORDER RE:
COMPLIANCE WITH PEREMPTORY
WRIT OF MANDATE

2. The writ issued by this court on May 25, 1985, remains in full force and effect. Specifically, respondents are ordered to provide final hearing decisions in public social services programs within the time limits required by State and

1 federal law, rendering such decision within 60 days of the
2 request for hearing for appeals concerning solely the Food Stamp
3 program, and within 90 days for all other appeals, in each and
4 every matter brought for fair hearing before them. Respondents
5 are also ordered to provide petitioners, for non-AFDC appeals,
6 monthly statistics on the number, type, and timeliness of said
7 hearing decisions. The statistics shall provide the information
8 and be in the format of the statistics currently being provided
9 concerning the AFDC program in King v. McMahon. Separate such
10 statistics shall be provided for the Food Stamp program, the
11 Medi-Cal program, and all other non-AFDC programs for which
12 hearings are conducted.

13 3. Respondents shall provide petitioners' attorneys
14 with copies of any report furnished to the Legislature regarding
15 timeliness of administrative decisions.

16 4. Respondents shall meet the following timetable
17 for achieving compliance with the peremptory writ of mandate
18 herein (hereinafter "Writ"): The following percentages of fair
19 hearing decisions shall be rendered in a timely manner on or
20 before the following dates:

21 The percentage of timely decisions shall be:

22 By this	For the	For the	For all non-AFDC
23 <u>Date:</u>	<u>Medi-Cal</u>	<u>Food Stamp</u>	<u>Programs in</u>
	<u>Program:</u>	<u>Program:</u>	<u>aggregate:</u>
24 10/1/86	35	60	60
25 2/1/87	55	70	70
26 6/1/87	75	80	80
27 10/1/87	95	95	95

1 The extent of compliance on the first day of any month
2 shall be calculated from respondents' compliance reports by
3 comparing the number of timely decisions to the total number of
4 decisions rendered in the immediately prior month. For example,
5 the extent of compliance on May 1 would be computed by dividing
6 the number of timely decisions issued in April by the total
7 number of decisions issued in April.

8 5. So long as respondents achieve and maintain the
9 compliance levels set forth in Paragraph 4 above, there shall
10 be a rebuttable presumption that monetary fines are unnecessary
11 to induce compliance with the Writ.

12 6. (a) If respondents, at any time, fail to meet
13 and maintain any of the measures of compliance set forth in the
14 timetable set forth in Paragraph 4 above, the fiscal sanctions
15 imposed by this paragraph shall be and are hereby imposed.

16 (b) For each of the three categories of cases
17 set forth in Paragraph 4, viewed independently, commencing the
18 date which respondents fail to achieve or maintain the compliance
19 levels set forth in Paragraph 4, in each case in which respondents
20 fail to comply with Paragraph 2 of this order they shall pay, or
21 cause to be paid, a penalty to each claimant who has requested
22 a fair hearing who has not received a timely decision and who
23 has prevailed, in whole or in part, after hearing. For example,
24 if on 10/1/86 respondents have not met the 35 percent compliance
25 measure for Medi-Cal program decisions, the penalties imposed by
26 this provision would apply to all untimely Medi-Cal program
27 decisions issued after 10/1/86 in which the claimant prevailed,

1 in whole or in part. Said penalty shall be in addition to any
2 amount which the claimant recovers as a result of the hearing,
3 and shall be in the amount of \$100 for each month, or 15-day
4 period thereof, during which the hearing decision was untimely.
5 Respondents shall take all steps within their control to cause
6 said payments to be made not more than ten (10) days after the
7 date on which the hearing decision is issued. This subparagraph
8 applies to all decisions issued in cases pending as of the date
9 the obligation to pay the penalty begins, as well as to all
10 hearing decisions in cases filed after that date. Respondents
11 shall provide petitioners statistics on the number and type of
12 such payments, in the format of the statistics currently being
13 provided for the AFDC program in King v. McMahon.

14 (c) The penalties imposed by subsection (b) shall
15 cease if the respondents meet the next highest level of compliance
16 by the date specified in timetable set forth in Paragraph 4.
17 For example, if respondents were paying penalties with respect
18 to Medi-Cal program decisions because they had failed to meet or
19 maintain the 10/1/86 compliance level of 35 percent, the
20 imposition of further penalties with respect to Medi-Cal program
21 decisions would cease if the respondents met and maintained the
22 2/1/87 compliance level of 55 percent. However, the penalties
23 shall commence again if respondents fail to maintain that level
24 of compliance or fail to meet and maintain any subsequent higher
25 level of compliance. If respondents are paying penalties because
26 they failed to meet the compliance level of 95 percent by 10/1/87,
27 the penalties shall not cease until respondents have maintained

1 that level of compliance for 12 consecutive months. If respondents
2 are not paying penalties because they either met the 95 percent
3 compliance level by 10/1/87 or met the 95 percent compliance level
4 later than 10/1/87 and maintained that level for at least 12
5 consecutive months, penalties shall commence again if respondents
6 fail to maintain the 95 percent compliance level for two
7 consecutive months.

