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Attorneys for Plaintiffs/Petitioners

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

AUDREY RUSH, KERRY RUSH,
and PHYLLIS CRISP, on behalf of
themselves and all others similarly
situated,

Plaintiffs/Petitioners

v.

ELOISE ANDERSON, Director of the
California Department of Social Services,
and the CALIFORNIA DEPARTMENT
OF SOCIAL SERVICES,

Defendants/Respondents.

Case No. 97CS01014

CLASS ACTION

REVISED
STIPULATION FOR SETTLEMENT

The parties desire to avoid the expense and uncertainty of further litigation of this action, and have reached a mutually acceptable resolution of the First, Third, Fourth, Fifth and Sixth Causes of action stated in the Second Amended Complaint in the above entitled action. The parties, by and through their respective attorneys of record, hereby stipulate as follows:

1. Respondent California Department of Social Services (hereinafter DSS) will issue a new "Notes from the Training Bureau" which will make the following changes to the documents entitled

1 "Notes from the Training Bureau", Item 94-12-2, dated December 20, 1994 (attached as Exhibit 1) and
2 Notes from the Training Bureau, Item 94-12-2a, dated March 21, 1995 (attached as Exhibit 2):

3 a. The first full paragraph on page 1, is hereby deleted. That paragraph stated "This
4 memo sets forth the general guidelines which CDSS believes are appropriate in decisions involving the
5 claim of equitable estoppel. Judges who write decisions in accord with these guidelines may write final
6 decisions. Failure to adhere to these guidelines will require the judge to write a proposed decision."

7 b. The third paragraph under the heading "ELEMENT 4" on page 3, which currently
8 states "There are three ways in which detrimental reliance can be established. They are as follows:" is
9 hereby changed to "Three ways in which detrimental reliance can be established are:".

10 c. The paragraph above the heading "ELEMENT 5" on page 6, is hereby deleted. That
11 paragraph stated "In all other overpayment cases, where the claimant's only contention is that he cannot
12 afford to repay the overpayment, this element of estoppel is not met. That is, the fact that the individual
13 has to repay an overpayment caused by county error alone does not satisfy the fourth element of
14 estoppel. Incurring the debt does not, of itself, constitute injury. If the claimant's only contention of
15 injury is the inability to repay the overpayment, the case should be denied without further analysis at this
16 step."

17 d. The paragraph labeled 4 on page 8 is hereby deleted. That paragraph stated:
18 "Hardship in repaying an overpayment or over issuance is not evaluated under the 4th element, but under
19 the 5th element, i.e. balancing."

20 2. All DSS Administrative Law Judges will be provided with instructions implementing this
21 settlement agreement within 30 days of approval of this Stipulation by the Court. A copy of these
22 instructions will be provided to plaintiffs attorneys.

23 3. Notice will be mailed to all members of the class defined as "All AFDC, TANF, or
24 CalWORKs claimants in administrative hearings conducted by the Department of Social Services or its
25 successor agencies on or after December 20, 1994, who have contended or will contend that an action
26 of a county or its agents, employees, contractors or successors was or will be completely or partially
27 estopped and that claim is denied solely because of a Department of Social Services finding that the
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1 claimant did not satisfy the fourth element of equitable estoppel pursuant to the CDSS Policy on
2 Equitable Estoppel (Notes from the Training Bureau-Issue 94-12-2a, December 20, 1994 and March 21,
3 1995, page 6), that the claimant's inability to repay an overpayment, by itself, does not constitute
4 injury."¹

5 4. The list of class members to whom notice will be mailed will be generated using the DSS
6 State Hearings Division's electronic data processing system. DSS shall update the addresses on the list
7 through the Medi-Cal Eligibility Data System and the United States Postal Service FASTforward
8 system.

9 5. The notice to members of the class will include:

10 a. A description of this litigation and Stipulation.

11 b. A statement that the class member can request a new administrative hearing regarding
12 whether repayment of the overpayment of benefits at issue constitutes injury for the purpose of the
13 fourth element of the doctrine of equitable estoppel and whether the fifth elements of the doctrine of
14 equitable estoppel is met.

15 c. A statement that the new administrative hearing must be requested within 90 days of
16 the date of receipt of the notice by the claimant.

17 d. A description of how to request the new administrative hearing.

18 e. A statement that the new administrative hearing will address all of the claimant's
19 hearing decisions in AFDC, TANF and CalWORKs cases since December 20, 1994 in which a claim
20 of equitable estoppel was denied because the claimant's inability to repay an overpayment, by itself, did
21 not constitute injury.

