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KAREN KOENS, KAREN KOENS as
Guardian ad litem for **MK., VANESSA**
LANDEROS-MARTINEZ, and **VANESSA**
LANDEROS-MARTINEZ as Guardian ad Litem
for E.M.,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

KAREN KOENS, KAREN KOENS as)
Guardian ad litem for **MK., VANESSA**)
LANDEROS-MARTINEZ, and **VANESSA**)
LANDEROS-MARTINEZ as Guardian ad Litem)
for E.M.,)

Petitioners/Plaintiffs)

vs.)

WILL LIGHTBOURNE, in his official capacity)
as Director, California Department of Social)
Services, **CALIFORNIA DEPARTMENT OF**)
DEPARTMENT OF SOCIAL SERVICES,)
JENNIFER KENT, in her official capacity as)
Director California Department of Health Care)
Services and the **CALIFORNIA DEPARTMENT**)
OF HEALTH CARE SERVICES,)

Respondents/Defendants.)

Case No. **RG17885067**

VERIFIED PETITION FOR
WRIT OF MANDATE,
PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS
[CCP §§ 1060, 1085, 1094.5;
Welf. & Inst. Code §10962];
COMPLAINT FOR DECLARATORY
RELIEF
[CCP § 1060]

ENDORSED
FILED
ALAMEDA COUNTY

DEC - 7 2017

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

I. INTRODUCTION

1. Petitioners Karen Koens and Vanessa Landeros-Martinez hereby challenge the failure by Respondents Will Lightbourne, Director, California Department of Social Services, the California Department of Social Services (hereafter CDSS), Jennifer Kent, Director California Department of Health Care Services and the California Department of Health Care Services (hereafter DHCS) to provide adequate Notices of Action when denying Protective Supervision after assessing an In-Home Supportive Services applicant or reassessing an In-Home Supportive Services recipient.

2. Respondents limit the information provided to applicants and recipients of IHSS Protective Supervision in a meaningful manner. When a county denies protective supervision, the notice does not state whether the applicant or recipient was assessed for protective supervision or why protective supervision was denied. The notice of action (hereafter NOA) does not identify the specific regulation that supports the action. Instead, the NOA cites all of the regulations that support the denial of protective supervision. The NOAs fail to identify the information or action that the applicant or recipient needs to gain IHSS protective supervision.

3. Petitioners bring this action on their own behalf because they are beneficially interested in receiving an adequate NOA for IHSS Protective Supervision Services that provides (a) client-specific information that is sufficient to allow the individual to determine the issue, (b) a non-technical explanation of the concept of "Protective Supervision", (c) explain the action to be taken and (d) if the individual does not agree, to decide whether to request an administrative hearing to review the county's determination.

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II. STATEMENT OF FACTS

A. Petitioner KAREN KOENS

4. Ms. Koens is the mother and caregiver of her disabled minor son, M.K., who suffers from Autism. From infancy, M.K. experienced profound developmental delays with respect to language development, self-stimulating behaviors, socialization and impulsivity. When M.K. was 18 months, Ms. K.K. had his symptoms and behaviors evaluated and was diagnosed with autism spectrum disorder. He has since been diagnosed with seizure disorder. At seven years of age, M.K., who is nonverbal, did not know and could not recite his telephone number his name or his address. At all relevant times, M. K. lives with his parents and his older sister in Santa Cruz County.

5. M.K. receives federal Social Security Supplemental Security Income benefits and Medi-Cal. He is a client with the San Andreas Regional Center. At all pertinent times, he attends special education classes in a highly restricted environment.

6. On February 6, 2014, Ms. Koens applied for IHSS services and Protective Supervision for her son. On March 12, 2014, Santa Cruz County conducted a home visit to assess M.K. for IHSS services. The worker noted that 7-year old M.K. is not toilet trained and uses diapers, needs assistance with dressing, bathing, oral hygiene, grooming. M.K. requires verbal direction and supervision during meals.

7. During the March 12, 2014 interview, Ms. Koens reported that her husband worked. She also said that she was temporarily disabled because as she was being treated for breast cancer. The social worker informed Ms. Koens that she could hire someone to be the paid IHSS provider. Ms. Koens stated that she could care for M.K. at that point in time. She indicated that she might need to have a care provider for M.K. after her surgery.

1 8. On March 12, 2014 Santa Cruz County denied Ms. Koens' IHSS application. The NOA
2 states that "[Y]ou did not tell us enough information to determine if you can get services. (MPP 30-
3 760.1)." The denial reason is that "[T]he parent has not left full-time employment or is prevented
4 from obtaining full-time employment because of the need to provide IHSS to the child. (30-
5 763.451(a).)"

6
7 9. Ms. Koens made a new application for IHSS for M.K., including Protective Supervision in
8 early 2016. Santa Cruz County approved IHSS services including Protective Supervision and also
9 approved Ms. Koens as the IHSS provider for M.K.

10 10. After the 2016 IHSS application was approved, Ms. Koens requested an administrative
11 hearing on April 19, 2016 to review the March 12, 2014 Notice. Santa Cruz County requested that
12 the hearing be bifurcated to determine whether there was jurisdiction for CDSS to hold an
13 administrative hearing on the 2014 NOA.
14

15 11. The jurisdictional hearing was held on May 25, 2016. The ALJ found that the March 12,
16 2014 NOA was inadequate and ordered an administrative hearing on the merits. The administrative
17 hearing on the merits was held on September 15, 2016. During the hearing, the parties reviewed
18 IHSS services areas including Protective Supervision. The Santa Cruz County argued that Ms. Koens
19 was ineligible to be a provider for her son and receive IHSS due to the two-parent rule, M.P.P. § 30-
20 763. The County conceded that Ms. Koens had recovered from her illness and was currently the
21 IHSS provider.
22

23 12. The Proposed Decision in Hearing #2016112009 specifically rejected Santa Cruz
24 County's contention that Ms. Koens could not be her son's IHSS provider because her husband was
25 available to provide care to the child as part of an intact two parent family. (A true copy of the
26 Proposed Decision in Hearing #2016112009 is attached hereto and incorporated by reference as
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1 Exhibit 1.) The Proposed Decision also rejected the county's contention that Ms. Koens was
2 ineligible to be her child's IHSS provider as she had not left out-of home employment to care for
3 M.K. (Exhibit #1, Proposed Decision #2016112009 p. 23.) The ALJ also granted Protective
4 Supervision for M.K and ordered the claim remanded for the County to approve Protective
5 Supervision and other IHSS in the amount effective February 6, 2014 ongoing until the date of the
6 current 2016 assessment. (See Exhibit #1, Proposed Decision, p. 23.)

8 13. After reviewing the Proposed Decision in #2016112009, the Presiding Judge, on behalf
9 of Respondent Jennifer Kent, exercised his authority to issue the Director's Alternate Decision and
10 held that the March 12, 2014 NOA was adequate and asserted that CDSS had no jurisdiction to
11 consider the merits of Ms. Koens' claim for retroactive Protective Supervision for M.K.. (A true
12 copy of the Director's Alternate Decision in Hearing #2016112009 is attached hereto and
13 incorporated by reference as Exhibit 2.)

15 **B. Petitioner Vanessa Landeros-Martinez**

16 14. Ms. Landeros-Martinez is the mother and caregiver of her developmentally disabled
17 minor daughter, E.M. E.M. was diagnosed at birth as having the congenital developmental disorder
18 Down Syndrome and has been diagnosed as having significant intellectual disabilities (formerly
19 described as mental retardation). E.M. receives Supplemental Security Income (SSI) and Medi-Cal.
20 She is a client with the North Bay Regional Center. She attends special education classes. At all
21 times relevant to this petition, E.M. lives with her mother, stepfather and younger half-siblings in
22 Sonoma County, California.

25 15. Ms. Landeros-Martinez initially requested In Home Supportive Services (IHSS) on
26 behalf of her daughter in 2010 when EM was 10 from Sonoma County, California. Sonoma County
27 made a home visit to assess Ms. Landeros-Martinez's daughter, E.M., for IHSS eligibility and issued

1 a NOA granting some IHSS services activities. However, the NOA does not state whether Sonoma
2 County assessed EM for Protective Supervision and does not state the reasons for denying Protective
3 Supervision.

4 16. Subsequent reassessment home visits confirmed E.M.'s eligibility for IHSS services.
5 From January 27, 2011 through June 22, 2015, Ms. Landeros-Martinez received seven (7) additional
6 notices of action pertaining to E.M.'s IHSS services. None of the additional notices of action
7 addressed whether Sonoma County assessed E.M. for Protective Supervision and found her to be
8 ineligible or that she was never assessed for Protective Supervision.
9

10 17. Subsequent to the June 22, 2015 NOA, Ms. Landeros-Martinez learned about Protective
11 Supervision from an IHSS advocate. She requested that the County assess E.M. for Protective
12 Supervision. Sonoma County issued the August 16, 2016 NOA authorizing Protective Supervision
13 retroactive to October 30, 2015.
14

15 18. On September 7, 2016, Ms. Landeros-Martinez requested an administrative hearing to
16 dispute the County's denial of Protective Supervision from the initial application date September 15,
17 2010 until October 29, 2015.
18

19 19. CDSS held the administrative hearing on October 28, 2016. During the hearing, Sonoma
20 County asserted that all of the issued NOAs pertaining to the amount of type of IHSS services
21 available to E.M. between 2010 and October 29, 2015 were legally sufficient. The County
22 maintained that E.M. was not entitled to retroactive Protective Supervision Services as there had been
23 no timely request for a hearing within the jurisdictional window. None of the seven NOAs indicate
24 that E.M. was ever assessed for Protective Supervision even though IHSS regulations specifically
25 requires that all minor children IHSS applicants be assessed for any need for PS services.
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1 20. The CDSS Administrative Law Judge (ALJ) issued a Proposed Decision in Hearing
2 #2016256251 on November 9, 2016. (A true copy of the Proposed Decision in Hearing #2016256251
3 is attached hereto and incorporated by reference as Exhibit 3.) In this Decision, the ALJ analyzed the
4 County's documents. There were no notes under Protective Supervision and there was no protective
5 supervision worksheet in the file.
6

7 21. The ALJ analyzed the Notices of Action for adequacy on the issue of assessing for
8 "Protective Supervision". The ALJ noted that the 9/15/10, 1/27/2011, 1/30/12, 2/15/13 and the
9 8/29/13 had no figure in the column following Protective Supervision and no regulation describing
10 Protective Supervision at the bottom of the Notices. The Protective Supervision Notices dated
11 5/20/14, 6/9/14 and 6/22/15 failed to provide any short descriptions of any service. These Notices
12 contained zeros for the line Protective Supervision, failed to explain why E.M. was not eligible for
13 Protective Supervision and there were no messages concerning Protective Supervision anywhere on
14 the Notices. Also, the June 22, 2015 notice did not contain any individual messages to the claimant
15 on the fifth page. The ALJ determined that none of the Notices of Action were adequate and there is
16 jurisdiction to hear the merits for retroactive assessments. (Exhibit 3, Proposed Decision in Hearing
17 #2016256251, pp. 12, 13.)
18
19

20 22. The ALJ also reviewed the standards for protective supervision for minors. The ALJ
21 found that the Sonoma County social workers made home visits in most of the years from 2010 to
22 2016. She noted that the county failed to assess E.M. for Protective Supervision and failed to request
23 that the parent obtain available information and documentation about the mental development.
24

25 23. After reviewing Proposed Decision #2016256251, The Presiding Judge, on behalf of
26 Respondent Director Lightbourne, exercised his authority to issue the Director's Alternate Decision
27 by concluding that all of the notices of action were adequate. (A true copy of the Director's Alternate
28

1 Decision in Hearing #2016256251 is attached hereto and incorporated by reference as Exhibit 4.) As
2 such, Ms. Landeros-Martinez's request for hearing must be dismissed as an untimely filing within the
3 State Hearing jurisdiction.

4 24. In reaching the decision that the request for hearing must be dismissed, only one NOA
5 was reviewed for adequacy. (Exhibit 4, Director's Alternate Decision, p. 6 ["Since a single adequate
6 NOA would be sufficient to render the Claimant's hearing request untimely, it is only necessary to
7 evaluate the most recent NOA from June 22, 2015."]) There is no authority for such a finding.

9 25. The Presiding Judge stated

10 "While some would like a detailed evaluation in each notice of action
11 of what information was considered and which element was found
12 lacking, the *IHSS program finds that is not necessary to meet the*
13 *legal adequacy standard.* [Emphasis added.] Indeed, many individual
14 parents request a state hearing each year, without benefit of a professional advocates, solely
15 on the basis of the information provided on the notice of action.
16 The notice of action is already 6 pages long, and at some point adding more detail
17 only confuses the issues." (Exhibit 4, Director's Alternated Decision, p. 7.)

16 III. PARTIES

17 26. Petitioner Karen Koens is the mother and care provider for her son, M.K., who has been
18 diagnosed with Autisim Spectrum Disorder. Petitioner Koens requested IHSS on behalf of her son on
19 February 6, 2014 but the denied the IHSS application was denied on March 12, 2014. The NOA
20 made no mention of whether Santa Cruz County assessed M.K. for Protective Supervision.

21 27. Petitioner Vanessa Landeros-Martinez is the mother and care provider for her minor
22 daughter E.M. Petitioner originally applied for IHSS Services on August 11, 2010 when E.M. was 10
23 years of age. The County granted IHSS services but not Protective Supervision. From 2010 through
24 2015, Ms. Landeros-Martinez never received one NOA that explained Protective Supervision and
25 whether Sonoma County assessed E.M. for Protective Supervision.
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1 28. Respondent Lightbourne is responsible for formulating, adopting, and amending
2 regulations and general policies affecting the purposes and responsibilities within the jurisdictions of
3 CDSS, in a manner which is both consistent with the law and necessary for the administration of
4 public social services. He is also responsible for the enforcement of all federal and state laws and
5 regulations to insure that county welfare departments execute the regulations in a uniform and
6 consistent manner. (Welf. & Inst. Code § 10553.) He has the authority, where appropriate, to
7 alternate a hearing decision that has been prepared by a CDSS Administrative Law Judge should the
8 hearing decision not meet the legal standards for issuance and enforcement of agency rules, state
9 and/or federal law. (Welf., & Inst. Code §§ 10959, 10961, MPP § 22-061.) Respondent Lightbourne
10 is being sued in his official capacity.
11

12 29. Respondent Lightbourne has the authority to grant a rehearing, if appropriate, should a
13 hearing decision not meet the legal standards for issuance and enforcement of agency rules, state
14 and/or federal law. (Welf. & Inst. Code § 10960.)
15

16 30. Respondent California Department of Social Services is the single state agency
17 responsible for the administration of the public social services administrative hearing process. (Welf.
18 & Inst. Code § 10950.) When CDSS' administrative law judge conducts a hearing, the judge will
19 prepare a written decision that may be adopted as Respondent Lightbourne's decision. (Welf. & Inst.
20 Code § 10958.)
21

22 31. CDSS administers the In-Home Supportive Services Program, to insure that each county
23 complies with state laws and regulations including issuing adequate NOAs after each and every
24 assessment or reassessment of an individual granting or denying protective supervision. (Welf & Inst.
25 Code § 10600).
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1 32. Respondent Jennifer Kent is the Director of Department of Health Care Services and, as
2 such, is responsible for operations of DHCS, enforcement of all laws pertaining to the administration
3 of health care services and medical assistance (Welf. & Inst. Code § 10721.) Respondent Kent is
4 responsible for overseeing that all Medi-Cal NOAs comply with the federal Medicaid regulations
5 pursuant to 42 C.F.R. 431.210. (Welf. & Inst. Code § 12300.) She has authorized Respondent
6 Director Lightbourne to provide administrative hearings for health care services and medical
7 assistance. (Welf. & Inst. Code § 10950(f).) Respondent Kent is sued in her official capacity.

