

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert Capistrano (70382), Mayalakshmi H. Watts (246566), Eric Berkowitz (116634), Cynthia L. Chagolla (293184), BAY AREA LEGAL AID 1735 Telegraph Oakland, CA 94612 TELEPHONE NO.: (510) 663-4744 FAX NO.: (510) 633-4740 ATTORNEY FOR (Name): Cynthia Brown and Marcos Espinosa-Tapia		FOR COURT USE ONLY <div style="font-size: 2em; opacity: 0.5;">FILED</div> <div style="font-size: 1.2em; opacity: 0.5;">2016 AUG 17 AM 10:20</div> <div style="font-size: 1.5em; font-weight: bold;">N16-1538</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Contra Costa STREET ADDRESS: 725 Court Street MAILING ADDRESS: CITY AND ZIP CODE: Martinez and 94553 BRANCH NAME: Martinez Branch		
CASE NAME: Brown, et al. v. Lightbourne		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: N16-1538 JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): 2
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 11, 2016
 Robert P. Capistrano
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case
Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims
(*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint
Case (*non-tort/non-complex*)
Other Civil Complaint
(*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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COURT OF APPEALS
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

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CYNTHIA BROWN and MARCOS ESPINOSA-TAPIA

SUPERIOR COURT OF CALIFORNIA

CONTRA COSTA COUNTY

CYNTHIA BROWN and MARCOS
ESPINOSA-TAPIA,

Petitioners,

vs.

WILL LIGHTBOURNE, in his official
capacity as, Director of the California
Department of Social Services,

Respondent.

) Case No.

N16-1538

) **VERIFIED PETITION FOR WRITS
OF ADMINISTRATIVE MANDATE
AND MANDATE**

) Code Civ. Proc. §§ 1085, 1094.5, Welf.
& Inst. Code § 10962

I. INTRODUCTION

1. Petitioners CYNTHIA BROWN and MARCOS ESPINOSA-TAPIA
("Ms. Brown" and "Mr. Espinosa-Tapia," respectively) challenge the practice of
Respondent WILL LIGHTBOURNE ("Lightbourne"), as Director of the California

1 Department of Social Services ("CDSS"), of permitting counties to recover overissuances
2 of CalFresh benefits more than three years after a demand issues for repayment of such
3 overissuance.

4 2. Welfare and Institutions Code § 18927 requires that households receive
5 "...adequate and timely notice of the [food stamp] overissuance..." For collection
6 attempts, CDSS is responsible for defining collection methods that include adequate and
7 timely notice. Welf. & Inst. Code § 18927(g).

8 3. Respondent's regulations, set forth in CDSS Manual of Policy and Procedures
9 ("MPP") §§ 63-801.111 and 63.801.112, allow counties to seek recovery of CalFresh
10 overissuances only if they occurred less than three years before the demand for repayment
11 is made. Respondent's subsequent CDSS interpretations of these regulations, which purport
12 to extend this three-year limitation so long as one monthly overissuance accrued within
13 three years of the demand, are inconsistent with these governing regulations and, pursuant
14 to Welf. & Inst. Code § 10554, are invalid because the interpretations were adopted
15 outside of the notice and comment procedures set forth in the Administrative Procedure
16 Act ("APA"), Gov. Code §§ 11340, et seq.

17 4. Petitioners Brown and Espinosa-Tapia were allegedly overissued CalFresh
18 food stamps, and CDSS permitted recovery of the entire amount demanded even though
19 significant portions of the total overissuances sought accrued more than three years before
20 the claim was made.

21 5. Ms. Brown and Mr. Espinosa-Tapia now seek a peremptory writ of
22 administrative mandate pursuant to Code Civ. Proc. § 1094.5 and Welf. & Inst. Code §
23 10962 vacating Respondent's two hearing decisions upholding the authority of Contra
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1 Costa County – as Respondent's agent – to recover the full amount of the CalFresh
2 overissuances assessed against each Petitioner; and also to stay any efforts by Contra
3 Costa County to recover said overissuances pending the final resolution of this case.

4 6. Additionally, Petitioners seek a peremptory writ of mandate pursuant to
5 Code Civ. Proc. § 1085 commanding Respondent to comply with MPP §§ 63-801.111 and
6 63.801.112, and to refrain from permitting counties to recover CalFresh overissuances
7 which occur more than three years before a demand for repayment is made.

8 **II. THE PARTIES**

9 7. Ms. Brown is, and at all relevant times has been, a resident of
10 Antioch, California and was eligible to receive CalFresh benefits.

11 8. Mr. Espinosa-Tapia was, at all relevant times and until mid-2013, a
12 resident of Antioch, California, and was eligible to receive CalFresh benefits. He now
13 resides in San Francisco, California.

14 9. Respondent Lightbourne is the Director of the Department of
15 Social Services, and is responsible for managing CDSS in its administration of the
16 CalFresh Program in accord with the laws and regulations governing the Program.
17 Respondent is sued in his official capacity as the official responsible for ensuring that
18 CDSS and its agents act in conformity with federal and state law. In accord with Welf. &
19 Inst. Code §§ 10553 and 10962, Mr. Lightbourne is the proper Respondent in this
20 proceeding.

21 **III. THE CALFRESH PROGRAM**

22 10. California's CalFresh Program, codified at Welf. & Inst. Code §§ 18900, et seq.
23 and formerly known as the Food Stamp Program, is a federally funded, means-tested
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1 program which aims to “safeguard the health and well-being of the nation's population by
2 raising the levels of nutrition among low-income households.” MPP § 63-101.2.

3 11. The CalFresh Program provides eligible families with an electronic benefits
4 transfer or "EBT" card to purchase sufficient food to maintain their families at a
5 subsistence level. As stated in Welf. & Inst. Code § 18901, the CalFresh
6 Program is administered by CDSS in accord with applicable federal law.

7 12. Pursuant to Welf. & Inst. Code § 18902, CDSS has delegated the day-to-day
8 responsibility of running the program to the State’s individual counties, “subject to CDSS
9 regulatory and rulemaking authority.” MPP § 63-104.

10 13. The monthly amount of CalFresh benefits received by a recipient household
11 depends on the size of the family and the combined income of each member of the
12 household. 7 C.F.R. § 273.10; MPP §§ 63-503.241 and 63-242.

13 14. An overissuance occurs when a food stamp household receives more food
14 stamps than it was eligible for in a given month.

15 **A. CDSS Regulations Establish a Three-Year Limit for Initiating Overissuance**
16 **Recovery**

17 15. When a recipient household is alleged to have been overissued
18 CalFresh benefits, CDSS regulations classify the overissuance as the result of either
19 inadvertent household error (resulting from a mistake or misunderstanding), agency error
20 (caused by the county), or an intentional program violation (as determined in a
21 disqualification hearing). 7 C.F.R. § 273.18(b); MPP § 63-801.2.

22 16. In the case of inadvertent household error overissuances, MPP § 63-
23 801.111 and 63-801.112, in effect since 1984, have provided:
24

1 .111 The CWD [County Welfare Department] shall take action on inadvertent
2 household and administrative error claims for which less than three years have
3 elapsed between the month the overissuance occurred and the month the CWD
determined by computation that an overissuance occurred, irrespective of the date
the DFA 842 was completed.

4 .112 The CWD shall not take action on inadvertent household and administrative
5 error claims for which more than three years have elapsed between the month the
6 overissuance occurred and the month the CWD determined by computation that the
overissuance occurred irrespective of the date the DFA 842 was completed.

7 17. The clause "the month the CWD determined by computation" refers to the
8 month in which the County both calculates and notifies the recipient of the alleged
9 overissuance, and demands repayment. See All-County Information Notice ("ACIN") I-03-
10 02, "Food Stamp Questions and Answers," p. 6 (January 14, 2002), a true copy of which is
11 attached as Exhibit 1:

12 Question #1a: Is there a difference between establishing and calculating claims (for
13 overissuances)? [¶] Yes. Claims of overissuances (OIs) are "established" by
14 documenting the amount of and the reason for the OI and issuing a demand letter to
15 the client. The date of the demand letter is the date that the claim is established [7
16 CFR 273.18(e)(3)(iii)]. Computing the amount of an overissuance does not
constitute the establishment of an OI claim. *Counties must compute the amount of
the overissuance and issue the demand letter within the three-year timeframe.* If the
county does not compute the overissuance until the end of the three-year time
period, a claim cannot be considered established against the household. (Italics
added)

17 **B. Respondent Expands the Three-Year Time Limit for Initiating Recovery**

18 18. Respondent subsequently issued ACIN I-52-02 (July 22, 2002), a true copy of
19 which is attached as Exhibit 2, purportedly allowing counties to recover overissuances
20 even if a "month the overissuance occurred" (MPP §§ 63.801.111, 63-801.112) fell more
21 than three years prior to the demand for repayment:

22 The CWD would be operating within the three-year time frame as required by 63-
23 801.11 as long as one month of the OI occurs within three years of establishing the
24 claim. Therefore, it does not matter that part of the OI occurred more than three
years prior to the establishment of the claim as long as a portion of the OI occurred
within the three-year time frame. (ACIN I-52-02, p. 1, Answer to Question 1b.)

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IV. FACTUAL ALLEGATIONS

A. Petitioner Cynthia Brown

19. Ms. Brown had been receiving CalFresh benefits for herself and her children for several years when, on or about August 17, 2015, she received a notice from the Contra Costa County Health and Welfare Agency ("the County") that she had received overissuances of CalFresh benefits totaling \$6,073 for the twelve months beginning in November, 2011 and ending in October, 2012, and demanding repayment of said overissuances. (A true copy of this notice is attached as Exhibit 3 and incorporated herein by reference.)

20. All but three months of the County's overissuance demand occurred more than three years before the notice.

21. Ms. Brown timely requested a hearing to contest the overissuance demand and, on December 16, 2015, a hearing was held before a CDSS administrative law judge.

22. At the hearing, the parties agreed that the issue in dispute was not the amount of the alleged overissuances, but rather the period during which the County could lawfully collect the alleged overissuances.

23. Specifically, the County contended that applicable law permits it to collect overissuances made more than three years prior to its issuance of a demand for repayment so long as at least one month of overissuance occurred within this period, while Ms. Brown argued that the County is only permitted to collect overissuances made in months falling less than three years before it demands repayment.

1 24. Accordingly, Ms. Brown contended that the County was allowed to recover
2 only the CalFresh benefits paid to her household in the months of August, September, and
3 October, 2012, which total approximately \$2,039.

4 25. On or about February 19, 2016, Respondent issued a written Decision denying
5 Ms. Brown's claim and holding that the County was permitted to collect overissuances
6 from Ms. Brown reaching back to November 2011. (A true copy of this Decision (hereafter
7 the "Brown Decision") is attached hereto as Exhibit 4 and is incorporated herein by
8 reference).

9 **B. Petitioner Marcos Espinosa-Tapia**

10 26. Mr. Espinosa-Tapia began receiving CalFresh benefits on or about July, 2012.
11 On or about December 7, 2015, he received a notice from the County stating that he had
12 received overissuances of CalFresh benefits totaling \$4,380 for the nine months beginning
13 in July, 2012 and ending in March, 2013, and demanding repayment of said overissuances.
14 (A true copy of this notice is attached as Exhibit 5 and incorporated herein by reference.)

15 27. Mr. Espinosa-Tapia timely requested a hearing to contest the
16 overissuance demand. On April 6, 2015, a hearing was held before a CDSS administrative
17 law judge. At the hearing, the parties agreed that the issue in dispute was not the amount of
18 the alleged overissuance, but rather the period during which the County could lawfully
19 collect the alleged overissuances.

20 28. Specifically, the County contended that applicable law permits it to
21 collect overissuances made more than three years prior to its issuance of a demand for
22 repayment so long as at least one month of overissuance occurred within this period, while
23 Mr. Espinosa-Tapia argued that the County is only permitted to collect overissuances made
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1 in months falling less than three years before it demands repayment. Accordingly, Mr.
2 Espinosa-Tapia contended that the County was allowed to recover only the CalFresh
3 benefits paid to Mr. Espinosa-Tapia's household in the months December, 2012 through
4 March, 2013, which total approximately \$2,420.

5 29. On or about April 11, 2016, Respondent issued a written Decision
6 denying Mr. Espinosa-Tapia's claim and holding that the County was permitted to collect
7 overissuances from him reaching back to July 2012. (A true copy of this Decision is
8 attached as Exhibit 6 and is incorporated herein by reference (hereafter, the "Espinosa-
9 Tapia Decision")).

