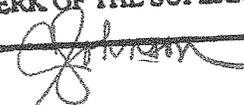


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ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 07 2014

CLERK OF THE SUPERIOR COURT  
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF ALAMEDA

17 LORAIN JONES, KIM KRUCKEL and  
18 LIFETIME, )  
19 Petitioners/Plaintiffs, )  
20 vs. )  
21 WILL LIGHTBOURNE, Director of the )  
22 California Department of Social Services, in )  
23 his official capacity; CALIFORNIA )  
24 DEPARTMENT OF SOCIAL SERVICES, )  
25 Respondents/Defendants )

Case No.: **RG 14716526**  
**VERIFIED PETITION FOR WRIT OF  
MANDAMUS AND FOR INJUNCTIVE  
AND DECLARATORY RELIEF**  
[Code Civ. Proc. §§ 1060, 1094.5, 1085]

1 By this verified petition, Petitioners allege as follows:

2 **I. INTRODUCTION**

3 1. Petitioner<sup>1</sup> Loraine Jones receives aid under the California Work Opportunity and  
4 Responsibility to Kids (“CalWORKs”) program. CalWORKs is designed to lift families with  
5 needy children out of poverty by, among other things, providing parents with the employment  
6 skills they need to achieve economic self-sufficiency within a time-limited period. This  
7 legislative purpose of economic self-sufficiency is to be achieved through two integrated  
8 provisions – employment services to help move families out of poverty and modest, time-limited  
9 cash assistance. When the Legislature chose to limit the time period during which CalWORKs  
10 recipients could receive cash benefits and services, it mandated that Respondent, the California  
11 Department of Social Services (the “Department” or “CDSS”), promptly make available to  
12 recipients, through county welfare departments, Welfare-to-Work activities and services  
13 (hereafter referred to as “WTW”). Welf. & Inst. Code §§ 11320.3 and 11325.21(a). This case  
14 challenges the Department’s failure to comply with its mandatory duty to require that counties  
15 provide timely WTW activities and services to CalWORKs recipients concurrently with cash aid.  
16 When the counties fail to do so, Petitioners seek, among other things, to compel Respondents to  
17 forebear from terminating cash aid until recipients have been offered their full months of WTW.

18 2. As just one example, for over three years, the Alameda County Social Services  
19 Agency (the “County”) has persistently failed, and CDSS has consistently failed to require the  
20 County, to make WTW activities and services available to Petitioner Jones, despite its clear duty  
21 to do so. This failure on the part of CDSS occurred despite Ms. Jones’s multiple requests for job  
22 training and educational opportunities in order to become economically self-sufficient. As a  
23 result of the County’s delays and errors, Petitioner Jones will not have achieved self-sufficiency  
24 when her 48 months on aid soon expires. In her administrative hearing, Ms. Jones requested that  
25 CDSS not count the months during which the County failed to provide her with the required  
26 WTW plan or services toward her 48 months of aid. Though the Administrative Law Judge

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27 <sup>1</sup> “Petitioner” includes “plaintiff;” “respondent” includes “defendant;” and “petition” includes  
28 “complaint.”

1 found that the County had failed to offer Ms. Jones the full period of WTW opportunities and  
2 services that the CalWORKs statutes require, the decision nonetheless denied her request.  
3 Petitioner Jones seeks to set aside the Department's decision under California Code of Civil  
4 Procedure section 1094.5.

5 3. Under California Code of Civil Procedure section 1085, Petitioners Jones, Kruckel,  
6 and Lifetime (collectively, "Petitioners") seek, on behalf of themselves and similarly situated  
7 CalWORKs recipients, to compel CDSS to require county welfare departments to provide the  
8 full period of WTW services that the Legislature deemed necessary to attain economic self-  
9 sufficiency. In those cases where counties have failed to make WTW available in a timely  
10 manner, Petitioners seek a declaration that state welfare laws not only authorize but obligate  
11 Respondents not to terminate recipients' cash aid and services until they receive the full period  
12 of WTW services to which they are entitled. Further, Petitioners seek injunctive relief, and/or a  
13 writ of mandate, compelling CDSS to ensure that county welfare departments carry out their  
14 WTW responsibilities, and exclude from the 48 months of time-limited aid the time during  
15 which they failed to do so.

## 16 **II. JURISDICTION AND VENUE**

17 4. This Court has jurisdiction over this matter under California Code of Civil Procedure  
18 sections 1085 and 1094.5..

19 5. Venue in this court is proper under Code of Civil Procedure section 393 (b), as the  
20 cause of action arose in Alameda County.

## 21 **III. PARTIES**

22 6. Petitioner LORAIN JONES is a 26 year old resident of Alameda County, California.

23 7. Petitioner KIM KRUCKEL is an adult resident of, and homeowner in, Alameda  
24 County who pays real property taxes. Ms. Kruckel is and was at all times relevant to this action  
25 a taxpayer interested in having the laws executed under C.C.P. section 526a and ensuring that  
26 Respondents do not impair or defeat a public right. She is also a concerned citizen who has an  
27 interest in ensuring, under C.C.P. section 1085, that Respondents comply with their legal duty to  
28 timely make available to CalWORKs recipients the WTW to which they are legally entitled. Ms.

1 Kruckel has a special interest in the outcome of this action, as the Executive Director of the  
2 Child Care Law Center (CCLC), dedicated to ensuring that all low-income working parents have  
3 access to high-quality, affordable childcare. CCLC assists many current and former CalWORKs  
4 recipients whose efforts at self-sufficiency are made more difficult by Respondents' failure to  
5 ensure that counties are complying with their duty to timely provide WTW services, including  
6 childcare, so that recipients may participate in education, job training and work.

7 8. Petitioner LOW-INCOME FAMILIES' EMPOWERMENT THROUGH  
8 EDUCATION ("LIFETIME") is a member-based organization dedicated to empowering low-  
9 income parents to determine, pursue and achieve their goals for education, employment and  
10 economic security. LIFETIME is based in Oakland, California and has chapters around the state.  
11 LIFETIME has an interest under C.C.P. section 1085 in ensuring that Respondents comply with  
12 their legal duty to timely offer to CalWORKs recipients the WTW to which they are legally  
13 entitled.

14 9. Respondent WILL LIGHTBOURNE is the Director of the California Department of  
15 Social Services (CDSS). As Director, he is responsible for the management of CDSS and the  
16 enforcement, operation and administration of the laws and regulations pertaining to the  
17 administration of the CalWORKs Program. Welf. & Inst. Code § 10553. Respondent  
18 LIGHTBOURNE is being sued in his official capacity, as the official responsible for ensuring  
19 CDSS and its agents act in conformity with federal and state law. Respondent LIGHTBOURNE  
20 is the proper Respondent in these proceedings by virtue of Welfare and Institutions Code section  
21 10553.

22 10. Respondent CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS) is the  
23 single state agency that oversees and is responsible for the ensuring that the CalWORKs program  
24 is administered in full compliance with applicable state and federal law. Welf. & Inst. Code §  
25 10600. Under Welfare and Institutions Code section 10531, CDSS is responsible for ensuring  
26 that each county's WTW plan complies with state and federal requirements, and that each county  
27 states how it will timely deliver the full range of WTW activities and services necessary to move  
28 CalWORKs recipients to self-sufficiency.

1 **IV. STATUTORY FRAMEWORK**

2 **A. Federal And State Background: TANF And CalWORKs**

3 11. In 1996, federal welfare reform replaced the Aid to Families with Dependent  
4 Children (“AFDC”) program with the Temporary Aid to Needy Families (“TANF”) program.  
5 TANF is a federally-funded block grant program designed to enable states to provide integrated  
6 cash assistance and employment services to needy families with children. One of the central,  
7 stated purposes of TANF is to end the dependence of needy parents on public assistance by  
8 promoting job preparation and employment. *See* 42 U.S.C. § 601 *et seq.*; 45 C.F.R. § 260.10(b).  
9 In fact, TANF was created as part of the “Personal Responsibility and *Work Opportunity*  
10 *Reconciliation Act.*” *Id.* (Emphasis added).