9 33. Respondent Department of Health Care Services is the single state agency charged with
10 full power to supervise every phase of the administration of health care services and medical
11 assistance for which grants-in-aid are received from the United States government or made by the
12 state in order to secure full compliance with the applicable provisions of state and federal laws.
13 (Welf. & Inst. Code § 10740.) This includes the administration of the Medi-Cal¹ program and
14 ensuring the Medi-Cal program is operated in conformity with all state and federal laws. (Welf. &
15 Inst. Code §§ 14000 *et seq.*)

17 34. Petitioners are informed and believe and on that basis allege that the actions complained
18 of herein were carried out by and under the direction and control of Respondents, through their agents
19 and/or employees, and done within the scope of said agency and/or employment of Respondent
20 Lightbourne and Respondent Kent.

22 IV. APPLICATION TO PROCEED UNDER FICTITIOUS NAMES

23 35. Petitioners Karen Koens and Vanessa Landeros-Martinez request permission from this
24 Court to proceed in this action using fictitious names for their children, E.M. who is profoundly
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27 ¹ The federal Medicaid Program is called Medi-Cal in California.

1 disabled and M.K. who is a disabled minor child. Ms. Koens and Ms. Landeros-Martinez seek to
2 proceed using fictitious names for their children to protect the privacy their children. In the matter
3 *Doe v. Lincoln Unified School District* (2010) 188 Cal.App.4th 758, the California Third District
4 Court of Appeal held in that the judicial use of “Doe” plaintiffs had gained “wide currency”. (See
5 *Starbucks Corp. v. Superior Court* (2008) 16 Cal.App.4th 1436.)
6

7 36. The principal rule concerning the use of a fictitious name for a party plaintiff requires fir
8 that the California Civil Code Sec. 372 be followed. In short, the party prosecuting the claim must be
9 the “real party in interests” or the person who was injured, otherwise harmed and who has legal
10 standing to proceed with the suit. In this action, the disabled minor children, of Ms. Koens and Ms.
11 Landeros-Martinez are the parties aggrieved and injure by the Respondents’ issuance of “alternated
12 decisions” in CDSS administrative fair hearings matters concerning the eligibility of the disabled
13 minors to receive IHSS PS services. Ms. Koens and Ms. Landeros-Martinez, as guardians and ad
14 litem, as well as the parents of the disabled minor children, are not only entitled to proceed with this
15 action on behalf of their children, but they are also authorized to proceed using the “Doe” fictitious
16 name rules.
17

18 37. The “Doe” plaintiff rule is best articulated in the federal case *Does I through XXIII v.*
19 *Advanced Textile Corp.* (9th Cir. 2000) 214 F.3d 1058 at 1067. That decision recognized three
20 grounds for which a plaintiff is permitted to proceed in an action using pseudonym. Only the first
21 two reasons are relevant to this matter. First, is the situation where “identification creates a risk of
22 retaliatory physical or mental harm [citations omitted]. The second situation is where anonymity is
23 necessary “to preserve privacy in a matter of a sensitive and highly personal nature.” Both of the real
24 parties in interest in this action, represented by their parents and guardians ad litem, have profound
25 developmental disabilities which are easily and readily the sources of public fear, scorn and
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27
28

1 approbation as a result of behaviors and conduct consistent with their diagnosed medical conditions
2 as well as shame and embarrassment.

3 38. The true names of these real parties in interests are actually known to the Respondents,
4 their agents and assigns. The use of the "Doe" plaintiff pseudonyms is necessary to afford the real
5 parties in interests, some modicum privacy, dignity and respect while their right to have IHSS PS
6 benefits provided as required by law are prosecuted through their request for judicial review of the
7 actions of the Respondents.
8

9 V. LEGAL FRAMEWORK

10 39. While the IHSS program is jointly operated by the DHCS and CDSS, CDSS is the entity
11 responsible for the day-to-day management of IHSS in compliance with state and federal laws.
12 (Welf. & Inst. Code §§ 10600, 10604(d), 10553, 12301, 12301.1 and 12302.) The CDSS
13 promulgated regulations to implement these statutes.
14

15 40. The IHSS program enables aged, blind or individuals with physical and/or mental
16 impairments who are unable to perform certain vital services for themselves and who cannot safely
17 remain in their homes of their choosing unless these services are provided for them by others.
18 (Welf. & Inst. Code §§12300, et.seq.) Protective Supervision is one service available in the IHSS
19 Program.
20

21 41. Protective Supervision consists of monitoring the behavior of non-self-directing,
22 confused, mentally impaired, or mentally ill persons. (Welf. & Inst. Code §12300 and CDSS Manual
23 of Policies and Procedures [MPP] §30-757.17.) Protective Supervision is available for "observing
24 recipient behavior in order to safeguard the recipient against injury, hazard, or accident." (MPP §30-
25 757.171.) To be eligible for such services, an individual must show "that twenty-four hour need
26 exists ... and that the recipient can live at home safely if protective supervision is provided." (MPP
27

1 §30-757.173.)

2 42. When assessing a minor for IHSS services, the county must assess for protective
3 supervision eligibility. (Welf. & Inst. Code §§ 12300(d)(4), 12301.1, 12309(b)(1)(2)(c), MPP §§30-
4 756.1, 756.2, 761.261.) A minor child is eligible for Protective Supervision if the need for
5 supervision is greater than what is needed for a non-disabled child of the same age. (Welf. & Inst.
6 Code §§ 12301(a), 12301.1, MPP § 30-756.372.) The county must review the child's mental
7 functioning on an individualized basis and must not presume a minor of that age has a mental
8 functioning that allows the child to perform an age appropriate function without human assistance.
9 A minor must not be denied protective supervision based solely on age because the minor has had no
10 injuries at home due to the mental impairment, as long as the minor has the potential for injury by
11 having the physical ability to move about the house. (Welf. & Inst. Code §§ 12300, 12301.1, MPP
12 §§ 30-761.26, 30-763.1.)

13 43. When action is taken regarding the amount of IHSS services, due process requires that
14 Respondents must send IHSS applicants or recipients a NOA. (Welf. & Inst Code §§ 12300.2) The
15 purpose of the NOA is to provide sufficient information to allow the individual to determine what the
16 issue is, understand the action to be taken and if the individual does not agree, the individual has a
17 right to request an administrative hearing to review the county's determination. (California
18 Constitution Article I, Section 7(a) and MPP § 22-001(a)(1).)

19 44. The Due Process Clause of the California Constitution Article I, Section 7(a) requires that
20 the NOA provides adequate explanation for its reasons in order to avoid arbitrary actions by
21 government agencies. NOAs must contain sufficient recipient-specific facts explaining and justifying
22 the intended actions, and inform Protective Supervision applicants and recipients regarding what
23 information or action is needed to reestablish eligibility or determine the correct amount of aid.
24

1 45. Consistent with Due Process Clause of the California Constitution Article I, Section
2 7(a), Respondent CDSS adopted formal regulations, Division 22 of the Manual of Policies and
3 Procedures, which govern the state administrative hearing process for all public social services
4 programs, including In-Home Supportive Services. These regulations define what constitutes an
5 adequate NOA for purposes of meeting the due process rights of individuals applying for or receiving
6 public social services benefits. An adequate NOA is defined as
7

8 [A] written notice informing the claimant of the action the county
9 intends to take, the reasons for the intended action, the specific
10 regulations supporting such action, an explanation of the claimant's
11 right to request a state hearing, and if appropriate, the circumstances
under which aid will be continued if a hearing is requested. . . .
(CDSS Manual of Policies and Procedures 22-001(a)(1).)

12 46. The NOA must inform the claimant regarding what information or action, if any, is
13 needed to reestablish eligibility or determine a correct amount of aid and shall include information
14 concerning the recipient's circumstances used to make the determination and shall cite the regulations
15 supporting the action. (MPP §§10-116.42, 22-071.1, 22-071.13 and 22-071.6)
16

17 47. Each applicant or recipient of IHSS services must receive an adequate written notice of
18 any action that the county welfare agency proposes to take with respect to a claim for services.
19 (Welf. and Inst. Code §§ 12300.2, 12301.5 and MPP §10-116; §30-759.7 and §30-763.8).
20

21 48. In addition to including a description of each specific task authorized and the number of
22 hours allotted the notice must clearly inform the individual regarding what information or action, if
23 any, is needed to reestablish eligibility or determine a correct amount of aid so that the individual is
24 able to understand if there is something the can be done in response to the NOA to stop or change the
25 county's proposed action. (42 C.F.R. § 431.210; MPP §§ 22-071.1; 22-071.13 and 22-071.6.) The
26 NOA must also include facts concerning the recipient's circumstances which have been used to make
27

1 the determination and shall cite the regulations which support the action.” (42 C.F.R. § 431.210;
2 MPP § 10-116.42.) For minors, the NOA must comply with the provisions of Welf. & Inst. Code §§
3 12300(d)(4); 12301.1; 12309(b)(1)(2)(c); MPP §§ 30-756.1; 30-756.2; and 30-761.261.).

4 49. Respondent CDSS manages the IHSS Program statewide by using the Case Management,
5 Information and Payrolling System (CMIPS). (Welf. & Inst. Code § 12302.2) CMIPS includes
6 generating NOAs for all 58 counties. Counties enter numerical values and provide only a short,
7 individualized explanation in the NOA.
8

9 50. The CDSS regulations mandate that a public social services claimant, including In-Home
10 Supportive Services claimant, who decides to challenge a county’s action or inaction must request an
11 administrative hearing within 90 days of the date of the adequate NOA in order to establish
12 jurisdiction for the hearing. (Welf. & Inst. Code § 10951; MPP § 22-009.)
13

14 51. When an adequate NOA is requested but not provided any hearing request shall be
15 deemed to be a timely hearing request. (MPP § 22-009.11.) If the NOA is not adequate and/or
16 language compliant, any hearing requested (including an otherwise untimely hearing request) shall be
17 deemed a timely hearing request. (MPP § 22-009.1) The fact that the individual knows, or should
18 have known of the action does not start the 90-day time limit. (*Morales v. McMahon* (1990) 223
19 Cal.App.3d 184.)
20

21 **FIRST CAUSE OF ACTION**
22 **(Respondents’ Protective Supervision Notices of Action Are Not Legally Adequate)**
23 **(Petition for Writ of Mandate, Code Civ. Proc. § 1085)**

24 52. Petitioners reallege and incorporate herein by reference each allegation set forth above as
25 fully set forth herein.

26 53. Respondents maintain a policy and practice that IHSS Program notices of action do not
27 have to meet the legal adequacy standard. (Exhibit 2, Director’s Alternate Decision, p. 7.) This

1 policy and practice violates Welfare and Institutions Code §§ 12300.2, 12301.5 and MPP §10-116;
2 §30-759.7 and §30-763.8). and *Morales v. McMahon* (1990) 223 Cal.App.3d 184.)

3 54. Petitioners Koens and Landeros-Martinez have requested that Respondent Lightbourne
4 modify the IHSS Protective Supervision NOAs to meet the requirements of the statutory and
5 regulatory requirements. Respondents have refused to meaningfully comply with their request.
6

7 55. The IHSS Protective Supervision NOAs that Respondents issue do not meet the standards
8 for an adequate written NOA. (MPP §§ 22-001(a)(1); 22-071.1; 22-071.13 and 22-071.6)

9 56. The notices sent to Petitioner Ms. Landeros-Martinez did not provide any information
10 regarding why Protective Supervision was not authorized to E.M or the circumstances that were
11 relied upon to determine Protective Supervision was not needed.
12

13 57. The notice sent to Ms. Koens did not identify the missing information needed to determine
14 eligibility, did not identify the services being denied, what action to be taken to action to be
15 approved.
16

17 58. Respondents have a clear, present and ministerial duty pursuant to Welfare and
18 Institutions Code Section 12300.2 to use written NOAs that meet the standards established by CDSS
19 regulations and Welfare and Institutions Code Section 12300.2.

20 59. At all times relevant to this action, Respondents have had the ability to fulfill their duties
21 under the law by issuing adequate NOAs for Protective Supervision.

22 60. Written demand was made upon all of the Respondents to perform their duties. Despite
23 this demand, Respondents have failed and refused to perform their duties to only utilize legally
24 adequate written NOAs for IHSS Protective Supervision purposes.
25

26 61. Petitioners are beneficially interested in Respondents' performance of their duties.

27 62. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law.
28

SECOND CAUSE OF ACTION
Respondents' Policy Violate the Due Process Clause of the California Constitution)
(Petition for Writ of Mandate, Code Civ. Proc. § 1085)

63. Petitioners reallege and incorporate herein by reference each allegation set forth above as fully set forth herein.

64. The California Constitution Article 1, Section 7(a) provides that a person may not be denied due process of the law. Governmental agencies are prohibited from acting arbitrarily to cause grievous losses even where their discretion is unbridled. "The very essence of arbitrariness is to have one's status redefined by the state without an adequate explanation for its reasons for doing so." (*People v. Ramirez* (1979) 25 Cal.3d 260, 266-267.)

65. NOAs that meet the requirement of due process must be sufficiently detailed and specific to enable a meaningful response. Vague and generic reasons for adverse agency action, rather than specific individualized facts supporting the agency's conclusion do not meet due process standards. Petitioners need only identify a statutorily conferred interest to trigger due process in California. (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1071.)

66. Respondents' policy that IHSS Protective Supervision NOAs are not required to meet due process standards results in NOAs being issued that are vague and provide no specific details as to reasons and basis for the action that the government plans to take.

67. This policy denies IHSS Protective Supervision applicants and recipients their right to receive NOAs that meaningfully detailed and accurately describe the proposed county action. This prevents Petitioners and others similarly situated from having adequate information about their claim. Respondents have no compelling interest that justifies this arbitrary denial of constitutionally, statutorily and regulatory required information. As such, Respondents' policy denies due process to applicants and recipients of IHSS Protective Supervision.