22 f. The notice will include the following: "You must prove repayment would have been
23 a hardship at the time of your prior hearing. Your actual repayment does not prevent you from proving
24 hardship."

25 g. A statement that if a new administrative hearing is requested, the prior hearing

27 ¹This class was certified by the court by order dated October 1, 1999. A copy of that order is
28 attached as Exhibit 1.

1 decision(s) will be set aside.

2 h. The notices will be in English on one side and in Spanish on the opposite side. The
3 notice will include information in Vietnamese, Cambodian, Chinese and Russian explaining how class
4 members can obtain more information about their rights under this Stipulation.

5 6. A draft of the notice to be mailed to class members shall be forwarded to plaintiffs attorneys
6 for review and comment no more than 15 days after lodging of this Stipulation with the court. Plaintiffs
7 attorneys shall forward any written comments regarding the notice to defendants' attorney within 15
8 days of their receipt of the draft notice. DSS shall mail the notice to class members no more than 60
9 days after approval of this Stipulation by the court.

10 7. If 20% or more of the notices are returned as undeliverable, posters containing the same
11 information as will be contained in the notice will be posted at every county welfare department office.

12 8. After receipt of the request for the new administrative hearing as described in Paragraph 3(b),
13 DSS will issue a Decision Pursuant to Court Order setting aside all of the claimant's hearing decisions
14 since December 20, 1994 in which a claim of equitable estoppel was denied in AFDC, TANF or
15 CalWORKs cases because the claimant's inability to repay an overpayment, by itself, did not constitute
16 injury.

17 9. After issuing the Decision Pursuant to Court Order, DSS will schedule a new administrative
18 hearing for the claimant on the same time schedule as any other request for a DSS administrative
19 hearing. The new hearing will address all of the claimant's hearing decisions since December 20, 1994
20 in which a claim of equitable estoppel was denied AFDC, TANF or CalWORKs cases because the
21 claimant's inability to repay an overpayment, by itself, did not constitute injury. The only issues in the
22 new hearing will be whether repayment of the overpayment of benefits at issue constitutes injury for the
23 purpose of the fourth element of the doctrine of equitable estoppel and whether the fifth element of the
24 doctrine of equitable estoppel is met.

25 10. If the claimant prevails in an administrative hearing provided in accordance with this
26 stipulation, all collection on the overpayment amount found to be estopped will cease. All amounts
27 collected on the overpayment which are found to be estopped will be returned to the claimant or used
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1 to offset other uncollected overpayments. If the amount is used to offset other uncollected
2 overpayments, a notice of action to that effect shall be issued to the claimant which the claimant can
3 challenged using the normal administrative hearing process.

4 11. If the claimant is a CalWORKs recipient at the time he or she receives any corrective
5 payment made after an administrative held pursuant to this Stipulation, the claimant shall be entitled to
6 place the payment, up to the statutory amount, in a restricted account under Welfare and Institutions
7 Code § 11155.2. Any administrative hearing decision pursuant to this Stipulation which orders
8 corrective payments shall inform the claimant of his/her right to place to place the payment, up to the
9 statutory amount, in a restricted account.

10 12. Within 90 days of the issuance of the last hearing decision in a hearing held pursuant to
11 paragraph 7 of this stipulation, DSS will send plaintiffs attorneys a report detailing the number of notices
12 sent pursuant to this stipulation, the number of hearings requested pursuant to this stipulation, the
13 number of claims granted in hearings with issue code 009 from the date of approval of this Stipulation
14 to the date of the report, the number of claims denied in hearings with issue code 009 from the date of
15 approval of this Stipulation to the date of the report, and the number of claims partially granted and
16 partially denied in hearings with issue code 009 from the date of approval of this Stipulation to the date
17 of the report. The parties expressly agree that no particular outcome of this reporting is guaranteed.

18 13. Plaintiff/Petitioners' counsel shall be entitled to recover costs. The parties shall attempt to
19 reach a separate agreement as to the amount of costs to be recovered. However, if good faith negotiation
20 fails to result in an agreement, Plaintiff/Petitioners shall file a memorandum of costs within the time
21 specified by California Rule of Court 870.