11 12. TANF imposed a maximum lifetime limit of 60 months that a non-exempt family  
12 may receive federally financed assistance. 42 U.S.C. § 608(a)(7). TANF’s time limit differs  
13 from its predecessor, the AFDC program, which had provided cash aid to needy families for as  
14 long as they met all eligibility and participation requirements. Under TANF, states may adopt an  
15 even shorter time limit; they may also provide assistance to families beyond the 60 month federal  
16 time limit, so long as federal TANF funds are not used to do so.

17 13. In 1997, California enacted its version of the federal TANF program, CalWORKs.  
18 Welf. & Inst. Code § 11200 *et seq.*, originally enacted as AB 1542, Chapter 270, Statutes of  
19 1997 (August 11, 1997). The CalWORKs program is aimed at promoting the well-being of  
20 children, strengthening families and helping parents achieve their potential for economic self-  
21 sufficiency through work. Manual of Policies and Procedures (“M.P.P.”) § 42.701.1. Integrated  
22 provisions of the CalWORKs program require counties to assist recipients in achieving self-  
23 sufficiency by the time cash aid ends, by providing access to education, employment, job  
24 preparation, training, necessary support services and removal of barriers to employment through  
25 its WTW program.

26 14. States receive TANF funds only upon approval of a state plan that complies with  
27 federal requirements and furthers TANF goals. 45 C.F.R. § 201.2 *et seq.* CDSS submits an  
28

1 annual state plan in which it certifies, among other things, “how the state intends to ...provide[]  
2 parents with job preparation, work and support services to enable them to leave the program and  
3 become self-sufficient.” California has certified that it will require counties to develop WTW  
4 plans for recipients within 90 days from the date aid is determined, or the date the recipient  
5 becomes non-exempt; the counties will then provide the full range of WTW. CDSS also has  
6 certified that it will ensure that the state plan’s requirements are in effect throughout the state.  
7 State Plan for Provision of Public Assistance under the Personal Responsibility and Work  
8 Opportunity and Reconciliation Act of 1996, Effective Oct. 1, 2010 (signed by Governor  
9 Schwarzenegger on 12/28/10) at p. 2 of 18; Welf. & Inst. Code § 11325.21(a).

10 15. CDSS allocates the state’s TANF funds to the counties, and is responsible for  
11 ensuring that counties are complying with relevant provisions of the Welfare and Institutions  
12 Code in timely delivering aid and services, including WTW. Welf. & Inst. Code §§ 10001(b),  
13 10532 and 11320.3. Among other state plan requirements, a state must *guarantee* that it will  
14 make an initial assessment of the skills, prior work experience, and employability of each adult  
15 recipient who has not completed or is not attending secondary school, within 30 (or at state  
16 option 90) days after an individual becomes eligible for aid. 45 CFR 261.11(a), (b) (Emphasis  
17 added) California has adopted the 90 day option. Welf. & Inst. Code § 11325.21(a).

18 16. When the Legislature enacted CalWORKs in 1997, it adopted the federal five year  
19 time limit. AB 1542, Chapter 270, Statutes of 1997 (August 11, 1997). In 2011, the Legislature  
20 reduced the maximum number of months that a non-exempt adult can receive aid to 48 months.  
21 Welf. & Inst. Code § 11454, as amended by S.B. 72, Chapter 8, Statutes of 2011.

22 17. Once a CalWORKs adult recipient has received 48 months of time-limited aid, he or  
23 she is no longer eligible for TANF-funded cash aid, may only participate in WTW if the county  
24 allows, and is ineligible to receive most support services. Welf. & Inst. Code § 11320.15.

25 **B. State, County And Recipient Duties Under The Welfare-To-Work Requirements**

26 18. The CalWORKs statute mandates that each county shall submit “a plan consistent  
27 with state law that describes how the county intends to deliver the full range of activities and  
28

1 services necessary to move CalWORKs recipients from welfare to work.” Welf. & Inst. Code §  
2 10531. CDSS is responsible for determining whether the county plan is incomplete or  
3 inconsistent with state or federal law and taking necessary actions to bring it into compliance.  
4 Welf. & Inst. Code § 10532(b)(2).

5 19. The CalWORKs statutes impose detailed requirements upon counties in the WTW  
6 process, with timeframes for each step in the WTW sequence. Upon being approved for  
7 CalWORKs aid, or becoming non-exempt from WTW requirements, the County must timely  
8 offer, and non-exempt CalWORKs recipients must participate in, WTW orientation, assessment,  
9 the creation of a WTW plan, and assigned WTW activities. Welf & Inst. Code §§ 11320.1,  
10 11325.21(a); M.P.P. §§ 42-711.51, 42-711.61.

11 20. Following assessment and within “90 days after the date that a recipient’s eligibility  
12 for aid is determined or the date the recipient is required to participate in welfare-to-work  
13 activities...,” the county and the participant “*shall* enter into a written welfare-to-work plan.”  
14 Welf. & Inst. Code § 11325.21(a) (emphasis added). The plan must specify the activities to  
15 which the participant is assigned, the supportive services that the county will provide to the  
16 recipient (such as child care, transportation reimbursement, job or training-related expenses), and  
17 “shall include the activities and services that will move the individual into employment.” Welf. &  
18 Inst. Code §§ 11320.1(b), 11323.2, 11325.21; M.P.P. §§ 42-711.6 *et seq.* Those recipients who  
19 are exempt from WTW participation must be given an opportunity to voluntarily participate.  
20 Welf. & Inst. Code § 11320.3(c); M.P.P. § 42-712.5. For those CalWORKs recipients who are  
21 not exempt from mandatory participation in WTW, their failure to participate without good cause  
22 results in severe monetary sanctions. Welf. & Inst. Code § 11327.5.

23 21. At the time of application, and at any subsequent eligibility determination, the county  
24 must provide the individual with written, and orally as necessary, notice of the education,  
25 employment and training opportunities, the supportive services available through the WTW  
26 program, a description of the exemptions from required participation and consequences of a  
27 refusal to participate if not exempt, and of the time remaining on the recipient’s time clock.  
28 Welf. & Inst. Code § 11324.8.

1       22.     In 2009, in response to a severe budget shortfall and an increasing overall  
2 CalWORKs caseload, the Legislature determined that there was likely to be a temporary lack of  
3 funding to provide the full range of WTW services to all CalWORKs recipients. Budget Act of  
4 1009, A.B. x4 4 (Chapter 4, Statutes of the Fourth Extraordinary Session of 2009). The  
5 Legislature responded by enacting new exemptions from mandatory WTW participation for  
6 parents with very young children. Welf. & Inst. Code § 11320.3(b)(7); *Id.*, see also Welf. & Inst.  
7 Code § 11454.5.

8       23.     Manifesting the Legislature’s intention that months when WTW services are  
9 unavailable are not countable toward the time limit, the CalWORKs 48 month time clock  
10 stopped for young child exempts until they no longer met the criteria for these exemptions, or  
11 December 31, 2012, whichever occurred first. Welf. & Inst. Code § 11454.5(a)(7). The  
12 Legislature also provided that upon the exemption ending and the resumption of the clock  
13 ticking, the counties would re-engage the recipient in WTW.