1 68. At all times relevant to this action, Respondents have had the ability to fulfill their duties
2 under the law by issuing adequate NOAs for Protective Supervision.

3 69. Written demand was made upon all of the Respondents to perform their duties. Despite
4 this demand, Respondents have failed and refused to perform their duties to only utilize legally
5 adequate written NOAs for IHSS Protective Supervision purposes.
6

7 70. Petitioners are beneficially interested in Respondents' performance of their duties.

8 71. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law.

9 72. Petitioners are entitled to a writ of mandate, pursuant to Code of Civil Procedure § 1085,
10 in that the respondents have a clear, present and ministerial duties, pursuant to Welfare and
11 Institutions Code §§ 12300.2; 12301.5; and MPP §§10-116; 22-001(a)(1); 22-071.1; 22-071.13; 22-
12 071.6; 30-759.7; and §30-763.8 to adopt NOAs that meet the due process standards under the
13 California Constitution.
14

15 **THIRD CAUSE OF ACTION**
16 **(Respondents' Protective Supervision Notices of Action Are Not Legally Adequate)**
17 **(Declaratory Relief Code Civ. Pro. Sec. 1060)**

18 73. Petitioners reallege and incorporate herein by reference each allegation set forth above as
19 fully set forth herein.

20 74. Unless restrained and enjoined by this Court, respondents will continue to send notices of
21 action that do not meet the standards of an adequate NOA. This policy will deny applicants and
22 recipients of IHSS protective supervision notice of client-specific reasons why protective supervision
23 was denied or decreased in violation of Welfare & Institutions Code §§ 12300.2, 12301.5 and MPP
24 §§10-116; 22-001(a)(1); 22-071.1; 22-071.13; 22-071.6; 30-759.7 and 30-763.8. Because
25 respondents' conduct is ongoing and continuous, declaratory relief is appropriate.
26
27

1 75. As a result of respondents' unlawful conduct, petitioners are likely to suffer irreparable
2 harm, and thus immediate relief is appropriate.

3 76. Petitioners are entitled to declaratory relief against all respondents under Code of Civil
4 Procedure § 1060 in that respondents' policy as set forth above violates the Welfare & Institutions
5 Code and lawfully enacted regulations. Respondents contend to the contrary.
6

7 **FOURTH CAUSE OF ACTION**
8 **(Director's Alternate Decision in Decision # 2016112009 Must Be Reversed As**
9 **the Notices of Action Are Not Legally Adequate.)**
10 **(Writ of Administrative Mandamus, Code Civ. Proc. Sec. 1094.5)**

11 77. Petitioner Karen Koens realleges and incorporates by reference each allegation set forth
12 above as fully set forth herein.

13 78. Petitioner is authorized under Welfare and Institutions Code Section 10962 to file a
14 petition with this court under the provision of the Code of Civil Procedure Section 1094.5, praying
15 for a review of the Director's Alternate Decision in Hearing # 2016112009.

16 79. Respondents Lightbourne and Kent prejudicially abused their discretion and proceeded in
17 a manner not authorized by law in adopting Director's Alternate Decision in Hearing # 2016112009.
18 The March 12, 2014 Notice does not meet the requirements of CDSS own regulations for an adequate
19 notice. (MPP §§ 10-116; 22-001(a)(1); 22-009; 30-759.7; and 30-763.8.) The Notice states that the
20 County denied the February 6, 2014 IHSS application because "you did not tell us enough
21 information to determine if you can get services" and cited MPP 30-760.1. This explanation does not
22 give the client-specific information necessary to allow the individual to determine what the issue is,
23 understand the action to be taken and if the individual does not agree, the individual has a right to
24 request an administrative hearing to review the county's determination. Specifically, the Notice does
25
26
27

1 not identify the information that the County needs to get services or to identify which "services" the
2 Notice references.

3 80. Petitioners have exhausted all available administrative remedies that Ms. Koens is
4 required to pursue. There is no other plain, speedy, and adequate remedy in the ordinary course of
5 the law other than the relief sought in this petition. A writ of administrative mandamus is the sole
6 and exclusive remedy for the review of Respondent's decision pursuant to Welfare and Institutions
7 Code Section 10962 and Code of Civil Procedure Section 1094.5.
8

9 **FIFTH CAUSE OF ACTION**
10 **(Director's Alternate Decision in Decision # 2016256251 Must Be Reversed Because the Notices**
11 **of Action Are Not Legally Adequate.)**
12 **(Writ of Administrative Mandamus, Code Civ. Proc. Sec. 1094.5)**

13 81. Petitioner Landeros-Martinez realleges and incorporates herein by reference each
14 allegation set forth above as fully set forth herein.

15 82. Petitioner is authorized under Welfare and Institutions Code Section 10962 to file a
16 petition with this court under the provision of the Code of Civil Procedure Section 1094.5, praying
17 for a review of the Director's Alternate Decision in Hearing # 2016256251.

18 83. The Director's Alternate Decision # 2016256251 is a prejudicial abuse of discretion and
19 is contrary to law because this decision violates lawful statutes and regulations. The notices of
20 action which were issued to E.M. fail to meet the due process requirements in that the notices of
21 action do not explain why Protective Supervision services were denied.
22

23 84. Additionally, the Director's Alternate Decision # 2016256251 is a prejudicial abuse of
24 discretion and is contrary to law because the notices of action do not meet the standards for an
25 adequate NOA as set forth in CDSS' MPP §§ 10-116; 22-001(a)(1); 22-009; 30-759.7; and 30-
26 763.8.)
27

1 85. Further, Respondent Lightbourne prejudicially abused his discretion and proceeded in a
2 manner not authorized by law in adopting Director's Alternate Decision # 2016256251 because he
3 lacked the legal authority to deny jurisdiction by evaluating only one NOA for adequacy instead of
4 reviewing all seven notices sent to Petitioner by Sonoma County. (See Director's Alternate Decision,
5 p. 6.) Each NOA must be individually evaluated for adequacy.
6

7 86. Petitioner has exhausted all available administrative remedies that she is required to
8 pursue. She has no other plain, speedy, and adequate remedy in the ordinary course of the law other
9 than the relief sought in this petition. A writ of administrative mandamus is the sole and exclusive
10 remedy for the review of Respondents' decision pursuant to Welfare and Institutions Code §10962
11 and Code of Civil Procedure §1094.5.
12

13 PRAYER FOR RELIEF

14 WHEREFORE, Petitioners requests that this Court:

15 1. Issue a preemptory writ of mandate pursuant to Code of Civil Procedure section 1085
16 ordering Respondents to prepare and issue for immediate use new "notices of action" concerning the
17 approvals for, denials of and decreases/increases in "protective supervision" that comply with the
18 requirements of of federal and state law, federal and state regulations MPP §§10-116; 22-001(a)(1);
19 22-071.1; 22-071.13; 22-071.6; 30-759.7 §30-763.8.
20

21 2. Issue a preemptory writ of mandate pursuant to Code of Civil Procedure section 1085
22 ordering Respondents to prepare and issue for immediate use new "notices of action" concerning the
23 approvals for, denials of and decreases/increases in "protective supervision" that comply with the
24 requirements of the Due Process clause of the California Constitution.
25

26 3. Declare that respondents' policy and practice that IHSS Program notices of action do not
27 have to meet the legally adequate standard is incorrect and violate Welfare and Institutions Code §§
28

1 12300.2, 12301.5 and MPP §10-116; 22-001(a)(1) 22-071.1; 22-071.13 and 22-071.6§30-759.7 and
2 §30-763.8.

3 4. Issue a writ of administrative mandamus ordering Respondent to set aside Director's
4 Alternate Decision Number # 2016256251 and reinstate the Proposed Decision remanding the case to
5 Sonoma County to assess the child E.M. for Protective Supervision from the time of her initial
6 application in September 2010 through October 29, 2016 and provide benefits as otherwise eligible.
7

8 5. Issue a writ of administrative mandamus ordering Respondent to set aside Director's
9 Alternate Decision Number # 2016112009 and reinstate the Proposed Decision remanding the case to
10 Santa Cruz County to approve M.K. for Protective Supervision and other IHSS in the amount of
11 227:20 effective February 6, 2014 onward until the date of the 2016 assessment.
12

13 6. Award Petitioners:

14 (a) Costs of suit; and

15 (b) Reasonable attorney fees in this action; and

16 7. Order such other and further relief as the Court deems just and proper.
17

18 DATED: 1/5/

19 Respectfully submitted,

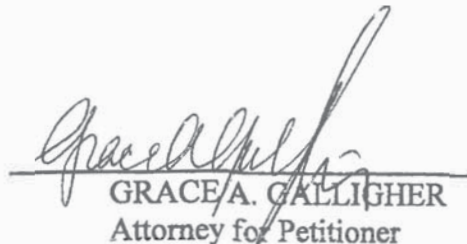
20
21 
22 GRACE A. GALLIGHER
23 Attorney for Petitioner
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25
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27
28

EXHIBIT 1

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
DEPARTMENT OF HEALTH CARE SERVICES

Hearing No. 2016112009

In the Matter of Claimant(s):

Karen Koens
789 Green Valley Rd Sp. 24
Watsonville, CA 95076

PROPOSED
DECISION

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

Cert Date: December 21, 2016

Richard W. Clopine
Administrative Law Judge

State Hearing Record

Hearing Date: September 15, 2016

Aid Pending: Not Applicable

Agency: Santa Cruz County

Agency:

Authorized Rep.
Organization:

SSN:

AKA:

Case Name:

LA District/Case:

Release Date:

Issue Codes: [610-3][620-3][626-1]

Agency Representative: Joyce Germain

Agency Representative:

Authorized Rep:

SSN:

AKA:

Language:

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 §10650.

SUMMARY

The action of the County denying Recipient's In-Home Supportive Services (IHSS) application is incorrect where the evidence established Recipient needs 227:20 hours per month effective February 6, 2014, to remain safely in his home. Additionally, the County action denying protective supervision effective February 6, 2014, is incorrect. [610-3][620-3][626-1]

FACTS

This hearing was held on September 15, 2016, by telephone originating in Sacramento, California. Present at the hearing were Claimant's authorized representative (AR), a County Hearing Representative (HR), a County IHSS Social Worker (SW1) and Social Worker Supervisor (SWS).

For purposes of this decision, "IHSS" refers to in-home supportive services available under the Personal Care Services Program (PCSP), the IHSS-Plus Option (IHSS-IPO) program, the In-Home Supportive Services Residual (IHSS-R) program, and the Community First Choice Option (CFCO) program.

By notice of action dated March 12, 2014, the County notified Recipient his IHSS February 6, 2014, application was denied. It is noted a subsequent IHSS application was made in 2016; the application, including Protective Supervision, was approved. Claimant requested a state hearing to contest the County March 12, 2014, action on April 19, 2016.

The case was bifurcated and a jurisdictional hearing was held on May 25, 2016. On August 19, 2016, an Administrative Law Judge (ALJ) determined jurisdiction exists to hear the merits of Claimant's dispute regarding the County's March 12, 2014, action denying Claimant's IHSS application. The ALJ determined the Notice of Action (NOA) was not legally adequate. No additional evidence was reviewed and no additional findings of fact or conclusions are made regarding jurisdiction.

It is undisputed Recipient currently receives 262:07 hours of IHSS per month.

Recipient is a 40-year-old male, seven at the time of the March 2014 County action, who lives with his family. Recipient suffers from Autism.

On March 4, 2014, the Social Worker made a home visit to assess Recipient's need for IHSS. The County summarized its position and arguments in a Statement of Position (SOP). The 2014 assessment from the SW was not submitted. The SOP was admitted into evidence. The County also submitted a response to Claimant's evidence submitted after the hearing. This was also admitted as evidence.

Recipient's AR submitted an SOP with attachments, a declaration from Claimant, and a rebuttal to the County's response documents submitted.

Recipient's AR specifically disputes the County's determination of Recipient's needs for the following services: Bowel and Bladder Care, Dressing, and Protective Supervision. All other categories are not in dispute.

During the course of the hearing, Claimant testified regarding each category in dispute, providing a detailed explanation of Claimant's functional limitations and needs and, from her

perspective, an explanation as to why the county's allocations are inadequate to address Claimant's needs in each of those categories. Claimant's other witness also provided testimony regarding Claimant's needs.

All of the documentary and testimonial evidence proffered by both parties was carefully considered in determining the specific allocations of time for each service as follows:

Two-Parent Rule

The County argued Recipient's mother (Claimant) was his IHSS provider and she was not prevented from working because she needed to take care of Recipient. The County argued Claimant was prevented from being working due to health reasons. The County indicated Claimant is ineligible to be a provider and receive IHSS due to the two-parent rule.

The County acknowledged Recipient father was working full time and Claimant was at home with Recipient. The County indicated Claimant did not leave full time employment to watch Recipient and she told the County she did not want Recipient in full time day care.

The County acknowledged Claimant has recovered from her illness and was approved as Recipient provider based on the 2016 application.

The County stated in its September 30, 2016, written response, to the documents submitted by the AR, Claimant reported she had breast cancer, she was waiting for surgery, and she needed help after her surgery. The County stated Claimant told the SW she did not want anyone else caring for Claimant. The County stated Claimant has a legal duty to care for her child and did so despite her illness; the County did not expressly state Claimant was unable to work due to her illness.

The SW testified Claimant told him she did not want a stranger to watch her son.

The AR stated Claimant was told she could not be a provider because she had not left employment to watch Recipient. The AR believes this was an excuse formulated after litigation began. The AR argued Claimant was misled by the County and believes her position is supported by the reasons listed on the March 2014 NOA.

The AR submitted an SOP. The SOP argued the two-parent rule does not apply in situations where a parent has left full time employment or is prevented from full time employment because no other suitable provider is available. The SOP states the County failed to apply the second part of the regulation.

The AR submitted a declaration from Claimant on September 20, 2016. Claimant stated she was not able to work because Recipient's needs were so severe. Claimant acknowledged she was ill; however, she stated her illness was the reason she was unable to work. Although not under penalty of perjury, the declaration stated it was true to the best of Claimant's recollection. This information was reiterated in an October 10, 2016, reply to the County's response to Claimant's "declaration."

The March 12, 2014, NOA states the County has denied Recipient February 6, 2014, application because "you did not tell us enough information to determine if you can get services" citing MPP 30-760.1. The March 12, 2014, NOA states the denial reason was "the parent has not left full-time employment or is prevented from obtaining full-time employment because of the need to provide IHSS to the child 30-763.451(a)."

