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SHERWIN C. MACKENZIE, JR.
EDWARD F. NOWAK
EDWARD K. PURCELL
PRINCIPAL DEPUTIES

ANN M. MACKAY
PRINCIPAL DEPUTY
LOS ANGELES OFFICE

3021 STATE CAPITOL
SACRAMENTO 95814

110 STATE BUILDING
LOS ANGELES 90012

Legislative Counsel of California

GEORGE H. MURPHY

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GERALD ROSS ADAMS
DAVID D. ALVES
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JIMMIE WING
DEPUTIES

Honorable Anthony C. Beilenson
Senate Chamber

Welfare - #20078

Dear Senator Beilenson:

QUESTION NO. 1

Section 28 of the Welfare Reform Act of 1971 (Ch. 578, Stats. 1971) defines nonrecurring special needs as those arising from "sudden and unusual circumstances beyond the control of the needy family." Regulations of the Department of Social Welfare define nonrecurring special needs as those arising from catastrophic acts of God, such as fire or earthquake. Are these regulations valid?

OPINION AND ANALYSIS NO. 1

Statutory authority for the granting of non-recurring special needs to recipients of Aid to Families with Dependent Children is found in subdivisions (d) (2) and (d) (3) of Welfare and Institutions Code* Section 11450, as amended by the Welfare Reform Act of 1971 (Ch. 578, Stats. 1971), which read as follows:

* All further code references are to the Welfare and Institutions Code, unless indicated otherwise.

"(2) A family shall also be entitled to receive an allowance, at county expense after first deducting therefrom any funds received from the federal government, for nonrecurring special needs caused by sudden and unusual circumstances beyond the control of the needy family; provided, however, that such needs shall not be taken into consideration in determining the eligibility of the family for aid.

"(3) The department shall establish rules and regulations assuring the uniform application statewide of the provisions of this subdivision." (Emphasis added.)

The applicable portion of regulations on non-recurring special needs (Public Social Services Manual Section 44-265.31) established by the State Department of Social Welfare under the above statutory authority reads as follows:

".3. Nonrecurring Special Needs

".31. A special need shall be allowed to replace the items listed in .342 below [Section 44-265.342 contains a list of covered items considered to be essential non-recurring special needs, such as refrigerators, beds, space heaters, etc.] that are owned by the recipient when they are destroyed by fire, flood, earthquake, storm or other acts of God." (Emphasis added.)

The basic question here is whether or not the State Department of Social Welfare has reasonably interpreted the statutory language of the provisions quoted from Section 11450 by adopting regulations which restrict "sudden and unusual circumstances beyond the control of the needy family" to mean only catastrophic acts of God.

Construction of a statute by those whose duty it is to carry it into effect, while not controlling, is entitled to great weight, but whatever the force of administrative construction final responsibility for interpretation of law rests with the courts (Morris v. Williams, 63 Cal. 2d 733). In order to be valid, an administrative regulation must be consistent with and not in conflict with statute (Gov. C. Sec. 11374), and the courts are obligated to strike down any regulation which doesn't constitute a reasonable statutory interpretation (Macomber v. State Social Welfare Board, 175 Cal. App. 2d 614).

In our opinion the courts would construe the category "sudden and unusual circumstances beyond the control of the needy family" as used in Section 11450 as authorizing payment for nonrecurring special needs in a variety of urgent situations, subject to reasonable limitations. Therefore, in applying Government Code Section 11374 and the Macomber case to the facts, we think the courts would hold that an administrative regulation restricting allowance for nonrecurring special needs only to cases involving catastrophic acts of God is an unreasonable interpretation of statute and therefore void.

QUESTION NO. 2

Inasmuch as Welfare and Institutions Code Section 11450 sets specific dollar limits on recurring special needs, but does not so limit nonrecurring special needs, is the SDSW** regulation which imposes a \$300 ceiling on nonrecurring special needs valid?

OPINION AND ANALYSIS NO. 2

Subdivision (d)(1) of Section 11450 specifically limits recurring special needs to the amounts contained in the table prescribing minimum basic standards of adequate care for the Aid for Families with Dependent Children program. On the other hand, subdivision (d)(2) of Section 11450 states that a family shall be entitled to an allowance

** State Department of Social Welfare

at county expense for needs caused by sudden and unusual circumstances, with no dollar limit expressed. Section 11450 (d)(2), also quoted in Opinion and Analysis No. 1, provides the following:

"(2) A family shall also be entitled to receive an allowance, at county expense after first deducting therefrom any funds received from the federal government, for nonrecurring special needs caused by sudden and unusual circumstances beyond the control of the needy family; provided, however, that such needs shall not be taken into consideration in determining the eligibility of the family for aid." (Emphasis added.)