14           **C. The Duty To Provide Full And Timely WTW Before Recipients Are Time-**  
15           **Limited.**

16       24.     Welfare and Institutions Code section 10000 mandates that in furtherance of the  
17 purpose of “providing appropriate aid and services to all of its needy and distressed . . . aid  
18 [including CalWORKs] shall be administered and services provided promptly and humanely . . .  
19 [so] as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to  
20 society.” Welfare and Institutions Code section 10500 mandates that aid, including CalWORKs  
21 aid, shall be administered “in such manner as to secure for every person the amount of aid to  
22 which he is entitled,” including provision of timely WTW services. Welfare and Institutions  
23 Code section 10001(b) directs the Department to provide grants in aid to counties so that they  
24 can fulfill the statutory mandate to “provide timely and appropriate services to assist individuals  
25 [to] develop or use whatever capacity they can maintain or achieve for self-care and self-  
26 support.” Welfare and Institutions Code section 11000 requires that the laws relating to the  
27 CalWORKs program “shall be fairly and equitably construed to effect the stated objects and  
28 purposes of the program.” The stated purpose of CalWORKs is to lift needy families out of

1 poverty and help them achieve economic self-sufficiency within their period of time-limited aid.  
2 Welf. & Inst. Code § 11200 *et seq.*, originally enacted as AB 1542, Chapter 270, Statutes of  
3 1997.

4 25. These CalWORKs statutes create a duty that the full range of integrated aid and  
5 services, including WTW, must be provided to recipients in a timely manner before recipients'  
6 aid is time-limited. A fair and equitable construction of California's CalWORKs laws that is in  
7 compliance with Welfare and Institutions Code section 11000, and one which effects the objects  
8 and purposes of the program, including transitioning adult recipients to self-sufficiency, is that  
9 because the CalWORKs time limit and WTW services are inextricably linked, the 48 month clock  
10 does not run while the county fails timely to make WTW services available to a non-exempt  
11 recipient.

## 12 V. FACTUAL ALLEGATIONS

### 13 A. Petitioner Loraine Jones

14 26. Petitioner Loraine Jones is a 26 year old mother of a five year old son, Zack, who is  
15 her only child. Ms. Jones has demonstrated her desire to work, and has tried hard to secure  
16 stable employment. But because of her poverty, lack of job skills, the failure of our state's  
17 education system adequately to address her difficulties learning math, and other life  
18 circumstances, she has been unable to maintain stable employment. She therefore relies on the  
19 modest cash grant and WTW assistance that CalWORKs is supposed to provide.

20 27. Ms. Jones was first approved for CalWORKs aid in September 2008, when she was  
21 21 years old and seven months pregnant. Ms. Jones reported her pregnancy at the time of  
22 application. As required, the County exempted her from WTW requirements for the duration of  
23 her pregnancy, and did not count these months against her time-on-aid clock. However, the  
24 County also did not inform Ms. Jones that she could voluntarily participate in WTW and receive  
25 supportive services while she continued to be exempt.

26 28. Following the birth of Ms. Jones's son on December 6, 2008, of which the County  
27 was made aware, the County failed to update its records to reflect that she was no longer  
28

1 pregnant. See CDSS State Hearing Decision No. 2013045293, a true copy of which is attached  
2 as Exhibit A, p. 2, ¶¶ 2, 3.

3 29. On her own initiative, Ms. Jones contacted the County in February and April 2010  
4 and asked about participating in WTW activities, but the County failed to follow up. *Id.* at 4, ¶  
5 4. Without any assistance from the County, Ms. Jones tried to get herself back on her feet while  
6 caring for an infant and fighting depression and emotional issues resulting from her poverty, the  
7 lack of help from the County, and her sister's untimely death. She participated in a job search  
8 program and applied for numerous jobs at fast food chains and stores. Ms. Jones's attempts to  
9 secure sustainable employment were not successful.

10 30. The County continued to consider Ms. Jones exempt from WTW for approximately  
11 two and one half years, until May 2011. The County failed periodically to review Ms. Jones's  
12 exempt status or to re-engage her once the exemption ended, as it is required to do. Then, when  
13 the County finally attempted to send her a notice to attend a WTW orientation, despite Ms. Jones  
14 having previously notified the County of her change of address, the WTW orientation notice was  
15 sent to an invalid address and returned to the County as undeliverable. Exhibit A, p. 2, ¶¶ 4, 5.

16 31. Until February 2012, the County violated its mandatory duty to notify Ms. Jones of  
17 the ticking of her CalWORKs time clock, or engage her in the WTW process, as required by the  
18 CalWORKs program. Until February 2012, the County did not contact her to engage her in  
19 WTW, attend orientation, or provide her with effective notice of supportive services. *Id.*, p. 2, ¶¶  
20 5, 6.

21 32. On February 23, 2012, Ms. Jones once again contacted the County to inquire about  
22 WTW. At that point, the County finally informed Ms. Jones that she had used 40 months of her  
23 48 months of time on aid, even though she still had no WTW plan, had not received an  
24 assessment, and had not been offered needed supportive services. *Id.*, p. 2, ¶ 5.

25 33. On March 15, 2012, Ms. Jones attended her first orientation, where she took a math  
26 and reading test. The County still has not completed any further assessment or offered her a WTW  
27 plan. No County worker met with Ms. Jones to properly appraise her employment history,  
28 vocational goals, or what supportive services she might need to achieve self-sufficiency. *Id.* at 4,

¶¶ 4, 5.

34. At all times since January 2010, Ms. Jones has been and continues to be willing to enter into a written WTW plan with the County and participate in mandated WTW activities. Ms. Jones has been and remains dependent upon the County to create a WTW plan and offer supportive services so that she may complete her GED, obtain job training, and employment.

35. In October 2012, the County notified Ms. Jones that, effective that month, she had used all 48 months of her time on aid clock and her aid would stop.

36. Ms. Jones requested an administrative hearing to challenge the County's determination. A hearing was held on April 3, 2013, and a written decision was issued on June 11, 2013. Based on the uncontroverted evidence in the record, the Administrative Law Judge (ALJ) concluded as a matter of fact that, for over two and one half years, the County had not effectively notified Ms. Jones of available supportive services and had not provided her with a WTW plan as required by California statute and regulations. The ALJ concluded that the County's persistent failure to engage Ms. Jones and provide her with a WTW plan or the necessary supportive services, as required by statute and regulations, constituted good cause for Ms. Jones to not participate in WTW. However, the ALJ found that she lacked the authority to adjust Ms. Jones's time on aid clock because CDSS' policy limited exemptions from time on aid to those explicitly enumerated in the CalWORKs statutes. *Id.* at 10.

37. The County has implemented the June 11, 2013 hearing decision. According to that decision, Ms. Jones became no longer exempt as of December 2010 and as of March 2014 she has used 40 of her 48 months of time-limited aid.

38. When her time-limited aid ends in less than eight months, Ms. Jones will be removed from the CalWORKs grant and her family's monthly income will be reduced to only \$333 per month. She will have insufficient income to meet her and her child's basic expenses. Her desperate financial circumstances will make it extremely difficult, if not impossible, to take advantage of any limited WTW services that the County, at some later date, may choose to offer.

**B. Petitioner Kim Kruckel**

39. Petitioner KIM KRUCKEL is the Executive Director of the Child Care Law Center

1 (CCLC). She is concerned about the effect that Respondents' policy has on the low-income  
2 parents served by CCLC, particularly current and former CalWORKs recipients who rely on  
3 CalWORKs child care services in order to prepare for employment, or work. In the absence of  
4 these necessary support services, parents will be unable to take the necessary steps to achieve  
5 economic self-sufficiency, and their children will remain trapped in deep poverty. Unless  
6 childcare is provided to CalWORKS recipients through the WTW program, these parents will be  
7 turned down by every other subsidized childcare provider based on a lack of availability of  
8 openings and an exceedingly long waiting list. By not providing childcare services to all eligible  
9 CalWORKs recipients through WTW, Respondents' policy places additional pressures on the  
10 already overtaxed waiting list for subsidized childcare.