It is found Claimant was unable to work from February 6, 2014, to the current assessment date in 2016 because the care required for her son (Recipient) was so extreme. This finding is based on the County's SOP and response, Claimant's SOP, reply, and statement. The County's evidence, including its position Claimant was prevented from work due to breast cancer, not care for Recipient, was considered; however, the preponderance of evidence support the current finding. It is noted in the County's response to Claimant's statement, the County did not specifically state Claimant told the County she was unable to work due to illness, instead the response stated Claimant planned on caring for her children even before they were born and despite her illness she cared for her children including Recipient. Additionally, there are no medical records in the Administrative Record stating Claimant is unable to work.

Bowel and Bladder Care

The County indicated Claimant is currently assessed 4:05 hours in this category; however, only 3:15 hours of time was approved due to alternative resources. The County indicated it did not have any specific information as to Recipient's need in 2014.

The AR testified Claimant told her she gave 5:45 hours of care in 2014 based on eight diaper changes, seven days a week, and five minutes per occurrence. The AR testified this time was only for time periods with Recipient was at home.

When the ALJ inquired about the calculation of time, the AR acknowledged her math may be incorrect.

The AR acknowledged the time is greater and hypothesized Recipient was younger and his need was higher.

Based on a preponderance of the evidence in the administrative record, it is found Claimant should be ranked at Functional Rank 4 since Claimant cannot perform these tasks with or without human assistance due to his functional limitations.

Based on a preponderance of the evidence in the administrative record, it is found the Recipient should be authorized in 4:40 hours per month based on Recipient's need for diaper changes at home eight times a day seven days a week and five minutes per occurrence. This finding is based on the evidence submitted by Claimant and Recipient's AR and the lack of evidence from the County.

The evidence does not justify an allocation of time outside the guideline range for services in this category.

Dressing

The County indicated Claimant is currently assessed 2:30 hours in this category. The County indicated it did not have any specific information as to Recipient's need in 2014.

The AR testified Claimant told her she needed to dress Recipient three times daily and ten minutes per occurrence. The AR acknowledged Recipient's abilities have improved.

There is no indication Recipient was combative.

Based on a preponderance of the evidence in the administrative record, it is found Claimant should be ranked at Functional Rank 5 since Claimant cannot perform these tasks with or without human assistance due to his functional limitations.

Based on a preponderance of the evidence in the administrative record, it is found the Recipient should be authorized in 2:48 hours per month based on Recipient's need for dressing three times daily. It is found Recipient has bowel and/or or bladder accidents and needs an additional change of clothes. It is also found 10 minutes to put of Recipient's pajamas is excessive. The time was calculated based on Recipient's need once a day for ten minutes, once a day for eight minutes, and once a day for six minutes. This finding is based on the evidence submitted by Claimant and Recipient's AR and the lack of evidence from the County. It is also based on the time necessary to allow Recipient to remain safely in his home in 2014.

The evidence does not justify an allocation of time outside the guideline range for services in this category.

Protective Supervision

The County argued Recipient was not self-injurious, he had no risky behaviors, he was not aggressive, and there was no report of wandering as he did not know how to open door knobs.

The County indicated the 2014 assessment was a standard 90 minute assessment.

The SW testified Recipient did not attempt any risky behaviors during the home assessment. The County indicated wandering, climbing, and hyper behavior were not reported at the home assessment.

The County acknowledged receipt of the documents including the Individual Education Plan (IEP) and SOC 821; however, the County argued Recipient's behavior has gotten worse.

The County acknowledged Recipient was ambulatory in 2014.

The County responded to Claimant's statement after the hearing. The September 30, 2016, response, written by the SW, states the assessment in 2014 was about 90 minutes. The response states the SW asked many questions to determine whether Recipient was eligible for Protective Supervision. The response states Claimant denied Recipient was self-injurious behavior at the 2014 assessment. The response states Claimant told the SW Recipient does not wander because he is unable to open the door. The response states Claimant's accident occurred after the March 4, 2014, assessment and would not have supported Protective Supervision because it was anticipation of a medical emergency.

The AR indicated Claimant told her the assessment lasted about 45 minutes and it kind of "fizzled" out after the SW told Claimant she could not be a provider. The AR indicated Claimant told her Protective Supervision was not really discussed.

The AR reported Recipient was hit by a car and seriously injured in 2014.

The AR testified Recipient is autistic and non-verbal.

The AR testified Recipient can be redirected; however, it has to be physical redirection as verbal redirection is ineffective.

The AR testified Recipient will climb on furniture or barriers erected by Claimant (daily), climb on window sills with no appreciation of the danger, grab knives, has no traffic awareness, and he must have a special harness in the school bus.

The AR argued Recipient's need was the same in 2014 as it current is in 2016.

The AR testified Recipient cannot identify his favorite food and he is always on the move.

The AR indicated the Statement of Position contains all the necessary specifics regarding Recipient's need for Protective Supervision.

The AR submitted a Statement of Position indicating Recipient needs Protective Supervision to remain safely in his home. The SOP contains a description of the 2014 motor vehicle accident. The SOP states Claimant turned around for a moment and Recipient went to the neighbor's driveway and lied down in back of a car with a driver inside and the engine running. The SOP states Recipient was run over and Recipient was dragged down the street until Claimant was able to stop the driver and get medical help for Recipient. The SOP lists Recipient's risky behavior as eloping, lack of response to verbal cues, eating items off the floor, biting, scratching, and pinching himself, climbing on furniture, grabbing sharp objects especially during meal preparation, close monitoring during street crossing and on the school bus (a special harness), no water temperature (hot/cold) awareness, throwing things up not realizing they will come back down and could strike him, and trying to open the doors in a moving car.

As attachments, the SOP has the following documents:

1. A SOC 821, dated August 2, 2016, stating Recipient has a moderate deficit in memory, severe deficit in orientation, and a severe deficit in judgment. The SOC 821 states Recipient will forget to finish a task and he is non-verbal. The SOC 821 states Recipient is not oriented to person, place, or time. The SOC 821 states Recipient is not aware of danger and he has eloped with unsecure bodies of water in the area. The SOC 821 notes Recipient he down "in front" of a parked car and was run over by the car. The SOC states Recipient's condition as not changed since 2014.
2. An April 6, 2016, statement by Recipient's doctor stating Recipient has a mental impairment as the result of his disability, his impairment prevents Recipient from being left alone, the behavior listed on the behavior log is consistent with Recipient's diagnosis, and Recipient's disability affects his ability to have good judgment regarding danger. The form states Recipient is non-verbal, he is unable to communicate, he cannot learn well, and is unaware on danger.
3. An April 6, 2016, questionnaire filled up by Recipient's doctor stating Recipient is totally dependent on others for assistance with ADLs. Recipient is non-verbal, he cannot have a conversation, he has a poor memory as he cannot remember his name, address, telephone number, and medical history (this differs from the SOC 821 as memory deficit is rated as severe). Recipient has eloped and has no orientation to place including a pond in the neighborhood. Recipient has no sense of safely in his environment (orientation deficit is listed as severe). Recipient does not understand "stranger" danger and he will run into the street despite is accident in 2014 were he was run over by a car.

Claimant submitted a statement, dated September 20, 2016, indicating the home visit was very short in 2014. Claimant stated she does not believe Protective Supervision was explained to her very well in 2014. Claimant acknowledged she did not "exactly" tell the SW Claimant had a

history of self-injurious behavior; however, she stated she told the SW Recipient must be constantly watched. Claimant stated the SW in 2014 did not really ask too many question about self-injurious behavior.

Claimant indicated in her statement Recipient had gone out to the front yard and her attention was diverted for a moment. Claimant stated when she looked back Recipient had sat down in a neighbor's driveway directly behind a car parking in the driveway. Claimant stated the neighbor pulled out of the drive way dragging Recipient under the car. Claimant stated the neighbor stopped when the passenger(s) in the car heard Recipient screaming. Claimant stated Recipient was taken to the hospital.

Claimant indicated in her statement Recipient lacks danger awareness and is often injured from falls and contact with household objects. Claimant stated Recipient gets frustrated and has temper tantrums as well. Claimant stated Recipient is unable to tell anyone why he is upset. Claimant stated Recipient must be watched all the time and raising Recipient is difficult.

Claimant stated Recipient's current behavior was the same or worse than 2014.

After the County's response was provided to the AR, the AR replied with essentially the same information as contained in Claimant's statement. The AR argued the SW did not assess for Protective Supervision and the questions and answers contained in the County's response are very minimal and do not constitute a proper Protective Supervision assessment. The AR also questioned whether the SW could remember an assessment done over two years ago.

It is found Recipient had a moderate to severe deficit in memory in 2014. This finding is based on the testimony of the AR, Claimant's statement, and the forms filled out by the Recipient's doctor. This finding is made despite the County's evidence as the forms filled out by Claimant and Recipient's doctor very persuasively provide Recipient's behavior was the same in 2014 as it is in 2016.

It is found Recipient had a severe deficit in orientation in 2014. This finding is based on the testimony of the AR, Claimant's statement, and the forms filled out by the Recipient's doctor. This finding is made despite the County's evidence as the forms filled out by Claimant and Recipient's doctor very persuasively provide Recipient's behavior was the same in 2014 as it is in 2016.

It is found Recipient had a severe deficit in judgment in 2014. This finding is based on the testimony of the AR, Claimant's statement, and the forms filled out by the Recipient's doctor. This finding is made despite the County's evidence as the forms filled out by Claimant and Recipient's doctor very persuasively provide Recipient's behavior was the same in 2014 as it is in 2016.

LAW

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

A county action is one which requires adequate notice, as well as any other county action or inaction relating to Claimant's application for or receipt of aid. (§22-001(c)(5))

A state hearing shall be available to a claimant who is dissatisfied with a county action and requests a state hearing. (§22-003.1)

A request for hearing or portion thereof shall be dismissed by written hearing decision when the person who requests the hearing does not have standing to request the hearing. Those persons who have standing to request the hearing are set forth in §22-001(c)(2). (§22-054.35)

The state hearing decision shall determine only those circumstances and issues existing at the time of the county action in dispute or otherwise agreed to by the parties. (§22-062.4)

A recipient shall have the right to request a hearing to review the current amount of aid. At the claimant's request, such review shall extend back as many as 90 days from the date the hearing request is filed and shall include review of any benefits issued during the entire first month in the 90-day period. This review shall only apply to facts that occurred during the review period. (§22-009.2 effective January 24, 2007 and All-County Letter (ACL) 16-42 (May 20, 2016))

The Personal Care Services Program (PCSP) provides personal care services to eligible Medi-Cal beneficiaries pursuant to Welfare and Institutions Code §14132.95 and Title 22, California Code of Regulations and is subject to all other provisions of Medi-Cal statutes and regulations. The program is operated pursuant to Manual of Policies and Procedures (MPP) Division 30. (MPP §30-700.2)

Individuals eligible to receive PCSP payments must have a chronic disabling condition expected to last 12 months or end in death (§51350(b)); a need for at least one personal care service or paramedical service (§§51350(a) and 51183); a service provider who is not the parent (if a minor) or a spouse (§51181); and must not be receiving advance payment for services (Manual of Policies and Procedures (MPP) §30-700.2)

The PCSP Program provides in home services to disabled individuals as a benefit of the California Medical Assistance Program (Medi-Cal) program. The program is administered by the counties under regulations issued by the State Department of Social Services. Those regulations are set forth in Division 30 of the Manual of Policies and Procedures (MPP). See Welfare and Institutions Code (W&I) 14132.95(i).

To qualify for PCSP, individuals not receiving SSI/SSP or Medi-Cal-linked to a cash-based program must be determined eligible for federally funded full-scope Medi-Cal by a Medi-Cal EW and be found in need of personal care services through a needs assessment. Effective May 1, 2004, the Medi-Cal State Plan providing personal care services was expanded to include the following services as federally funded personal care services:

- Ancillary services, including domestic and related services, under W & I Code, Section 14132.95 (d)(2), *not* provided by a spouse or parent of a minor child; and
- Protective supervision *not* provided by a spouse or parent of a minor child.

(ACWDL 05-21, June 13, 2005)

The term IHSS is often used to refer generally to four distinct state/county programs which provided in-home services to disabled populations. These programs are the following:

- PCSP (Personal Care Services Program) is a program funded through Medi-Cal and provides services to individuals who otherwise qualify for Medi-Cal and have a chronic disabling condition. Eligibility is fully based on Medi-Cal eligibility. PCSP is unavailable to individuals whose provider is their spouse or to minor individuals whose parent is the provider. It is also unavailable if the provider is receiving advance payment or the

recipient is receiving a restaurant meal allowance. See, generally, Welfare and Institutions Code 14132.95

- IHSS Plus Option (IPO) is a program funded through Medi-Cal, which provides services for federally eligible Medi-Cal recipients who do not qualify for the PCSP Program. Such recipients often include individuals where the spouse is the provider or minors when the parent is the provider. Eligibility is fully based on Medi-Cal eligibility. See, generally, Welfare and Institutions Code 14132.97.
- Community First Choice Option (CFCO) is a program that provides services for federally eligible Medi-Cal recipients who meet IPO requirements and in addition require 195 hours over service or meet certain other levels of severity of need. See, generally, All County Letter 14-60, August 29, 2014.

IHSS Residual (IHSS-R) is a program limited to disabled individuals who do not qualify for federal Medi-Cal program participation, primarily legal aliens. Eligibility is based on linkage to the SSI/SSP program. See, generally, Welfare and Institutions Code 12300 et. seq.

All CFCO participants must be eligible for Full Scope Federal Financial Participation Medi-Cal and be eligible based on one of the following criteria:

- 1) Have a total assessed need (excluding heavy cleaning and yard hazard abatement) of 195 or more IHSS hours per month.
- 2) Have a total assessed need (excluding heavy cleaning and yard hazard abatement) under 195 IHSS hours per month and:

Have 3 or more of the following services with the designated Functional Index (FI) Ranks:

- Eating, FI Rank of 3-6
- Bowel and bladder/menstrual care, FI Rank of 3-6
- Bathing/grooming, FI Rank of 4-5
- Dressing, FI Rank of 4-5
- Mobility inside, FI Rank of 4-5
- Transfer, FI Rank of 4-5
- Respiration, FI Rank of 5-6
- Paramedical, (FI Rank not applicable)

OR

Have a combined FI Rank of 6 or higher in mental functioning (memory, orientation, and judgment). FI Ranks for mental functioning can be either 1, 2, or 5.

- 3) Have a combined "Individual Assessed Need" total of 20 hours or more per week in one or more of the following services:
 - Preparation of meals
 - Meal clean-up (if preparation of meals and feeding are assessed needs)
 - Respiration
 - Bowel and bladder care
 - Feeding
 - Routine bed baths
 - Dressing

- Menstrual care
- Ambulation
- Transfer
- Bathing, oral hygiene, grooming
- Repositioning and rubbing skin
- Care and assistance with prosthesis
- Paramedical services

(All County Letter No. 14-60, August 29, 2014)

Effective September 1, 2014, as the movement of IPO recipients into CFCO is completed, those recipients who are considered Non-Severely Impaired (NSI) and receive protective supervision, will be eligible for 195 hours of protective supervision, plus hours for other services, up to a maximum of 283 hours per month.