22 14. Plaintiff/Petitioners' counsel shall be entitled to recover attorney fees. The parties shall
23 attempt to reach a separate agreement as to the amount of such fees. However, if good faith negotiation
24 fails to result in an agreement, Plaintiff/Petitioners shall file a motion to claim attorney fees within the
25 time specified by California Rule of Court 870.2.


26 15. This stipulation has been drafted by all the parties. In the event a court is required to
27 interpret this Stipulation, no party shall have the right to argue that the other is responsible for any
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1 ambiguity in the language of this Stipulation, and any uncertainty or ambiguity shall not be interpreted
2 against any one party.

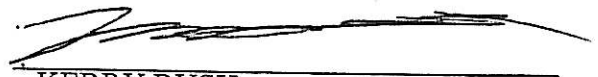
3 16. This agreement does not constitute an admission by either party regarding the legal or factual
4 issues raised in this action.

5 17. This stipulation can be signed in counterparts.

6
7 DATED: 11-3-00


AUDREY RUSH

8
9 DATED: 11-3-00


KERRY RUSH

10
11 DATED: 11/20/00

NORTHERN CALIFORNIA LAWYERS
FOR CIVIL JUSTICE

COALITION OF CALIFORNIA WELFARE
RIGHTS ORGANIZATIONS

12
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14
15
16 By:


STEPHEN GOLDBERG
Attorney for Plaintiffs/Petitioners

17
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19 DATED:

Representative of the Department of
Social Services

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21
22 DATED:

BILL LOCKYER
Attorney General
FRANK FURTEK, Supervising
Deputy Attorney General
DARRYL MANSFIELD
Deputy Attorney General

23
24
25
26
27 _____
Attorneys for Defendants/Respondents

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2 against any one party.

3 16. This agreement does not constitute an admission by either party regarding the legal or factual
4 issues raised in this action.

5 17. This stipulation can be signed in counterparts.

6
7 DATED:

AUDREY RUSH

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9 DATED:

KERRY RUSH

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11
12 DATED:

NORTHERN CALIFORNIA LAWYERS
FOR CIVIL JUSTICE

13
14 COALITION OF CALIFORNIA WELFARE
RIGHTS ORGANIZATIONS

15
16 By:

STEPHEN GOLDBERG
Attorney for Plaintiffs/Petitioners

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18
19 DATED:

11/15/00

Karen D. Harrison
Representative of the Department of
Social Services

20
21
22 DATED:

11/15/00

BILL LOCKYER
Attorney General
FRANK FURTEK, Supervising
Deputy Attorney General
DARRYL MANSFIELD
Deputy Attorney General

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David A. Mansfield
Attorneys for Defendants/Respondents

CDSS POLICY ON EQUITABLE ESTOPPEL*

This memo sets forth the general guidelines which CDSS believes are appropriate in decisions involving the claim of equitable estoppel. Judges who write decisions in accord with these guidelines may write final decisions. Failure to adhere to these guidelines will require the judge to write a proposed decision.

The California Supreme Court, in *Lentz v. McMahon* (1989) 49 Cal.3d 393, concluded that equitable estoppel was an issue that could be raised and decided in administrative hearings. The court in *Lentz* did not address specific guidelines regarding when the use of estoppel was appropriate, but did note the following:

That estoppel was an appropriate remedy "against a county's assertion of purely procedural preconditions and limitations on benefits, when the county itself is responsible for the procedural default..."

The court left open the question of whether estoppel would apply to circumstances where a substantively ineligible person is seeking to apply estoppel against the government.

The equitable estoppel work group, consisting of people from AAD and Legal Affairs Division, discussed the issue of analyzing equitable estoppel in cases involving substantive ineligibility and it was concluded that estoppel would apply in appropriate cases. This approach is consistent with a line of court cases in other jurisdictions. [See *Kramarevsky v. Dept. of Social and Health Services*, State of Washington Supreme Court (1993) 122 W.2d 738, 863 P.2d 535; *Frage v. Dept. of Health and Rehabilitative Services*, 464 So. 2d 144 (Fla. Dist. Ct. App. 1984); *Kruse v. Dept. of Public Aid*, 173 Ill. 119, 596 N.E. 2nd 743, (1992)]

In *Lentz*, citing *Canfield v. Prod* (1977) 67 Cal. App. 3d 722 and *Long Beach v. Mansell* [(1970) 3 Cal. 3d 462], the Supreme Court stated the four basic elements of estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.