10 **C. The Decisions**

11 30. The Brown Decision and the Espinosa-Tapia Decision (collectively, the
12 "Decisions") rely on an erroneous application of the law governing recovery of CalFresh
13 overissuances, and constitute abuses of discretion in that the Respondent did not proceed in
14 the manner required by law, among other things, because:

15 (a) The Decisions rely on an erroneous interpretation and application of
16 MPP §§ 63-802.111-112 and 63-802.311(b). These regulations explicitly require county
17 welfare agencies to treat each overissuance month as independently triggering a recovery
18 period of no more than three years, to the effect that such agencies cannot seek any
19 overissuances for any month falling more than three years before demand for repayment is
20 made. The Decisions wrongfully disregard the plain meaning of the regulations, and
21 misapply the regulations to permit county welfare agencies to recover overissuances made
22 up to six years before a demand letter is sent.
23
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1 (b) The Decisions rely on a CDSS notice entitled "All County Information
2 Notice 1-52-02" (Exhibit 2) as authority for the County to collect overissuances made more
3 than three years prior to its demands for repayment, thus going beyond the plain language
4 of MPP §§ 63-801.111 and 63-801.112. ACIN I-52-02 purports to establish a rule or
5 standard of general application, and to interpret the applicable regulations governing
6 overissuances in the MPP. ACIN provisions which go beyond governing regulations have
7 not been expressly exempted by statute from the requirement that they be promulgated in
8 conformity with the APA. Because the cited provisions of ACIN I-52-02 are not supported
9 by the plain language of MPP §§ 63-801.111 and 63-801.112 and have not been adopted
10 under the procedures set forth in Gov. Code §§ 11340.5, 11342.600, 11346, and other
11 applicable law, they are invalid "underground regulations" having no force or effect. See,
12 for example, *Armistead v. State Personnel Board*, 22 Cal.3d 198 (1978).

13 FIRST CAUSE OF ACTION

14 (Administrative Mandate, Code Civ. Proc. § 1094.5; Welf. & Inst. Code § 10962)

15 31. Paragraphs 1 through 30 are incorporated herein by reference.

16 32. Each Petitioner has a beneficial interest in the subject matter of this
17 action, including ensuring that Respondent correctly interprets and applies the laws and
18 regulations governing the CalFresh Program.

19 33. The Decisions constitute abuses of discretion in that CDSS has not proceeded
20 in the manner required by law. Specifically, (i) the Decisions rely on the ACINs as
21 authority for the County to collect overissuances occurring more than three years before
22 the repayment demands to Petitioners were made, (ii) the Decisions violate the plain
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1 meaning of MPP §§ 63-802.111-112 and 63-802.311(b), and (iii) the Decisions rely on an
2 underground regulation issued in violation of the APA.

3 34. Petitioners have exhausted all available administrative remedies and
4 have no plain, speedy or adequate remedy at law.

5 35. Unless compelled to perform its duties and obligations in conformity
6 with law, Respondent will continue to fail to do so.

7 SECOND CAUSE OF ACTION

8 (Mandamus, Code Civ. Proc. § 1085)

9 36. Paragraphs 1 through 30, and 32 through 35, are incorporated herein by
10 reference.

11 37. Petitioners are entitled to a writ of mandate, pursuant to Code of Civil
12 Procedure §1085, in that the Respondent has a clear, present, and ministerial duty under
13 Welfare & Institutions Code §§ 10553, 10554, and 18927 to develop clear and consistent
14 regulations, including those related to the collection of CalFresh overissuances that are
15 consistent with the law.

16 38. The CDSS's policy of permitting county welfare agencies to seek recovery of
17 overissuances occurring more than three years before demanding payment is in violation of
18 law, as alleged herein, and wrongfully denies CalFresh recipients of their rights under
19 applicable statutes and regulations.

20 39. The offending provisions of ACIN I-52-02 are tantamount to a "regulation"
21 within the meaning of Gov. Code § 11342.600, and other applicable law, and are thus
22 subject to the rulemaking procedures of the APA. These provisions have not been adopted
23 as regulations and filed with the Secretary of State pursuant to the APA. As such, the
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1 ACIN Notices are invalid and of no force or effect, and the CDSS's reliance on them to
2 permit county welfare agencies to seek overissuances occurring more than three years
3 before demanding payment is contrary to law.

4 **CLAIM FOR ATTORNEYS' FEES**

5 40. This action will result in a benefit to the public, and Petitioners are entitled to
6 an award of attorneys' fees and costs pursuant to Code Civ. Proc. § 1021.5.

7 41. Petitioners are also entitled to attorneys' fees under Welfare & Institutions
8 Code § 10962.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioners pray for relief as follows:

- 11 1. For an order barring the County, during the pendency of this action, from
12 collecting any CalFresh overissuances from Petitioners that occurred more
13 than three years from the dates that payment demands were made;
- 14 2. For a peremptory writ of administrative mandate commanding Respondent
15 to vacate the Decisions to the extent that they authorize collection of
16 CalFresh overissuances that occurred more than three years from the dates
17 payment demands were made;
- 18 3. For a peremptory writ of administrative mandate commanding Respondent
19 and its agents to refrain from complying with ACIN I-52-02 to the extent
20 that it authorizes collection of CalFresh overissuances that occur in any
21 month which falls more than three years from the month in which a demand
22 for repayment is made;

- 1 4. For a peremptory writ of mandate commanding Respondent and its agents
2 to refrain from authorizing the collection of any CalFresh overissuances that
3 occur in any month which falls more than three years from the month in
4 which a demand for repayment is made;
5 5. For an order granting Petitioners their costs and attorneys' fees; and
6 6. For such other relief as is just and equitable.

7
8 Date: August 11, 2016

BAY AREA LEGAL AID

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11 Robert P. Capistrano
12 Attorney for Petitioners
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VERIFICATION

1. I have read the foregoing Petition.
2. I am a party to this action.
3. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
5. Executed on Aug 3, 2016, at Concord, California.


Cynthia Brown

VERIFICATION

1
2 1. I have read the foregoing Petition.

3 2. I am a party to this action.

4 3. The matters stated in the foregoing document are true of my own knowledge
5 except as to those matters which are stated on information and belief, and as to those
6 matters I believe them to be true.
7

8 4. I declare under penalty of perjury under the laws of the State of California that
9 the foregoing is true and correct.

10 5. Executed on 8/3, 2016, at Richmond, California.
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15 Marcos Espinosa-Tapia
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Exhibit 1

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



January 14, 2002

ALL COUNTY INFORMATION NOTICE I-03-02

TO: ALL COUNTY WELFARE DIRECTORS
ALL FOOD STAMP COORDINATORS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
☐ Federal Law or Regulation
Change
☐ Court Order or Settlement
Agreement
☒ Clarification Requested by
One or More Counties
Initiated by CDSS

SUBJECT: FOOD STAMP QUESTIONS AND ANSWERS

The purpose of this All-County Information Notice is to provide counties with answers to questions regarding Food Stamp Program policy. These questions were submitted by the County Welfare Directors Association's Technical Review Team (TRT) and the answers submitted to TRT for review and comments before being finalized by the Food Stamp Bureau. As requested by TRT county representatives, questions and answers (Q&As) are separated and categorized for ease of reference.

If you have any questions regarding the enclosed Q&As, please contact the policy analyst assigned that area of the regulations.

Sincerely,

Original document signed by

GARY SWANSON, Chief
Food Stamp Branch

FOSTER CARE WRAPAROUND SERVICES PROGRAM

QUESTION #1:

Are children who participate in the "foster care wraparound services" program considered to be foster care children? How are these wraparound payments treated in the food stamp budget calculation?

ANSWER:

The "foster care wraparound services" program is a program created to permit children who ordinarily would be placed in foster homes or group homes to remain in their own homes. Children who participate in the "foster care wraparound services" program would not be considered foster care children, even though foster care program funds are used to provide services to these children. Services provided to such families are excluded as income under MPP 63-502.2. Also, in instances where the county makes payments to a vendor or a third party on behalf of the household for an expense, such a vendor payment would be excluded as income under this same section. However, any cash paid directly to the food stamp household would be treated as income, as specified in MPP 63-502.1.

SELF-EMPLOYMENT INCOME

QUESTION #1:

Food stamp manual sections 63-502.132, 63-502.143, 63-503.422, and FSQUADS 502.3-10 require some clarification regarding self-employment income. The first issue involves whether to consider 20 hours management per week in determining whether room rental is earned or unearned income. The next one involves what you allow as the cost of doing business and/or shelter expenses.

Scenario #1:

An applicant applies for food stamps for herself as a one-person household. She owns her own home and rents out three of the home's four bedrooms. One bedroom is occupied by a couple and the other two bedrooms by single roommates. Everyone has equal access to the three common rooms. No meals are provided. Each person purchases and prepares his or her own meals.

What percentage of the applicant's mortgage, interest, taxes, and insurance should be allowed as the "cost of doing business?" Would the income on the rentals be considered earned or unearned? The applicant is not engaged 20 hours per week in managing the property. For this example, let's say she rents each room for \$200 per month and her shelter costs total \$1000 per month (\$800 interest, taxes, and insurance and \$200 principal).

Scenario #2:

The applicant is self-employed as an acupuncturist and works out of her residence. She is renting a house and shares rent with a roommate. She claims part of her share of the rent and utilities as business expenses.

Can these business expenses be allowed, as well as her full share of rent and utilities as a shelter deduction?

ANSWER:

Scenario #1:

Because room rental is considered self-employment, income received from room rental would be treated as earned income in the food stamp budget as specified in MPP 63-502.132(b). The "20 hours a week management" provision does not apply to a room rental situation; it applies only to management of rental property [MPP 63-502.132(a)].

SELF-EMPLOYMENT INCOME (continued)

In determining the cost of doing business, CWDs have the option to do the calculation either by the square footage of the home or by the number of rooms.

By square footage:

- 1) Let's assume the square footage of the home is 1000 square feet, of which 300 square feet is rented out. Approximately $\frac{1}{3}$ of cost would be allowed from the \$600.00 (gross income of $3 \times \$200.00$).
- 2) Cost per month (her housing* and utility costs) = \$1000.00. Take 33% of \$1,000 = \$333.00.
- 3) Net self-employment income (\$600.00 - \$333.00) = \$267.00.
- 4) Or, allow the 40% standard deduction, instead of calculating actual expenses as in steps 1-3, if the household chooses this option.
- 5) Then, allow the 20% earned income deduction and other deductions, as necessary, after determining the net self-employment income in steps 1-3 or step 4.

By number of rooms:

- 1) 7 rooms and 3 are rented out.
- 2) Percentage of cost is $\frac{3}{7} = .43$.
- 3) Cost per month (her housing* and utility costs) = \$1000.00. Take 43% of \$1,000 = \$430.00.
- 4) Net self-employment income (\$600 gross income - \$430.00) = \$170.00.
- 5) Or, allow the 40% standard deduction, instead of calculating actual expenses as in steps 1-4, if the household chooses this option.
- 6) Then, allow the 20% earned income deduction and other deductions, as necessary, after determining the net self-employment income in steps 1-4 or step 5.

*Housing costs include: mortgage, interest, taxes, and insurance

Please note that the three common rooms will not be considered in this calculation, as the owner of the home is not charging roommates for the usage of these rooms.

Scenario #2:

She cannot claim a portion of her share of rent and utilities as business expenses, as well as claiming her full share of rent and utilities as a shelter deduction. However, she can claim part of her share of rent and utilities as business expenses, and the remainder would be allowed as a shelter deduction. The methods described in scenario #1 can be used to determine her net self-employment income.

HOMELESS CLIENTS

QUESTION #1:

Can a homeless client receive food stamps if they are in a shelter that provides three meals a day?

ANSWER:

Yes, the client is still eligible to participate in the food stamp program. According to MPP 63-503.6, a homeless client shall be permitted to use their food stamp benefits to purchase prepared meals from meal providers who have been authorized by Food and Nutrition Service (FNS) to accept food stamp coupons at the shelter. A meal provider for the homeless is defined as a nonprofit organization, either public or private, which feeds homeless persons, e.g., soup kitchen, or shelter.

SECTION 8 HOUSING

QUESTION #1:

A client is approved for Section 8 housing, but did not report this change to the CWD. Due to being approved for Section 8, the client's rent went from \$298 to \$117, with HUD paying \$181. However, there was no change in residence. CWD was budgeting the client \$298, because the client did not report the rent change. The unreported income is \$181. Should client report change in rent/housing (Section 8) if no actual move occurred?

ANSWER:

Though the client did not move, and the income paid to a vendor is excluded income, it was still the client's responsibility to report the change when she was approved for Section 8 housing. As stated in section MPP 63-505.41(a), monthly reporting households shall report and provide verification of "the source of excluded income when first reported and when there is a change." The client should have reported her Section 8 approval. Under these circumstances, because the client did not report the change, there is a client caused error.

OVERISSUANCES

BACKGROUND:

63-801.112 states: "The CWD shall not take action on inadvertent household and administrative error claims for which more than three years have elapsed between the month the overissuance occurred and the month the CWD determined by computation that the overissuance occurred irrespective of the date the DFA 842 was complete."

