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Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California
October 26, 1971

Honorable Anthony C. Beilenson
Senate Chamber

Welfare Reform Act of 1971 - #20068

Dear Senator Beilenson:

QUESTION

You have asked, assuming the validity of Section 11451.6 of the Welfare and Institutions Code (but see County of Alameda et al. v. Co. W.R.O. et al., California Supreme Court, 9/21/71), whether the Director of the Department of Social Welfare's regulation reducing the standard allowance for work-related expenses for recipients of aid to families with dependent children on the basis of days worked is consistent with Section 11451.6.

OPINION

Assuming the validity of Section 11451.6, it is our opinion that the director may not by regulation reduce the standard allowance for work-related expenses for recipients of aid to families with dependent children on the basis of days worked.

ANALYSIS

In the Welfare Reform Act of 1971 (Stats. 1971, Ch. 578), the Legislature added Section 11451.6 to the Welfare and Institutions Code to permit recipients of aid to families with dependent children the right to deduct \$50 of their earned income for work-related expenses, without reduction in their grants. Section 11451.6 provides as follows:

"11451.6. Notwithstanding Section 11008, any exemptions from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars (\$50)

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per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Interagency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967)."

The regulation of the department concerning work-related expenses is as follows (S.D.S.W. Regs. No. 44-113.241):

".24 Work Expenses-Amounts Allowable Per Month

.241 All items listed in 44-113.23, except child care and business expenses - A standard deduction shall be allowed for these items according to the number of days worked during the month as follows:

1 through 10 days	\$25.00
over 10 days	\$50.00"

Section 11451.6 limits work-related expenses to a standard set deduction of \$50 per month, except for child care, notwithstanding the exemption for work-related expenses authorized by other provisions of law. Work-related expenses are expenses to be deducted from earned income after other statutory disregards from earned income are taken into consideration (45 C.F.R. Pt. 233(a) (7)). Thus, in order to take advantage of the total \$50 deduction to which the recipient is entitled, he would have to have an earned income of \$50 or more income per month.

The director is authorized to promulgate regulations not in conflict with law (W. & I.C. Secs. 10553, 10554 and 10604). A regulation reducing the set allowance for work-related expenses on the basis of days worked is inconsistent with the provisions of law discussed.

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Thus, in our opinion, assuming the validity of Section 11451.6, the director may not by regulation reduce the standard allowance for work-related expenses on the basis of days worked.

Very truly yours,

George H. Murphy
Legislative Counsel

By *Mary Shaw*
Mary Shaw
Deputy Legislative Counsel

MS:lm

CE 796 (Child Care)

Smo. 28.1. Section 11451.6 is added to the Welfare and Institutions Code, to read:

11451.6. Notwithstanding Section 11008, any exemptions from earned income for work-related expenses authorized under other provisions of this chapter shall be limited to a standard allowance of fifty dollars (\$50) per month plus reasonable and necessary costs of child care. For purposes of this section, reasonable costs of child care are defined as actual costs, not to exceed the costs of securing child care available in the community which meets the minimum standards of the Federal Inter-agency Day Care Agreement of Section 107 of Public Law 90-222 (Economic Opportunity Act amendments of 1967).

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11130.1)

SDSW Regulation
Filed 9/29/71

44-113 NET INCOME (Continued)

44-113

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.242 Child Care - The reasonable and necessary cost of obtaining such care shall be allowed when the county determines that adequate care for the recipient's children cannot be provided during his working hours by nonworking persons in his household. However, the amount allowed shall not exceed the actual cost of securing such care through a day care facility meeting the standards outlined in Chapter 30-350 (Child Care Services) when the county determines that such a facility is available to the recipient.

.243 Business Expenses - The full cost of expenses which are incurred in the production of income. The recipient must bear the full burden of proof for justifying the existence of and need for any expense reimbursed under this classification.

44-113 NET INCOME (Continued)

44-113

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.25 Other Deductions from Net Income

In addition to the deductions described above, deductions for other expenses of persons with income from any source, shall be made as follows:

Effective 10/1/71