The court continued: Our cases recognize the correlative principle that estoppel will not be applied against the government if to do so would effectively nullify "a strong rule of policy, adopted for the benefit of the public". *County of San Diego v. Cal. Water Co.* [(1947) 30 Cal. 2d 817, 829-830]. In *Mansell*, supra, 3 Cal 3d 462, we adopted a balancing approach to accommodate these concerns:

The government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such estoppel against a private party are present and, in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel."

*In January 1995 Judges Peter Hemenway and Barry Bernstein will provide training on equitable estoppel in each regional office.

In This Issue

CDSS Policy on Equitable Estoppel

In reviewing *Canfield*, the Court noted that "On the burden on the individual side of the *Mansell* balance, we note that welfare benefits....are intended to provide basic means of subsistence to recipients. Welfare department workers, who purport to advise and direct recipients, clearly stand in a confidential nature to them."

On the "policy" side of the *Mansell* balance, the interests represented by a statute of limitations are to encourage timely presentation of claims and prevent windfall benefits.

The "policy" side of the ledger will vary from case to case but, in general, and especially in overpayment cases, the policy side of the ledger will be the government interest in issuing benefits only to people who are eligible for benefits and to recoup benefits from those who are not eligible. Welfare and Institutions Code (W&IC) Section 11004 Subsection (f) requires the recoupment of overpayments for current and former aid recipients. Additional policy considerations include, but are not limited to protection, care and assistance to people of the state, (Welfare and Institutions Code 10000) and the mandate that regulations should be equitably construed (W&IC 11000).

DISCUSSION OF THE ELEMENTS OF ESTOPPEL

It is necessary to follow a sequential evaluation in each case.

ELEMENT 1

The party to be estopped must be advised of the facts.

Before this element of estoppel is met, it must be established that the party to be estopped (i.e., the county or DHS) had all the necessary information to make a correct determination of aid or eligibility in the individual's case.

Question: Was the county advised of the true state of facts?

- (a) If the county stipulates or otherwise agrees that it was advised of the facts, note this and proceed to element 2.
- (b) If the county does not take a position, or disagrees that it was informed, make a factual finding. If the finding is that the county was not informed, deny the case at this point.
- (c) If the county agrees that it administratively erred and caused the overpayment, this is not a stipulation of fact but rather a legal conclusion. Normally, element 1 will still have been met. There are some instances, however, where the county has mischaracterized the error as county error when the individual incompletely reported. It would be necessary in such case for the ALJ to make a finding of fact that the county was not fully aware of all the facts. In that case, element 1 would not have been met.

ELEMENT 2

He must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended.

For this element to be established, the county (or DHS) must exhibit some conduct or make a statement with the intent that the claimant will take an action in reliance on that conduct or statement or must act in such a way that the claimant would reasonably believe the county or DHS intended the claimant to rely on such conduct or statement.

Question: Did the county intend that the claimant rely upon its act or advice?

- (a) In the case of an aid pending overpayment, this element is not met. The county did not intend that the claimant rely on the grant issued as being the correct grant. The county was required to issue the aid solely because the claimant filed a timely hearing request.
- (b) The county representative must be acting in her official capacity, and must be the person responsible for providing correct information about the program. A casual comment made by a county worker at a party cannot reasonably be relied upon by a recipient. Neither can a recipient successfully claim that his reliance on a Medi-Cal worker, who has said that he may have \$3200 in the bank, misled him as to AFDC or FS property limits when the Medi-Cal worker was only answering a question about Medi-Cal property limits.
- (c) An AFDC recipient calls his EW, and is told that the AFDC property limit is \$2,000. He receives a lump sum payment of \$5,000 which he spends down to \$1,900. When the county imposes the lump sum disqualification, he claims the EW misled him, and that is why he spent down below \$2,000. Since the county never gave any advice as to how lump sum income would affect eligibility, element 2 is not met.

ELEMENT 3

The other party (i.e., the claimant) must be ignorant of the true state of facts.

Question: Was the claimant ignorant of the true state of facts?

- (a) Normally, the individual will not be aware of the true state of facts. However, a finding must still be made on a case-by-case basis. A finding that someone knew the true state of facts must be supported by evidence, and not the judge's conclusion that the claimant "must have" or "should have" known the facts. Conversely, the judge should explore the claimant's knowledge and not merely accept testimony of ignorance of facts where it appears that knowledge of the facts would be expected.
- (b) A person who has constructive notice is not ignorant of the true state of facts. For example, if a person receives a notice advising him that he is eligible for an AFDC grant of \$400, but receives a check for \$560, he is not ignorant of the true state of facts, whether he reads the notice or not, or whether he misreads or misunderstands the notice. However, if he called his worker and was told that the \$560 was correct, and to ignore the notice, he would be considered unaware of the true state of facts.