63-801.311(b) states: "The CWD shall calculate the amount of the overissuance which occurred during the six years preceding the date the overissuance was discovered. The CWD shall not include in its calculations any amount of the overissuance which occurred in a month more than six years prior to the date the overissuance was discovered."

QUESTION #1a

Is there a difference between establishing and calculating claims (for overissuances)?

ANSWER:

Yes. Claims for overissuances (OIs) are "established" by documenting the amount of and the reason for the OI and issuing a demand letter to the client. The date of the demand letter is the date that the claim is established [7 CFR 273.18(e)(3)(iii)]. Computing the amount of an overissuance does not constitute the establishment of an OI claim. Counties must compute the amount of the overissuance and issue the demand letter within the three-year timeframe. If the county does not compute the overissuance until the end of the three-year time period, a claim cannot be considered established against the household.

QUESTION #1b:

Why calculate back six years, but act within three?

ANSWER:

The "three years" is the timeframe for the occurrence, the computation, and to inform the household of the OI. This time frame is to ensure that timely action is taken on any OI. The "six years" timeframe applies in determining the total amount of the OI. The counties must go back six years in computing the amount of the OI claim against the household. A claim against the household is equal to the difference between the allotment amount the household received and the allotment amount the household should have received.

OVERISSUANCES (continued)

ANSWER #1b (continued)

The six years allows the county to possibly collect on a larger amount of the OI. Once a claim is established, there is no time limit, with the exception of MPP 63-801.222 (administrative errors claims being recouped pursuant to Lomeli v. Saenz), on collection of overissuances.

QUESTION #1c:

What effect does this (calculating back six years) have on current Food Stamp Program case records retention requirements?

ANSWER:

Food Stamp Program case records retention requirements remain unchanged.

QUESTION #1d:

What is an example of calculating back six years, but acting within three?

ANSWER:

An overissuance occurred in December 2000. The county must establish a claim (compute the amount of the claim and issue a demand letter) for this overissuance within three years, which would be before December 2003. When the county computes the amount of this overissuance, it must go back six years to determine the total amount of the claim. Thus, if the county discovers and calculates the amount of this overissuance in December 2002, it would include in its calculations any amount which occurred during the six years preceding the December 2002 date, which would be back to December 1996.

Exhibit 2

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



July 22, 2002

ALL-COUNTY INFORMATION NOTICE I-52-02

TO: ALL COUNTY WELFARE DIRECTORS
ALL FOOD STAMP COORDINATORS

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order or Settlement Agreement
- ☒ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

SUBJECT: FOOD STAMP QUESTIONS AND ANSWERS

REFERENCE: ACIN I-62-96, I-03-02, I-05-02; ACL 98-66, 99-64; CFL 00/01-21

The purpose of this All-County Information Notice (ACIN) is to provide counties with answers to questions regarding Food Stamp Program policy. Questions were submitted by the County Welfare Directors Association's Food Stamp Committee. The answers were submitted to the committee for review and comments before being finalized by the Food Stamp Policy Bureau. Additional questions and answers (Q&As) have been added by the bureau to provide clarification on topics that are frequently asked about by the counties. As requested by the committee, Q&As are separated and categorized for ease of reference.

If you have any questions regarding the enclosed Q&As, please contact the policy analyst assigned that area of the regulations.

Sincerely,

**Original document signed by
Pat Sutherland For**

GARY SWANSON, Chief
Food Stamp Branch

Attachment

OVERISSUANCES

QUESTION #1a:

Please provide further clarification on the three-year time frame for establishing an overissuance (OI) discussed in OI Q&A #1 on pages six and seven of ACIN I-03-02. For example, an IEVS report may cause a case to be referred to an investigative unit for potential fraud and OI computation. When does the three-year clock get started? Is it the date the IEVS worker refers the case to investigations or the date the investigative staff uses the information on IEVS and other verifications (from an employer for example) to calculate the OI?

ANSWER:

The three-year time frame does not begin with the date of discovery, the date the case is referred to investigations, or the date the investigative staff uses the information on IEVS and other verifications to calculate the OI. The three-year time frame begins with the date of the occurrence of the OI [Manual of Policies and Procedures (MPP) 63-801.11; ACIN I-03-02]. OI Q&A #1 in ACIN I-03-02 provides an example of how the three-year time frame works. It also explains the six-year calculation time frame.

QUESTION #1b:

A portion of an OI included in a "six-year" calculation would "occur" more than three years before the establishment of the claim. If a claim must be established within three years of the date of occurrence, how can a claim be established that includes months of OI more than three years prior to the establishment date?

ANSWER:

MPP 63-801.311(b) instructs the CWD to calculate the claim for this six-year period. The CWD would be operating within the three-year time frame as required by MPP 63-801.11 as long as one month of the OI occurs within three years of establishing the claim. Therefore, it does not matter that part of the OI occurred more than three years prior to the establishment of the claim as long as a portion of the OI occurred within the three-year time frame. As mentioned in OI Q&A #1 in ACIN I-03-02, the three-year "establishment" time frame is to ensure that timely action is taken, and the six-year "calculation" time frame is to allow a larger amount to be collected.

OVERISSUANCES (continued)

QUESTION #2 BACKGROUND:

63-801.231 states: "A claim shall be handled as an intentional program violation claim for an overissuance or trafficking only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member or the sponsor had committed an intentional program violation, as defined in Section 20-300.1 or if an individual accused of intentional program violation has signed either a Disqualification Consent Agreement or an Administrative Disqualification Hearing Waiver as defined in Sections 63-102(a) and (d)(6). Prior to a determination of intentional program violation the claim against the household shall be established and handled as an inadvertent household error claim."

63-801.321 states: "For each month that a household received an overissuance due to an act of intentional program violation, the CWD shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the intentional program violation claim shall be calculated back to the month the act of intentional program violation occurred, regardless of the length of time that elapsed until the determination of intentional program violation was made or the date the waiver of Right to an Administrative Disqualification Hearing or Disqualification Consent Agreement was signed. However, the CWD shall not include in its calculation any amount of the overissuance which occurred in a month more than six years from the date the overissuance was discovered or prior to March 1, 1979."

QUESTION #2a:

Are potential Intentional Program Violation (IPV) claims exempt from the three-year time frame for establishing the overissuance?

ANSWER:

MPP 63-801.231 indicates that a potential IPV claim should be established as IHE claim until an IPV has been determined as specified in this section (i.e., by court of appropriate jurisdiction, etc.). The IHE claim must be established within the required three-year time frame. If an IPV determination is made on the IHE claim, the IPV claim would be considered appropriately established regardless of the length of time that has elapsed from the date of occurrence. If an IPV determination were not made, the county would continue to handle the claim as an IHE.

OVERISSUANCES (continued)

ANSWER #2a (continued):

Counties are permitted to postpone the establishment of an IHE in cases where an OI is being referred for possible legal prosecution or for administrative disqualification, and the CWD determines that such action will prejudice the case (MPP 63-801.412). In such cases, when an IPV is determined in the manner specified in MPP 63-801.231 (i.e., by court of appropriate jurisdiction, etc.), the county would follow the decision set forth by the court, etc. Because the IPV was appropriately determined, a valid claim exists regardless of the length of time that has elapsed from the date of occurrence. However, if the case is determined not to be an IPV, and no IHE had been previously established, an IHE claim could only be established if it is still within the three-year time frame. The county would not be able to go back and establish an IHE claim if it is beyond that three-year time frame.

QUESTION #2b:

Special Investigations Unit (SIU) letters are not notices of action and are not subject to state administrative hearings because no adverse action explaining the OI budget and demanding repayment has yet been taken by the county. If the county sends only an SIU letter that addresses the amount of a potential IPV, instead of sending a notice of action, would an IHE claim be considered established?

ANSWER:

A claim would only be considered established if the proper demand notices have been sent (for an IHE the county would send a DFA 377.7B with repayment agreement DFA 377.7C). If the county sends an SIU letter only, a claim would not be considered established.

QUESTION #2c:

Prior to July 2001, potential IPV overissuances that occurred over three years from the date of discovery were not addressed in a notice of action to the client with the client's appeal rights explained until the IPV was either established in court or by an ADH. Once the IPV was established, any previous IHE OI notice of action was revised to include the full overissuance amount that occurred during the IPV period. If the only overissuance was for an IPV period that occurred over three years from the date of discovery as then defined, no notice of action was initiated until the IPV was established. Would this be the same process now?

OVERISSUANCES (continued)

ANSWER:

If a claim is initially established as an IHE, the county must send a DFA 377.7B and repayment agreement DFA 377.7C. If such claim were later determined to be an IPV, the county would inform the client of this status change by sending the DFA 377.7F along with repayment agreement DFA 377.7G. If the county decided not to establish the claim as an IHE first, but an IPV is appropriately determined (MPP 63-801.231), the county would send the DFA 377.7F and DFA 377.7G.

QUESTION #2d:

If there is no IHE OI established because the IPV period ends more than 3 years before a potential IPV OI is calculated, how is six years from the date the IPV overissuance was discovered to be determined?

ANSWER:

MPP 63-801.321 indicates that the county is to include OIs occurring during the preceding six years. Whenever a possible IPV overissuance is suspected, whether or not the county plans to first establish an IHE, the county should calculate the amount of the overissuance at that time. The date of the calculation would serve as the date of discovery and any applicable OIs in the preceding six years would be included.

QUESTION #2 CONCLUSION:

Whenever an IPV is suspected, counties should establish an IHE claim. By doing so, counties will ensure that they will still have a valid claim in case an IPV is not proven. If a client requests and is granted a fair hearing on the IHE claim, the county is not prevented from referring the case to the local prosecuting authority for investigation and prosecution for IPV. The county is only prevented from pursuing both an ADH on a case and referring that case for prosecution if the factual issues of the case arise out of the same or related circumstances (MPP 20-300.24). If the facts of the case do not warrant prosecution, or if a case previously referred for prosecution has been declined, the case is returned to the CWD for referral action for an ADH (MPP 20-300.23).

HOUSEHOLD COMPOSITION

QUESTION #1:

If a food stamp participant or a member of a food stamp household leaves the country or state due to an emergency, is there a time limit on how long that individual or household member can be gone without the food stamp benefits being affected?

ANSWER:

Food stamp regulations provide, with certain exceptions, that a household shall consist of persons who live together and customarily purchase food and prepare meals together for home consumption (MPP 63-402.13). Eligibility is determined on a monthly basis and household composition is an eligibility factor. Therefore, persons included in the household for any month must live with the household and purchase and prepare meals with the household for at least part of the month (MPP 63-402.131). With regard to months when a person is not in the household at all, the person does not fit into the household definition; therefore, he or she cannot be considered a member for that month. However, any of his or her income made available to the household would be counted as income to the household (MPP 63-503.45). Similarly, any of an absent person's resources to which the household has access would be counted as resources of the household for food stamp purposes (MPP 63-501.2 and 63-503.45). Pursuant to MPP 63-505.3 and 63-505.5 households shall report changes in household composition and other relevant circumstances affecting eligibility. For additional information, please see ACIN I-05-02.

QUESTION #2:

We have a case that consists of a mother, her child, and the child's biological father. A few years ago, the mother and father were divorced. The mother got remarried and the second husband adopted the child. The mother and her second husband are now divorced and the biological father moved back into the home. MPP 63-402.142 states that separate household status cannot be granted when parents are living with their biological children. Can the biological father in this scenario be granted separate household status from the mother and the child?

ANSWER:

MPP 63-402.142 does not apply because the second husband adopted the child and the biological father does not have any legal ties to the child. If the biological father purchases and prepares together with the rest of the family, then this is one household. However, if the biological father purchases and prepares separately, and he and his ex-wife do not present themselves as husband and wife to the public, separate household can be granted per MPP 63-402.12 and MPP 63-102(s)(9).

NONCITIZEN ELIGIBILITY—EXPIRED I-551 CARDS

QUESTION #1a:

If the only documentation that a noncitizen provides is an expired I-551 card, should the county institute a SAVE verification, or should the county determine that the noncitizen is ineligible until other documentation is made available?

ANSWER:

MPP 63-300.5(e)(2) indicates that a noncitizen is ineligible only if NO adequate verification or documentation is available. Lawful permanent residents do not lose their lawful permanent resident status because their I-551 card has expired. Even if the I-551 card is expired, it is an acceptable form of documentation.

However, an expired card would represent questionable verification, at certification or recertification, and as such would fall under MPP 63-300.5(g). Therefore, the county should institute a SAVE verification for a noncitizen who shows an expired I-551 card. Benefits should not be denied based on noncitizen status if someone has presented an expired I-551 card.