11 40. Based on her personal experience working with childcare providers and persons  
12 seeking childcare, she is aware that CalWORKs parents are routinely not provided with the  
13 necessary information regarding the availability of childcare through the CalWORKs program.

14 **C. Petitioner Lifetime**

15 41. Petitioner Lifetime's mission is to empower low-income parents to determine, pursue  
16 and achieve their goals for education, employment and economic security. Lifetime works with  
17 current and former CalWORKs parents to expand educational opportunities for CalWORKs  
18 parents, as the most effective means of lifting families out of poverty. In furtherance of  
19 Lifetime's mission, the organization works with parents to ensure they have timely access to the  
20 full range of WTW opportunities and services.

21 42. Lifetime's mission and the goals of its members are frustrated by Respondents'  
22 failure to ensure that counties make available on a timely basis, and for the full duration of time-  
23 limited benefits, WTW activities and services.

24 **D. Respondent's Systemic Failure To Ensure That Counties Make Available**  
25 **Timely Welfare-To-Work, And To Take Corrective Action Where The**  
26 **Counties Fail To Do So.**

27 43. Petitioners are informed and believe that the counties' failure to provide timely WTW  
28 services to CalWORKs recipients is, and has been, widespread, and that many other non-exempt,

1 adult CalWORKs recipients who have not received timely WTW services will be terminated  
2 from aid before they receive their full period of WTW due to the following types of systemic  
3 practices and policies:

- 4 • Many, if not all, counties systematically fail to assess and enter into written WTW plans  
5 with their CalWORKs recipients within the required 90 day time period following when  
6 they are determined eligible for aid, or no longer exempt from WTW participation;
- 7 • Many, if not all, counties begin counting the time for the 48 month period from the date  
8 of application, and continue counting time, even when the county has failed to timely  
9 offer the recipient a WTW plan;
- 10 • Many, if not all, counties terminate recipients from aid due to the 48 month time limit  
11 even if, due to county delay or error, the recipients have not been offered the full period  
12 of WTW services that the Legislature intended;
- 13 • Many, if not all, counties fail to make available on a timely basis, WTW services and  
14 opportunities to persons with Limited English Proficiency;
- 15 • Many, if not all, counties fail to make available on a timely basis, WTW services and  
16 opportunities to persons whose case is transferred from one county to another;
- 17 • Many, if not all, counties fail to note that a particular exemption has ended, and  
18 consequently fail to timely notify CalWORKs recipients of the expiration of their  
19 exemption, and fail to make available on a timely basis, WTW services and opportunities  
20 to those persons whose time on aid clocks have commenced running;
- 21 • At least one county's failure to note that an exemption due to pregnancy has ended when  
22 a pregnancy ends is so commonplace that Alameda County has coined a name for it -- a  
23 "runaway pregnancy." Exhibit A, p. 2, ¶ 3 and p. 4, ¶ 4;
- 24 • Many, if not all, counties believe that they are not required and do not even have  
25 authority to stop the 48 month clock during any time when recipients do not receive  
26 WTW services as a result of county error or failure;
- 27 • The Department has no regulation or policy, and has failed to inform counties, that for  
28 periods prior to January 1, 2014, they have such authority and/or has failed to direct them  
to remove from CalWORKs recipients' time on aid clock any month in which the County  
failed to timely have offered a WTW plan;
- The Department fails to investigate and hold accountable counties which fail to make  
WTW plans available in a timely manner; and
- The Department fails to obtain information from counties regarding their failure to  
provide timely WTW services so that it may take corrective action.

44. As a result of the aforementioned systemic practices and policies, the Department has  
led Ms. Jones and other CalWORKs recipients to believe that they are to receive timely WTW

1 services but has failed to disclose that those services would not be provided in a timely manner  
2 and that the time period during which those services were not made available would still count  
3 toward their time limits.

4 45. Ms. Jones and other CalWORKs recipients rely upon the Department to notify them  
5 of the means to maximize their benefits. They have been and are unaware that they have not and  
6 will not be provided with timely WTW services, nor timely re-engaged upon the expiration of  
7 their exemption, and yet will have the time during which they have not been provided such  
8 services still count toward their 48 month time limit.

9 46. Ms. Jones and other CalWORKs recipients have consequently had to bear the burden  
10 of the Department's failure to ensure that the counties fulfill their duties to provide timely WTW  
11 services and when counties fail to do so, to exclude time that is therefore uncountable from the  
12 recipients' 48 month time limit.

13 **E. Allegations Regarding Writ, Injunctive And Declaratory Relief**

14 47. Petitioners have a beneficial interest in Respondents' performance of their legal duties.

15 48. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of the  
16 law.

17 49. Unless the Department is ordered to ensure that counties timely offer WTW services  
18 to Ms. Jones and similarly situated CalWORKs recipients, and that counties do not terminate  
19 CalWORKs cash aid before time-limited recipients have been afforded the full duration of WTW  
20 services, Ms. Jones and other CalWORKs recipients whose aid is or will be prematurely  
21 terminated will be irreparably harmed.

22 50. The Department's threatened wrongful conduct would also harm the public interest  
23 by, among other things, causing widespread unemployment and destitution, thereby further  
24 burdening public agencies responsible for providing safety net support.

25 51. It would be extremely difficult, if not impossible, to ascertain the amount of  
26 compensation which will afford Petitioners adequate relief if Respondents' wrongful conduct is  
27 not enjoined.

28 52. Unless compelled by this Court to comply with the various legal obligations raised

1 herein, Respondents will continue to refuse to perform their duties, and Petitioners will be  
2 injured as a result.

3 53. Written demand was made upon the Respondents to perform their duties. In  
4 contravention of the laws and the demand made upon them, Respondents have failed and refused  
5 to perform their duties mandated by law.

6 54. At all times relevant to this action, Respondents have had and continue to have the  
7 legal ability to perform their duties but despite demand have failed and refused to do so.

8 55. An actual controversy has arisen and presently exists between Petitioners and  
9 Respondents. Petitioners claim that Respondents are obligated by law to provide timely WTW  
10 services throughout the period of aid received and, if recipients do not receive timely WTW  
11 services, the period during which those services are not received does not count toward the time  
12 limit. Respondents dispute these contentions and, instead, claim that they have no such  
13 obligations or that they have been met.

14 56. A judicial declaration and/or writ of mandate is necessary and appropriate at this time  
15 in order that Petitioners may ascertain and enforce their rights and duties as set forth above.

16 **VI. CAUSES OF ACTION**

17 **FIRST CAUSE OF ACTION**

18 **For A Writ of Administrative Mandate Under Code of Civ. Proc. §1094.5.**

19 57. Petitioner Jones realleges and incorporates herein by reference each and every  
20 allegation contained in Paragraphs 1 through 56.

21 58. Respondent Lightbourne's decision is a prejudicial abuse of discretion and contrary to  
22 law in that it fails to properly count as time on aid only those months in which Petitioner Jones  
23 was not exempt, and was offered the Welfare-to-Work opportunities and services to which she  
24 was statutorily entitled. Welf. & Inst. Code § 11325.2.

25 59. Respondent Lightbourne abused his discretion by failing to provide a remedy to Ms.  
26 Jones for the County's clear, repeated failure to comply with its statutory duties under Welf. &  
27 Inst. Code sections 10000, 10001 (b), 10500, 11000, and applicable CalWORKs statutes.