ELEMENT 4

The claimant must rely on the conduct to her injury.

Question: Did the claimant change her position to her detriment? In reliance on county conduct?

There are three ways in which detrimental reliance can be established. They are as follows:

(a) Loss of Substantive Eligibility

Question: Did the recipient, in relying upon the county conduct, lose the ability to be substantively eligible for the program at issue?

Cases where the person lost an opportunity to be substantively eligible for aid are cases where the overpayment would in most cases be estopped in its entirety. It will be necessary to make a finding that the person would have exercised his opportunity. Testimony is sufficient to establish

that the claimant would have exercised the opportunity.

Example 1

A claimant who has \$1,500 in a bank account and has reported this to the county, fails to spend this money below the \$1,000 AFDC property limit because the EW never told the claimant of the \$1,000 limit. The claimant, who was overpaid due to excess property, relied to her injury by failing to spend below the \$1,000 limit and make herself eligible if she testifies she would have brought her account below \$1,000 had she known of the \$1,000 limit.

Example 2

A claimant's son does not complete high school by age 19. The county aids the claimant's child until age 19 and then discontinues the case and charges the claimant with an overpayment for the entire year between the child's 18th birthday and 19th birthday. If the claimant can establish that his child would have completed high school by age 19 by going to summer school or taking extra classes, the claimant would have relied to his detriment, where the county failed to advise him that such a requirement existed for AFDC eligibility.

(b) Lost a Valuable Right

Question: Did the recipient otherwise lose a valuable right (e.g., right to a hearing or eligibility for other benefits such as GA or GR, increased FS benefits, RISP, AFDC Foster Care, or Transitional Child Care) in reliance upon the county action?

In cases where a person lost a valuable right (e.g. the right to apply for or receive the correct amount of GR, FS or a RISP) the amount of recoverable overpayment would be determined by the amount of aid the claimant would have received had the county acted properly in the first place.

Example 1

A claimant receives AFDC MAP in July 1991, when he should have received zero based upon May 1991 income. The claimant testified he would have applied for a RISP had the county proposed to reduce the grant. The claimant relied to his detriment in not applying for a RISP, as the county action negated the need for a RISP and precluded such application. The measure of the injury would be the difference between the AFDC grant received and the RISP the claimant could have received if AFDC had properly been denied and the claimant had applied for a RISP.

Note: This does not apply in cases where the claimant received MAP as aid paid pending a hearing to dispute the suspension of aid. (*Daniels v. McMahon*, parareg 151-3)

Example 2

The claimant's AFDC benefits are erroneously approved, but he was ineligible for AFDC because he is an ineligible refugee or alien. The household did not receive FS benefits. The county now seeks to recoup an overpayment. The claimant did not apply for GR benefits because he was getting AFDC. The claimant lost a valuable right -- the opportunity to apply for and establish GR eligibility.

Since the CDSS lacks the jurisdiction to review GR eligibility, this case would be remanded back to the county to determine GR eligibility during the AFDC overpayment months. The measure of the injury would be the difference between the AFDC grant received and the GR grant the claimant could have received if AFDC had properly been denied and the claimant had immediately applied for GR. The order in this case would require the county to reduce the AFDC overpayment by the difference between the AFDC received and the GR the claimant would have received unless the county establishes that the claimant was not eligible for GR. There will be no state review in the event the county finds no eligibility for GR. In no event can an ALJ order the county to issue GR benefits to the claimant, even if the GR grant would have been greater than the AFDC grant.

Example 3

The recipient received \$560 in AFDC benefits. The county establishes that this \$560 constitutes an administrative error overpayment. The claimant received \$50 in FS benefits. If the claimant had received the correct AFDC grant (\$0) she would have received \$150 in FS benefits. The claimant "lost" \$100 in FS benefits because of the county mistake. The amount of the injury is \$100. This would go to reducing the amount of the AFDC overpayment, as there is no FS overissuance, and there is no authority to issue \$100 in additional FS benefits. The computation is set out as an example only. When an ALJ has a hearing, the case would be remanded to the county to compute the amount of lost FS benefits, and reduce the overpayment accordingly. This computation, unlike the GR determination, could be appealed back to CDSS as a compliance related issue. The ALJ will not order the county to issue FS benefits to the claimant, but would only reduce the AFDC overpayment after the county has completed its recomputation.

