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Sacramento, California
November 19, 1971

Honorable Anthony C. Beilenson
Senate Chamber

Welfare - #21608

Dear Senator Beilenson:

QUESTION

You have asked whether the Department of Social Welfare's regulation denying aid solely on the basis that a recipient owns items used to provide, equip and maintain a household in excess of the \$300 market value limit prescribed in subdivision 2 of Section 11155* is valid.

OPINION

In our opinion if the department's regulation denies aid solely on such basis, and without regard to other exemptions to which the recipient is entitled, it is invalid.

ANALYSIS

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).

*All section references are to the Welfare and Institutions Code.

Section 11155 provides as follows:

"11155. In addition to the personal property permitted by other provisions of this part, an applicant or recipient, including an applicant for or recipient of aid to families with dependent children, may retain items of personal property, other than cash, securities, instruments or other evidences of indebtedness, of a market value not to exceed one thousand dollars (\$1,000), and in addition property falling within the following categories:

"1. The entire value of wedding and engagement rings, heirlooms and clothing.

"2. The reasonable value of household furnishings and, in addition, other property used to provide, equip and maintain a household for the applicant or recipient up to a market value of three hundred dollars (\$300) for each item.

"3. Equipment and material of reasonable value, including motor vehicles, which are necessary to implement an employment, rehabilitation or self-care plan necessary for employment of the applicant or recipient.

"4. Any property right which is essential to land use or which is not available for the use of or expenditure by or in behalf of the applicant or recipient to meet a current or future need of the applicant or recipient.

"In addition to all of the foregoing the director may at his discretion exempt other items of personal property not exempted under this section." (Emphasis added.)

The regulations of the Department of Social Welfare provide in pertinent part as follows (Sec. 42-707 d.):

"d. Household Items

"... nor shall OAS, AB and ATD be granted or paid to a person who owns any item used to provide, equip, and maintain a household when such item is valued, without regard to encumbrances, in excess of \$300.

* * *

"... nor shall AFDC be granted or paid to any family or on behalf of any orphan child or to a family if the members of the Family Budget Unit or the orphan child owns any item used to provide, equip and maintain a household when such item is valued, without regard to encumbrances, in excess of \$300."

Subdivision 2 of Section 11155 exempts in addition to any other exemption, other property used to provide, equip and maintain a household not exceeding a \$300 market value for each item. The exemption is limited to property items falling within the category. A property item that does not fall within the description of the category would not receive the exemption. Thus, a property item used to provide, equip and maintain a household over \$300 market value would not receive the exemption.

However, items which are not exempt under subdivision 2 of Section 11155 may be exempt under other provisions of that section. In addition to any other personal property exemptions, an applicant or recipient may retain items of personal property other than cash, securities, instruments or other evidences of indebtedness of a market value not to exceed \$1,000. (See also W. & I.C. Secs. 11154 and 11157).

Since the \$1,000 property exemption is in addition to other exemptions, in our opinion it would not preclude an applicant or recipient from applying any of his personal property, with the specific exceptions mentioned, to that exemption.

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In other words, we think that in the event that a personal property item used to provide, equip and maintain a household does not qualify for any other exemption because it is in excess of a \$300 market value, the applicant or recipient could apply such item against his \$1,000 exemption.

Thus, it is our opinion that if the department regulation denies aid solely on the basis that a recipient owns items used to provide, equip and maintain a household in excess of the \$300 market value limit prescribed in subdivision 2 of Section 11155, without regard to other exemptions to which the recipient is entitled, it is inconsistent with that section and thus invalid.

Very truly yours,

George H. Murphy
Legislative Counsel

By *Mary Shaw*
Mary Shaw
Deputy Legislative Counsel

MS:CEH

IMPLEMENTATION OF REGULATIONS SPECIFICALLY REJECTED BY
THE LEGISLATURE

Legislative History:

SB 545 (Burgener) included the following:

1) A special needs "spend-down" provision, requiring recipients to spend a portion of their allowable cash reserves before being eligible for a special need grant.

2) A "multiple grant" household provision, requiring that a portion of the grant to an aged, blind, or disabled recipient living with an AFDC family be deemed available to the AFDC family, with a consequent grant reduction.

On June 9, 1971 SB 545 died in the Senate Health and Welfare Committee.

On July 12, 1971 amendments to SB 796 (Beilenson) were offered to the Senate Finance Committee seeking to include the above provisions. The Senate Finance Committee rejected the amendments.

On July 21, 1971 amendments to SB 796 were offered on the Senate Floor, seeking to include the above provisions. The Senate rejected the amendments.

The above amendments were rejected during the course of welfare negotiations and were not included in the final version of SB 796. Nevertheless, SDSW regulations of October 5, 1971 put these concepts into effect.

Special Needs - Spend-Down

CONTINUATION SHEET
FOR FILING ADMINISTRATIVE REGULATIONS
WITH THE SECRETARY OF STATE
(Pursuant to Government Code Section 11380.1)

SDSW Regulation
Filed 10/5/71

44-265 SPECIAL NEEDS FOR AFDC (Continued)

44-265

AFDC

.13 The cost of any special need shall be met by first requiring the recipient to utilize his liquid assets (as defined in Section 44-333.16). However, when the allowance for a special need cannot be met in full by the recipient's liquid assets, it shall be allowed as a part of the grant in accordance with the procedures outlined in Section 44-315.511 when federal participation is available. There will be no state participation in the cost of any special need granted to an AFDC recipient.

.14 The county may allow a nonrecurring special need in a single month or prorate it over not more than three consecutive months. A nonrecurring special need prorated in this manner shall not be considered recurring.

.2 Recurring Special Needs

.21 Therapeutic Diet

.211 Special need for a therapeutic diet shall be authorized when a doctor or other practitioner recommends one or a combination of the diets listed below, except that final determination of the need for a therapeutic diet may be based on consultation with the county medical consultant. The allowance may continue for no more than one year unless continuation of need is resubstantiated as provided above.

The amount allowed for a combination diet shall not exceed that specified for the highest cost diet included in the recommended diet plan.

DO NOT WRITE IN THIS SPACE

Effective 10/1/71