All-County Letter (ACL) 14-60 (August 29, 2014)

The IHSS Plus Option (formerly IHSS Plus Waiver) program provides IHSS Plus Option (IHSS-IPO) services to eligible Medi-Cal beneficiaries, subject to Medi-Cal provisions, statutes and regulations, pursuant to Welfare and Institutions Code Section 14132.951 and Title 22, California Code of Regulations, Division 3, and is operated pursuant to Division 30.

These services are available as described in MPP Section 30-707, when services are provided by a parent of a minor child recipient or a spouse; and/or when the recipient receives a Restaurant Meal Allowance; and/or when the recipient receives Adult Day Payment for in-home care services.

To qualify for the IHSS-IPO, Medi-Cal eligibility is required. Individuals not receiving Supplemental Security Income/State Supplementary Payments (SSI/SSP) or other Medi-Cal linked cash-based programs (e.g., CalWORKs) must be determined eligible for federally funded full-scope Medi-Cal by a Medi-Cal eligibility worker (EW). Individuals must also qualify for in-home services through a needs assessment, completed by an IHSS social worker (SW). Individuals receiving at least one of the IHSS-IPO services are considered to be IHSS-IPO participants.

Recipients in any one of the categories described in Section 30-700.31, who have been determined eligible for Medi-Cal, qualify for the IHSS Plus Option program.

Individuals who qualify for both IHSS and PCSP funding shall be funded by PCSP.

(Section 700.3 and .4, All County Letter 05-05, June 2, 2005; All County Welfare Director's Letter 05-21, June 13, 2005; All County Information Notice I-33-10, April 21, 2010; All County Letter No. 11-19, February 25, 2011)

IHSS-R program services will be available to individuals eligible under current IHSS regulations, but who are not eligible for federally funded full-scope Medi-Cal. The services available under the IHSS Residual program have not changed. (ACWDL 05-21, June 13, 2005)

Recipients who remain in the IHSS-R program are those who have been determined eligible for IHSS-R services, but who are not eligible for federally funded full-scope Medi-Cal, such as citizens under the five-year ban. (ACIN I-28-06, answer #2)

A completed medical certification form must be received prior to the authorization of IHSS services for new applicants and to allow the continuation of IHSS services for recipients. In order for IHSS to be authorized or continued, the medical certification form must include a declaration from a licensed health care professional that the applicant/recipient is unable to independently perform some activity of daily living and that without the assistance of IHSS services, the applicant/recipient would be at risk of placement in out-of-home care. The form must also include a description of any condition or functional limitation that has resulted in, or contributed to, the applicant/recipient's need for assistance. (W&IC § 12309.1 as added by SB72, ACL 11-55, July 27, 2011)

Social services staff shall determine need for services based on the recipient's physical/mental condition, or living/social situation; the recipient's statement of need; the available medical information; and other information social service staff considers necessary and appropriate. (§30-761.26)

Services staff shall determine the need for only those tasks in which the recipient has functional impairments. Recipients must cooperate, within their ability, to secure medical verification of their present condition, their ability to remain in their own homes, and their need for and level of out-of-home care. (§30-763.1)

For services in this section where time guidelines are specified, the services shall be subject to the specified time guideline unless the recipient's needs require an exception to the guideline. When assessing time for services (both within and outside the time guidelines), the time authorized shall be based on the recipient's individual level of need necessary to ensure his/her health, safety, and independence based on the scope of tasks identified for service. In accordance with Welfare and Institutions Code Section 12301.2, the purpose of the guidelines is to provide counties with a tool for both consistently and accurately assessing service needs and authorizing time.

An exception to the time guideline may result in receiving more or less time based on the recipient's need for each supportive service and the amount of time needed to complete the task.

Exceptions to the hourly task guidelines identified in this section shall be made when necessary to enable the recipient to establish and maintain an independent living arrangement and/or remain safely in his/her home or abode of his/her own choosing and shall be considered a normal part of the authorization process.

No exception shall result in the recipient's hours exceeding the maximum limits of 195 hours per month as specified at Section 30-765.121 for nonseverely impaired cases or 283 hours per month for severely impaired cases as specified in Section 30-765.111.

No exception shall result in the recipient's hours exceeding the maximum limit for PCSP cases as specified at Section 30-780.2(b).

No exceptions to hourly task guidelines shall be made due to inefficiency or incompetence of the provider.

When an exception to an hourly task guideline is made in a recipient's case, the reason for the exception shall be documented in the case file.

(30-757.1(a))

County services staff shall conduct a needs assessment of applicants and recipients. In making this assessment, the services staff shall determine the total amount of hours per week needed for the various services set forth in the program content. (§30-763.2)

No need exists for services which the applicant/recipient is able to perform safely, without an unreasonable amount of physical or emotional stress. (§30-761.25)

Staff of the designated county department shall determine the recipient's level of ability and dependence upon verbal or physical assistance by another for each of the functions listed in MPP § 30-756.2. This assessment shall evaluate the effect of the recipient's physical, cognitive and emotional impairment on functioning. Staff shall quantify the recipient's level of functioning using the following hierarchical five-point scale:

- Rank 1: Independent: able to perform function without human assistance, although the recipient may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his or her safety. A recipient who ranks a 1 in any function shall not be authorized the correlated service activity.
- Rank 2: Able to perform a function, but needs verbal assistance, such as reminding, guidance, or encouragement.
- Rank 3: Can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.
- Rank 4: Can perform a function but only with substantial human assistance.
- Rank 5: Cannot perform the function, with or without human assistance.

(MPP § 30-756.1)

If the recipient's functioning varies throughout the month, the functional rank should reflect the functioning on reoccurring bad days. It is not solely based on a "worst" day scenario (e.g., a recipient who suffers from arthritis will have days when pain is significant and days when pain is mild; therefore, in this case you would rank a recipient based on the reoccurring days where the frequency of pain is significant).

(All County Letter 06-34E1, attachment B, December 21, 2006)

Bowel and bladder care includes assistance with using, emptying, and cleaning bed pans or bedside commodes, urinals, ostomy, enema and catheter receptacles; application of diapers; positioning for diaper changes; managing clothing; changing disposable barrier pads; putting on and taking off disposable rubber gloves; wiping and cleaning recipient; assistance with getting on/off commode or toilet; and washing and drying recipient's and providers hands. Bowel and bladder care does not include insertion of enemas, catheters, suppositories, or digital stimulation or coistomy irrigation (these tasks are categorized as paramedical services).

Factors for consideration of time include, but are not limited to: the extent to which the recipient can assist or perform tasks safely; the frequency of the recipient's urination and/or bowel movements; and if there are assistive devices available (such as elevated toilet seats or Hoyer lifts) which result in decreased or increased need for assistance.

Bowel and Bladder Care - Time for Task Guideline Ranges - Weekly Hours:

Rank	Low	High
Rank 2	0.58	2.00
Rank 3	1.17	3.33
Rank 4	2.91	5.83
Rank 5	4.08	8.00

Exception criteria for the time guideline ranges include, but are not limited to, frequency of urination or bowel movements; bowel or bladder accidents requiring assistance; morbid obesity; spasticity or locked limbs; combativeness or bathroom door access problems.

(MPP Section 30-757.14(a))

Personal hygiene includes cleaning the body in a tub or shower; obtaining water/supplies and putting them away; turning on/off faucets and adjusting water temperature; assistance with getting in/out of tub or shower; assistance with reaching all parts of the body for washing, rinsing, drying and applying lotion, powder, deodorant; oral hygiene and denture care; and washing/drying hands. Grooming includes hair combing/brushing; hair trimming when the recipient cannot get to the barber or salon; shampooing, applying conditioner, and drying hair; shaving; fingernail and toenail care when these services are not assessed as paramedical service. This category does not include getting to/from the bathroom (categorized as ambulation).

Personal Hygiene and Grooming - Time for Task Guideline Ranges - Weekly Hours:

Rank	Low	High
Rank 2	0.50	1.92
Rank 3	1.27	3.15
Rank 4	2.35	4.08
Rank 5	3.00	5.10

Exception criteria for the time guideline ranges include, but are not limited to, whether the provider's constant presence is required; the recipient's weight; whether the recipient has spasticity or locked limbs; whether a roll-in shower is available; or combativeness.

(MPP Section 30-757.14(e))

Severely Disabled/Non-Severely Disabled

A "severely impaired" individual is a recipient with a total assessed need for 20 or more hours per week in one or more of the following areas:

1. Nonmedical personal services, listed in §30-757.14:

- (a) bowel and bladder care
- (b) respiration
- (c) consumption of food (feeding)
- (d) routine bed baths
- (e) bathing, oral hygiene and grooming
- (f) dressing
- (g) rubbing of skin to promote circulation, etc.
- (h) moving into and out of bed

- (i) care of and assistance with prosthesis and assistance with self-administration of medicines
 - (j) routine menstrual care
 - (k) ambulation
2. Meal Preparation
 3. Meal cleanup when preparation of meals and feeding are required.
 4. Paramedical services.

(§30-701(s)(1))

The maximum IHSS hours which may be authorized for a recipient who is severely impaired are 283 hours per month. Effective April 14, 2000, the CDSS repealed Handbook §30-765.112, which contained the maximum allowable dollar payments.

A severely impaired person is someone who needs 20 or more hours of service per week in the areas specified in §30-701(s)(1).

(§30-765.11 and .111 Handbook)

The maximum monthly IHSS authorization for a nonseverely impaired individual is 195 hours. Effective April 14, 2000, the CDSS repealed Handbook §30-765.122, which contained the maximum allowable dollar payments. (§30-765.12 and .121 Handbook)

Protective Supervision:

The IHSS Program content includes Protective Supervision. Protective Supervision consists of monitoring the behavior of non-self-directing, confused, mentally impaired or mentally ill recipients in order to safeguard the recipient against injury, hazard or accident. (§30-757.171)

Social Services staff shall discuss the need for twenty-four-hours-a-day supervision with the recipient, or the recipient's guardian or conservator, and will discuss the appropriateness of out-of-home care as an alternative to Protective Supervision. (§30-757.174)

If a person is identified by county staff to potentially need Protective Supervision, the county shall request that the form SOC 821 (11/05), Assessment of Need for Protective Supervision for In-Home Supportive Services Program, be completed by a qualified physician or other appropriate medical professional to certify the need for Protective Supervision and returned to the county. The form shall not be determinative, but shall be used in conjunction with other pertinent information, such as an interview or report by the social service staff or a Public Health Nurse, to assess the person's need for Protective Supervision. Recipients may also request Protective Supervision. Recipients may obtain documentation (such as the SOC 821) from their physicians or other appropriate health care professionals for submission to the county social service staff to substantiate the need for Protective Supervision. (§30-757.173)

Protective Supervision is available when social services staff determines that a 24-hour need exists for Protective Supervision and that the recipient can remain at home safely if Protective Supervision is provided. Services staff shall determine that the entire 24-hour need for Protective Supervision can be met through any of the following, or combination of the following:

IHSS; alternative resources; or a reassurance phone service when reasonable and appropriate. (§30-757.171 and .173)

Protective Supervision is not available for: friendly visiting or other social activities; when the need is due to a medical condition and the form of supervision required is medical; in anticipation of a medical emergency; to prevent or control antisocial or aggressive recipient behavior; to guard against deliberate self-destructive behavior, such as suicide, or when an individual knowingly intends to harm himself/herself. (§30-757.172)

County Social Services staff shall obtain a signed statement from the provider(s) of record or any other person(s) who agrees to provide any In-Home Supportive Services (IHSS) or PCSP compensable service voluntarily. The statement [Form SOC 450 (10/98)] shall indicate that the provider knows of the right to compensated services, but voluntarily chooses not to accept any payment, or reduced payment, for the provision of services. (§30-757.176)

Protective Supervision involves not only the observation of behavior to safeguard the individual against harm, but also the intervention to prevent harm when the individual engages in potentially dangerous conduct. Protective Supervision is available to those IHSS beneficiaries who are non-self-directing and who would most likely engage in potentially dangerous activities. (*Calderon v. Anderson* (1996) 45 Cal. App. 4th 607, 52 Cal. Rptr. 2d 846)

The California Court of Appeals ruled that Protective Supervision for IHSS recipients could be limited to those recipients who were non-self-directing or mentally infirm. (*Marshall v. McMahon* (1993) 22 Cal. Rptr. 2d 220).

For service authorization purposes, no need for protective supervision exists during periods when a provider is in the home to provide other services. (§30-763.332)

Excluded Needs and Behaviors under MPP § 30-757.172

The exclusions listed under MPP § 30-757.172 are applicable if a recipient is otherwise eligible for Protective Supervision in that s/he has the requisite mental impairment/ mental illness, is nonself-directing, and would likely engage in potentially dangerous activities. MPP § 30-757.172 states Protective Supervision shall not be authorized:

- (a) For friendly visiting or other social activities;
- (b) When the need is caused by a medical condition and the form of the supervision required is medical.
- (c) In anticipation of a medical emergency;
- (d) To prevent or control anti-social or aggressive recipient behavior.
- (e) To guard against deliberate self-destructive behavior, such as suicide, or when an individual knowingly intends to harm himself/herself.

An example of an excluded need/behavior for "(b) When the need is caused by a medical condition and the form of the supervision required is medical," is a recipient who has diabetes and the need for Protective Supervision is to help if/when the recipient has an episode of hypoglycemia.

Additionally, an example of an excluded need/behavior for "(c) In anticipation of a medical emergency" is a recipient who has Congestive Heart Failure and the need for Protective Supervision is in anticipation of a heart attack.

If a recipient only displays needs or behaviors excluded under MPP § 30-757.172, they are not eligible for Protective Supervision. If a recipient displays self-injurious behavior that would qualify for Protective Supervision, but also displays excluded behavior(s) based on MPP § 30-757.172, they may still be eligible for Protective Supervision for the non-excluded behaviors.

For example: A recipient who displays multiple self-injurious behaviors such as attempting suicide and wandering would be eligible for Protective Supervision to intervene to prevent wandering, but not to prevent suicide attempts.

The IHSS program is not intended to prevent or control dangerous behaviors, and IHSS providers are not trained to intervene when recipients are displaying such behaviors. The non-IHSS program remedy for suicide attempts and other dangerous behavior is still to call 911.

Additional Excluded Needs and Behaviors

The Calderon v. Anderson decision states that "protective supervision is not available merely to provide constant oversight in anticipation of environmental or medical emergency or exigent circumstances."

For example: A mentally ill/mentally impaired recipient who would not know how to exit his/her home in the event of a fire is not eligible for Protective Supervision based on that behavior (or lack of appropriate response/behavior) alone.

