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Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California
November 2, 1971

Honorable Anthony C. Beilenson
Senate Chamber

Welfare - #20084

Dear Senator Beilenson:

QUESTION

You have asked whether regulation 44-115.8 of the Department of Social Welfare is valid.

OPINION

In our opinion such regulation is invalid.

ANALYSIS

Public Social Services Manual regulation 44-115.8, newly adopted by the State Department of Social Welfare, contains the following provisions:

".8 One or More Recipients of AFDC¹ Resides in the Same Household with One or More Recipients of Adult Aids²

".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.

¹ Aid to Families with Dependent Children.

² Old Age Security, Aid to the Blind, and Aid to the Totally Disabled.

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".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."

As to the law in general regarding these provisions, administrative regulations adopted by those having the duty of enforcement and interpretation of a statute are generally entitled to great weight in the courts, but whatever the force of administrative construction, final responsibility for interpretation of law rests with the courts (Coca-Cola Co. v. State Board of Equalization, 25 Cal. 2d 918, and Morris v. Williams, 67 Cal. 2d 733). Such regulations are invalid unless they are consistent with and not in conflict with statute, and they cannot alter or enlarge the terms of the legislative enactment (Eisenberg's White House v. State Board of Equalization, 72 Cal. App. 2d 8).

The State Department of Social Welfare does have regulatory authority to set housing and utility need standards for recipients of the categorical aid programs under Welfare and Institutions Code Section 11452.³ However, Section 44-115.8 as quoted above, purports to treat a portion of the adult aid recipient's grant as income-in-kind to the family, rather than establishing housing and utility need standards.

In all the categorical aid programs the recipient's housing and utilities allowance is required by law to be fixed in a monetary amount (see, e.g. W. & I.C., Sec. 12159, relating to aid to the aged). The regulations, supra, would reduce the recipient's allowance for housing and utilities (including telephone) based upon the computed pro rata share of rent of all persons living with the recipient, designating any excess over such pro rata share as income in kind to the family.

Section 21 (3) of Article XIII of the California Constitution concerning aid to the blind provides, in pertinent part, as follows:

"... no person concerned with the administration of aid to needy blind persons shall

³ Old Age Security, Aid to the Blind, Aid to the Totally Disabled, and Aid to Families with Dependent Children.

dictate how any applicant or recipient shall expend such aid granted him, and all money paid to a recipient of aid shall be intended to help him meet his individual needs and is not for the benefit of any other person, and such aid when granted shall not be construed as income to any person other than the blind recipient of such aid... ."

Section 11006 of the Welfare and Institutions Code provides that all money paid to a recipient or recipient group as aid is intended to help the recipient meet his individual needs or, in the case of a recipient group, the needs of the recipient group, and is not for the benefit of any other person. Aid granted cannot be construed as income to any person other than the recipient or, in the case of a recipient group, the recipient group.

Thus, under the legislative intent expressed in Article XIII, Section 21 of the California Constitution and Welfare and Institutions Code Section 11006, in our opinion the aid granted to an adult recipient of aid cannot be construed as income to a recipient of AFDC or for his benefit, and inversely aid granted to a recipient of AFDC cannot be construed as income to an adult recipient of aid or for his benefit (e.g., see Nov. 4, 1952, ballot pamphlet relating to the constitutional amendment on Aid to the Blind).

Based upon the authority of the State Department of Social Welfare to set housing and utility need standards, we think the department can reduce grants in shared housing situations through establishment of such standards taking into consideration actual housing needs. However, in our opinion, housing and utility allowances cannot be treated as income-in-kind.

Very truly yours,

George H. Murphy
Legislative Counsel

Christopher Zirkle

By
Christopher Zirkle
Deputy Legislative Counsel

CZ:mmm

Implementation of Emergency Regulations Which Cite SB 796

As Their Basis Where No Such Basis Exists

In-Kind Income

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

AFDC

.6 Nonneedy Relatives

Natural or adoptive parents, stepfathers, or adults whose needs are met through any categorical aid program shall not be considered to be nonneedy relatives for purposes of this section.

.61 Treatment of Contributions

.611 The excess of the in-kind income value for housing and utilities (see .9 below) included in the minimum basic standard of adequate care figure (Section 44-315.511(a)) for the appropriate size Family Budget Unit over the increased cost of housing and utilities to the nonneedy relative caused by the presence of the AFDC child(ren) in his household shall be considered a contribution in-kind to the Family Budget Unit.

.612 If the nonneedy relative wishes to contribute to the support of the child(ren) in his care in excess of the amount computed in .61 above, he may do so by either identifying the need item to be contributed using .8 below or by specifying an exact dollar amount to be contributed. Any amounts so specified are considered net income to the AFDC child(ren).

DO NOT WRITE IN THIS SPACE

Effective 10/1/71

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11180.1)

44-115 EVALUATION OF INCOME IN KIND (Continued)

44-115

AFDC

.91 Housing

- a. one-person FBU - \$55/per month
- b. two-person FBU - \$74/per month
- c. three-person FBU - \$81/per month
- d. four-person or larger FBU - \$86/per month

.92 Utilities (including telephone):

- a. one-person FBU - \$12/per month
- b. two-person FBU - \$13/per month
- c. three-person FBU - \$14/per month
- d. four-person or larger FBU - \$15/per month

.93 Food

- a. one-person FBU - \$29/per month
- b. two-person FBU - \$65/per month
- c. three-person FBU - \$83/per month
- d. four-person FBU - \$103/per month
- e. five-person FBU - \$124/per month
- f. six-person FBU - \$145/per month
- g. seven-person FBU - \$161/per month
- h. eight-person FBU - \$177/per month
- i. nine-person FBU - \$193/per month
- j. ten-person or larger FBU - \$209/per month

.94 Clothing - \$9 for each person per month

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