1 66. By leading recipients to believe that they will be given a timely opportunity to  
2 participate in WTW so that they may become employable before the expiration of their time-  
3 limited aid, and that the Department will assist them in maximizing their benefits and services,  
4 knowing that this is not true, Respondents are estopped from allowing the termination of time-  
5 limited aid until the full period of WTW is made available.

6 **THIRD CAUSE OF ACTION**

7 **Respondents' Violation of The Duty to Ensure that Counties Provide Timely Notice**  
8 **of the Expiration of Exemptions, and Timely Re-Engage Non-Exempt Participants.**  
9 **Code of Civ. Proc. § 1085; Welf. & Inst. Code §§ 11324.8, 11454.5.**

10 67. All Petitioners reallege and incorporate herein by reference each and every allegation  
11 contained in Paragraphs 1 through 66.

12 68. Respondents have violated their mandatory duty to ensure that counties provide  
13 CalWORKs recipients with timely notice when their exemptions are expiring, and of the  
14 commencement of the ticking of their time on aid clock.

15 69. Respondents have also violated their mandatory duty to ensure that counties have  
16 timely re-engaged previously exempt CalWORKs recipients in order to comply with their  
17 statutory duty to make available a WTW plan within 90 days of the expiration of an exemption  
18 from the time limit.

19 70. Petitioner Jones, and others like her, have been and continue to be harmed by the  
20 Respondents' failure to fulfill their statutory duty to ensure that they receive timely notice of the  
21 expiration of their exemption from the time limit, and timely re-engage them in WTW.

22 **VII. RELIEF REQUESTED**

23 WHEREFORE, Petitioners request that this Court:

24 1. Issue a writ of administrative mandamus pursuant to Code of Civil Procedure §  
25 1094.5 setting aside Respondent Lightbourne's decision that Petitioner Jones is not entitled to  
26 have her time-on-aid clock restored for any months after November 2010, during which the  
27 county failed to provide her with WTW opportunities and services;

1           2.    Issue a peremptory writ of mandate pursuant to Code of Civil Procedure § 1085,  
2 compelling Respondents to fulfill their mandatory duty to ensure that counties make available to  
3 CalWORKs recipients the full period of Welfare-to-Work activities and supportive services to  
4 which they are statutorily entitled, and to take corrective action when they fail to do so, including  
5 prohibiting counties from time-limiting CalWORKs aid unless and until the counties have made  
6 available the full period of WTW;

7           3.    Declare that Welfare and Institutions Code sections 10000, 10001(b), 10500, 11000,  
8 11325.2 and 11325.21 impose upon Respondents a mandatory duty to ensure that counties  
9 make available timely WTW to all recipients and that as the state agency responsible for  
10 ensuring county compliance, to take corrective action when counties fail to do so;

11          4.    Enjoin Respondents to make available timely WTW to all recipients, and (a) notify  
12 county welfare departments that they are authorized and obligated not to count the time during  
13 which they failed to make available timely WTW toward the 48 months of time-limited aid, and  
14 (b) take reasonable steps, including notice to all persons harmed by the Department's failure to  
15 comply with these duties that they are entitled to an adjustment of their CalWORKs time clock,  
16 and the means for requesting same;

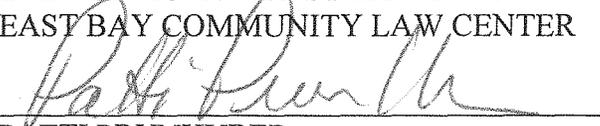
17          5.    Find that Respondents are estopped from counting on recipients' time on aid clock  
18 any months in which they were eligible to participate in WTW and the county failed to re-engage  
19 the recipient or adopt a WTW plan;

20          6.    Award Petitioners their reasonable costs and attorneys' fees; and

21          7.    Order such other and further relief as the Court deems just and proper.

22  
23 DATED: March 6, 2014

THE PUBLIC INTEREST LAW PROJECT  
EAST BAY COMMUNITY LAW CENTER

24 By:   
25

PATTI PRUNHUBER

26 By:   
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CHRISTOPHER A. DOUGLAS

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**VERIFICATION**

I, LORAIN JONES, am one of the Petitioners in the above-entitled action. I am aware of the nature of the Petition for Writs of Mandate being filed on my behalf, the legal bases for the Petition and the relief being sought. I certify as true and correct those paragraphs of said Petition which are based upon my personal knowledge. As to each of the remaining paragraphs of said Petition, these are stated based upon my information and belief and as to those matters, I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the above verification is true and correct. Executed in Berkeley, Alameda County on

February 28, 2014.

Lorraine Jones

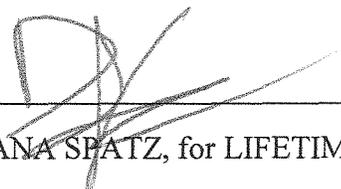
LORAIN JONES

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**VERIFICATION**

I, DIANA SPATZ, am the Executive Director of Lifetime, one of the Petitioners in the above-entitled action. I am aware of the nature of the Petition for Writs of Mandate being filed on Lifetime's behalf, the legal bases for the Petition and the relief being sought. I certify as true and correct those paragraphs of said Petition which are based upon my personal knowledge. As to each of the remaining paragraphs of said Petition, these are stated based upon my information and belief and as to those matters, I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the above verification is true and correct. Executed in Alameda County on March 6<sup>th</sup>, 2014.

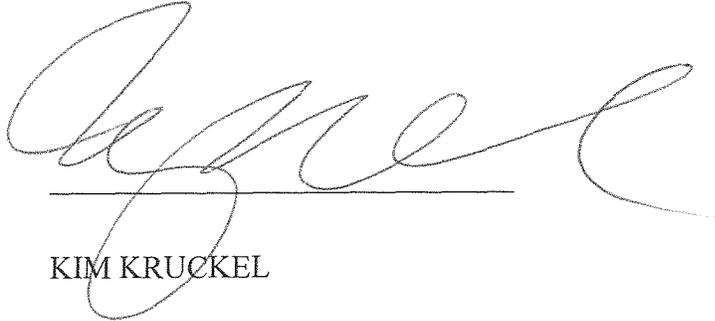
  
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DIANA SPATZ, for LIFETIME

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**VERIFICATION**

I, KIM KRUCKEL, am an Alameda County resident and one of the Petitioners in the above-entitled action. I am aware of the nature of the Petition for Writs of Mandate being filed on my behalf, the legal bases for the Petition and the relief being sought. To the extent that the Petition is based upon facts known personally to me, I certify them to be true. As to each of the remaining paragraphs of said Petition, these are stated based upon my information and belief and as to those matters, I believe them to be true.

I declare under the penalty of perjury under the laws of the State of California that the above verification is true and correct. Executed in Oakland, Alameda County on March 5, 2014.



KIM KRUCKEL

# EXHIBIT A

# CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Hearing No. 2013045293

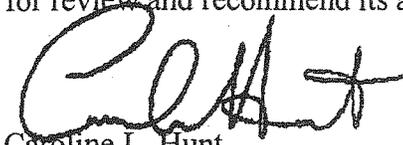
In the Matter of Claimant(s):

Lorraine Russ Jones  
2471 Onion Street #E  
Alameda, CA 94501

# PROPOSED DECISION

Adopted by the Director  
6/11/2013  
California Department of Social Services

I submit the attached proposed decision  
for review and recommend its adoption.