As stated above, the counties must assess all eligible minors, which include anyone up to the age of 18 years old, for a mental impairment/ mental illness. If the child is mentally impaired/mentally ill, the following provides a four-step process for counties to use when applying the terms of the Garrett v. Anderson stipulated judgment:

1. Is the minor nonself-directing due to the mental impairment/mental illness? If the answer is no, then the minor is not eligible for Protective Supervision pursuant to Calderon v. Anderson and Marshal v. McMahon, and Protective Supervision should not be granted. The county should document that because the child is self-directing, the minor does not meet the Garrett criteria of needing more supervision than another minor of the same age without a mental impairment/mental illness. Counties should also document the underlying facts which are basis for this determination. If the answer is yes, then move to question 2;
2. If the minor is mentally impaired/mentally ill and nonself-directing, is he/she likely to engage in potentially dangerous activities? Consider here whether the minor retains the physical ability to put him/herself at risk of harm. If the answer is no, then the minor is not eligible for Protective Supervision under the Calderon v. Anderson court decision, and Protective Supervision should not be granted. The county should document that because the child is not likely to engage in potentially dangerous activities, the minor does not meet the Garrett criteria of needing more supervision than another minor of the same age without a mental impairment/mental illness. If the answer is yes, then move to question 3;
3. Does he/she also need more supervision than a minor of comparable age who is not mentally impaired/mentally ill pursuant to the Garrett v. Anderson court order? "More supervision" can be more time, more intensity, or both. The additional supervision required must be significantly

more than routine child care, and not only be related to the functional limitations of the child, but also allow the child to remain safely in their own home with this assistance. If the answer is no, then the minor is not eligible for Protective Supervision under the *Garrett v. Anderson* court order, and Protective Supervision should not be granted. The county should document that because the child does not need more supervision than another child of the same age without a mental impairment/mental illness, the minor does not meet the *Garrett* criteria of needing 24 hours-a-day of supervision. If the answer is yes, then move to question 4;

4. When it is found that "more supervision" is needed, is 24 hour-a-day supervision needed in order for the minor to remain at home safely pursuant to MPP § 30-757.173? If the answer is no, then the minor is not eligible for Protective Supervision and it should not be granted. If the answer is yes, the minor qualifies for Protective Supervision; if otherwise eligible.

(All-County Letter (ACL) 15-25 Pages 6 and 7)

For the purpose of Protective Supervision eligibility, nonself-direction is an inability, due to a mental impairment/mental illness, for individuals to assess danger and the risk of harm, and therefore, the individuals would most likely engage in potentially dangerous activities potentially causing self-harm.

(All-County Letter (ACL) 15-25 Page 3)

It is CDSS' policy a person does not have to suffer *actual* injury to be eligible for Protective Supervision, but only have a history of a propensity for placing him/herself in danger. For example:

□ A person with a documented history of nonself-direction, who has a tendency to open the front door and start walking away, does not necessarily have to make it into the street in order for this to be considered potentially hazardous behavior.

Other evidence of a propensity for placing him/herself in danger may come from doctor evaluation, Individualized Education Plans (IEPs), etc.

(ACL 15-25, page 25)

Question 36: Can we accept a mental health diagnoses from other medical professionals or should the diagnoses be provided by mental health professionals only?

Corrected: We can accept a diagnosis from any medical professional who is acting within the scope of his or her license. Service hours are authorized based on assessed need, never solely based on a diagnosis. Mental function shall be assessed in accordance with MPP Section 30-756.37. While any diagnosis may be accepted and considered in the course of the process, the diagnosis would only be considered as a part of the whole, in conjunction with the social worker's observations.

(All-County Letter (ACL) 09-30, question 36, June 30, 2009)

Two Parent Rule:

§30-763 provides:

.44 When the recipient is under eighteen years of age and is living with the recipient's parent(s), who has a legal duty pursuant to the Family Code to provide for the care of his/her child, IHSS may be purchased from a provider other than the parent(s) when no parent is able and available to provide the IHSS services for any of the following reasons, and services must be provided during the inability or unavailability of the parent(s):

.441 When the parent(s) is unavailable because of employment or is enrolled in an educational or vocational training program.

.442 If the parent(s) is physically or mentally unable to provide the needed IHSS services.

.443 When the parent is unavailable because of on-going medical, dental or other health-related treatment.

.444 When the parent(s) must be unavailable to perform shopping and errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings, IHSS may be purchased from a provider other than the parent(s) for up to eight hours per week to perform IHSS tasks necessary during the unavailability of the parent(s).

.45 When the recipient is under eighteen years of age and is living with the recipient's parent(s), who has a legal duty under the Family Code to provide for the care of his/her child, the IHSS specified in Section 30-763.456 may be purchased from a parent under the following condition:

.451 The parent has left full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.

(a) For the purposes of this section, full-time employment means working an average of 40 or more hours per week regardless of worksite location. A parent providing IHSS-funded care to his/her own child is not full-time employment.

.452 For the purposes of Section 30-763.451, a suitable provider is any person who is willing, able, and available to provide the needed IHSS. A suitable provider who is a person having a duty pursuant to the Family Code need only be able and available to provide the needed IHSS; the person is only considered to be unavailable if that unavailability occurs during a time the recipient must receive a specific service, for the following reasons: employment, enrollment in an educational or vocational training program, or employment searches.

.453 Example: Both parents are employed full-time. Their minor child is eligible to receive IHSS. One parent leaves his full-time job in order to provide IHSS to the child; the other parent retains full-time employment. If the other requirements in Section 30-763.451 are met, IHSS may be purchased from the parent who left his job since he left full-time employment to provide IHSS to the child.

.454 Example: When one parent is employed full-time and the other parent, who has never been employed, is at home, able and available to provide IHSS.

(a) When the employed parent left his/her job to provide IHSS to his/her child, IHSS could not be purchased from that parent since the conditions pursuant to Section 30-763.451 are not met because the other parent is a suitable provider.

(b) When the employed parent did not leave full-time employment, the non-working parent may qualify as a paid provider only if that parent is prevented from obtaining full-time employment in order to provide IHSS to the child and other requirements pursuant to Section 30-763.451 are met. When the non-working parent cannot be employed full-time for reasons other than the need to provide IHSS to the child, the non-working parent does not qualify as a paid provider.

.455 A parent provider who meets the requirements in Section 30-763.451 shall be paid for performing authorized services regardless of the presence of the other parent in the home, including non-work hours, weekends, and holidays.

(See Also All-County Letter (ACL) 15-45 (May 1, 2015))

1. Q. If the non-provider parent in a two-parent household is not working, or going to school full-time, is the child still eligible for IHSS?

A. Yes, the child may be eligible for IHSS; however, the provider parent would not meet the qualifications to be a paid IHSS provider under MPP Section 30-763.451 because of the availability of the non-provider parent.

10. Q. In a single parent home, when the parent is employed full-time (40 or more hours a week), can that parent be paid to be an IHSS provider when they are not at work?

A. No, a single parent, who is employed full-time, does not meet the criteria to be the parent provider under MPP Section 30-763.451 because they have not left full-time employment and are not prevented from full-time employment because of the care needs of the child. In this situation, a non-parent provider can be paid, but only for periods of parental inability or unavailability as detailed in MPP Section 30-763.44-444.

(All-County Letter (ACL) 15-45 (May 1, 2015))

Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

Providers shall be paid only for the following:

(1) Services related to domestic services.

(2) Personal care services.

(3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.

(4) Protective supervision only as needed because of the functional limitations of the child.

(Welfare and Institutions Code (W&IC) §12300 (e))

Parents can work out of the home and still be an IHSS Plus Waiver (now IPO) provider as long as they are not working full-time. MPP 30-763.451(a) requires that to be a paid provider, the parent has left full-time employment or is prevented from obtaining full-time employment because of the need to provide in home supportive services to the child.

Two parents who both work full-time cannot be paid for services in the IPO during the hours they are home in the morning and evening. In order for parents to be paid providers, they must meet the criteria in MPP 30-763.45. MPP 30-763.451(a) requires that the parent has left full-time employment or is prevented from obtaining full-time employment because of the need to provide IHSS to the child.

(ACIN I-28-06, April 11, 2006, answers to questions 6 and 8)

CONCLUSION

Based on the above regulations, All-County Letter (ACL), and statutes, to be eligible for protective supervision, a recipient must establish he or she is nonself-directing due to a mental condition, the recipient must retain the ability to not harm him/herself at home, the recipient must need more supervision than a minor of comparable age, and the need must be 24 hours per day. ACL 15-25 outlines a four step process to follow in determining whether a minor is entitled to protective supervision.

The steps are determining if the minor nonself-directing due to the mental impairment/mental illness, whether the minor is likely to engage in potentially dangerous activities, whether the minor needs more supervision than a minor of comparable age who is not mentally impaired/mentally ill, and whether 24 hour-a-day supervision needs in order for the minor to remain at home safely. Pursuant to ACL 15-25, all four steps must be met and if one step is not met, it is not necessary to continue the analysis.

The first step is to determine whether the Recipient is nonself-directing due to the mental impairment/mental illness. If the answer is no, then the Recipient is not eligible for Protective Supervision pursuant to *Calderon v. Anderson* and *Marshall v. McMahon*, and Protective Supervision should not be granted.

For the purpose of Protective Supervision eligibility, nonself-direction is an inability, due to a mental impairment/mental illness, for individuals to assess danger and the risk of harm, and therefore, the individuals would most likely engage in potentially dangerous activities potentially causing self-harm.

It was found Recipient had a moderate to severe deficit in memory in 2014.

It was found Recipient had a severe deficit in orientation in 2014.

It was found Recipient had a severe deficit in judgment in 2014.

The totality of all testimony and documents were reviewed and considered in reaching the conclusions made below.

The evidence in the record is conflicting and wide ranging; however, based on the preponderance of evidence in the Administrative Record, it is determined Recipient is not self-directing. The evidence established Claimant has very poor memory, orientation, and judgment. The evidence establishes Recipient will wander, run into the street, despite a very serious car

accident in 2014, he lacks appreciation for dangers posed by the street, strangers, and environmental hazards such as a neighborhood pond.

The evidence established at seven years old Recipient could not remember his telephone number, is name, or his address.

The evidence establish Recipient had to be placed in a harness to safely ride in the school bus, he climbs on furniture and window sills, and he can defeat barriers designed to prevent access to various parts of the residence. The evidence establishes Recipient will grab sharp objects without an appreciation of the dangers involved with objects such as knives.

The evidence establishes Recipient needs to be watched constantly to avoid risk of serious injury or death.

While all seven year old children need supervision. It would be expected a seven year old would not risk additional injury by running out in the street after being stuck by a car. It is noted the car accident occurred after the assessment; however, it is still impactful on Recipient's memory, orientation, and judgment in 2014.

It is also noted redirection of Recipient must be physical as he does not respond to verbal redirection.

Based on the preponderance of evidence in the Administrative record, it is determined Recipient is not self-directing.

The second step is to determine if the Recipient retains the physical ability to put him/herself at risk of harm. If the answer is no, then the minor is not eligible for Protective Supervision under the Calderon v. Anderson court decision, and Protective Supervision should not be granted.

In the present case, it is not seriously disputed Recipient retains the ability to place himself at risk. Based on the preponderance of evidence in the administrative record, it is determined Recipient retains the ability to place himself at risk. The evidence establishes is active, climbs furniture, and runs out of the residence. Additionally, Recipient possesses the ability to defeat environmental/safety barriers.

The third step is to determine if Recipient requires more supervision than a minor of comparable age who is not mentally impaired/mentally ill. "More supervision" can be more time, more intensity, or both. The additional supervision required must be significantly more than routine child care, and not only be related to the functional limitations of the child, but also allow the child to remain safely in their own home with this assistance. If the answer is no, then the minor is not eligible for Protective Supervision under the Garrett v. Anderson court order, and Protective Supervision should not be granted.

In the present case while Recipient displays some behaviors typical of a seven year old, his risky behaviors go far beyond those of a non-mentally impaired seven year old child. As noted above, Recipient engages in numerous and frequent risky behaviors including eloping, grabbing sharp objects, and climbing in, and on, dangerous objects or places. The evidence established Claimant must take action numerous times daily to prevent Recipient from injuring himself. The evidence established Recipient will open the door on a moving car and he needs to be placed in a harness to safely ride the school bus.

While all children who are seven years old need supervision, the County's position argument ignores the All-County Letter (ACL) stating the need for supervision can be based on a need for more time, more intensity, or both. Based on the preponderance of evidence, it is determined Recipient needs more frequent and more intensive supervision than other children his age.

If a recipient only displays needs or behaviors excluded under MPP § 30-757.172, they are not eligible for Protective Supervision. If a recipient displays self-injurious behavior that would qualify for Protective Supervision, but also displays excluded behavior(s) based on MPP § 30-757.172, they may still be eligible for Protective Supervision for the non-excluded behaviors.

For example: A recipient who displays multiple self-injurious behaviors such as attempting suicide and wandering would be eligible for Protective Supervision to intervene to prevent wandering, but not to prevent suicide attempts.

It is noted some of Recipient's behaviors (temper tantrums, biting, and scratching) may be categorized as excluded behaviors, including anticipation of a medical emergency and/or anti-social behaviors. The evidence also includes various forms filled out by Recipient's doctor indicating his behaviors are related to his mental condition. Even without using the possible excluded behaviors, eloping, exhibited poor judgment, and lack of safety and environmental danger awareness, such as wandering with a pond, running into the street, sitting behind a running care, grabbing sharp objects, and sitting/climbing in hazardous places are sufficient to support a need for Protective Supervision without considering the potentially excluded behavior.

When it is found "more supervision" is needed, is 24 hour-a-day supervision needed in order for the minor to remain at home safely, if not, then the minor is not eligible for Protective Supervision and it should not be granted. If the answer is yes, the minor qualifies for Protective Supervision, if otherwise eligible.

The evidence establishes Claimant's need is constant and even a momentary decrease in the level of supervision did and could cause risk of serious injury. As a result, it is determined Recipient's need is 24/7 and the "fourth" element necessary for Protective Supervision for a minor is met.

For all the above reason's it is determined Recipient meets the four criteria for protective supervision and Recipient's request for protective supervision is granted.

The evidence showed Recipient's need since 2014 was essentially unchanged to the current day. The evidence demonstrated Recipient engaged in risky behaviors in 2014. Based on testimonial and documentary evidence in the Administrative Record, it is determined Recipient's need for protective supervision was present at the time of the application of February 6, 2014.