The basic theory is that the claimant's circumstances should be evaluated to determine how much aid the claimant would have received had no county error been made. The claimant's recoupable AFDC overpayment may then be reduced (or in rare cases even eliminated) when all factors are considered.

- (c) Other cases where the claimant adversely changed his position in reliance upon the county's misconduct.

Question: Did the recipient adversely change her position in reliance upon the county conduct other than in cases where she lost the ability to be substantively eligible or lost a valuable right? "Adversely" refers to whether the claimant incurred a cost without receiving a commensurate gain, or whether she did some act which he would not have done, or failed to do some act which she would have done to her detriment, because she relied upon the misinformation from the county. These situations are different from (a) because here the claimant could not have done anything to make herself eligible. Either the county could have done something to make the claimant eligible, or nothing could have been done to make the claimant eligible. Incurring the debt for an overpayment would not constitute an adverse change of position necessary to meet this element.

Example 1

The county advises the claimant that she will get AFDC-Foster Care benefits effective the date children are placed in her home. The claimant accepts children in her home in reliance on this information, but is approved only for FC benefits some six weeks later after a court petition is filed. The claimant has incurred out-of-pocket expenses for the

FC children for six weeks. The claimant has neglected her own needs and is now facing an automobile repossession because money that would have been used for car payments was used for the FC children. She testifies she never would have taken the children into her home but for the county advice. The claimant adversely relied upon the county's misinformation. She changed her position in accepting the children into her home for six weeks at her own expense. The county would be required to establish an earlier beginning date of aid.

Example 2

The claimant receives a \$1,000 overpayment. During that period he used \$600 of the overpaid funds to purchase a car which he otherwise would not have been able to afford. In this case, the claimant did not adversely change his position. He incurred a cost for the car but received a commensurate gain - namely, the car.

Example 3

The county determines that child "C" has been abused and neglected by his parent. The county removes the child from the parent's home and places the child with the claimant grandmother.

The county then fails to file a petition with the court to place "C" with the claimant until eight months later. The county had promised the claimant it would petition the court to place the child in the claimant's home so she could get AFDC-FC benefits on the child's behalf.

The claimant is ineligible to receive federal AFDC-FC because the county failed to file a petition for placement within six months of the time the county removed the child from the claimant's home. If the claimant testifies that she never would have agreed to have "C" placed in her home but for the county promise, the claimant would have relied to her detriment in providing care for "C". The fourth element of estoppel would have been met. The ALJ would then balance the equities (element 5) to determine if estoppel applies in this case. If estoppel applies, the county would be required to continue to issue AFDC-FC benefits to the claimant even though she does not meet federal AFDC-FC requirements.

← In all other overpayment cases, where the claimant's only contention is that he cannot afford to repay the overpayment, this element of estoppel is not met. That is, the fact that the individual has to repay an overpayment caused by county error alone does not satisfy the fourth element of estoppel. Incurring the debt does not, of itself, constitute injury. If the claimant's only contention of injury is the inability to repay the overpayment, the case should be denied without further analysis at this step.

ELEMENT 5

BALANCING THE INTERESTS (GOVERNMENTAL AGENCIES)

Before a case is granted, this element must always be discussed, because the estoppel is being asserted against the government (i.e., the county, CDSS, or CDHS). To do this the ALJ must:

- (a) Determine the nature of the detriment to the individual, considering the amount of the overpayment, the hardship involved, and other specific facts and compare to --

- (b) The public policy in recouping overpayments, the charge to the state treasury, compliance with state and federal laws and the intent of the programs, and consider the following:

The degree of culpability or negligence of the agency or its representatives in their conduct or advice, and the seriousness of the impact or effect of such conduct or advice upon the claimant.

The balancing must be done on a case-by-case basis, taking into consideration all factors including the degree of negligence (was the county error one of commission or omission, how long did the error last, the seriousness of the harm to the recipient, whether the recipient contributed in some way to the error, and other factors).

In the case of *Collins v. Woods*, (1984) 158 Cal.App.3d 439, 204 Cal.Rptr. 650, a California Court of Appeals referring to changes to former Welfare and Institutions Code Section 11004(c) said the following: "The amended statute, on the other hand, imposed a new responsibility on all recipients to repay all overpayments through grant adjustment." The court discussed shifting to the recipient the burden of assuring correct payments.

