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# Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California  
October 26, 1971

Honorable Anthony C. Beilenson  
Senate Chamber

Welfare - #20085

Dear Senator Beilenson:

## QUESTION

Assuming that prior to October 1, 1971, the operative date of Section 12101.1 of the Welfare and Institutions Code,\* that a responsible OAS\*\* relative was making his required contributions directly to the OAS recipient and that such contribution was taken into consideration in determining the monthly aid grant, you have asked whether after October 1, 1971, the county department is required to increase the recipient's aid grant due to the operation of Section 12101.1.

## OPINION

In our opinion, under such assumption, while the net cost to the county will not be changed by reason of the operation of Section 12101.1, the department is required on and after October 1, 1971, to increase the recipient's aid grant due to the operation of Section 12101.1.

## ANALYSIS

Section 12101.1 requires that OAS relatives' contributions under Section 12101 be paid to the county department and be treated by the county as recoveries on aid granted. This provision was operative on October 1, 1971 (Ch. 578, Stats. 1971, Sec. 43).

\* All future section references to the Welfare and Institutions Code.

\*\* Aid to the aged.

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Honorable Anthony C. Beilenson - p. 2 - #20085

While under the assumption above, prior to the operative date of that section, the relatives' contribution was paid directly to the recipient, after that date the relatives' contribution will be paid to the county department and treated as a recovery on aid granted. Since the recipient does not receive the contribution from the relative there will be no such contribution to take into consideration in determining the grant. Thus, the recipient's grant would be increased accordingly.

Thus, while the net amount of cost to the county will not be changed by reason of the operation of Section 121011, in our opinion, under the assumption mentioned above, the county department on and after October 1, 1971, is required to increase the recipient's grant.

Very truly yours,

George H. Murphy  
Legislative Counsel

By *Mary Shaw*  
Mary Shaw  
Deputy Legislative Counsel

MS:mc

SE 796 (Stepfather Income)

Sec. 8.6. Section 5127.5 is added to the Civil Code, to read:  
5127.5. Notwithstanding the provisions of Section 5125 or 5127 granting the husband the management and control of the community property, to the extent necessary to fulfill a duty of a wife to support her children, the wife is entitled to the management and control of her share of the community property.

The wife's interest in the community property, including the earnings of her husband, is liable for the support of her children to whom the duty to support is owed, provided that for the purposes of this section, prior support liability of her husband plus three hundred dollars (\$300) gross monthly income shall first be excluded in determining the wife's interest in the community property earnings of her husband.

The wife may bring an action in the superior court to enforce such right provided that such action is not brought under influence of fraud or duress by any individual, corporation or governmental agency.

A natural father is not relieved of any legal obligation to support his children by the liability for their support imposed by this section and such contribution shall reduce the liability to which the interest of the wife in the community property is subject.

UNITED STATES  
DEPARTMENT OF SOCIAL WELFARE

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IS MORE THAN \$300 PLUS HIS PRIOR LIABILITY THE "HALF OF GROSS INCOME" IS COUNTED AS A RESOURCE. IF THE EXEMPTION BRINGS THE AMOUNT BELOW ONE HALF OF HIS GROSS INCOME, THEN THE DIFFERENCE IS COUNTED AS A RESOURCE TO THE F.B.U.

- EXAMPLE:

- A. STEP-FATHER HAS A GROSS INCOME OF \$700 AND NO PRIOR LIABILITY. \$700 MINUS \$300 IS \$400. ONE HALF OF \$700 IS \$350. THE RESOURCE TO THE MOTHER IS \$350.
- B. WITH THE SAME INCOME THE STEP-FATHER HAS A PRIOR LIABILITY OF \$115. \$700 MINUS \$300 IS \$400 LESS THE \$115 LEAVES \$285 WHICH IS LESS THAN ONE HALF OF THE GROSS. THE RESOURCE TO THE MOTHER IS \$285.

ROBERT B. CARLSON  
DIRECTOR OF SOCIAL WELFARE

(PG. 6 OF 6)

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su 7:15 P.M.

CONTINUATION SHEET  
FOR FILING ADMINISTRATIVE REGULATIONS  
WITH THE SECRETARY OF STATE  
(Pursuant to Government Code Section 11110.1)

SDSW Regulation  
Filed 9/24/71

43-113 RESPONSIBILITY FOR SUPPORT (Continued)

43-113

AFDC | .6 Stepfather

A stepfather is responsible for the support of:

- .61 His children from another union living outside the home; and
- .62 His children, natural and adopted, living in the home; and
- .63 His wife.

A stepfather is not legally responsible for the support of his wife's children by another man, unless he has adopted them. However, his wife's interest in the community property, including the earnings of her husband (see Section 44-101.5 for definition of earnings) shall be considered available for the support of his stepchild(ren). See Section 44-133.5.

If the stepfather and his legal dependents living in the home are needy but are ineligible or refuse to apply for public assistance or General Relief, a determination of possible misuse of AFDC funds shall be made, as specified in Section 20-101.

44-133 TREATMENT OF INCOME - AFDC (Continued)

44-113

AFDC | .5 Stepfather's Income

- .51 When the stepfather is included in the family budget unit (see Sections 44-213.3 and 44-213.4), his net nonexempt income is net income to the family budget unit for purposes of both eligibility determination and grant computation.

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CONTINUATION SHEET  
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(Pursuant to Government Code Section 11190.1)

44-133 TREATMENT OF INCOME - AFDC (Continued)

44-133

AFDC

.52 When the stepfather is excluded from the family budget unit but his wife requests that her needs, or the needs of any of his children, including their children in common, be taken into consideration in determining the eligibility of, or in computing the amount of aid payment for her eligible children, the county must determine his ability to support these persons and himself on the basis of the AFDC Minimum Basic Standard of Adequate Care (Section 44-212.1). Allow the deduction from earnings from work expenses in accordance with Section 44-113.23 and .24 but do not allow earned income exemption.

.521 If his income meets their combined need, exclude his wife and his children from the AFDC family budget unit for purposes of both eligibility determination and grant computation. His wife's income, including her community interest in his income, is considered net income to the family budget unit. Her community interest in his income is computed as follows:

a. Earnings: The remainder, up to one-half of his total earnings, after deducting the following:

- The stepfather's prior support liability. (For purposes of this section, the prior support liability of the stepfather shall be limited to the actual amounts contributed by him whether voluntarily or under court order, to the support of his children by a woman other than his current wife.); and

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44-133

TREATMENT OF INCOME - AFDC (Continued)

44-133

AFDC

- \$300

plus

- b. Other Income -- one-half of all community income, such as interest and dividends, when not included in the determination set forth in Item a., above.

.522 If his income does not meet their combined need, include in the family budget unit his wife and his children for whom she requests aid for purposes of eligibility determination and include only his wife for purposes of grant determination. Net income to the family budget unit from the stepfather shall be computed as follows:

- a. The wife's community interest in the stepfather's income as computed in .521 above; plus
- b. The remainder after subtracting the following amounts from his gross income
- the amount computed in a. above
  - work-related expenses in accordance with Sections 44-113.23 and 44-113.24
  - his needs, and those of the members of the stepfather unit who are excluded from the family budget unit, computed on the basis of the standard or assistance (see Section 44-315.511(a)). For purposes of this section the stepfather unit is the stepfather plus his children, including children he has in common with his wife who are not included in the FBU.

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Effective 10/1/71