Other IHSS Hours:

Based on the preponderance of evidence in the Administrative Record, it is determined Recipient's needs the following IHSS hours to remain safely in his home:

Service Category	County Determination		In Dispute	Stipulations		ALJ Findings	
	Hours	Minutes		Hours	Minutes	Hours	Minutes
Meal Preparation	0	0		0	0	0	0

Meal Cleanup	0	0		0	0	0	0
Routine Laundry	0	0		0	0	0	0
Food Shopping	0	0		0	0	0	0
Other Shopping Errands	0	0		0	0	0	0
Respiration Assistance	0	0		0	0	0	0
Bowel and Bladder Care	0	0	X	0	0	4	40
Feeding	0	0		0	0	0	0
Bed Baths	0	0		0	0	0	0
Dressing	0	0	X	0	0	2	48
Menstrual Care	0	0		0	0	0	0
Ambulation	0	0		0	0	0	0
Transfers	0	0		0	0	0	0
Bathing & Grooming	0	0		0	0	0	0
Repositioning	0	0		0	0	0	0
Medication Assistance	0	0		0	0	0	0
Medical Accompaniment	0	0		0	0	0	0
Other (Specify)	0	0		0	0	0	0
Paramedical Services	0	0		0	0	0	0
Protective Supervision	0	0	X	0	0	45	2
Total Weekly Hours	0	0		0	0	52	30
Total Stipulations						0	0
X 4.33	0	0				227	20
Domestic Services (monthly)	0	0		0	0	0	0
Total Monthly Hours & Minutes	0	0				227	20

Based on the conclusions above, it is determined Recipient does not meet the definition of severely disabled. As a result, the award of Protective Supervision hours totals 195 hours per months.

Two Parent Rule:

As determined above, Recipient has a need for IHSS to remain safely in his home effective February 6, 2014.

The regulations, noted above, provide circumstances where a parent, who is prevented from working full time, can receive payment as an IHSS provider for a son or daughter.

§30-763.45 states when the recipient is under eighteen years of age and is living with the recipient's parent(s), who has a legal duty under the Family Code to provide for the care of his/her child, the IHSS specified in Section 30-763.456 may be purchased from a parent under the following condition:

- .451 The parent has left full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.

- (a) For the purposes of this section, full-time employment means working an average of 40 or more hours per week regardless of worksite location. A parent providing IHSS-funded care to his/her own child is not full-time employment.

It was found Claimant was unable to work in 2014 because the care require for her son was so extreme.

The evidence established Claimant was prevented from work to care for Recipient. While the County argued Claimant was prevented from working due to her illness, no evidence was submitted from Claimant's doctor preventing her from working. Additionally, based on the evidence, Recipient needed constant care; likely more demanding than a full time job, and even with her illness, Claimant was able to care for Recipient. It is noted Recipient now receives Protective Supervision and Claimant is the provider; therefore, it is concluded the County's argument Claimant made a determination to care for her children even before they were born was considered, but determined to be unpersuasive. If this was the reason for not authorizing Claimant to be the provider in 2014, it should be the same today. Claimant submitted a statement indicating she could not work or even look due to the extensive nature of Recipient's needs. As a result, it is determined Claimant was prevented in 2014 from working or seeking employment due to the needs of Recipient. The County incorrectly denied IHSS application for Recipient based on the two-parent rule.

Based the foregoing, it is determined the County incorrectly determined Recipient was ineligible for IHSS. Additionally, it is determined Recipient needed 227:20 hours of IHSS per month and the County shall approved Recipient for his amount of IHSS effective February 6, 2014.

ORDER

The claim is granted in part and denied in part.

The claim is granted on the so far as the County shall determine Recipient needs protective supervision to remain safe in his home effective February 6, 2014. The claim is remanded and the County shall approve Recipient for Protective Supervision and other IHSS in the amount of 227:20 effective February 6, 2014, on ongoing up until the date of the current 2016 assessment.

In all other respects, the claim is denied.

EXHIBIT 2

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES


Hearing No. 2016112009

In the Matter of Claimant(s):

Karen Koens
789 Green Valley Rd. Sp. 24
Watsonville, CA 95076

DIRECTOR'S ALTERNATE DECISION

I exercise my authority to issue the attached Decision of the Director as the decision in this matter.
The Administrative Law Judge's proposed decision, which is enclosed, was not adopted and has no effect.


Jennifer Kent
Director

Cert Date: December 21, 2016

State Hearing Record

Hearing Date:	September 15, 2016	Release Date:	February 10, 2017
Aid Pending:	Not Applicable	Issue Codes:	[610-2] [614-2]
Agency:	Santa Cruz County	Agency Representative:	Joyce Germain
Agency:		Agency Representative:	
Authorized Rep. Organization:		Authorized Rep:	
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 Notice of Action (NOA) dated March 12, 2014 was adequate, providing the correct reason for the denial of the case and deprives the State Hearing of jurisdiction at this time, to consider the merits of this case.

Assuming arguendo, that jurisdiction might exist, the claim was correctly denied because the applicant's mother did not leave, nor was she prevented from, full-time work due to the need to care for the disabled child MPP (Manual of Policy and Procedures) §30-763.451. The claimant (mother) planned on staying in the home and caring for her children even before the children were born. The mother was also in the home due to her stated desire not to have "strangers" care for her disabled child and the other children in the home, and partially for personal medical issues. She did not state that she was prevented from work by a need to care for her disabled child.

CMIPS case notes indicate that the SW provided the parent (mother) with information on obtaining a non-parent provider if she was not able to care for her disabled child due to medical reasons. The mother stated that she was able to care for the minor, but may need assistance at a later time. The case was correctly denied. [610-2] [614-2]

FACTS

This hearing was held on September 15, 2016 by telephone originating in Sacramento, California. Present at the hearing, were Claimant's authorized representative (AR), a County Hearing Representative (HR), a County IHSS Social Worker (SW1) and Social Worker Supervisor (SWS)

By Notice of Action (NOA) dated March 12, 2014, the County notified Recipient his February 6, 2014 IHSS application was denied. Claimant requested a state hearing to contest this notice on April 19, 2016, more than two years later.

The case was bifurcated and a jurisdictional hearing was held on May 25, 2016. On August 19, 2016, an Administrative Law Judge (ALJ) determined jurisdiction exists to hear the merits of Claimant's dispute regarding the County's March 12, 2014 action denying Claimant's IHSS application, without providing any analysis or support for that decision.

The County summarized its position and arguments in a Statement of Position (SOP). The 2014 assessment from the SW was not submitted. The SOP was admitted into evidence. The County also submitted a response to Claimant's evidence submitted after the hearing. This was also admitted as evidence.

Recipient's AR submitted an SOP with attachments, a declaration from Claimant, and a rebuttal to the County's response to documents submitted.

Recipient's AR specifically disputes the County's determination of Recipient's needs for the following services: Bowel and Bladder Care, Dressing and Protective Supervision. No other categories are disputed. During the hearing, Claimant testified regarding each category in dispute, providing a detailed explanation of Claimant's functional limitations and needs. Claimant's other witness also provided testimony regarding Claimant's needs.

The March 12, 2014 NOA is prepared on a state approved CMIPS form. It denies the application for IHSS services on the basis that the applicant's parent is in the home full time and has not left work or been unable to accept full time work due to the absence of any other

suitable provider. It provides the specific two parent regulation upon which the county's action was based. The NOA further informed the applicant of the availability of a state hearing, of the need to request a state hearing within 90 days, and of the method to request a state hearing. The Claimant did not avail herself of this option, waiting more than two years before filing a request for a hearing.

The content of the March 12, 2014 NOA, provides the Claimant with sufficient information to request a state hearing to challenge the County determination that she was ineligible to be a parent provider for her child, because she had not left full time work, or been unable to return to work full time due to the need to care for her disabled child. It also provided the specific regulation stating this requirement.

Recipient is a 10-year-old male, seven at the time of the March 2014 County action, who lives with his family. Recipient suffers from Autism.

On March 4, 2014, the Social Worker made a home visit to assess Recipient's need for IHSS. All of the documentary and testimonial evidence proffered by both parties was carefully considered.

Two-Parent Rule

The County asserted the Applicant's mother (Claimant) was in the home and had not left full time employment to care for the child and was not prevented from working because she needed to take care of Applicant. The County acknowledged the Applicant's father was working full time and Claimant was at home with Recipient. It was undisputed that the Claimant had not worked since her oldest child was born. The County notes indicated that the Claimant told the County SW at the time of the home visit that she had always wanted to be at home to care for her children (not specific to the Applicant).

The County indicated Claimant did not leave full time employment to watch Applicant and she told the County she did not want Applicant in full time day care, although he presumably attends school.

The County indicated Claimant is ineligible to be a provider and receive IHSS due to the two-parent rule. The County acknowledged Claimant has recovered from her illness and was approved as a care provider for her son based on a 2016 IHSS application.

The County stated in its September 30, 2016 written response, to the documents submitted by the AR, Claimant reported she had breast cancer, she was waiting for surgery, and she needed help after her surgery. The County stated Claimant told the SW she did not want anyone else caring for Claimant. The County stated Claimant has a legal duty to care for her child and did so despite her illness. The SW testified Claimant told him she did not want a stranger to watch her son.

The AR stated Claimant was told she could not be a provider because she had not left employment to watch Applicant, as the regulations state. The SOP argued the two-parent rule does not apply in situations where a parent is prevented from full time employment because no other suitable provider is available.

The AR submitted a declaration from Claimant on September 20, 2016. Claimant stated she was not able to work because Recipient's needs were so severe. Claimant acknowledged she was ill; however, she denied her illness was the reason she was unable to work. Although not

under penalty of perjury, the declaration stated it was true to the best of Claimant's recollection. This information was reiterated in an October 10, 2016 reply to the County's response to Claimant's "declaration."

The March 12, 2014 NOA states the County has denied Applicant's February 6, 2014 application because "you did not tell us enough information to determine if you can get services" citing MPP 30-760.1. The March 12, 2014 NOA states the denial reason was "the parent has not left full-time employment or is prevented from obtaining full-time employment because of the need to provide IHSS to the child 30-763.451(a)."

The response stated Claimant planned on caring for her children even before they were born and despite her illness she cared for all of her children including Applicant.

LAW

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

A request for state hearing must be filed within 90 days of the action or inaction with which the claimant is dissatisfied. If the claimant received an adequate and language-compliant notice of the action, the date of the action is the date the notice was mailed or given to the claimant. If adequate notice was required but not provided, or if the notice is not adequate and/or language-compliant, any hearing request (including an otherwise untimely hearing request) shall be deemed a timely hearing request. (§22-009.1 revised effective January 24, 2007)

Welfare and Institutions Code (W&IC) sections 10951 and 10960 allow for good cause exceptions to the 90-day period for filing a hearing request and the 30-day period for filing a rehearing request. Good cause is defined as a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language compliant notice, in and of itself, shall not constitute good cause. Good cause cannot be applied if the request for hearing is made over 180 days from the order or action in dispute. In addition, the Administrative Law Judge is authorized to use equitable estoppel principles in appropriate cases to find hearing requests timely if the filing date exceeds the 180 day good cause limitation. (Welfare and Institutions Code 10951, 1060, All County Information Notice i-66-08, November 19, 2008)

- (a) No person shall be entitled to a hearing pursuant to this chapter unless he or she files his or her request for the same within 90 days after the order or action complained of.
- (b)
 - (1) Notwithstanding subdivision (a), a person shall be entitled to a hearing pursuant to this chapter if he or she files the request more than 90 days after the order or action complained of, and there is good cause for filing the request beyond the 90 day period. The director may determine whether good cause exists.
 - (2) For purposes of this subdivision, "good cause" means a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language compliant notice, in and of itself, shall not constitute good cause. In no event, shall the department grant a request for a hearing where the request is filed more than 180 days after the order or action complained of.
 - (3) Nothing in this section shall preclude the application of the principles of equity jurisdiction as otherwise provided by law.

(Welfare and Institutions Code (W&IC) §10951)

Adequate notice is defined as written notice informing the claimant of the action that the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested. In all cases, the notice is to be prepared on a standard form approved by the California Department of Social Services. The notice shall be prepared in clear, nontechnical language and if a claimant submits a request for a state hearing on the back of the notice, a duplicate copy shall be provided to the claimant on request. (§§22-071.1 and 22-001(a))

Although the printed Notice of Action forms designed for specific types of action will help the county provide adequate notice, filling in the appropriate blanks and checking the appropriate boxes on a notice of action form will not assure that the notice is adequate.

In broadest terms, the recipient needs to know and understand what is happening to the family's application for services. The recipient needs enough information to be able to judge whether or not the action is correct—including the detail of computation affecting the amount of aid. The recipient should be informed of what facts were used and how they were used so that he or she can make an informed decision whether or not to request corrective action or to appeal the action. (All County Information Notice I-151-82, November 23, 1982)

The Personal Care Services Program (PCSP) provides personal care services to eligible Medi-Cal beneficiaries pursuant to Welfare and Institutions Code §14132.95 and Title 22, California Code of Regulations and is subject to all other provisions of Medi-Cal statutes and regulations. The program is operated pursuant to Manual of Policies and Procedures (MPP) Division 30. (MPP §30-700.2) Individuals eligible to receive PCSP payments must have a chronic disabling condition expected to last 12 months or end in death (§51350(b)); a need for at least one personal care service or paramedical service (§§51350(a) and 51183); a service provider who is not the parent (if a minor) or a spouse (§51181); and must not be receiving advance payment for services (Manual of Policies and Procedures (MPP) §30-780.4).

The PCSP Program provides in home services to disabled individuals as a benefit of the California Medical Assistance Program (Medi-Cal) program. The program is administered by the counties under regulations issued by the State Department of Social Services. Those regulations are set forth in Division 30 of the Manual of Policies and Procedures (MPP). See Welfare and Institutions Code (W&IC) 14132.95(i). To qualify for PCSP, individuals not receiving SSI/SSP or Medi-Cal-linked to a cash-based program must be determined eligible for federally funded full-scope Medi-Cal by a Medi-Cal EW and be found in need of personal care services through a needs assessment. Effective May 1, 2004, the Medi-Cal State Plan regarding personal care services was expanded to include the following services as federally funded personal care services:

- Ancillary services, including domestic and related services, under W & I Code, Section 14132.95 (d)(2), *not* provided by a spouse or parent of a minor child; and
- Protective supervision *not* provided by a spouse or parent of a minor child.

(ACWDL 05-21, June 13, 2005)

The term IHSS is often used to refer generally to four distinct state/county programs which provided in-home services to disabled populations. These programs are the following:

- PCSP (Personal Care Services Program) is a program funded through Medi-Cal and provides services to individuals who otherwise qualify for Medi-Cal and have a chronic disabling condition. Eligibility is fully based on Medi-Cal eligibility. PCSP is unavailable to individuals whose provider is their spouse or to minor individuals whose parent is the provider. It is also unavailable if the provider is receiving advance payment or the recipient is receiving a restaurant meal allowance. See, generally, Welfare and Institutions Code 14132.95
- IHSS Plus Option (IPO) is a program funded through Medi-Cal, which provides services for federally eligible Medi-Cal recipients who do not qualify for the PCSP Program. Such recipients often include individuals where the spouse is the provider or minors when the parent is the provider. Eligibility is fully based on Medi-Cal eligibility. See, generally, Welfare and Institutions Code 14132.97.
- Community First Choice Option (CFCO) is a program that provides services for federally eligible Medi-Cal recipients who meet IPO requirements and in addition require 195 hours over service or meet certain other levels of severity of need. See, generally, All County Letter 14-60, August 29, 2014.