QUESTION #1b:

What should the county do if a noncitizen claims that his or her I-551 card was taken away by INS because it was expired?

ANSWER:

If the noncitizen does not have any other documentation of his or her status, the noncitizen is ineligible for food stamp benefits until other documentation or verification is made available. MPP 63-300.5(e)(2)(B) indicates that if the noncitizen does not have any documentation of noncitizen status, but gives permission for the CWD to contact INS to request verification of noncitizen status, then the CWD shall contact INS. If the CWD receives verification of eligible noncitizen status, then the CWD cannot deny benefits if the noncitizen is otherwise eligible. The CWD certifies the noncitizen pending the results of the verification for up to six months from the date of the original request for verification in accordance with MPP 63-300.5(e)(2)(D)(2).

For both of the above situations (questions #1a and #1b), the CWD should also refer the client to INS for assistance in obtaining current documentation. Furthermore, MPP 63-300.5(i) provides that the CWD should offer assistance to a household that has difficulties in obtaining required documentary evidence.

DRUG AND ALCOHOL FACILITIES—SHELTER DEDUCTIONS

QUESTION #1:

Should the rent expense for a resident of a drug and alcohol facility be used as a standard shelter deduction or as a homeless shelter deduction?

ANSWER:

A temporary resident at a drug and alcohol treatment facility does not in or of itself qualify the client as homeless. The CWD must make the determination if the client meets the definition of homeless as provided in MPP 63-102(h)(2). The county would need to determine whether the client was homeless before he/she entered the treatment center or will be homeless after leaving the treatment center. If the client meets the Food Stamp Program's homeless requirements, the CWD would then use the homeless shelter deduction. If it is determined that the client is not homeless, the CWD would use the standard shelter deduction.

BUDGETING

QUESTION #1:

How should deductible expenses be determined for food stamp purposes in each of the following situations?

SITUATION 1a:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The income in the household is CalWORKs and income for one of the ineligible noncitizens. The ineligible noncitizen declares that the income is used only for personal needs, and that he or she does not pool income or contribute toward the household expenses.

ANSWER:

When one ineligible noncitizen has income, count all ineligible noncitizens in the proration of deductible expenses in accordance with MPP 63-502.374(a)(2). In other words, if one ineligible noncitizen has income, the proration of expenses is done automatically regardless of whether or not he or she contributes or pools income. You do not do a "contribution test" for income proration. This proration does not apply to the standard utility allowance (SUA).*

SITUATION 1b:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The income to the household is CalWORKs and income for one of the ineligible noncitizens. The ineligible noncitizen declares he or she contributes a flat amount to household expenses.

ANSWER:

When one ineligible noncitizen has income, count all ineligible noncitizens in the proration of expenses in accordance with MPP 63-502.374(a)(2) regardless of whether the ineligible noncitizen pays part, a flat amount, or all of the deductible expenses. Even if an ineligible noncitizen makes a fixed or flat rate contribution to a deductible expense, the known amount is not deducted and the expense must be prorated. [63-502.372(b), 63-502.373, and 63-502.374]. This proration does not apply to the SUA.*

BUDGETING (continued)

SITUATION 1c:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The only income in the household is earned income for one of the ineligible noncitizens. The ineligible noncitizen declares he or she pays all the shelter expenses.

ANSWER:

When one ineligible noncitizen has income, count all ineligible noncitizens in the proration of expenses in accordance with MPP 63-502.374(a)(2). In the above situation, you would only prorate the deductible expenses based on the fact that at least one of the ineligible noncitizens has income. This proration does not apply to the SUA.*

SITUATION 1d:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The income in the household is CalWORKs, an ineligible noncitizen's earned income, and unearned income for another ineligible noncitizen. The ineligible noncitizen with the earned income declares he or she pools income with the eligible household members. The ineligible noncitizen with the unearned income declares he or she does not pool income or contribute towards the household expenses.

ANSWER:

When one ineligible noncitizen has income, count all ineligible noncitizens in the proration of expenses in accordance with MPP 63-502.374(a)(2). In the above situation, once it is determined that one ineligible noncitizen has income, the proration of expenses is done automatically. You do not do a "contribution test" for income proration. This proration does not apply to the SUA.*

SITUATION 1e:

A household includes several individuals with some ineligible noncitizens and the rest eligible noncitizens or U.S. citizens. The income to the household is CalWORKs that is paid to one of the ineligible noncitizens on behalf of citizen children.

BUDGETING (continued)

ANSWER:

In order to be calculated into the proration of deductible expenses, the ineligible noncitizen must have income. If the ineligible noncitizen were acting solely as an agent or payee for another household member, he or she would not be calculated into the proration because that income would not be considered his or hers per MPP 63-502.372(b)(2).

QUESTION #2:

How do you calculate the combined and federal-only budgets for income and shelter costs in the following situations?

SITUATION #2a:

The food stamp (FS) household consists of 5 eligible members.

- CFAP mother receives CalWORKs grant.
- CFAP father, who is also welfare to work sanctioned, has earnings of \$800.
- Three federally eligible children receive CalWORKs grant.
- The CalWORKs grant of \$876 is the amount before the CFAP father was welfare to work sanctioned.
- Rent is \$500.

ANSWER:

The combined FS budget computes the FS benefit amount for the entire household (both federal and CFAP household members). This is the FS allotment that should be issued to the household. CFAP household members are not excluded members of the FS household; they are part of the combined FS household. The only instance in which they would be considered "excluded" is when determining the federal share of cost for a combined household.

The federal FS budget is ONLY used to determine the federal and state share of the combined allotment. The federal FS budget computes the FS benefit amount for the federal food stamp household members only. The CFAP share of the combined allotment is determined by subtracting the federal benefit amount from the combined benefit amount.

BUDGETING (continued)

ANSWER #2a (continued)

Per ACL 98-66, dated September 1, 1998, "CWDs are to use existing budgeting procedures for calculating food stamp benefits to be issued to eligible households. However, the income and deductible expenses of CFAP noncitizen household members shall be excluded when determining the federal share of cost for combined (state and federal) households."

Therefore, in determining how much of the income and shelter cost in the above situation is to be used in the combined and federal-only budgets, the calculation is done as follows (proration does not apply to the SUA*):

Income:

COMBINED FS BUDGET	\$800 (CFAP father's earnings) + \$876 CalWORKs grant prior to the CFAP father's welfare to work sanction (CFAP mother, CFAP father, and 3 federally eligible) = \$1676	\$1676 to be used in the Combined FS budget
FEDERAL FS BUDGET	\$876 divided by 5 (CFAP mother, CFAP father, and 3 federally eligible children) = \$175.20 per person X 3 (federally eligible children) = \$525.60 Note: None of the CFAP income is counted in the Federal FS budget.	\$525.60 federally eligible members' income to the Federal FS budget

Rent:

COMBINED FS BUDGET	\$500 (Household's total rent amount)	\$500 rent amount to be used in the Combined FS budget
FEDERAL FS BUDGET	\$500 divided by 5 (CFAP mother, CFAP father, and 3 federally eligible children) = \$100 per person X 3 (3 federally eligible children) = \$300 Note: If an ineligible noncitizen or CFAP eligible has income, all ineligible noncitizens/CFAP eligible persons of that household are counted in the proration.	\$300 rent amount to be used in the Federal FS budget

BUDGETING (continued)

SITUATION #2b:

FS household consists of five eligible members.

- CFAP eligible mother, also welfare to work sanctioned, has no other income.
- CFAP eligible father, also welfare to work sanctioned, has no other income.
- Three federally eligible children receive CalWORKs grant.
- The CalWORKs grant prior to the CFAP persons' welfare to work sanction is \$876. CFAP mother is the payee of the CalWORKs grant.
- Rent is \$500.

ANSWER:

Income:

COMBINED FS BUDGET	\$876 CalWORKs grant prior to sanction (CFAP father, CFAP mother, and 3 federally eligible children)	\$876 CalWORKs income to the Combined FS budget
FEDERAL FS BUDGET	<p>\$876 divided by 5 (CFAP mother, CFAP father, and 3 federally eligible children) = \$175.20 per person X 3 (federally eligible children) = \$525.60</p> <p>Note: When a person is work sanctioned but meets a food stamp work requirement exemption, the household continues to receive the same amount in food stamp benefits.</p> <p>While the sanctioned persons are removed from the AU, they are still part of the food stamp household. Hence, the CalWORKs grant amount of \$876 (amount prior to the work sanction) would be prorated among the CalWORKs recipients. The pro rata share is then multiplied by the number of federally eligible persons to come up with the federal share.</p>	\$525.60 income to the Federal FS budget

BUDGETING (continued)

ANSWER #2b (continued)

Rent:

COMBINED FS BUDGET	\$500 (Household's total rent amount)	\$500 rent amount to be used in the combined budget
FEDERAL FS BUDGET	<p>\$500 (Household's total rent)</p> <p>Note: If an ineligible noncitizen has income, all ineligible noncitizens of that household, including CFAP eligible persons, are counted in the proration of a housing expense.</p> <p>In this case, since neither of the CFAP eligible persons has income, the rent expense would not be prorated.</p>	\$500 rent amount to be in Federal FS budget

QUESTION #3:

How are income and shelter expense budgeted in the combined and federal-only budgets in the following situation?

SITUATION #3:

FS household consists of two eligible members.

- CFAP eligible mother has earned income of \$500.
- Undocumented father has no income and does not contribute toward expenses.
- Undocumented child has no income.
- Citizen child.
- Rent is \$400.

BUDGETING (continued)

ANSWER:

Income:

COMBINED FS BUDGET	\$500 (CFAP eligible mother's income)	\$500 income to the Combined FS budget
FEDERAL FS BUDGET	\$0 Note: CFAP person's income is not counted in the Federal FS budget.	\$0 income to the Federal FS budget

Rent:

COMBINED FS BUDGET	\$400 (household's total rent amount)	\$400 rent amount to the Combined FS budget
FEDERAL FS BUDGET	\$400 divided by 4 (CFAP eligible mother, 2 undocumented persons, and Citizen child) = \$100 per person X 1 (Citizen child) = \$100 Note: The proration is done in this case because the CFAP person has income.	\$100 rent amount to the Federal FS budget

*SUA BUDGETING:

The proration examples provided in the budgeting Q&As in this ACIN do NOT apply to the SUA. An ACL discussing the treatment of the SUA will be released by the Food Stamp Policy Bureau soon.

Exhibit 3

COUNTY OF CONTRA COSTA

STATE OF CALIFORNIA
HEALTH AND WELFARE AGENCY
DEPARTMENT OF SOCIAL SERVICESFOOD STAMP(CalFRESH) REPAYMENT NOTICE
FOR INADVERTENT HOUSEHOLD
ERRORS ONLYCynthia Brown
5130 Paddock Ct
Antioch, CA 94531Notice Date : August 17, 2015
Case Name : Cynthia Brown
Case Number : 07-09-0886109
CWIN : 63440
Investigator : Cozette Nguyen
Investigator No : KXGD
Phone : 677[7]-2943
Address : 400 Ellinwood Way,
Pleasant Hill, CA 94523
Questions ? Ask your Worker.State Hearing : If you think this action is
wrong, you can ask for a
hearing. The back of this page
tells how. Your benefits may
not be changed if you ask for a
hearing before this action takes
place.

You or a member of your household made a mistake.

Too many Food Stamps(CalFRESH) were issued to:

☒ You.☐ _____, whom you sponsor.

Here's why:

You failed to report Vernon Dunbar's earnings from 7-Eleven.

You must repay the extra Food Stamps(CalFRESH).

\$6,073.00 in extra Food Stamps(CalFRESH) were issued for the period 11/01/2011 to 10/31/2012. This amount was reduced by
\$ 0 because we owed the household benefits from past months or we received repayment of part of the amount owed.You now owe \$ 6,073.

- You do not have to use any SSI benefits you get to repay this overissuance.

YOU MUST EITHER:

- Pay in full, or
- Sign the Repayment Agreement and pay as agreed.
 - Complete, sign and return the enclosed Repayment Agreement (DFA 377.7C).
 - Your repayment agreement will be based on your current ability to pay as figured by the county. Any changes in your ability to pay may change your monthly payments.
 - ☐ If you do not sign and return the agreement within 30 days after the date of this notice the amount of Food Stamps (CalFRESH) you get will be reduced by \$10 or 10% the month following the 30 day period.
- If you do not agree to pay, the county may use other ways of collecting the amount owed such as through the courts.
- If this inadvertent household error is later found to be an intentional program violation, penalties will apply even if you agree to pay back what you owe.
- If the county sues you for the amount due, you may also be required to pay court costs.
- If you do not pay the amount owed, the county may take your state income tax refund and/or ask the court to attach your wages or any property you own.