Caroline L. Hunt  
Administrative Law Judge

Cert Date: 6/11/2013

## State Hearing Record

Hearing Date:	April 3, 2013	Release Date:	6/11/2013
Aid Pending:	Not Applicable	Issue Codes:	[102-1] [109-3]
Agency:	Alameda County	Agency Representative:	Mary Michel-Gonzales
Agency:		Agency Representative:	
Authorized Rep. Organization:	East Bay Community Law Center	Authorized Rep:	Ed Barnes, Esq.; Arusha Gordon
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

Alameda County incorrectly determined that the claimant had used 40 months of her CalWORKs time clock effective January 2013, as she was entitled to an exemption while unable to work due to her pregnancy-related medical condition, a period of three months, and while caring for her new born child for the first 12 months of his life. In all other respects, the county action is sustained. [102-1] [109-3]

### FACTS

On February 11, 2013, the claimant requested a state hearing concerning her 48-month lifetime limit of CalWORKs benefits, objecting to the county's "ticking" of previously "unticked" months from October 2008 to November 2009.

A hearing was convened on April 3, 2013, with Alameda County, by its appeals officer, the claimant and her authorized representatives (ARs), an attorney and legal intern, appearing. The hearing record was reopened for the submission of additional documents and further testimony and argument by the parties scheduled for June 5, 2013. After the claimant's AR timely submitted medical documents on May 21, 2013, and subsequently waived further hearing, with the consent of the county, the documents submitted by the claimant's AR were received into evidence and the hearing record was closed, effective May 30, 2013.

At hearing, the parties identified the issues as the "ticking" of the claimant's 48-month CalWORKs timeclock from September 2008 through February 2011, the county's "unticking" of the months October through December 2008, and whether the claimant was entitled to any "clock stoppers" while she was pregnant, caring for her newborn child, and during the two and a half year period the county did not provide her with supportive services.

The only Notice of Action (NOA) submitted into evidence in this matter was a CalWORKs Approval Notice, dated August 8, 2009, stating that the claimant had used nine months of her then 60-month total time on aid. The county's NOA stated that, since August 2008, the claimant had been on aid recorded as follows:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2008								Not Counted	Not Counted	Not Counted	Not Counted	Counted
2009	Counted	-	-	-	-							

Thus, the county's August 8, 2009 county NOA showed that, from August<sup>1</sup> to November 2008, the county counted the claimant as exempt (not ticked) and the four months were not counted on her CalWORKs timeclock. The county started counting the claimant's time on aid from December 2008 to August 2009, a period of nine months.

The county did not generate any subsequent NOAs to the claimant reflecting the further ticking of her CalWORKs time clock after August 2009, or the county's subsequent action in January 2012 unticking a number of months between October 2008 and November 2009, as referenced in the claimant's February 11, 2013 hearing request, and more fully described below.

<sup>1</sup> It is noted that the claimant did not apply for aid until September 10, 2008.

It is found that jurisdiction exists for the State Hearings Division to determine the claimant's claim concerning her 48-month CalWORKs timeclock because the county failed to send her any further notices concerning her Welfare-to-Work status or the ticking or un-ticking of her CalWORKs time clock.<sup>2</sup>

At hearing, the county established that the claimant was 26 year-old, the mother of a four year-old child, and a recipient of CalWORKs, CalFresh (formerly known as the Food Stamps Program) and Medi-Cal since September 1, 2008. At the time of her application for county aid in September 2008, the claimant was 21 years old and seven months pregnant. After the claimant submitted written verification of her pregnancy, the county granted her an exemption, not counting her time as part of her CalWORKs timeclock, due to the pregnancy.

The claimant's son was born on December 6, 2008. However, following the birth of the claimant's child, and continuing until May 31, 2011, the county treated the claimant as though she was still pregnant, under an exemption the county called at hearing a "runaway pregnancy," excused from participating in Welfare-to-Work activities, for a period of two and one half years.

The county established at hearing that, in June 2011, the county sent the claimant a notice about a scheduled Welfare-to-Work orientation. However, as the county conceded at hearing, all county notices at that time were mistakenly sent to an invalid address for the claimant and, as reflected in the county's case notes, the postal service returned the mail. Through no fault of the claimant's, she was not notified and did not attend the orientation scheduled on June 16, 2011, nor did she receive any subsequent notices from the county. No sanction was imposed for her not attending the orientation.

On February 23, 2012, the claimant contacted the county to inquire about Welfare-to-Work activities. At that time, the claimant also updated her address. At hearing, the county offered no evidence that the county contacted the claimant to develop a Welfare-to-Work Plan, attend orientation, or receive employment counseling or training services in the winter of 2012.

In October 2012, the county determined that, effective October 1, 2012, the claimant had "timed out" of her 48-month CalWORKs timeclock, based on her time clock ticking throughout the period she was on aid. There was no evidence that the county noticed the claimant of its determination.

However, after a request for hearing filed by the claimant on September 26, 2012<sup>3</sup>, the county reviewed its records and, on January 9, 2013, changed the claimant's records by taking the following actions:

- 1) Deleting the exemption for previously unticked time in the period September through December 2008 due to the lack of medical certification of disability due to pregnancy;
- 2) Crediting one month of exempt time in September 2008 due to paid child support;

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<sup>2</sup> The county acknowledged at hearing that between June 2011 and February 2012 it sent all of the claimant's mail to an incorrect address, although the claimant had notified the county of her correct address. The record was left open in part to allow the county to produce any NOAs it may have sent the claimant, albeit to the wrong address, but none was located or submitted into the record.

<sup>3</sup> The September 26, 2012 request for hearing was apparently resolved by a verbal withdrawal, according to county records.

- 3) Granting 12 months of exempt time (unticked) for the period December 2009 to November 30, 2012 due to ABX 4, allowing an exemption for caring for a child aged 12 to 24 months.

At hearing, the county submitted a chart showing the claimant's counted time on aid (Y), and periods of exemption (Ex), as follows:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2008									Ex.	Y	Y	Y
2009	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Ex.
2010	Ex.	Ex.	Ex.	Ex.	Ex.	Ex.	Ex.	Ex.	Ex.	Ex.	Ex.	Y
2011	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2012	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2013	Y											

Based on the county's January 2013 adjustments to the claimant's CalWORKs timeclock, as reflected in the above table, the county determined that the claimant had used 40 months of her 48-month timeclock.

The claimant objected to the county's actions on number of grounds. First, her AR contended that the claimant was entitled to an exemption from her CalWORKs timeclock during the last three months of her pregnancy and the county had never told her she needed to submit medical documents or a CalWORKs-61 form, to show that her pregnancy prevented her from participating in gainful employment. Second, the AR objected that the county had not provided the claimant with supportive services, in a setting where the claimant had been dealing with a newborn infant, fighting depression and substance abuse. The AR argued that the claimant was entitled to further exemptions based on the county errors in this case. Each of these arguments is addressed below.

The Claimant's Last Trimester of Pregnancy

At the time of her application for aid in September 2008, when the claimant was 21 years old and 7 months pregnant with her first child, the county exempted her due to her pregnancy, having received the claimant's verification of her pregnancy from her medical provider. Thus, September, October, and November were not counted on the claimant's CalWORKs timeclock.

As noted above, in January 2013, the county amended the claimant's record by counting ("re-ticking") the last three months of the claimant's pregnancy, determining that, while the claimant was exempt from participating from Welfare-to-Work activities due to her pregnancy, her CalWORKs timeclock was still ticking as she had not submitted medical documentation of a disabling condition.

The claimant's AR objected to the re-ticking of the previously unticked time, asserting that the claimant's pregnancy was medically complicated with a severe pregnancy-related medical

condition, preventing her from being able to work while the county failed to inform the claimant that she needed to submit medical documentation that she was unable to work because of her pregnancy in order to stop her CalWORKs clock from "ticking."

The claimant testified that during her pregnancy in the fall of 2008 she was diagnosed with toxemia, characterized by high blood pressure and swelling of her extremities. She also testified to having a flutter or murmur in her heart. Because of the claimant's medical condition, her baby, suffering fetal distress, was delivered early, by caesarean section, at 39 weeks, on December 8, 2008.

