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Sacramento, California
October 29, 1971

Honorable Anthony C. Beilenson
Senate Chamber

Welfare - #20071

Dear Senator Beilenson:

QUESTION

You have asked whether State Department of
Social Welfare Regulation 44-113.242 is valid.

OPINION

In our opinion such regulation is invalid.

ANALYSIS

Section 11451.6 authorizes an exemption from
the earned income of an AFDC*recipient for the reason-
able and necessary costs of child care. Such costs 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 Requirements (W. & I.C. 11451.6).

The Department of Social Welfare provides for
the child care exemption from earned income as follows
(SDSW - Regs., Sec. 44-113.242):

* Aid to Families with Dependent Children.

"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."

Literally, this provision would authorize the earned income deduction for child care only when adequate care for the recipient's children cannot be provided during working hours by nonworking persons in his household. Under Section 11451.6, the recipient is entitled to an earned income exemption for the reasonable and necessary cost of child care.

The Director of the Department of Social Welfare is authorized to adopt regulations, orders or standards of general application to implement, interpret or make specific the law enforced by the department which are consistent with law (W. & I.C., Secs. 10553, 10554 and 10604). Regulations which are inconsistent with state law are invalid (Morris v. Williams, 67 Cal. 2d 733, 748).

Under the regulations the director would purportedly be assuming that no cost was necessary as the nonworking person in the AFDC home who was capable of providing adequate care for the recipient's children was not only providing such care but also providing such care without cost to the recipient.

Since the recipient is entitled to an earned income exemption for reasonable and necessary costs of child care (W. & I.C., Sec. 11451.6) a regulation denying such costs on the assumption, without inquiry, that a nonworking, noncaretaker relative capable of providing adequate child care, provides such care without cost is inconsistent with the law.

Honorable Anthony C. Beilenson - p. 3 - #20071

Thus, in our opinion, State Department of
Social Welfare Regulation 44-113.242 is invalid.

Very truly yours,

George H. Murphy
Legislative Counsel

By *Mary Shaw*
Mary Shaw
Deputy Legislative Counsel

MS:jim

796, Section 28 (in part) (Special Needs)

(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.

SB 796 (OAS Grants)

Sec. 84. Section 12101.1 is added to the Welfare and Institutions Code, to read:

12101.1. Relatives' contributions under Section 12101 shall be paid to the county department and be treated by the county as recoveries on aid granted.

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

SDSW Regulation
Filed 9/24/71

43-103 EFFECT OF RELATIVE RESPONSIBILITY ON AID PAYMENTS (Continued) 43-103

OAS

Only the contributions actually received by the county on behalf of an applicant or recipient or paid directly to the applicant or recipient are considered in determining his eligibility or the amount of grant to which he is eligible. However, failure of the responsible relative to cooperate in providing the information necessary to determine his liability or failure of the relative to meet his liability as fixed by the county are bases for a report by the county to the district attorney or other civil legal officer for appropriate action.

43-109 RESPONSIBILITY OF ADULT CHILD

43-109

The maximum liability of an adult child shall be determined under the Relatives' Contribution Scale (see .31 below) which gives consideration to the child's net income and the number of his dependents. When the net monthly income of the adult child exceeds \$825, add \$5 to the appropriate subcolumn of Column C for each additional increment of \$25 in the adult child's net monthly income.

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Effective 10/1/71

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11160.1)

43-109 RESPONSIBILITY OF ADULT CHILD (Continued)

43-109

OAS | .31 Relatives' Contribution Scale

RELATIVES' CONTRIBUTION SCALE

A	B	C					
If gross monthly income is:	Then net monthly income is:	Maximum required monthly contribution if number of persons dependent upon income is:					
		1	2	3	4	5	6 or more
\$ 0 - 467.99	\$ 0 - 350	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
468.00 - 501.33	351 - 375	20	0	0	0	0	0
501.34 - 534.66	376 - 400	25	0	0	0	0	0
534.67 - 567.99	401 - 425	30	20	0	0	0	0
568.00 - 601.33	426 - 450	35	25	0	0	0	0
601.34 - 634.66	451 - 475	40	30	20	0	0	0
634.67 - 667.99	476 - 500	45	35	25	0	0	0
668.00 - 701.33	501 - 525	50	40	30	20	0	0
701.34 - 734.66	526 - 550	55	45	35	25	0	0
734.67 - 767.99	551 - 575	60	50	40	30	20	0
768.00 - 801.33	576 - 600	65	55	45	35	25	0
801.34 - 834.66	601 - 625	70	60	50	40	30	20
834.67 - 867.99	626 - 650	75	65	55	45	35	25
868.00 - 901.33	651 - 675	80	70	60	50	40	30
901.34 - 934.66	676 - 700	85	75	65	55	45	35
934.67 - 967.99	701 - 725	90	80	70	60	50	40
968.00 - 1001.33	726 - 750	95	85	75	65	55	45
1001.34 - 1034.66	751 - 775	100	90	80	70	60	50
1034.67 - 1067.99	776 - 800	105	95	85	75	65	55
1068.00 - 1101.33	801 - 825	110	100	90	80	70	60

DO NOT WRITE IN THIS SPACE

Columns B and C of the above scale constitute the Relatives' Contribution Scale as it appears in the law.

Effective 10/1/71

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11180.1)

43-109 RESPONSIBILITY OF ADULT CHILD (Continued)

43-109

OAS |

Column A is included for convenience in converting gross income to net income when the income of the adult child includes only his salary or wages. Under the law, the differential between gross and net income for such child is a flat 25 percent and this is the differential between the gross income shown in Column A and the net income shown in Column B.

If the adult child's income includes income from property, self-employment, business, etc., his total net income must be determined under the appropriate provisions in Section 43-105.4. Net income so determined is then used in determining his maximum liability under Column C of the scale.

43-109 RESPONSIBILITY OF ADULT CHILD (Continued)

43-109

OAS | .5 Remittance of Contributions

The responsible relative must remit to the county welfare department the amount prescribed in Section 43-109.31, less the value of any in-kind contributions described in Section 43-109.4.

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Effective 10/1/71

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE

(Pursuant to Government Code Section 11380.1)

43-109 RESPONSIBILITY OF ADULT CHILD (Continued)

43-109

OAS

.51 Contributions in excess of the amount required in Section 43-109.4 may be remitted directly to the applicant or recipient, in which case the applicant or recipient must report such contributions to the county welfare department as income.

.6 Disposition of Contributions in Excess of Amount of Aid Granted

If, because more than one adult child contributes toward the support of a parent, the total monthly contribution exceeds the amount of aid paid in such month, the excess amount shall be credited toward the succeeding month's support obligation; provided, however, such excess shall not be credited to the extent that any such adult child has not fully met his support obligation in previous months.

43-111 PROCEDURE FOR DETERMINING NONLIABILITY OR LIABILITY OF
AN ADULT

43-111

OAS

.42 Adult Child Fails to Meet His Liability as Fixed by the County

The county granting aid shall request the district attorney or other civil legal officer to proceed against such adult child as provided in W&IC Section 12100 and Section 1650 et seq. of the Code of Civil Procedure.

DO NOT WRITE IN THIS SPACE

Effective 10/1/71