Warning: If you believe this overissuance is wrong, this is your last chance to ask for a hearing. If you stay on food stamps (CalFRESH) the county can lower your food stamps(CalFRESH) to collect the overissuance. If you go off food stamps(CalFRESH) before the overissuance is paid back, the county may take what you owe out of your income tax refund.

Rules: These rules apply. You may review them at your Welfare Office: MS 63-801.21

SCANNED

Attachment 1 Page 1

Exhibit 4

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Hearing No. **2015247121**

In the Matter of Claimant(s):

Cynthia Brown
5130 Paddock Court
Antioch, CA 94531

DECISION

Pursuant to the authority of the Director,
I adopt the attached final decision.



Shelton, Demetrius
Administrative Law Judge

Adopt Date: February 19, 2016

State Hearing Record

Hearing Date:	December 16, 2015	Release Date:	February 19, 2016
Aid Pending:	Not Applicable	Issue Codes:	[293-2]
Agency:	Contra Costa County	Agency Representative:	Denise Reynolds
Agency:		Agency Representative:	
Authorized Rep. Organization:	Bay Area Legal Aid	Authorized Rep:	Robert Capistrano
SSN:		SSN:	
AKA:		AKA:	
Case Name:		Language:	
LA District/Case:		Companion Case:	

Appeal Rights

You may ask for a rehearing of this decision by mailing a written request to the Rehearing Unit, 744 P Street, MS 9-17-37, Sacramento, CA 95814 within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause. In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.

You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.

This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.

SUMMARY

The Claimant received a CalFresh overissuance of \$6,073 for the period November 2011 through October 31, 2012. Contra Costa County ("County") may collect the full amount of the overissuance for the period. [293-2]

FACTS

By Notice of Action ("NOA") dated August 17, 2015, the County notified the Claimant that she was overissued \$6,073 in CalFresh benefits for the period November 2011 through October 31, 2012 due to unreported income.

On August 31, 2015, the Claimant requested a state hearing to contest this County action.

On December 16, 2015, a state hearing was held in Pleasant Hill, California. Present at the hearing were the Claimant's Authorized Representative ("AR"), a County Hearing Representative ("CR"), and a County Overpayment Specialist. Both the County and the AR submitted Statements of Position which were admitted into the record.

At the hearing, the parties agreed that the issue in dispute was not the amount of the overissuance, but rather the period of recovery.

The CR testified that the Claimant's household consists of the Claimant, her minor son, and two adult sons. Evidence was further presented that on August 18, 2015, the County's Overpayment Specialist documented a CalFresh overissuance of \$6,073 for the period November 1, 2011 through October 31, 2012 due to the Claimant's failure to report earned income from one of her adult son's employment at 7-Eleven Store. The CR testified that the County became aware of this unreported income on October 22, 2012.

The CR asserted that pursuant to regulations, the County is entitled to collect the full amount of the overissuance as established in the NOA issued on August 17, 2015. The CR argued that an overissuance must be established when there is less than three years between the month the overissuance occurred, and the month the eligibility worker calculates and determines that an overissuance has occurred. The CR further presented evidence that "as long as one month of the overissuance occurred within this three-year period a claim may be established" and the County may go back six years in its recovery.

The AR did not dispute the \$6,073 overissuance for the period. The AR, however, argued that the County is limited in its recovery to the overissuances for the month of August 2012 through October 2012 as those months were within the three year of the establishing of the overissuance. The AR argued that the County cannot recover an overissuance of benefits issued more than three years prior to demanding repayment which in this case was August 17, 2015. The AR argued that the Manual of Policies and Procedures ("MPP"), Section 63-801.112 provides:

"The CWD shall not take action on inadvertent household and administrative error claims for which more than three years have elapsed between the month the overissuance occurred and month the CWD determined by computation that the overissuance occurred irrespective of the date the DFA 842 was complete." (Emphasis added)

Accordingly, the AR testified that the amount of the overissuance would be limited to months of August 2012 through October 2012 in the approximate amount of \$2,039.

The QR 7/SAR 7/SAWS 2 form must include verification of gross nonexcluded earned income for the Data Month and verification of nonexcluded unearned income when first reported and when there is a change. This requirement does not apply to child/spousal support disregard payments or PA, GA, FC, RCA, or ECA payments paid by the county. (§63-508.45, All County Letter 12-25, May 12, 2012)

Questions on the QR 7/SAR 7/SAWS 2 shall not be considered fully answered if situations such as, but not limited to the following exist:

The QR 7/SAR 7/SAWS 2 does not include information on changes that the household has previously reported to have occurred; for example, an actual change that the household reported to the county by telephone mid-payment period was not included on the QR 7/SAR 7/SAWS 2.

The QR 7/SAR 7/SAWS 2 does not include information that was reported on the previous QR 7 and the household does not indicate a change has occurred (e.g., the household previously reported earnings from two sources and only reported income from one source on the current QR 7/SAR 7/SAWS 2).

If elements pertaining to one program's requirements are missing from the QR 7/SAR 7/SAWS 2, the QR 7/SAR 7/SAWS 2 shall be considered incomplete for that program only.

The county shall not consider the QR 7/SAR 7/SAWS 2 incomplete if information regarding child support/spousal support disregard payments has not been included.

(§63-508.44, All County Letter 12-25, May 12, 2012)

Mid-payment period change means any change reported during the payment period that is outside the QR 7/SAR 7/SAWS 2 report process. There are two types of mid-quarter reports: (1) mandatory reports the household must make within 10 days and (2) voluntary reports the household may make at any time during the quarter. The county shall only take action to increase benefits as a result of a voluntary report and shall take no action to decrease benefits. (§63-102(m)(7) All County Letter 12-25, May 12, 2012)

Under prospective budgeting except for certain designated households who are excluded from regular reporting, all households participating in the CalFresh Program shall report household circumstances on the QR 7/SAR 7/SAWS 2 as a condition of eligibility. Households will also be required to report changes as specified in §§63-508 and 63-509, other than on the QR 7/SAR 7/SAWS 2. (§63-505.2 effective July 1, 2004)

Eligibility and benefit amounts will be determined on a quarterly or semi-annual basis from information reported by the recipient on the QR 7/SAR 7/SAWS 2. Prospective budgeting rules will be used. (§63-508.11)

Under SAR, all CalFresh recipients subject to the IRT requirements are required to report mid-period when their income exceeds 130 percent of the FPL for their household size. While the two tiers of the CalWORKs IRT are not mandatory reports in CalFresh, when a report of income over the CalWORKs IRT is made that results in a change in the CalWORKs case, the allotment will also be recalculated in the companion CalFresh case.
(All County Letter 12-25, May 12, 2012)

CalFresh recipients must report income over their IRT within 10 days of when the change is known to the household. The date the change is 'known to the household' is either the date the household becomes aware of new employment or an increase in pay, the start date of employment or when the household first receives the income exceeding the IRT. All County Letter 14-77, October 15, 2014 (Question #3).

To determine a CalFresh household's net monthly income, when there is no elderly or disabled household member, the county shall use the steps listed below. For QR/PB households, the steps below shall be followed after income is averaged over the QR/PB Payment Quarter as specified in §63-509(a)(4):

The county shall use exact dollars and cents. The final figure shall be rounded up for calculations that end in 50 cents or more, and down otherwise.

- (a) Add the gross monthly income earned by all household members minus earned income exclusions.
- (b) Apply the earned income deduction (which is 20% of gross earned income) to the total gross earned income.
- (c) Add to net monthly earned income the total monthly unearned income of all household members, minus income exclusions.
- (d) Subtract the standard deduction which is \$155 for four persons effective October 1, 2011 (ACIN I-62-11), and \$160 effective October 1, 2012 (ACIN I-46-12).
- (e) Subtract monthly dependent care expenses, if any, up to the current maximum. It is \$200 for dependent children under age two and \$175 for all other dependents. (The cap on the deduction for dependent care expenses is eliminated effective October 1, 2008. Families eligible for the deduction are allowed to deduct the entire amount of dependent care expenses when calculating benefit levels.) (ACL 08-37)
- (f) Subtract the homeless shelter deduction (which was \$143 as of October 1, 1995 and continuing).
- (g) Total the allowable shelter expenses (see §63-502.36) to determine shelter costs. Subtract from the total shelter costs 50% of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost.
- (h) Subtract the excess shelter cost (up to the current maximum, which was and \$459 effective October 1, 2011 and \$469 effective October 1, 2012) from the household's monthly income after all other deductions. The household's net monthly income has been determined.

(§63-503.311 revised effective November 1, 2006; Handbook §63-1101.2; ACIN I-61-09 and I-75-10)

The general rule is that the county is required to establish a claim against any household that has received more benefits than it was entitled to receive. All adult household members are jointly and individually liable for any overissuance to the household. (§63-801.1)

The county shall initiate collection action against any or all of the adult members of a household which received an overissuance. (§63-801.61)

There are no current State regulations that would prevent counties from pursuing collections of an established inadvertent household error or inadvertent household error overissuance claim (i.e. when the county issued a demand letter to the household within three years of the overissuance that the county seeks to collect) when more than three years has lapsed after the demand letter was issued. (ACIN I-58-08)

In an unpublished decision, the Court of Appeals upheld CDSS' claims that application of the doctrine of equitable estoppel was inappropriate because CalFresh is a wholly federally funded program, and because *Office of Personnel Management v. Richmond* (1990) 496 U.S. 414, precluded the relief sought. (*Vang v. Saenz*, No. C016270, March 20, 2002)

In an unpublished opinion by the Court of Appeals (*Vang v. Saenz*) the Court denied petitioner's claim that equitable estoppel should be applied to preclude the county from recovering CalFresh overissuances which were caused by inadvertent household error. The Appeals Court relied primarily on the U.S. Supreme Court's analysis in *OPM v. Richmond*.

In the *OPM* case, the Supreme Court concluded that equitable estoppel cannot be applied against the government where to do so would result in the payment of benefits not authorized by Congress.

The Supreme Court stated in *OPM* as follows:

"Whether there are any extreme circumstances that might support estoppel in a case not involving payment from the Treasury is a matter we need not address. As for monetary claims, it is enough to say that this Court has never upheld an assertion of estoppel against the Government by a claimant seeking public funds. In this context there can be no estoppel, for courts cannot estop the constitution."

(*OPM v. Richmond* (1990) 496 U.S. 414, 434)

The county shall take action on inadvertent and administrative error claims for which less than three years have elapsed between the month the overissuance occurred and the month the county determined by computation that an overissuance occurred, irrespective of the date the claim determination was completed. (§63-801.111)

The CDSS interpretation of the three-year time period discussed in §63-801.111 is as follows:

"The three-year time frame does not begin with the date of discovery, the date the case is referred to investigations, or the date the investigative staff uses the information on IEVS and other verifications to calculate the OI. The three-year time frame begins with the date of the occurrence of the OI [Manual of Policies and Procedures (MPP) 63-801.11; ACIN I-03-02]. OI Q&A #1 in ACIN I-03-02 provides an example of how the three-year time frame works. It also explains the six-year calculation time frame."

(All-County Information Notice (ACIN) No. I-52-02, July 22, 2002, Question 1)

The county shall calculate the amount of the CalFresh overissuance which occurred during the six years preceding the date the overissuance was discovered. The county shall not include in its calculation any amount of the overissuance which occurred in a month more than six years

prior to the date the overissuance was discovered. (§63-801.311(b), as revised effective August 10, 2001)

The CDSS issued an All-County Information Notice (ACIN) in which it interpreted the following state regulations:

"The CWD shall not take action on inadvertent household and administrative error claims for which more than three years have elapsed between the month the overissuance occurred and the month the CWD determined by computation that the overissuance occurred irrespective of the date the DFA 842 was complete." (§63-801.112)

"The CWD shall calculate the amount of the overissuance which occurred during the six years preceding the date the overissuance was discovered. The CWD shall not include in its calculations any amount of the overissuance which occurred in a month more than six years prior to the date the overissuance was discovered." (§63-801.311(b))

"QUESTION #1b:

"Why calculate back six years, but act within three?"

"ANSWER:

"The 'three years' is the timeframe for the occurrence, the computation, and to inform the household of the OI. This time frame is to ensure that timely action is taken on any OI. The 'six years' timeframe applies in determining the total amount of the OI claim against the household. A claim against the household is equal to the difference between the allotment amount the household received and the allotment amount the household should have received.

"The six years allows the county to possibly collect on a larger amount of the OI. Once a claim is established, there is no time limit, with the exception of §63-801.222 (administrative errors claims being recouped pursuant to *Lomeli v. Saenz*), on collection of overissuances."

Based on the above departmental interpretation, as further explained in ACIN No. I-52-02, it appears that despite §63-801.112, which limits the county action to three years from the "month the overissuance occurred" and the overissuance computation month, the CDSS position is to allow the counties to take action to collect the overissuance for up to six years as long as the overissuance occurred over a six-year period, the last month of which occurred within three years of the overissuance computation. Thus, the CDSS is treating an "overissuance" not as a one-month occurrence for purposes of the above interpretation, but as a continuing action.