It is the position of the Department that by placing the burden on recipients to assure correct payments, the claimant should be on notice that the county may not have issued the correct grant in all cases. The claimant's reliance on the county conduct must be reasonable.

Thus, for example, if the claimant receives the maximum aid payment of \$607 for three persons when he had \$0 income and still received MAP of \$607 when he had \$1500 monthly income for several months, the ALJ should question the claimant to determine if he realized he should not have received the MAP of \$607. Even if the claimant was ignorant of the true state of facts (element 3), the reasonableness of the claimant's reliance on the county issuance of the full \$607 is a factor to consider in balancing.

Hardship in repayment is one of several factors to be considered in the balancing test.

ADDITIONAL EXAMPLES (Nonoverpayment situations)

Estoppel issues arise in non-overpayment cases also, most notably in foster care cases. (See the examples given previously on pages 6 and 7.

Another example of the application of estoppel in a non-overpayment case is as follows: The claimant applies for Medi-Cal in August 1993 for his daughter. He reports the correct date of birth for the child, who is over one year of age. The county erroneously issues the claimant a Notice of Action advising him that the daughter is eligible for a zero SOC for September 1993 as part of a program for babies up to one year old. The claimant calls the county and is assured that his daughter is eligible for the zero SOC program. Relying on that assurance, the claimant takes his daughter to a pediatrician and incurs \$230 in costs, when he could have obtained the equivalent services at a community facility at a much lower cost. The county discovers its error, and informs the claimant that the correct September SOC is \$360 and issues an MC 177S form for September 1993 obligating the claimant to pay \$360.

The requisite elements of estoppel are met. The claimant incurred injury because he changed his position and lost the opportunity to obtain medical services at the lower cost. After balancing, an estoppel grant would be appropriate.

SUMMARY

1. The elements are to be evaluated sequentially.

2. If any element is not met, the analysis will stop and the claim will be denied.
3. Most cases will involve the collection of overpayments or overissuances. However, estoppel can also be applied in other cases. For example, a new and earlier beginning date of aid may be established under estoppel principles. But, in the FS Program, the only thing that may be estopped is the collection of the overissuance. This is because the FS Program is solely federally funded, and eligibility requirements are strictly governed by federal law. Thus, the state cannot establish eligibility for benefits. However, the collection of FS overissuances has been broadly delegated to the states, so the state can equitably preclude collection of an overissuance. [See *Vang v. Healy*, 92 Daily Journal D.A.R. 13973; and *Vang v. Healy*, Memorandum and Order, Sacramento County Superior Court No. 370072, April 5, 1993].

The CDSS is appealing *Vang* to the State Court of Appeal. *Vang* has been stayed pending appeal. Administrative Adjudications has decided that despite such stay, it will begin implementing *Vang* in state hearings. If a judge grants estoppel in a FS case, he/she would order the county to cease collection of the FS overissuance and include the language "unless and until the CDSS notifies the county that estoppel does not apply in FS cases." This would occur if *Vang* is reversed on appeal.

4. Hardship in repaying an overpayment or overissuance is not evaluated under the 4th element, but under the 5th element, i.e., balancing.
5. Once estoppel is at issue in an AFDC administrative error overpayment case, THE ALJ MUST DO THE FOLLOWING:
 - (a) Ask the claimant if he received FS benefits.
 - (b) If total ineligibility for AFDC exists, ask whether the claimant would have applied for GA or GR.
 - (c) Ask the claimant if he would have applied for a RISP or Foster Care benefits where appropriate.
 - (d) When the AU has been determined to be ineligible for AFDC and received an overpayment due to increased earnings or hours of employment, ask if the claimant had child care costs. If so, this may require a remand to the county to determine whether lost TCC benefits will reduce the overpayment.

ENDORSED

NOT - 1999

By B. BEDDOW, Deputy

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Attorneys for Plaintiffs/Petitioners AUDREY RUSH, KERRY RUSH, PHYLLIS CRISP and all
others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

AUDREY RUSH, KERRY RUSH and
PHYLLIS CRISP, on behalf of themselves
and all others similarly situated,

Plaintiffs/Petitioners,

v.

ELOISE ANDERSON, Director, Department
of Social Services, and the CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES,

Defendants/Respondents.