In our opinion the legislative intent expressed in this provision requires the counties to provide an allowance sufficient to replace items considered to be essential nonrecurring special needs. Subdivision (d)(3) of Section 11450 further provides that the department is required to establish rules and regulations which assure uniform application of the provisions relating to recurring and nonrecurring special needs.

The State Department of Social Welfare regulation applicable here is Public Social Services Manual Section 44-265.343, which provides: "The total amount allowable under this section [the nonrecurring special needs section as discussed in Opinion and Analysis No. 1] shall not exceed \$300." (Emphasis added.) The regulation also imposes specific dollar limits on individual items (e.g., refrigerators, essential furniture, etc.). We think this section would limit a grant for nonrecurring special need to \$300 per occurrence, since the regulation allows only a total of \$300.

As mentioned in Opinion and Analysis No. 1, although administrative interpretation is given great weight, Government Code Section 11374 and the Macomber case require that an administrative regulation be consistent with and not in conflict with statute, and that

such regulation constitute a reasonable interpretation of statute.

Therefore, one of the questions arising from the SDSW regulation imposing a dollar limit on nonrecurring special needs is whether or not such limit is within the regulatory function of assuring uniformity throughout the state, or whether it violates the legislative intent expressed in the statute.

The Legislature did not specifically prohibit the SDSW from establishing a dollar limit on nonrecurring special needs. However, we think a limit of \$300 per occurrence would be insufficient to carry out the legislative intent, discussed above, that nonrecurring special needs be adequately met. Factors that support such a legislative intent are found in examining the very nature of nonrecurring special needs. For example, under the SDSW's regulatory limitations on nonrecurring special needs discussed in Opinion and Analysis No. 1, needs arising from catastrophes such as fires or earthquakes would, in our opinion, be covered as nonrecurring special needs, and to limit losses of this type to a maximum of \$300 would not sufficiently restore habitable living conditions to a recipient who has lost several essential items in such a catastrophe. We think that nonrecurring special needs must be governed by guidelines such as reasonable dollar limits to assure their uniform allowance throughout the state, or such as provisions limiting the amount which may be expended for specific items like refrigerators or essential furniture. Thus, in our opinion, a regulation imposing an aggregate \$300 limitation in all cases would be void as an unreasonable interpretation of statute.

Very truly yours,

George H. Murphy
Legislative Counsel

Christopher Zirkle
By
Christopher Zirkle
Deputy Legislative Counsel

CZ:jlb

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11150.1)

SDSW Regulation
Filed 10/5/71

44-265 SPECIAL NEEDS FOR AFDC (Continued)

44-265

AFDC

No allowance shall be made for this purpose if the Services System is providing homemaker services to the family. (See Section 10-053.5.)

.224 The amount of the charge for special telephone service or equipment, such as the cost of an amplifying device when a member of the household is handicapped by a hearing problem.

.225 A standard allowance of \$5.00 per month when the health problem requires excessive use of one or more utilities.

.3 Nonrecurring Special Needs

.31 A special need shall be allowed to replace the items listed in .342 below that are owned by the recipient when they are destroyed by fire, flood, earthquake, storm or other acts of God.

.32 Replacement of any item under the provisions of Section .1 above shall be allowed only when the item is not available to the family without cost from any source.

.33 The county shall determine the most feasible and economic method of replacement including the provision of used, serviceable items, and such method shall be binding upon the recipient. If the recipient is to purchase the item(s), proof of purchase may be required by the county.

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Effective 10/1/71

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11180.1)

44-265 SPECIAL NEEDS FOR AFDC (Continued)

44-265

AFDC

.34 The amount of the allowance shall be calculated as follows:

.341 Determine the actual cost, including sales tax, of the replacement item.

.342 The amount determined in .341 above or the maximum amount listed below, whichever is less, shall be allowed:

a. Clothing - \$25 for each person in the Family Budget Unit

b. Bedding, dishes, and kitchen utensils - \$12 for each person in the Family Budget Unit

c. Cook stove - \$142

d. Refrigerator - \$190

e. Space heater - \$73

f. Double bed, including mattress - \$143

g. Other essential furniture - \$50

.343 The total amount allowed under this section shall not exceed \$300.

44-267 SPECIAL NEED FOR CHILD IN FOSTER CARE

44-267

.1 For Payment to Foster Family or Institution

The cost of additional clothing, including an initial supply of clothing and school or other uniform when not included in the basic foster care.

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