(ACIN No. I-03-02, January 14, 2002; ACIN I-52-02, July 22, 2002)

There are no current State regulations that would prevent counties from pursuing collections of an established administrative error or inadvertent household error overissuance claim (i.e. when the county issued a demand letter to the household within three years of the overissuance that the county seeks to collect) when more than three years has lapsed after the demand letter was issued. (ACIN I-58-08)

The county shall be permitted to determine that a CalFresh overissuance claim is uncollectible after it is held in suspense for three years. The county shall use a suspended or terminated claim to offset a restoration of lost benefits in accordance with §63-802.54. (§63-801.53)

CONCLUSION

It is undisputed that the Claimant received a CalFresh overissuance of \$6,073 for the period November 2011 through October 31, 2012 due to unreported household income. The evidence further established that the overissuance was discovered on, or around, October 22, 2012. The overissuance was thereafter established via a notice of action dated August 17, 2015.

As stated in the "Law" section above, the position of the California Department of Social Service (CDSS) is to allow the counties to take action to collect an overissuance for up to six years as long as the overissuance occurred over a six-year period, the last month of which occurred within three years of the overissuance computation. Thus, the CDSS is treating an "overissuance" not as a one-month occurrence for purposes of the above interpretation, but as a continuing action. Accordingly, since the last month of the overissuance in this matter for the period November 1, 2011 through October 31, 2012 occurred within the three year period that the overissuance was established, the County may collect the full amount of the overissuance. The County's action, therefore, must be sustained.

ORDER

The claim is denied.

Exhibit 5

CONDADO DE CONTRA COSTA

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
CALIFORNIA DEPARTMENT OF SOCIAL SERVICESFood Stamps Over Payment
NOTIFICACIÓN DE EMISIÓN
EXCESIVA DE BENEFICIOS DE
CALFRESH SOLAMENTE POR ERRORES
NO INTENCIONALES DEL GRUPO (IHE)

Fecha de notificación : 12/07/2015
Nombre del caso : Marcos Espinosa-Tapia
Número del caso : 1B20B77
Nombre del trabajador : MCSC
Número del trabajador : FTPS
Número de teléfono del trabajador : (866) 663-3225
Horario de oficina : 8 AM - 12 PM, 1 PM - 5 PM
Información las 24 horas : (877) 505-4630
Dirección : PO BOX-4114
Concord CA 94524-4114

Marcos Espinosa-Tapia
38 Doral WAY
Antioch CA 94509-6047

¿Tiene preguntas? Comuníquese con su trabajador.

Audiencia con el estado: Si usted cree que esta acción está equivocada, puede solicitar una audiencia a menos que ya haya tenido una audiencia sobre la cantidad que debe. En el reverso de esta hoja se le explica cómo hacerlo. Es posible que sus beneficios no cambien si usted solicita una audiencia antes que esta acción entre en vigor.

Número de identificación de reclamo: 1339887

Se le emitió una cantidad excesiva de beneficios del Programa de CalFresh (conocido antes como el Programa de Estampillas para Comida) a su grupo para fines de CalFresh (de aquí en adelante llamado 'grupo').

La razón es la siguiente:

Se usó la cantidad equivocada de ingresos ganados cuando se calculó su cantidad de CalFresh. Esto provocó que su grupo recibiera beneficios de CalFresh de más.

Los ingresos ganados no reportados no califican para la deducción del 20%.

Usted tiene que reembolsar los beneficios extras de CalFresh.
Se le emitieron \$4380.00 en beneficios extras de CalFresh para el período de 07/2012 - 03/2013.

El grupo recibió la cantidad de \$4380.00 en beneficios de CalFresh.

El grupo debió haber recibido \$0.00 en beneficios de CalFresh. Usted recibió \$4380.00 (beneficios extras de CalFresh) menos lo que debió haber recibido.

Esta cantidad se redujo \$0.00 porque le debíamos beneficios al grupo correspondientes a meses anteriores o recibimos un reembolso parcial de la cantidad que se debía. Usted ahora debe \$4380.00.

En la hoja de cálculo adjunta a esta notificación, puede ver cómo calculamos la cantidad extra que usted recibió.

Reglas: Estas reglas aplican. Usted puede revisarlas en su oficina de asistencia pública.
MPP: 63-801.21, Duarte v. Saenz

- No tiene que usar beneficios que recibe del Programa de Ingresos Suplementales de Seguridad (SSI) para reembolsar esta emisión excesiva.

- Puede pedir una audiencia si cree que recibió los beneficios extras de CalFresh porque el Departamento de Bienestar Público del Condado cometió un error.

- Se cobrará a todas las personas adultas que formaban parte del grupo cuando ocurrió la emisión excesiva.

USTED TIENE QUE:

Pagar por completo la emisión excesiva de beneficios de CalFresh o completar, firmar y devolver el formulario de convenio para reembolso (DFA 377.7C) que se adjunta y pagar en la forma acordada.

ACCIONES DEL PROGRAMA:

- Se basará su convenio de reembolso en su capacidad actual para pagar según la calcule el condado. Cualquier cambio en su capacidad para pagar pudiera cambiar sus pagos mensuales.

- Si usted no firma y devuelve el convenio antes de que pasen 30 días a partir de la fecha de esta notificación, la cantidad de beneficios de CalFresh que usted recibe se reducirá un 10% comenzando en N/A.

- Si usted no paga, es posible que el condado utilice otros medios para cobrar la cantidad que usted debe, como por medio de la corte, otros métodos de agencias de cobros, y por una acción de cobros del gobierno federal.

- Si más tarde se determina, en la corte o por medio de una audiencia, que este error fue culpa de usted, se aplicarán sanciones aun cuando usted esté de

Attachment 1 Page 1

NOTIFICACION DE ACCION CONDADO DE CONTRA COSTA

Food Stamps Over Payment

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

(CONTINUADO)

Fecha de notificación : 12/07/2015
Nombre del caso : Marcos Espinosa-Tapia
Número del caso : 1B20B77
Nombre del trabajador : MCSC
Número del trabajador : FTPS
Número de teléfono del trabajador : (866) 663-3225

acuerdo en reembolsar lo que debe.

Si el pago del reclamo se atrasa o si se presenta una demanda en contra del grupo, es posible que se requiera que usted pague los costos adicionales del trámite o de la corte.

- Si usted no paga la cantidad que debe, el condado puede interceptar su devolución estatal/federal de impuestos sobre los ingresos y/o hacer una petición a la corte para embargar su sueldo o cualquier otra clase de propiedad que usted posea.

Advertencia: Si usted cree que esta emisión excesiva está equivocada, ésta es su última oportunidad para solicitar una audiencia. Si continua recibiendo beneficios de CalFresh, el Condado puede reducir su cantidad de beneficios de CalFresh para cobrar la emisión excesiva. Si deja de recibir beneficios de CalFresh antes de que se reembolse la emisión excesiva, es posible que el Condado tome la cantidad que usted debe de su devolución de impuestos sobre los ingresos.

CF 377.7B (2/14) (To client) CalFresh OI Notice for Inadvertent Household Errors Only

NOTIFICACION DE ACCION

CONDADO DE CONTRA COSTA

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Food Stamps Over Payment

(CONTINUADO)

Fecha de notificación : 12/07/2015
Nombre del caso : Marcos Espinosa-Tapia
Número del caso : 1B20B77
Nombre del trabajador : MCSC
Número del trabajador : FTPS
Número de teléfono del trabajador : (866) 663-3225

Mes y año de la emisión excesiva

07/2012

PARTE 1 - ELEGIBILIDAD POR INGRESOS BRUTOS

A. INGRESOS NO GANADOS, BRUTOS Y NO EXENTOS

1. Asistencia monetaria	\$	\$	\$	\$
2. Seguro Social, Desempleo (UIB), Incapacidad (DIB), pensiones	\$	\$	\$	\$
3. Mantenimiento de hijos/esposa(o)	\$	\$	\$	\$
4. Becas, subvenciones, préstamos	\$	\$	\$	\$
5. Otros	\$	\$	\$	\$
6. Ingresos no ganados brutos no reportados	\$	\$	\$	\$
7. Ingresos no ganados brutos (A1+A2+A3+A4+A5+A6)	\$	\$	\$	\$
8. Menos mantenimiento de hijos pagado (anote el resto en B7)	\$	\$	\$	\$
9. Total de ingresos no ganados brutos (A7 - A8)	\$	\$	\$	\$

B. INGRESOS GANADOS, BRUTOS Y NO EXENTOS

1. Salario/sueldo bruto	\$	\$	\$	\$
2. Trabajo por cuenta propia	\$	\$	\$	\$
3. Asignación para entrenamiento	\$	\$	\$	\$
4. Ingresos ganados brutos (B1+B2+B3)	\$	\$	\$	\$
5. Ingresos ganados brutos no reportados	\$	\$	\$	\$
6. Ingresos ganados, brutos y ajustados (B4+B5) (incluyendo ingresos no reportados)	\$	\$	\$	\$
7. Menos el resto del mantenimiento de hijos pagado (Si no se usó completamente en la Sección A)	\$	\$	\$	\$
8. Total de ingresos ganados brutos (B6-B7) (Si la cantidad es un número negativo, anote cero)	\$	\$	\$	\$

C. PRUEBA DE INGRESOS BRUTOS

No calculado para hogares con un miembro de edad avanzada/incapacitado. (MPP 63-503.323)

1. Tamaño del hogar	\$	\$	\$	\$
2. Máximo permitido de ingresos brutos de la lista	\$	\$	\$	\$
3. Total de ingresos brutos mensuales contables (A9+B8)	\$	\$	\$	\$
4. ¿Elegible por ingresos brutos? (¿Es el C3 menos o igual al C2?)				

D. EMISIÓN EXCESIVA POR INGRESOS BRUTOS (Si C4 es 'No')

1. Cantidad emitida anteriormente	\$	\$	\$	\$
2. Beneficio correcto	\$	\$	\$	\$
3. Total de la emisión excesiva de CalFresh (D1-D2)	\$	\$	\$	\$
4. Menos beneficios perdidos no restablecidos	\$	\$	\$	\$
5. Menos pago recibido	\$	\$	\$	\$
6. Cantidad de la emisión excesiva que se tiene que devolver (D3-D4-D5)	\$	\$	\$	\$
7. Menos beneficios a cambio de trabajo (Workfare) para contrabalancear	\$	\$	\$	\$
8. Cantidad de la emisión excesiva que se tiene que devolver (D6-D7)	\$	\$	\$	\$

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NOTIFICACION DE ACCION CONDADO DE CONTRA COSTA

Food Stamps Over Payment

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

(CONTINUADO)

Fecha de notificación : 12/07/2015
Nombre del caso : Marcos Espinosa-Tapia
Número del caso : 1B20B77
Nombre del trabajador : MCSC
Número del trabajador : FTPS
Número de teléfono del trabajador : (866) 663-3225

Mes y año de la emisión excesiva	07/2012			
PARTE 2 - ELEGIBILIDAD POR INGRESOS NETOS				
(Esta sección se calcula solamente si C4 es 'Sí'.)				
E. INGRESOS NO GANADOS, BRUTOS Y NO EXENTOS (A9)	\$	\$	\$	\$
F. INGRESOS GANADOS, BRUTOS Y NO EXENTOS				
1. Ingresos ganados brutos (no incluyendo ingresos no reportados) (B4)	\$	\$	\$	\$
2. Ingresos ganados, brutos y ajustados (80% de F1)	\$	\$	\$	\$
3. Ingresos ganados, brutos y no reportados	\$	\$	\$	\$
4. Total de ingresos ganados contables	\$	\$	\$	\$
5. Menos el resto de mantenimiento de hijos pagado (B7) (Si no se usó completamente en la Sección A)	\$	\$	\$	\$
6. Total de ingresos ganados brutos (F4-F5) (Si la cantidad es un número negativo, anote cero)	\$	\$	\$	\$
G. TOTAL DE INGRESOS BRUTOS Y NO EXENTOS (E+F6)	\$	\$	\$	\$
H. DEDUCCIÓN ESTÁNDAR/CUIDADO DE DEPENDIENTES/ ALBERGUE PARA PERSONAS SIN HOGAR				
1. Deducción estándar	\$	\$	\$	\$
2. Exceso de gastos médicos (Solamente se calcula el exceso de gastos médicos para hogares con miembros de edad avanzada/incapacitados.)	\$	\$	\$	\$
3. Cuidado de dependientes (100% del costo)	\$	\$	\$	\$
4. Deducción por albergue para personas sin hogar	\$	\$	\$	\$
5. Total de deducciones (H1+H2+H3+H4)	\$	\$	\$	\$
6. Total de ingresos ajustados (G-H5)	\$	\$	\$	\$
I. DEDUCCIONES POR VIVIENDA				
1. Total del costo de vivienda	\$	\$	\$	\$
2. Total de la cantidad permitida para servicios públicos y municipales	\$	\$	\$	\$
3. Total del costo para alojamiento (I1+I2)	\$	\$	\$	\$
4. Cantidad permitida para el costo de alojamiento (50% de H6)	\$	\$	\$	\$
5. Exceso del costo de alojamiento (I3-I4)	\$	\$	\$	\$
6. Máximo de cantidad permitida para alojamiento (Anote la cantidad que aparece en I5 para hogares con un miembro de edad avanzada/incapacitado.)	\$	\$	\$	\$
7. Deducción permitida para alojamiento (I5 ó I6, lo que sea menos) (Anote la cantidad que aparece en I5 para hogares con un miembro de edad avanzada/incapacitado.)	\$	\$	\$	\$
J. INGRESOS NETOS MENSUALES CONTABLES (H6-I7)	\$	\$	\$	\$
K. PRUEBA DE INGRESOS NETOS				
1. Tamaño del hogar	\$	\$	\$	\$
2. Máximo permitido de ingresos netos de la lista	\$	\$	\$	\$
3. ¿Elegible por ingresos netos? (¿Es J menos o igual a K2?)				