The claimant's contemporaneous medical records corroborate the claimant's testimony, indicating her diagnosis was preeclampsia, which the American Pregnancy Association states may also be called toxemia (the condition testified to by the claimant), defined as "a condition that occurs only during pregnancy...[D]iagnosis is made by a combination of high blood pressure and protein in the urine, occurring after week 20 of pregnancy, and is often precluded by gestational hypertension." The American Pregnancy Association informational website, a print-out of which was submitted into evidence by the claimant's AR, described the treatment for preeclampsia or toxemia as rest, lying on the left side, potential treatment with high blood pressure medications, bed rest, dietary changes and supplements. The complications, according to the American Pregnancy Association, include serious complications for the mother such as liver or renal failure. Accordingly, it is found that the claimant's preeclampsia was a medically verified medical condition during the last trimester of her pregnancy that restricted her to bed rest and required medical supervision.

#### The Runaway Pregnancy

The records showed that, after the birth of the claimant's child, the county failed to update its records to reflect the claimant's status as no longer pregnant, from December 2008 until May 2011. The county noted that its records indicated that the claimant called on April 15, 2010 to ask about participating in Welfare-to-Work activities, but the county failed to follow up. Based on the undisputed evidence, it is found that, throughout this two and one half year period, the county ticked the claimant's time on aid, but did not develop a Welfare-to-Work Plan, contact her about Welfare-to-Work activities or offer her supportive services.

#### The Wrong Address

The undisputed record established that the county used an invalid address for the claimant up until February 2012, and thus provided her with no effective notices concerning orientations or other Welfare-to-Work activities, including supportive services. The evidence is also undisputed and it is accordingly found that, in March 2012, once the claimant received notice, she attended an employment orientation, was placed in a training program and was, at the time of hearing, participating in all of her Welfare-to-Work activities.

### **LAW**

The statutory and regulatory references in this decision are to the Welfare & Institutions Code (W&IC) and the California Department of Social Services' Manual of Policies and Procedures (MPP), unless otherwise noted.

"WtW Grant program" means the Welfare-to-Work (WtW) Grant program described in 42 United States Code (USC) §603(a)(5), which authorizes the U.S. Dept. of Labor to provide WtW grants to states and local communities. (MPP §42-701.2(w)(1), eff. August 1, 2002)

The California Work Opportunity and Responsibility to Kids Act is contained in Chapter 2, Part 3, Division 9 of the W&IC (commencing with §11200 and ending with §11526) and may be cited as the CalWORKs program. (W&IC §11200)

On March 24, 2011, the Governor signed SB 72 (Chapter 8, Statutes of 2011). That statute, which was initially implemented by All County Letter followed by emergency regulations, provides that effective July 1, 2011 adults will only be eligible to receive CalWORKs for a maximum of 48 countable months. This new 48 month CalWORKs time clock replaced the 60 month CalWORKs time clock that was implemented January 1, 1998.

Effective July 1, 2011, adults will only be eligible to receive CalWORKs for a maximum of 48 countable months. In implementing the new CalWORKs 48-month time limit for adults, County Welfare Departments (CWDs) must consider the following months of aid received:

- All countable months of CalWORKs time-on-aid (TOA) received in California since January 1, 1998;
- All months of Temporary Assistance for Needy Families (TANF) TOA received from other states since January 1, 1998. As a reminder, CWDs must continue to treat months of Tribal TANF assistance as out-of-state TOA.
- Months of TANF aid received in California or any other state between September 1, 1996 (when some states first implemented their TANF program) and December 1997;
- Months in which the adult was exempt from the CalWORKs time limit clock, for any of the reasons listed in Manual of Policies and Procedures (MPP) Sections 42-302.11 - .12 and 42-302.21 and ACL 11-34, or were not aided due to a sanction from the Welfare-To-Work program.

(All County Letter 11-33, April 29, 2007, Welfare and Institutions Code §11454 as amended by SB 72, January 2011.)

The CWD shall provide the individual, in writing and orally as necessary, a description of the 60-month (now 48-month) time limit requirements, including the exceptions and exemptions from the time limit, as provided in Sections 42-302.11 and 42-302.21 and the process by which recipients can claim the exceptions and exemptions, as provided in MPP Section 42-302.3. The description of the limit requirements shall be provided at the time an individual applies for aid, at the time a recipient's eligibility for aid is redetermined, and any other time a notice of action establishing time on aid pursuant to this section is provided. (§40-107(a)(4).)

The recipient shall be informed at redetermination by notice of action of:

- the number of months the individual received aid as reported on the most recent notice of action,
- the cumulative number of countable months that the recipient has received aid and the specific months that were exempt from the 60-month time limit since the last notice of action, or the beginning of aid if there has been no prior notice of action, the remaining number of months that the recipient may be eligible to receive aid."

(40-107(a)(4)(A) and (B).)

As set out in All County Information Notice I-02-06 (January 9, 2006):

Unless exempt under W&IC §11320.3, recipients shall attend orientation to the welfare-to-work program, attend appraisal per W&IC §11325.2, and participate in job search and job club activities per W&IC §11325.22. (W&IC §11320.1(a))

Any individual required to participate in welfare-to-work activities must enter into a written welfare-to-work plan with the County Welfare Department after assessment. (W&IC §11325.21; §42-711.61, effective July 1, 1998)

Except as specified in §§42-711.621 and .622, a non-exempt individual shall enter into his or her welfare-to-work plan after assessment, but no more than 90 days after the date that the individual's eligibility for aid is initially determined or the date that the individual is required to participate in welfare-to-work activities pursuant to §42-711.623(c) or (d) unless the individual meets an exemption criterion or is otherwise not required to sign a welfare-to-work plan. (§42-711.62)

Effective July 1, 2011 when the adult reaches the new CalWORKs 48-month time limit, the CWD must remove the adult from the Assistance Unit (AU) and reduce the AU's grant effective July 1, 2011, unless the adult meets a time limit extension criterion listed in MPP Sections 42-302.11-.12. (This process is consistent with the treatment of a 60-month timed-out adult prior to July 1, 2011.) (ACL 11-33, April 29, 2011.)

The following months will continue to not count against the time limit:

- Months of TANF aid received in California or any other state between September 1, 1996 (when some states first implemented their TANF program) and December 1997;
- Months in which the adult was exempt from the CalWORKs time limit clock, for any of the reasons listed in Manual of Policies and Procedures (MPP) Sections 42-302.11 - .12 and 42-302.21 and ACL 11-34, or were not aided due to a sanction from the Welfare-To-Work program.

(All County Letter 11-33, April 29, 2011, Welfare and Institutions Code Section 11454 as amended by SB 72, January 2011.)

#### Exemptions

Any month in which any of the following conditions exists for any period during the month shall not count toward the 48-month time limit:

- (a) The individual is exempt from WtW participation requirements due to a verified disability that is expected to last at least 30 days.
- (b) The individual is exempt from WtW due to:
  - (1) The need to care for an ill or incapacitated person residing in the home.
  - (2) Being the nonparent caretaker of a dependent child of the court, a kin-GAP child, or a child who is at risk of placement in Foster Care. The caretaking responsibilities must be beyond normal day-to-day parenting responsibilities.

(In both (1) and (2), the individual's ability to be "regularly employed", or to participate in WTW activities, must be impaired.)

- (c) The individual is a victim of domestic abuse, and good cause (per §42-713.22) exists for waiving the 48-month limit.
- (d) The individual is eligible for, participating in, or exempt from Cal-Learn or another teen parent program approved by the CDSS.
- (e) The individual is at least 60 years old.
- (f) The individual is excluded from the AU for reasons other than exceeding the time limit.
- (g) The cash aid received in California or elsewhere has been fully reimbursed because of child support collection.
- (h) The individual lived in Indian country, or in certain Alaskan native villages.
- (i) The individual is a former cash aid recipient and is only receiving child care, case management or supportive services.
- (j) The recipient does not receive a cash aid payment because the eligible grant amount is less than \$10.