CASE NO. 97CS01014

ORDER GRANTING
CLASS CERTIFICATION

Petitioners' Motion For Class Certification came regularly before this Court on July 2, 1999 for
hearing. Stephen Goldberg and Grace A. Galligher appeared as attorneys for petitioners Audrey
Rush, Kerry Rush and Phyllis Crisp. Deputy Attorney General Darryl Mansfield and Karlen
Harmison, Department of Social Services, Staff Attorney appeared as attorneys for respondents
Eloise Anderson, Director, Department Of Social Services, and the California Department Of
Social Services,

The Court, having considered the pleadings and other documents in support of and in

ORDER GRANTING CLASS CERTIFICATION

1 opposition to the motion for class certification, having heard the arguments of counsel, and being
2 fully advised in the matters, and good cause appearing therefor;

3 The Court hereby finds that there is a proper basis for certifying class and that there is an
4 ascertainable group.

5 IT IS HEREBY ORDERED that:

6 The motion for class certification is granted as to those individuals whose equitable estoppel
7 claims were denied because, although the first three elements of equitable estoppel were met, the
8 fourth element was not met and the hearing decision references the policy that "the inability to
9 repay an overpayment by itself does not constitute an injury".

10 The class is defined as follows:

11 "All AFDC, TANF or CalWorks claimants in administrative hearings
12 Conducted by the Department of Social Services or its successor agencies
13 on or after December 20, 1994, who have contended or will contend that an
14 action of a county or its agents, employees, contractors, or successors was
15 or will be completely or partially estopped and that claim is denied solely
16 because of a Department of Social Services finding that the claimant did
17 not satisfy the fourth element of equitable estoppel pursuant to the CDSS
18 Policy on Equitable Estoppel (Notes from the Training Bureau-Issue 94-
19 12-2a, December 20, 19994 and March 21, 19995, page 6); that the claimant's
20 inability to repay an overpayment, by itself, does not constitute injury."

21 The class definition will identify a community interest of people who have been denied
22 consideration for or possible offsets for overpayments for failure to meet the fourth element of
23 equitable estoppel, specifically, as it is set forth in CDSS Training Bureau manual with regard to the
24 claimant's inability to repay an overpayment not being by itself a basis for injury.

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29 ORDER GRANTING CLASS CERTIFICATION

1 IT IS FURTHER ORDERED that

2 The class definition does not extend to Plaintiff Crisp and other individuals similarly situated to
3 Ms. Crisp whose equitable estoppel claims were denied without an explicit finding that "the first
4 three elements of equitable estoppel were met, the fourth element was not met and there is no
5 reference in the hearing decision to the policy that the inability to repay an overpayment by itself
6 does not constitute an injury".

7 Dated: OCT - 1 1999
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12 HONORABLE LLOYD G. CONNELLY
13 JUDGE OF THE SUPERIOR COURT
14

15 Approved as to form on _____ by _____
16 DARRYL MANSFIELD,
17 Deputy Attorney General
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26 ORDER GRANTING CLASS CERTIFICATION
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Received by Superior Court
NOV 24 2000
SUPERIOR COURT,
Sacramento, California

B. BEDDOW, Deputy

ENDORSED
12 2000
By B. BEDDOW, Deputy

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

AUDREY RUSH, KERRY RUSH,
and PHYLLIS CRISP, on behalf of
themselves and all others similarly
situated,

Plaintiffs/Petitioners

v.

ELOISE ANDERSON, Director of the
California Department of Social Services,
and the CALIFORNIA DEPARTMENT
OF SOCIAL SERVICES,

Defendants/Respondents.

Case No. 97CS01014

CLASS ACTION

~~PROPOSED~~

**ORDER GRANTING
MOTION FOR ENTRY OF
JUDGMENT PURSUANT TO
TERMS OF STIPULATED
SETTLEMENTS**

1 Good cause appearing, Plaintiffs'/Petitioners' Motion for Entry of Judgment Pursuant to Terms of
2 Stipulated Settlements filed November 21, 2000, is granted. It is ordered that judgment be
3 entered on the terms stated in the Revised Stipulation for Settlement and the Stipulation Re:
4 Second Cause of Action attached hereto as Exhibits A and B respectively and incorporated
5 herein as though fully set forth. The court retains jurisdiction at the parties' request to enforce the
6 settlements until they are performed in full.

7 Dated: DEC 12 2000

LLOYD G. CONNELLY

8
9 LLOYD G. CONNELLY
JUDGE OF THE SUPERIOR COURT