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Sacramento, California  
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Honorable Anthony C. Beilenson  
Senate Chamber

Welfare - #20043

Dear Senator Beilenson:

## QUESTION

You have asked whether the Department of Social Welfare may require a recipient of AFDC<sup>1</sup> to utilize all of his liquid assets before qualifying for special needs.

## OPINION

In our opinion the department may not require a recipient of AFDC to utilize all of his liquid assets before qualifying for special needs.

## ANALYSIS

Subdivision (d) (1) of Section 11450<sup>2</sup> provides as follows:

"(d) (1) In addition to the amounts payable under subdivision (a) of this section and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. The county shall pay the full cost of the additional aid furnished needy families pursuant to this subdivision after first deducting therefrom

<sup>1</sup> Aid to families with dependent children.

<sup>2</sup> All code references are to the Welfare and Institutions Code.

any funds received from the federal government. Such recurring special needs shall include but not be limited to special diets upon the recommendation of a physician, and unusual costs of transportation, laundry, housekeeping service, telephone, and utilities not to exceed the minimum basic standards of adequate care."

The Department of Social Welfare's regulations concerning special needs provide as follows (SDSW - Regs. Sec. 44-265.13; SDSW - Manual - EAS Sec. 44-333.16):

"44-265 ...

".13 The cost of any special need shall be met by first requiring the recipient to utilize his liquid assets (as defined in Section 44-333.16). However, when the allowance for a special need cannot be met in full by the recipient's liquid assets, it shall be allowed as a part of the grant in accordance with the procedures outlined in Section 44-315.511 when federal participation is available. There will be no state participation in the cost of any special need granted to an AFDC recipient."

"44-333 ...

".16 Liquid Assets

"'Liquid assets,' as used herein, means resources which are immediately available, or can be made immediately available, for support during a future period of grant reduction to adjust an overpayment, or for a current cash adjustment or repayment. This includes cash or negotiable stocks or bonds but excludes any portion of the income or public assistance grant(s) to which the recipient was eligible in the month(s) of overpayment or to which he will otherwise be eligible in the month(s) of adjustment and which will be required to meet need under the appropriate assistance standard."

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As we read the regulations quoted above, a recipient of AFDC will not be entitled to an allowance for a special need until he first uses any cash or negotiable securities he possesses to meet such need.

In addition to exemptions granted to him for certain real property and personal effects (W. & I. C. Secs. 11155, 11255), a recipient of AFDC is entitled to retain a personal property reserve of \$600 (W. & I. C. Sec. 11257).

According to the department's own regulations, the personal property reserve may consist in whole or in part of cash and negotiable securities (SDSW Manual - PSS - Sec. 41-311). We doubt that it is within the department's province to exclude such assets unless an exemption is first accorded in the amounts required to be exempted by law.

The law also states that an AFDC recipient is entitled to an allowance for recurring and nonrecurring special needs (W. & I. C. Sec. 11450, subd. (d)). While it is true that such allowance is paid from county funds, and that the department is given a certain amount of discretion in determining the types of needs that will be covered, the right to an allowance is bestowed in categorical terms by the statute. There is no other qualification stated, and certainly nothing to suggest that the recipient must use exempt resources as a condition to obtaining the allowance.

While it is true that the administrative interpretation of a statute, such as embodied in regulations of the State Department of Social Welfare, will be accorded great respect by the courts and will be followed if not clearly erroneous (Adoption of Barnett, 54 Cal. 2d 370), such an interpretation cannot prevail if inconsistent or unauthorized by applicable laws (Bekins Van Lines, Inc. v. State Board of Equalization, 62 Cal. 2d 84).

If the department's regulation is construed to require a recipient to use a portion of his exempt property, we think that the department's construction


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of the statute is erroneous, in that it places an unauthorized restriction on the right of an AFDC recipient to receive a special need allowance. So construed, it forces him to use a portion or all of a property reserve which is exempted by statute, in order to qualify for an allowance which the law grants to him without qualification.

We conclude, therefore, that the Department of Social Welfare may not require a recipient of AFDC to utilize his liquid assets exempt by law before qualifying for a special need allowance.

Very truly yours,

George H. Murphy  
Legislative Counsel

By   
Edward K. Purcell  
Deputy Legislative Counsel

EKP:db

Multiple Grant Households

CONTINUATION SHEET  
FOR FILING ADMINISTRATIVE REGULATIONS  
WITH THE SECRETARY OF STATE  
(Pursuant to Government Code Section 11380.1)

SDSW Regulation  
Filed 10/5/71

44-115 EVALUATION OF INCOME IN KIND (Continued)

44-115

AB  
ATD  
OAS  
AFDC

- .8 One or More Recipients of AFDC Resides in the Same Household with  
One or More Recipients of Adult Aids

.811 When the above situation exists, if the recipient's  
(Adult Aid or FBU) housing and utilities allowance  
exceeds his share of the actual cost of housing and  
utilities (including telephone), the excess shall be  
considered in-kind income and taken into consideration  
in computing the grant.

.812 Each recipient's share shall be calculated by dividing  
the total actual cost of housing and utilities (including  
telephone), by the number of persons (adults and minors,  
needy and nonneedy) residing in the household.

- .9 For purposes of this section the following shall be considered as  
the in-kind income value of certain items of need for an FBU:

DO NOT WRITE IN THIS SPACE

Effective 10/1/71