(§42-302.21, as revised effective March 1, 2002 and April 9, 2003 and as modified by All County Letter 11-33, April 29, 2007)

In general, a pregnant woman whose pregnancy impairs her ability to be regularly employed or to participate in welfare-to-work activities, is exempt from welfare-to-work participation. Medical verification must exist to establish these limitations.

Additionally, the county may exempt the pregnant woman if participation will not readily lead to employment, or if a training activity is not appropriate. (W&IC §11320.3(b)(7); MPP §42-712.48)

In general, a parent or other relative who has primary responsibility for personally providing care to a child six months of age or under is exempt from welfare-to-work participation. This specific one-time exemption may be reduced to the first 12 weeks, or increased to the first 12 months, after the birth or adoption of the child. The reduction or increase is made on a case-by-case basis, using county developed criteria. (W&IC §11320.3(b)(6)(A)(i); MPP §42-712.471)

An individual who has received this exemption shall be exempt for a period of 12 weeks upon the birth or adoption of subsequent children. The county, using criteria it has developed, may extend this period to six months, on a case-by-case basis. (W&IC §11320.3(b)(6)(A)(ii); MPP §42-712.472)

The parent or other relative who has primary responsibility for personally providing care to one child who is from 12 to 23 months of age, inclusive, or two or more children who are under six years of age is exempt from welfare-to-work participation. This paragraph shall become inoperative on July 1, 2011. (§42-712.474 effective July 1, 2010)

The Welfare to Work exemption for caring for a child ages 12 to 23 months went into effect on August 1, 2009 (despite the fact that MPP §42-712.474 is effective July 1, 2010) (ACL 09-46)

Good cause for not participating in welfare-to-work activities includes:

- a. Lack of necessary supportive services.
- b. The person is a victim of domestic abuse, when participation is detrimental to, or unfairly penalizes, the person or the person's family.
- c. Licensed or license-exempt child care is not "reasonably available" during the individual's hours of training or employment, including commuting time, or arrangements have broken down or been interrupted, for children 10 years old or younger, for a child 11 years of age or older (when described in §§47-201.22 or .23), or for a foster care or SSI recipient child.

(MPP §42-713.2)

Although the regulations adding exemptions on a short term basis for caring for a child aged 12 to 23 months and for lack of supportive services are effective July 1, 2010, per ACL 09-46 they are effective August 1, 2009.

A CaWORKs recipient can request an exemption/exception to the 48-month time limit verbally or in writing. When a recipient states that s/he meets a condition that qualifies as an exemption or exception to the limit, the county shall document the request and provide the recipient with an exemption/exception request form if necessary to complete the request. (§42-302.3 as modified by All County Letter 11-33, April 29, 2007)

The county shall inform the individual, in writing, of the exemption/exception determination within 15 calendar days from the date of receipt of a verbal or written request for an exemption/exception to the 48-month time limit. The specified time limit may be exceeded when completion of the determination is delayed because of circumstances beyond the control of the county. The case record must specify the cause for delay. These instances include:

- (a) Inability on the part of the recipient to provide the necessary verification.
- (b) Delay on the part of an examining physician to provide the necessary information.

(§42-302.32)

The notice of action approving or denying a request for an exemption or exception to the 48-month time limit shall state whether the request was granted or denied, and the reason for the denial. (§42-302.34 as modified by All County Letter 11-33, April 29, 2007)

A county may waive any program requirement, except as specified in Section 42-715.511, for a recipient who has been identified as a past or present victim of domestic abuse when it has been determined that good cause exists, as specified in Section 42-713.22.

Program requirements that may be waived include, but are not limited to:

- (a) Time limit on receipt of assistance;
- (b) Work requirements;

- (c) Education requirements (based on the teen school requirement as specified in Section 42-719, Section 42-762, and Section 42-769);
- (d) Paternity establishment; and
- (e) Child support cooperation requirement as specified in Section 82-512.11.

(§42-715.51)

Good cause for not participating in welfare-to-work activities includes:

- a. Lack of necessary supportive services.
- b. The person is a victim of domestic abuse, when participation is detrimental to, or unfairly penalizes, the person or the person's family.
- c. Licensed or license-exempt child care is not "reasonably available" during the individual's hours of training or employment, including commuting time, or arrangements have broken down or been interrupted, for children 10 years old or younger, for a child 11 years of age or older (when described in §§47-201.22 or .23), or for a foster care or SSI recipient child.

(§42-713.2)

Effective July 28, 2009, any month in which an individual is excused from participation for good cause due to lack of supportive services, as specified in Section 42-713.21, shall not be counted toward the 48-month time limit. This paragraph shall become inoperative on July 1, 2012. (MPP §42.713.43)

### CONCLUSION

The claimant's credible testimony and medical documentation established that in the last trimester of her pregnancy in the fall of 2008, the then 21-year old claimant experienced medical complications, including preeclampsia (also known as toxemia), requiring bed rest and monitoring. The record also established that the county did not ask the claimant to provide medical documents at the time, or submit a CalWORKs-61 form, instead initially granting her an exemption from her CalWORKs timeclock, then later, in January 2013, revoking the exemption and ticking the time. As the claimant's AR argues, if the claimant had been asked to submit the medical records, she could have provided them at that time.

Under W&IC §11323.3 and MPP §42-302, providing for exemptions for medically verified pregnancy-related conditions that impair the ability to be regularly employed, it is concluded that the claimant's preeclampsia, involving high blood pressure and danger to the health of the mother, based on medical documentation, prevented the claimant from active employment in the last trimester of her pregnancy. It is also noted that the county originally granted this exemption and initially did not tick the claimant's time in the fall of 2008. It is therefore concluded that the three month period in the last trimester of the claimant's pregnancy shall not be counted toward her 48-month timeclock.

Similarly, after the baby was born, the claimant is entitled to an exemption under W&IC §11323.3(b)(5), which provides for an exemption for caring for an incapacitated individual (claimant's newborn), and §11323.3(b)(6), providing an exemption for the care of an infant six months or younger, up to 12 months, and from birth to 23 months. It is accordingly concluded

that the first 12 months the claimant cared for her child shall not be counted toward her 48-month timeclock. It is noted that the county had already unticked the second 12 months the claimant looked after her son, when he was aged 13 to 24 months, and this was not disputed at hearing.

Finally, the evidence established that the county did not provide the claimant with a Welfare-to-Work Plan, or effectively notify her of available supportive services, as required by statute and the regulations. The record showed that the county's action, or inaction, was the result of a lack of effective communication and admitted error in updating the claimant's address. Under §42-713.2 of the regulations, the county's error provided good cause for the claimant not to engage in supportive services, as evidenced by the fact the county did not impose sanctions when the claimant did not attend the June 2011 orientation, having not received notice. However, it is concluded that the claimant was not "excused" from participating in supportive services, within the meaning of §42.713.43, as she was required to attend her employment orientation and job training in March 2012. Thus, the claimant is not entitled to a clock stopper in December 2010, after her son turned 2 years old, and it is concluded that the county's action counting that time from December 2011 until January 2013 is sustained.

#### ORDER

The claim is granted in part and denied in part.

The claim is granted insofar as Alameda County shall rescind its determination that the claimant had used 40 months of her CalWORKs timeclock effective January 2013, and insofar as the county shall grant the claimant an exemption and not count the time from October through November 2009, a period of three months, and December 2009 through November 2010, a period of 12 months.

In all other respects, the claim is denied.