8 (d) "Timely decision", as used in this order means:

9 (1) In cases where no postponement or
10 continuance occurred prior to close of the hearing
11 record, "timely" means a final decision mailed by
12 the respondents (hereinafter "issued") no later than
13 90 days from the hearing request (60 days in the
14 case of a hearing requested by a claimant involving
15 only food stamps);

16 (2) In those cases where the claimant
17 postponed the hearing, a timely decision means a
18 decision issued no later than 90 days from the
19 date of postponement (60 days in the case of a
20 hearing requested by a claimant involving only
21 food stamps);

22 (3) In those cases where the hearing
23 was continued on the motion of the hearing officer,
24 a timely decision means a decision issued no later
25 than 120 days from the date of the hearing request
26 (90 days in the case of a hearing requested by a
27 claimant involving only food stamps); provided,

1 however, that in the event that, in a Medi-Cal
2 program case, the hearing officer determines that
3 a Medi-Cal medically-needy disability assistance
4 claim should be remanded to the D.E.D. for further
5 evaluation and/or additional information and the
6 claimant so agrees, pursuant to paragraph 10 of
7 the Judgment Pursuant to Stipulation in Visser v.
8 Kizer (Sacramento Superior Court No. 337016),
9 a timely decision means a decision issued no later
10 than 150 days from the date of the hearing request.

11 7. The payments made pursuant to paragraph 6 of this
12 order shall not be considered income or resources in any public
13 social service program, nor shall they reduce or affect the
14 amount of any benefits otherwise received or to be received.

15 8. Nothing herein shall be construed to either change
16 the terms of the Writ or respondents' duties thereunder, nor to
17 deny to petitioners the right to complete compliance with the Writ.

18 9. Respondent shall, at reasonable times to be agreed
19 by the parties, inform petitioners of the steps it takes, or plans
20 to take, to comply with this order.

21 10. This court retains jurisdiction for the purpose of
22 enabling petitioners to apply for such further orders as may be
23 necessary or appropriate for complete enforcement of the
24 peremptory writ of mandate herein or of the provisions of this
25 order, or for sanctions for failure to comply either with the
26 peremptory writ of mandate or with this order. Nothing herein
27 shall be construed to restrict respondents' rights to seek

1 modifications to the Writ or this order.

2 11. Respondents waive any right to appeal this order.

3 12. Petitioners may apply to this court for an award
4 of attorneys' fees by motion to be filed within 90 days of the
5 date of this order.

6
7 Dated: JUN 23 1986

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9 MICHAEL E. BALLACHEY
10 JUDGE OF THE SUPERIOR COURT

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15 STIPULATION

16 The parties to the above action hereby stipulate to
17 entry of the above order and apply to the Court for its issuance,
18 the order being approved for form and content.

19
20 Dated: 6/14/86

Edward Barnes
EDWARD BARNES
Attorney for Petitioners

21
22
23 Dated: 6/12/86

John J. Klee, Jr.
JOHN J. KLEE, JR.
CHARLTON HOLLAND
Attorneys for Respondents

Legal Aid Society of Alameda County

1440 BROADWAY, SUITE 700
OAKLAND, CALIFORNIA 94612

Telephone (415) 465-3833

CLIFFORD SWEET
EXECUTIVE ATTORNEY

MEMORANDUM

To: Welfare Task Force Members
From: Leslie Dawson
Re: Fines for late welfare decisions
Date: January 24, 1990

Under the terms of the court orders in Ball and King, the State must give hearing claimants fines for late decisions in which the claimants prevail in whole or part. The amount of the fine depends on State performance in issuing timely decisions. As of 12/87 for AFDC and 4/88 for non-AFDC cases, the minimum fine is \$50.

Recent State performance has established the following rates per amount of time the decision is late:

Month	AFDC (<u>King</u>)	FS/MC (<u>Ball</u>)	Other (<u>Ball</u>)
4/89	\$17.50 per day	\$35.00 per day	\$20.00 per day
5/89	\$15.00 per day	\$37.50 per day	\$17.50 per day
6/89	\$12.50 per day	\$40.00 per day	\$20.00 per day
7/89	\$10.00 per day	\$42.50 per day	\$17.50 per day
8/89	\$ 7.50 per day	\$45.00 per day	\$20.00 per day
9/89	\$10.00 per day	\$47.50 per day	\$22.50 per day
10/89	\$12.50 per day	\$50.00 per day	\$25.00 per day
11/89	\$10.00 per day	\$52.50 per day	\$27.50 per day

Assuming the State does not produce 95% of its decisions timely in subsequent months, the fines for late decisions for the next three months will be as follows:

12/89	\$12.50 per day ¹	\$55.00 per day	\$30.00 per day
1/90	\$15.00 per day	\$57.50 per day	\$32.50 per day
2/90	\$17.50 per day	\$60.00 per day	\$35.00 per day

If you have any clients for whom the State does not pay these rates, please let me know.

¹If the State maintains 95% compliance, the rate will be down at the rate of \$2.50 per day each month, instead of going up.