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NOTIFICACION DE ACCION CONDADO DE CONTRA COSTA

Food Stamps Over Payment

STATE OF CALIFORNIA
HEALTH AND HUMAN SERVICES AGENCY
CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

(CONTINUADO)

Fecha de notificación : 12/07/2015
Nombre del caso : Marcos Espinosa-Tapia
Número del caso : 1B20B77
Nombre del trabajador : MCSC
Número del trabajador : FTPS
Número de teléfono del trabajador : (866) 663-3225

Mes y año de la emisión excesiva	07/2012			
L. EMISIÓN EXCESIVA POR INGRESOS NETOS				
1. Cantidad emitida/autorizada anteriormente	\$	\$	\$	\$
2. Beneficio correcto	\$	\$	\$	\$
3. Total de la emisión excesiva de CalFresh (L1-L2)	\$	\$	\$	\$
4. Menos beneficios perdidos no restablecidos	\$	\$	\$	\$
5. Menos pago recibido	\$	\$	\$	\$
6. Cantidad de la emisión excesiva que se tiene que devolver (L3-L4-L5)	\$	\$	\$	\$
7. Menos beneficios a cambio de trabajo (Workfare) para contrabalancear	\$	\$	\$	\$
8. Cantidad del pago excesivo que se tiene que devolver (L6-L7)	\$	\$	\$	\$

PARTE 3 - ELEGIBILIDAD POR RECURSOS

M. RECURSOS CONTABLES

1. Total de recursos	\$	\$	\$	\$
2. Nivel máximo de recursos	\$	\$	\$	\$
3. ¿Elegible por recursos? (¿Es M1 menos o igual a M2?)				

N. EMISIÓN EXCESIVA POR RECURSOS

(Si M3 es 'No')

1. Cantidad emitida/autorizada anteriormente	\$	\$	\$	\$
2. Beneficio correcto	\$	\$	\$	\$
3. Total de la emisión excesiva de CalFresh (N1-N2)	\$	\$	\$	\$
4. Menos beneficios perdidos no restablecidos	\$	\$	\$	\$
5. Menos pago recibido	\$	\$	\$	\$
6. Cantidad de la emisión excesiva que se tiene que devolver (N3-N4-N5)	\$	\$	\$	\$
7. Menos beneficios a cambio de trabajo (Workfare) para contrabalancear	\$	\$	\$	\$
8. Cantidad de la emisión excesiva que se tiene que devolver (N6-N7)	\$	\$	\$	\$

PARTE 4 - ELEGIBILIDAD POR RAZONES NO FINANCIERAS

O. MIEMBROS DEL HOGAR

1. Tamaño anterior del hogar				
2. Tamaño correcto del hogar				

P. EMISIÓN EXCESIVA POR RAZONES NO FINANCIERAS

1. Cantidad emitida/autorizada anteriormente	\$	\$	\$	\$
2. Beneficio correcto	\$	\$	\$	\$
3. Total de la emisión excesiva de CalFresh (P1-P2)	\$	\$	\$	\$
4. Menos beneficios perdidos no restablecidos	\$	\$	\$	\$
5. Menos pago recibido	\$	\$	\$	\$
6. Cantidad de la emisión excesiva que se tiene que devolver (P3-P4-P5)	\$	\$	\$	\$
7. Menos beneficios a cambio de trabajo (Workfare) para contrabalancear	\$	\$	\$	\$
8. Cantidad de la emisión excesiva que se tiene que devolver (P6-P7)	\$	\$	\$	\$

Attachment 1 Page 5

Exhibit 6

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

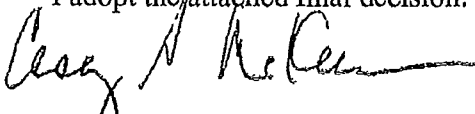
Hearing No. **2016005241**

In the Matter of Claimant(s):

Marcos Espinosa-Tapia
1686 45th Ave.
San Francisco CA 94122

DECISION

Pursuant to the authority of the Director,
I adopt the attached final decision.



Casey S. McKeever
Administrative Law Judge

Adopt Date: April 11, 2016

State Hearing Record

Hearing Date:	April 6, 2016	Release Date:	April 11, 2016
Aid Pending:	Not Applicable	Issue Codes:	[292-2]
Agency:	Contra Costa County	Agency Representative:	Yesenia Valdivia
Agency:		Agency Representative:	
Authorized Rep. Organization:	Bay Area Legal Aid	Authorized Rep:	John Treat
SSN:		SSN:	
AKA:		AKA:	
Case Name:	Marcos Espinosa -Tapia	Language:	
LA District/Case:		Companion Case:	

Appeal Rights

You may ask for a rehearing of this decision by mailing a written request to the Rehearing Unit, 744 P Street, MS 9-17-37, Sacramento, CA 95814 within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause. In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.

You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.

This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.

SUMMARY

Contra Costa County's determination that Claimant was overissued \$4,380 in CalFresh (formerly Food Stamps) benefits from July 2012 to March 2013 is sustained. The overissuance was caused by Claimant's failure to report his spouse's income.

Under state and federal regulations, the County is not barred from seeking recovery of that portion of the overissuance which occurred more than three years prior to the date of discovery when the last month of the overissuance was established within three years from its occurrence and no portion of the claim occurred more than six years prior to discovery. [292-2]

FACTS

Claimant appeals Contra Costa County's determination that he was overissued \$4,380 in CalFresh (formerly Food Stamps) benefits from July 2012 to March 2013. The County issued a Notice of Action (NOA) December 7, 2015. Claimant requested a hearing January 4, 2016. The hearing was held April 6, 2016, in Pleasant Hill, California. Claimant was represented by his Authorized Representative (ARs). The County was represented by a Social Services Appeals Officer (SSAO).

Claimant is a 37-year old male who applied for CalFresh benefits on July 9, 2012. The household consisted of Claimant, his wife and their three minor children. At the time of application the only income reported was from Claimant's employment, which was stated to be \$1,600 per month. Claimant submitted a QR 7 (quarterly report) for data month August 2012, November 2012 and February 2012 in which he reported only his own earnings.

The County asserted that in preparing for the annual recertification in June 2013 the County discovered that Claimant's wife had received income from earnings and State Disability Income (SDI). It requested and obtained verification from the wife's employer that the wife was hired on November 14, 2011, and received earnings through January 2013 from Kaiser Permanente. Subsequent information verified that the wife continued to be employed as of the date the employment was documented in November 2015. The County introduced earnings information into the record.

Additionally, the County received verification that Claimant's wife qualified for and received SDI during the period of the overissuance. The Income Eligibility Verification System (IEVS) payment record showed that she received \$530 per week beginning October 27, 2012. The record stated that Claimant had remaining benefits of \$26,197.14 as of December 5, 2012, and that she received \$1,060 in November 2012.

Based upon the information it received, the County determined that Claimant's CalFresh household was overissued benefits from July 2012 to March 2013. The County submitted a budget table the SSAO testified was attached to the NOA sent to Claimant and his wife. The County determined the household's income for the overissuance period as follows:

Month	Claimant's wages	Spouse's wages	Total earnings	Spouse's SDI	Total gross	Gross limit
7/2012	\$1,733.60	\$3,694.00	\$5,427.00	\$0	\$5,427.00	\$2,836.00
8/2012	\$1,733.60	\$3,516.00	\$5,429.00	\$0	\$5,249.00	\$2,836.00
9/2012	\$1,733.60	\$3,566.00	\$5,299.00	\$0	\$5,299.00	\$2,836.00
10/2012	\$1,600.00	\$3,533.00	\$5,133.00	\$0	\$5,133.00	\$2,927.00
11/2012	\$1,600.00	\$2,081.00	\$3,681.00	\$0	\$3,681.00	\$2,927.00

Month	Claimant's wages	Spouse's wages	Total earnings	Spouse's SDI	Total gross	Gross limit
12/2012	\$1,600.00	\$308.00	\$1,908.00	\$0	\$1,908.00	\$2,927.00
1/2013	\$1,600.00	\$286.45	\$1,886.45	\$2,297.00	\$4,183.45	\$2,927.00
2/2013	\$1,600.00	\$0.00	\$1,600.00	\$2,297.00	\$3,897.00	\$2,927.00
3/2013	\$1,600.00	\$1,037.98	\$2,637.00	\$0	\$2,637.00	\$2,927.00

The County determined that Claimant's household's gross income exceeded the eligibility limit from July to November 2012, and January and February 2013. In December 2012 and March 2013, however, the household's gross income did not exceed the eligibility limit, and in those two months the County determined the overissuance as follows:

Factor	12/2012	3/2013
Claimant's earnings	\$1,600.00	\$1,600.00
Less 20% disregard	\$1,280.00	\$1,280.00
Spouse's earnings	\$308.00	\$1,037.00
Countable earnings	\$1,588.00	\$1,317.00
Standard deduction	- \$187.00	- \$187.00
Adjusted income	\$1,401.00	\$2,130.00
Housing costs	\$1,731.00	\$1,731.00
50% adjusted income	\$700.50	\$1,065.00
Excess shelter	\$1,030.50	\$666.00
Maximum excess shelter	- \$469.00	- \$469.00
Net income	\$932.00	\$1,661.00
Correct grant for HH of 5	\$513.00	\$294.00
Amount issued	\$605.00	\$605.00
Overissuance	\$92.00	\$311.00

The overissuance as calculated by the County was thus as follows:

Month	Eligible amount	Amount issued	Overissuance
7/2012	\$0	\$421.00	\$421.00
8/2012	\$0	\$568.00	\$568.00
9/2012	\$0	\$568.00	\$568.00
10/2012	\$0	\$605.00	\$605.00
11/2012	\$0	\$605.00	\$605.00
12/2012	\$513.00	\$605.00	\$92.00
1/2013	\$0	\$605.00	\$605.00
2/2013	\$0	\$605.00	\$605.00
3/2013	\$294.00	\$605.00	\$311.00
Total	\$807.00	\$5187.00	\$4380.00

In its Statement of Position (SOP), the County asserted that it had incorrectly failed to include the wife's SDI and earnings for December 2012 and March 2013, and that the actual overissuance should equal \$5,187. It stipulated, however, that the County is bound by the amount originally charged in the December 7, 2015, NOA.¹

¹ It was not established that the original overissuance was understated. Although the IEVS record shows receipt of SDI in November 2012, it is not clear that under quarterly reporting rules that income was countable prior to January 2013. The IEVS report does not verify receipt of SDI after November 2012. It is also not clear what earned income the County asserts was not considered.

Claimant's position

Claimant's ARs do not dispute the income information or overissuance calculations made by the County. They argued that under MPP §63-801.112, the County was barred from seeking collection of any overissuance for a month more than three years prior to December 2015, the month it determined that the overissuance occurred and notified Claimant of the claim. Therefore, they asserted that the overissuance should be limited to the period from December 2012 to March 2013, a total of \$2,420.

Claimant's ARs do not deny that the County's attempt to collect the overissuance for the months prior to December 2012 is inconsistent with the interpretation of the California Department of Social Services (CDSS) announced in All-County Information Notice (ACIN) I-03-02 (January 14, 2002). The ARs argued that ACIN I-03-02 is a "rule which interprets other rules" and violates with the Administrative Procedures Act, Cal. Gov't Code §11342.

LAW

All the regulations cited refer to the Manual of Policies and Procedures (MPP), unless otherwise noted.

For purposes of this decision, W&IC is the abbreviation for the Welfare & Institutions Code.

