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Sacramento, California
November 1, 1971

Honorable Anthony C. Beilenson
Senate Chamber

Welfare Reform Act of 1971 - #20086

Dear Senator Beilenson:

You have asked two questions relating to Section 5127.5 of the Civil Code which we have answered below.

QUESTION NO. 1

May the Department of Social Welfare by regulation define the wife's community property interest in her husband's earnings for the purpose of supporting her children by a former husband under Section 5127.5 to mean the remainder, up to one-half of his total earnings, after deducting his prior support liability plus \$300?

OPINION AND ANALYSIS NO. 1

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. 10053, 10054, and 10604).

When a state agency is authorized by law "to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute" (Gov. C. Sec. 11374; Morris v. Williares (1967), 67 Cal. 2d 733, 748).

Section 5127.5 of the Civil Code provides as follows:

"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 of 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."

The Department of Social Welfare computes the wife's community property interest in the earnings of her husband for the purposes of Section 5127.5 of the Civil Code as follows (DWS Regs. Sec. 44-133 .521 a.):

".521 ... 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

" - \$300 ..."

Section 5127.5 clearly states that prior support liability of the stepfather plus \$300 gross monthly income shall first be excluded in determining the wife's interest in the community property earnings of the husband.

The character of a wife's interest in the community property is that of a half owner (Bank of America Nat. Trust & Savings Ass'n. v. Rogan, 33 F. Supp. 183; Gist v. U.S., 423 Fed. 2d 1118).

Thus, in our opinion, the stepfather's prior support liability plus \$300 gross monthly income must first be excluded from his total earned income prior to determining the wife's one-half interest.

The department's regulation defines the wife's community property interest in the stepfather's earnings as the remainder, up to one-half of his total earnings, after deducting his prior support liability, plus \$300. This regulation is capable of more than one interpretation and thus its validity would depend upon its application by the department. The regulation may mean one-half of the entire earned income or the entire balance of earned income after deductions, whichever is less. It may also mean one-half of the balance of earned income after deductions.

Since it is our opinion that the deductions must first be excluded from his total earned income prior to determining the wife's one-half interest, an interpretation by the department of its regulation to mean one-half of the balance of earned income after deductions would be consistent with Section 5127.5.

QUESTION NO. 2

May the department by regulation limit the stepfather's prior support liability under Section 5127.5 to the actual amounts contributed by him whether voluntary or by court order, to the support of his children by a woman other than his current wife, rather than the actual amount which he is liable to pay?

OPINION NO. 2

In our opinion the department may not by regulation make such a limitation.

ANALYSIS NO. 2

Section 5127.5 provides first for the exclusion of prior support liability of the stepfather in determining the wife's interest in the community property earnings of her husband.

The department of Social Welfare has by regulation defined the stepfather's prior support liability as follows (SDSW 44-133.521 a.):

"a. Earnings: ...

" - 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.); ..."

Liability has been defined as a condition which creates a duty to perform an act immediately or in the future (Union Oil Co. of California v. Basalt Rock Co., 30 Cal. App. 2d 317), a duty which must at least eventually be performed; every kind of legal obligation, responsibility or duty (Vandergrift v. Riley, 16 P. 2d 734, 736).

Literally, prior support liability would include any support which he is legally obliged to pay and would include any arrearages in such support that have not been paid. As such liability is not the actual amount of the contribution but the actual amount of the legally enforceable support obligation, we see no basis to depart from the literal interpretation of Section 5127.5.

Honorable Anthony C. Beilenson - p. 5 - #20086

The department's regulation fixing the deduction for the stepfather's prior support liability as the actual amounts contributed by him which may be more or less than his support liability would be inconsistent with the literal interpretation of Section 5127.5 which requires the deduction of the liability.

Thus, in our opinion, the department may not by regulation fix the deduction for the stepfather's prior support liability under Section 5127.5 as the actual amounts contributed by him, whether voluntary or by court order, to the support of his children by a woman other than his current wife.

Very truly yours,

George H. Murphy
Legislative Counsel

By *Mary Shaw*
Mary Shaw
Deputy Legislative Counsel

MS:em

726 (150% Limitation on Gross Income)

Sec. 25.2. Section 11267 is added to the Welfare and Institutions Code, to read:

11267. To the extent permitted by federal law and regulations, no child or family is eligible to receive aid under this chapter if the total gross income, exclusive of grant payment, prior to any deductions available to such child or family exceeds 150 percent of the minimum basic standard of adequate care applicable to such child or family.

9/2/71 Telegram from SDSW to County Welfare Directors

(FGP CONT.)

6. COMPUTE AND ALLOW TRAINING EXPENSES AS AT PRESENT PENDING ANY FUTURE REGULATION CHANGES.
7. SECTION 11267 PROVIDES A 150% GROSS INCOME LIMITATION TO THE EXTENT PERMITTED BY FEDERAL LAW AS A CONDITION OF INITIAL AND CONTINUING ELIGIBILITY. THESE CASES SHOULD BE IDENTIFIED PENDING FURTHER DIRECTION BY SDSW.
8. DO NOT INVOKE DURATIONAL RESIDENCE (SECTION 11252.5). THIS WILL BE DONE AT THE DIRECTION OF THE STATE DIRECTOR AT A LATER DATE.
9. ALL SPECIAL NEEDS MAY BE REMOVED FROM THE OCTOBER 1 GRANT AND BE PAID AS A SEPERATE PAYROLL. IF INCLUDED IN THE GRANT, THE PAYROLL MUST IDENTIFY THE AMOUNT OF SPECIAL NEEDS ALLOWED AS A SEPERATE FIGURE SINCE THESE ARE ONLY FEDERAL AND COUNTY SHARED ITEMS.
10. THE MAXIMUM AMOUNT ALLOWED FOR RECURRING SPECIAL NEEDS IS THE DIFFERENCE BETWEEN THE "MAXIMUM AID TABLE" IN SECTION 11450 AND THE "MINIMUM BASIC STANDARDS OF ADEQUATE CARE" TABLE IN SECTION 11452. THESE SPECIAL NEED ALLOWANCES ARE

(PG. 3 OF 9)

SENDER'S TEL. NO.

NAME & ADDRESS

WU 1207 (R 5-69)

(FGP CONT.)

* 1. IF YOUR GROSS INCOME EXCEEDS THE AMOUNTS SHOWN BELOW FOR YOUR SIZE FAMILY, YOU WILL BECOME INELIGIBLE.

SIZE OF FAMILY	GROSS INCOME
1.....	\$188
2.....	315
3.....	383
4.....	471
5.....	543
6.....	612
7.....	664
8.....	744
9.....	815
10.....	885

* TO BE INCLUDED ONLY IF SO DIRECTED BY SDSW; SEE ITEM NO. 7 ABOVE.

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