CalFresh (formerly food stamp) benefit determinations

Eligibility and benefits in the CalFresh (CF) program are determined based upon prescribed rules which consider a household's income and specified deductions. A household's gross income must fall below the applicable limit for a household of comparable size to qualify for benefits. If a household satisfies the gross income test, its net nonexempt income is calculated to determine if the household is eligible under the net income limit and, if so, the amount of benefits for which the household qualifies.

Gross income limit

Except for categorically eligible households and households with an elderly or disabled household member(s), the counties shall determine eligibility for CF benefits pursuant to the maximum gross income standards as promulgated and updated by the United States Department of Agriculture. The gross income standard for a household of five (5) persons as set forth in Handbook §63-1101.31 and set out in All-County Information Notice I-62-11, effective October 1, 2011 was \$2,836. As of October 1, 2012, it was \$2,927 (ACIN I-46-12). A household with income in excess of the standard is ineligible to receive CF. (§63-409.111)

Net income limit

Except for categorically eligible households, CF eligibility is based on maximum net income standards set forth in Handbook §63-1101. Pursuant to Handbook §63-1101.32 and set out in All-County Information Notice I-42-12, effective October 1, 2012, the maximum net income level for a household of five (5) persons was \$2,251. A household with income in excess of the standard is ineligible to receive CF. (§63-409.112)

Semi-annual reporting and reasonably anticipated income

The county will use information on the SAR 7 to determine continuing eligibility and future benefit amounts based on all eligibility factors. Based on information provided on the SAR 7, the county will determine continuing eligibility as it relates to property, income deprivation (CalWORKs only), and household composition using prospective budgeting rules. (All-County Letter No. 03-18, April 29, 2003, p.16)

The SAR/Prospective Budgeting (SAR/PB) system uses anticipated income/prospective budgeting to determine a recipient's benefits. Prospective budgeting requires the county to use income that the recipient *reasonably anticipates* it will receive during the payment period. ()

Income is "reasonably anticipated" when the county determines it is reasonably certain that the recipient will receive a specified amount of income during any month of the SAR payment period and applies to all earned and unearned income. Income is considered reasonably anticipated if the county determines that the income has or will be approved or authorized within the upcoming payment period, or the assistance unit/household is reasonably certain that the income will be received within the period; and the amount of the income is known. (All-County Letter 12-25, May 17, 2012)

Weekly and biweekly income conversions

Income reasonably anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. The county shall use exact monthly income if it can be reasonably anticipated. For change reporting households, whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the county shall convert income to monthly income by multiplying by 4.33 or 2.167 as appropriate if the exact amount is not known.

For SAR households, whenever a full month's income is anticipated but is received weekly or biweekly, and will remain the same throughout the SAR payment Quarter, the county shall convert income to monthly income by multiplying by 4.33 or 2.167.

(§63-503.242(b)(1)(QR))

CalFresh benefit calculations for households without an elderly or disabled member

To determine a CalFresh household's net monthly income, when there is no elderly or disabled household member, the county shall use the steps listed below. For prospective budgeting households, the steps below shall be followed after income is computed for the payment period as specified in §63-509(a)(4):

The county shall use exact dollars and cents. The final figure shall be rounded up for calculations that end in 50 cents or more, and down otherwise.

- (a) Add the gross monthly income earned by all household members minus earned income exclusions.
- (b) Apply the earned income deduction (which is 20% of gross earned income) to the total gross earned income.

- (d) Subtract the standard deduction which was \$187 for five (5) persons effective October 1, 2012.
- (e) Subtract monthly dependent care expenses, if any,
- (f) Subtract the homeless shelter deduction, if applicable.
- (g) Total the allowable shelter expenses (see §63-502.36) to determine shelter costs. Subtract from the total shelter costs 50% of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost.
- (h) Subtract the excess shelter cost (up to the current maximum, which was \$469 effective October 1, 2012, from the household's monthly income after all other deductions. The household's net monthly income has been determined.

(§63-503.311 revised effective November 1, 2006; Handbook §63-1101.2; ACIN I-61-09 and I-75-10)

The household's monthly allotment shall be determined from the Coupon Allotment Tables (Handbook §63-1101) on the basis of the household's size and net income. For a household of five (5) persons with net income of \$932, the monthly allotment was \$513. (§63-503.324)

CalFresh (formerly Food Stamps) overissuances

When a CalFresh household received a larger allotment than it was entitled to receive, the county shall establish a claim against the household equal to the difference between the benefits received and the benefits which should have been issued.

- (a) For categorically eligible households, a claim shall be determined only when the amount of the overissuance can be calculated on the basis of the household's net income and/or household size.
- (b) When the overissuance occurred in a month or months in which any household member has already performed a Workfare or work component requirement, see §63-407.89.
- (c) When determining the amount of benefits the household should have received, the county shall not apply the 20% earned income deduction to that portion of earned income the household failed to report.

(§63-801.312, as amended by adding (c), effective November 12, 1996)

When computing an overissuance or underissuance, counties are to use the actual amount of CalWORKs that was anticipated with reasonable certainty or that was reasonably anticipated. Quarterly reporting regulations support using the amount of the CalWORKs grant that was reasonably anticipated with no look-back for recalculation of the CalWORKs grant. Since CalWORKs grants are known-to-county information and not subject to recipient reporting, a recalculated grant is not required.

(All County Information Notice I-16-05, p.12, April 4, 2005)

Collection of CalFresh (CF) overissuances

The general rule is that the county is required to establish a claim against any household that has received more benefits than it was entitled to receive. All adult household members are jointly and individually liable for any overissuance to the household. (§63-801.1)

The county shall take action on inadvertent and administrative error claims for which less than three years have elapsed between the month the overissuance occurred and the month the county determined by computation that an overissuance occurred, irrespective of the date the claim determination was completed. (§63-801.111)

The CDSS interpretation of the three-year time period discussed in §63-801.111 is as follows:

"The three-year time frame does not begin with the date of discovery, the date the case is referred to investigations, or the date the investigative staff uses the information on IEVS and other verifications to calculate the OI. The three-year time frame begins with the date of the occurrence of the OI [Manual of Policies and Procedures (MPP) 63-801.11; ACIN I-03-02]. OI Q&A #1 in ACIN I-03-02 provides an example of how the three-year time frame works. It also explains the six-year calculation time frame."

(All-County Information Notice (ACIN) I-52-02, July 22, 2002, Question 1)

The county shall calculate the amount of the CF overissuance which occurred during the six years preceding the date the overissuance was discovered. The county shall not include in its calculation any amount of the overissuance which occurred in a month more than six years prior to the date the overissuance was discovered. (§63-801.311(b), as revised effective August 10, 2001)

(ACIN I-03-02, January 14, 2002)

Counties may take action to collect an overissuance for up to six years as long as the overissuance occurred over a six-year period, the last month of which occurred within three years of the overissuance computation. Thus, the CDSS is treating an "overissuance" not as a one-month occurrence for purposes of the above interpretation, but as a continuing action.

(ACIN I-03-02, January 14, 2002; ACIN I-52-02, July 22, 2002)

CONCLUSION

The sole issue presented in Claimant's appeal is whether the County may demand repayment of an overissuance of CalFresh benefits which occurred more than three years prior to the date the County established the claim. His ARs argues that the overissuance which is alleged to have occurred from July to November 2012 – a total of \$2,767 – is not recoverable. In its Statement of Position (SOP), Claimant's AR asserts that the total overissuance should be reduced to \$2,420. However, the amount for that period allegedly owed as stated in the December 7, 2015, NOA, and as stipulated by the County, is \$1,613 (\$92 + \$605 + \$605 + \$311). The overissuance for the period from July to November 2012 Claimant's AR contends may not be collected is \$2,767 (\$421 + \$568 + \$568 +605 +605).

Claimant's counsel cites MPP §63-801.112 in support of his argument that the County may not seek recovery of any overissuance which occurred prior to December 2012. That regulation provides, "The CWD [county welfare department] shall not take action on inadvertent household

and administrative error claims for which more than three years have elapsed between the month the overissuance occurred and the month the CWD determined by computation that the overissuance occurred irrespective of the date the DFA 842 was completed."

Additionally, MPP §63-801.113(b) provides that "[t]he CWD shall calculate the amount of the overissuance which occurred during the six years preceding the date the overissuance was discovered. The CWD shall not include in its calculation any amount of the overissuance which occurred in a month more than six years prior to the date the overissuance was discovered."

Since the County has not characterized the overissuance in this case as an Intentional Program Violation (IPV), the rules set forth in §63-801.11 apply.

Claimant's AR argues that phrase "the month the overissuance occurred" must mean that each overpayment month independently triggers the three-year recovery period.

Claimant's reading conflicts with the CDSS policy providing guidance to the counties as set forth in All-County Information Notices I-03-02 (January 3, 2002) and ACIN I-52-02 (July 22, 2002). These state that once an overissuance for any month is established within three years from the date of its occurrence, the County must calculate the overissuance for the six year period from the date of discovery pursuant to §63-801.311(b).

I do not find §63-801.112 clearly prohibits a county from seeking recovery of an overissuance for a month occurring more than three years prior to the month of discovery when the last month of a continuous overissuance occurred within three years from the date it was established by the County. The CDSS interpretation allows application of the six-year calculation period of §63-801.311(b) once an overissuance has been established within three years from its occurrence.

Claimant's argument that the six-year calculation applies only in Intentional Program Violation (IPV) cases under 7 C.F.R. §273.18(c)(1) is not supported by the language of that regulation. That section provides that for IPV cases, a claim "must be calculated back to the month the act of IPV first occurred," i.e., irrespective of any time limit. Apart from IPV cases, states are prohibited "for all claims" from including amounts which occurred more than six years prior to discovery. Thus, the federal regulation clearly contemplated recovery of overissuances occurring more than three years prior to the date of discovery in non-IPV cases, and the state's rule at §63-801.311(b) is consistent with that provision. Claimant's position would render the six-year calculation period meaningless, since no such limits apply in IPV cases.

Nor do I find that the guidance set forth in ACIN I-03-02 and ACIN I-52-02 violates the Administrative Procedure Act. The ACINs are not regulatory but merely explain the meaning of existing regulations. The policy at issue here has been applied for some 14 years and Claimant's AR cited no court decision or judicial ruling which has found that it violates state or federal law.

ORDER

The claim is denied.

Notice of Language Services

If you do not understand this information or notification, call your county worker. You have the right to interpreter services provided by the county at no cost to you.

(English)

Si no entiende la información o notificación, póngase en contacto con el trabajador social de su condado. El condado debe proporcionarle el servicio de interpretación en forma gratuita.

(Spanish)

إذا لم تفهم هذه المعلومات، أو هذا الإشعار فعليك الاتصال بموظف الإقليم. ويحق لك الحصول على خدمات مترجم يقدمها لك الإقليم بالمجان.

(Arabic)

Եթե այս ինֆորմացիան չէք հասկանում հաճեցեք կապվել ձեր գավառի սպառողային իրավունք ունեք առանց վճարման թարգմանիչի ծառայությանը, որ ձեզ կտրվի գավառի կողմից

(Armenian)

ប្រសិនបើអ្នកមិនយល់ព័ត៌មាន ឬការជូនព័ត៌មាននេះ សូមទូរស័ព្ទទៅកាន់បុគ្គលិកធ្វើការក្នុងខោនធីរបស់អ្នក ។ អ្នកមានសិទ្ធិ
ក្នុងការទទួលសេវាបកប្រែដែលផ្តល់ដោយខោនធីដោយមិនគិតថ្លៃពីអ្នកឡើយ ។

(Cambodian)

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(Chinese)

اگر این اطلاعات یا اطلاعیه را نمیفهمید، با کارمند بخش خود تماس بگیرید. شما قانوناً حق دارید از خدمات ترجمه که بطور مجانی توسط بخش فراهم میشود بهره مند شوید.

(Farsi)

Yog koj tsis to taub cov ntaub ntawv lossis daim ntawv no, hu rau koj tus kws khiav ntaub ntawv nyob koj cheeb tsam. Koj muaj cai siv kev pab txhais lus pub dawb uas los ntawm cheeb tsam koj nyob ko.

(Hmong)

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(Japanese)

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(Korean)

ຫາກວ່າທ່ານບໍ່ເຂົ້າໃຈຂໍ້ມູນຫລືໃບແຈ້ງຄວາມນີ້ ໃຫ້ໂທໂຮໂປຫາພະນັກງານຄາວຕີ້ (county) ຂອງທ່ານ.

ທ່ານມີສິດທິຈະຮັບບໍລິການນາຍພາສາທີ່ຈັດໃຫ້ໂດຍຝ່າຍຄາວຕີ້ (county) ໂດຍທ່ານບໍ່ເສັຽຄ່າ.

(Lao)