All CFCO participants must be eligible for Full-Scope, Federal Financial Participation Medi-Cal and be eligible based on one of the following criteria:

- 1) Have a total assessed need (excluding heavy cleaning and yard hazard abatement) of 195 or more IHSS hours per month.
- 2) Have a total assessed need (excluding heavy cleaning and yard hazard abatement) under 195 IHSS hours per month and:

Have 3 or more of the following services with the designated Functional Index (FI) Ranks:

- Eating, FI Rank of 3-6
- Bowel and bladder/menstrual care, FI Rank of 3-6
- Bathing/grooming, FI Rank of 4-5
- Dressing, FI Rank of 4-5
- Mobility inside, FI Rank of 4-5
- Transfer, FI Rank of 4-5
- Respiration, FI Rank of 5-6
- Paramedical, (FI Rank not applicable)

OR

Have a combined FI Rank of 6 or higher in mental functioning (memory, orientation, and judgment). FI Ranks for mental functioning can be either 1, 2, or 5.

- 3) Have a combined "Individual Assessed Need" total of 20 hours or more per week in one or more of the following services:
 - Preparation of meals
 - Meal clean-up (if preparation of meals and feeding are assessed needs)
 - Respiration
 - Bowel and bladder care
 - Feeding

- Routine bed baths
- Dressing
- Menstrual care
- Ambulation
- Transfer
- Bathing, oral hygiene, grooming
- Repositioning and rubbing skin
- Care and assistance with prosthesis
- Paramedical services

(All County Letter No. 14-60, August 29, 2014)

Social services staff shall determine need for services based on the applicant's physical/mental condition, or living/social situation; their statement of need; the available medical information; and other information social service staff considers necessary and appropriate. (§30-761.26)

Two Parent Rule:

MPP §30-763 provides:

.44 When the recipient is under eighteen years of age and is living with the recipient's parent(s), who has a legal duty pursuant to the Family Code to provide for the care of his/her child, IHSS may be purchased from a provider other than the parent(s) when no parent is able and available to provide the IHSS services for any of the following reasons, and services must be provided during the inability or unavailability of the parent(s):

.441 When the parent(s) is unavailable because of employment or is enrolled in an educational or vocational training program.

.442 If the parent(s) is physically or mentally unable to provide the needed IHSS services.

.443 When the parent is unavailable because of on-going medical, dental or other health-related treatment.

.444 When the parent(s) must be unavailable to perform shopping and errands essential to the family, search for employment, or for essential purposes related to the care of the recipient's minor siblings, IHSS may be purchased from a provider other than the parent(s) for up to eight hours per week to perform IHSS tasks necessary during the unavailability of the parent(s).

.45 When the recipient is under eighteen years of age and is living with the recipient's parent(s), who has a legal duty under the Family Code to provide for the care of his/her child, the IHSS specified in Section 30-763.456 may be purchased from a parent under the following condition:

.451 The parent has left full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.

(a) For the purposes of this section, full-time employment means working an average of 40 or more hours per week regardless of worksite location. A parent providing IHSS-funded care to his/her own child is not full-time employment.

.452 For the purposes of Section 30-763.451, a suitable provider is any person who is willing, able, and available to provide the needed IHSS. A suitable provider who is a person having a duty pursuant to the Family Code need only be able and available to provide the needed IHSS; the person is only considered to be unavailable if that unavailability occurs during a time the recipient must receive a specific service, for the following reasons: employment, enrollment in an educational or vocational training program, or employment searches.

.453 Example: Both parents are employed full-time. Their minor child is eligible to receive IHSS. One parent leaves his full-time job in order to provide IHSS to the child; the other parent retains full-time employment. If the other requirements in Section 30-763.451 are met, IHSS may be purchased from the parent who left his job since he left full-time employment to provide IHSS to the child.

.454 Example: When one parent is employed full-time and the other parent, who has never been employed, is at home, able and available to provide IHSS.

(a) When the employed parent left his/her job to provide IHSS to his/her child, IHSS could not be purchased from that parent since the conditions pursuant to Section 30-763.451 are not met because the other parent is a suitable provider.

(b) When the employed parent did not leave full-time employment, the non-working parent may qualify as a paid provider only if that parent is prevented from obtaining full-time employment in order to provide IHSS to the child and other requirements pursuant to Section 30-763.451 are met. When the non-working parent cannot be employed full-time for reasons other than the need to provide IHSS to the child, the non-working parent does not qualify as a paid provider.

.455 A parent provider who meets the requirements in Section 30-763.451 shall be paid for performing authorized services regardless of the presence of the other parent in the home, including non-work hours, weekends, and holidays.

(See Also All-County Letter (ACL) 15-45 (May 1, 2015))

1. Q. If the non-provider parent in a two-parent household is not working, or going to school full-time, is the child still eligible for IHSS?

A. Yes, the child may be eligible for IHSS; however, the provider parent would not meet the qualifications to be a paid IHSS provider under MPP Section 30-763.451 because of the availability of the non-provider parent.

10. Q. In a single parent home, when the parent is employed full-time (40 or more hours a week), can that parent be paid to be an IHSS provider when they are not at work?

A. No, a single parent, who is employed full-time, does not meet the criteria to be the parent provider under MPP Section 30-763.451 because they have not left full-time employment and are not prevented from full-time employment because of the care needs of the child. In this situation, a non-parent provider can be paid, but only for periods of parental inability or unavailability as detailed in MPP Section 30-763.44-.444.

(All-County Letter (ACL) 15-45 (May 1, 2015))

Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

- (1) Services related to domestic services.
- (2) Personal care services.
- (3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.
- (4) Protective supervision only as needed because of the functional limitations of the child.

(Welfare and Institutions Code (W&IC) §12300 (e))

Parents can work out of the home and still be an IHSS Plus Waiver (now IPO) provider as long as they are not working full-time. MPP 30-763.451(a) requires that to be a paid provider, the parent has left full-time employment or is prevented from obtaining full-time employment because of the need to provide in home supportive services to the child.

Two parents who both work full-time cannot be paid for services in the IPO during the hours they are home in the morning and evening. In order for parents to be paid providers, they must meet the criteria in MPP 30-763.45. MPP 30-763.451(a) requires that the parent has left full-time employment or is prevented from obtaining full-time employment because of the need to provide IHSS to the child.

(ACIN I-28-06, April 11, 2006, answers to questions 6 and 8)

CONCLUSION

Jurisdiction:

In this case, the Claimant seeks a state hearing after not filing a request for hearing for more than two years after she received a Notice of Action (NOA). The most important question is whether the NOA she received was adequate. If so, there is no jurisdiction for her claim to proceed to examination of the merits.

In this case, the NOA has the appropriate and specific reason, the specific regulations, and was received but no hearing was filed within either the 90 day jurisdictional period, or the 180 day period requiring good cause. It is determined that there is no jurisdiction to hear this request at this time. There are also equitable reasons for this determination. Had the parent responded timely, the evidence would have been more current, the parties would have been on a more equal basis for gathering and evaluating facts relevant to the merits.

Two Parent Rule:

The regulations, noted above, require that a parent is not eligible to be an IHSS provider for their own child living with them unless the parent has left full time employment or is prevented from obtaining full time employment because no other suitable provider is available

MPP §30-763.45 states when the recipient is under eighteen years of age and is living with the recipient's parent(s), who has a legal duty under the Family Code to provide for the care of his/her child, the IHSS specified in Section 30-763.456 may be purchased from a parent only under the following condition:

.451 The parent has left full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and the inability of the parent to perform supportive services may result in inappropriate placement or inadequate care.

- (a) For the purposes of this section, full-time employment means working an average of 40 or more hours per week regardless of worksite location. A parent providing IHSS-funded care to his/her own child is not full-time employment.

In this case, the Claimant did not indicate to the County that she had been prevented from working due to the needs of her now school age child. To the contrary, she indicated she had always wanted to stay home with her children and had not sought to return to work when they were small. Because the Claimant had no interest in being employed full time in 2014, it cannot be said that she was prevented from obtaining full time employment due to the need to care for her son during that time.

While Claimant subsequently submitted a statement indicating she could not work or even look due to the extensive nature of Applicant's needs, this contradicted her statements during the home visit in 2014, which was closer to the time and made without regard to the potential gain she would have should she be approved as a parent care provider. As a result, it is determined Claimant was not prevented in 2014 from working or seeking employment due to the needs of Recipient. The County correctly denied the IHSS application for Recipient based on the two-parent rule.

Based the foregoing, it is determined there is no jurisdiction for a state hearing to review the merits of the Claimant's request for a hearing, and even assuming arguendo that jurisdiction existed, the County correctly determined Recipient was ineligible for IHSS because his parent affirmatively chosen not to work so she could care for her children, and had not left work or been unable to find full time work due to the need to care for her child.

ORDER

The claim is denied.

EXHIBIT 3

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
DEPARTMENT OF HEALTH CARE SERVICES

Hearing No. 2016256251

In the Matter of Claimant(s):

Vanessa Landeros-Martinez
35 E Washington # 311
Petaluma, CA 94952

PROPOSED
DECISION

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

Cert Date: November 9, 2016

Carole W. Harper
Administrative Law Judge

State Hearing Record

Hearing Date: October 26, 2016

Aid Pending: Not Applicable

Agency: Sonoma County

Agency:

Authorized Rep.
Organization:

SSN:

AKA:

Case Name:

LA District/Case:

Release Date:

Issue Codes: [004-1] [620-3]

Agency Representative: Rocio Tamburrino

Agency Representative:

Authorized Rep: Myra Galt

SSN:

AKA:

Language:

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

There is jurisdiction to hear the claimant's appeal for retroactive assessments of the child EM. The case is remanded to Sonoma County to assess the child EM for eligibility to Protective Supervision from the date of her application in 2010 to the date of granting Protective Supervision in 2016.

[004-1] [620-3]

FACTS

By Notice of Action (NOA) dated September 15, 2010, Sonoma County informed the recipient that her application for IHSS dated 8/11/10 had been approved effective 8/11/10, and that she is authorized to receive the services listed below. All IHSS services are listed, with explanatory notes for some: Domestic Services is set forth in detail (Clean floors, wash kitchen counters, stoves, refrigerator, bathroom, store food, supplies, take out garbage, dust, pick up, bring in fuel, make bed and miscellaneous. Yard Hazard Abatement similarly provides details. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral hygiene and Grooming, for a total of 20 hours per month. Four individual messages to the claimant are entered in the space at the bottom of the Notice of Action, for proration of less than a full month, limit on services to minors living with parent, proration of domestic and related services, and assignment to PCSP. MPP sections are cited for three of these four messages.

By Notice of Action (NOA) dated January 27, 2011, Sonoma County informed the recipient that upon reassessment we find there is no change from your previous authorization for IHS effective February 1, 2011. All IHSS services are listed, with explanatory notes for some: Domestic Services is set forth in detail (Clean floors, wash kitchen counters, stoves, refrigerator, bathroom, store food, supplies, take out garbage, dust, pick up, bring in fuel, make bed and miscellaneous. Yard Hazard Abatement similarly provides details. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral hygiene and Grooming, for a total of 20 hours per month. Two individual messages to the claimant are entered in the space at the bottom of the Notice of Action, for the 3.6% reduction under the new law, and transfer from PCSP to IHSS. A W&IC section is cited for the reduction.

By Notice of Action (NOA) dated January 30, 2012, Sonoma County informed the recipient that upon reassessment we find there is no change from your previous authorization for IHS effective February 1, 2012. All IHSS services are listed, with explanatory notes for some: Domestic Services is set forth in detail (Clean floors, wash kitchen counters, stoves, refrigerator, bathroom, store food, supplies, take out garbage, dust, pick up, bring in fuel, make bed and miscellaneous). Yard Hazard Abatement similarly provides details. The same figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral Hygiene and Grooming, for a total of 20 hours per month. Two individual messages to the claimant are entered in the space at the bottom of the Notice of Action, one for the 3.6% reduction under the new law. A W&IC section is cited for the reduction. A second message states "No change" and cites MPP.

By Notice of Action (NOA) dated February 15, 2013, Sonoma County informed the recipient that upon reassessment we find there is no change from your previous authorization for IHS effective February 1, 2013. All IHSS services are listed, with explanatory notes for some: Domestic Services is set forth in detail (Clean floors, wash kitchen counters, stoves, refrigerator,

bathroom, store food, supplies, take out garbage, dust, pick up, bring in fuel, make bed and miscellaneous.) Yard Hazard Abatement similarly provides details.

Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral hygiene and Grooming, for a total of 20 hours per month. Five individual messages to the claimant are entered in the space at the bottom of the Notice of Action, for the 3.6% reduction under the new law, and transfer from PCSP to IHSS. A W&IC section is cited for the reduction. A second message states "No change" and cites MPP. A third message states that her service assessment includes consideration of alternative resources for bowel and bladder, feeding, bathing and oral hygiene. A fourth message states limitation on services for a minor living with a parent provider. The fifth message states services are prorated by 6 persons living in the home.

By Notice of Action (NOA) dated August 29, 2013, Sonoma County informed the recipient that her authorization for IHS has been changed effective September 1, 2013. All IHSS services are listed, with explanatory notes for some: Domestic Services is set forth in detail (Clean floors, wash kitchen counters, stoves, refrigerator, bathroom, store food, supplies, take out garbage, dust, pick up, bring in fuel, make bed and miscellaneous. Yard Hazard Abatement similarly provides details. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral hygiene and Grooming, for a total of 29 hours per month. Four individual messages to the claimant are entered in the space at the bottom of the Notice of Action, for the 8% reduction under the new law. A W&IC section is cited for the reduction. A second message states you have been found in need of additional hours of service and cites MPP. A third message states that her alternative resources for bathing oral hygiene and grooming have been reduced. A fourth message states limitation on services for a minor living with a parent provider.

By Notice of Action (NOA) dated May 20, 2014, Sonoma County informed the recipient that the services she can get are changed. However there is no change in hours from 29 hours per month. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral hygiene and Grooming, for a total of 29 hours per month. This notice is on a new form NA1253, which includes an additional blank page for individual messages. There are no explanatory notes on the new form for any of the services listed.

Many additional messages to the claimant are entered in the space on the page following the list of services. One is a 'no change' message, another is for the 8% reduction under the new law, with explanations as to how the recipient can choose the areas to cut. This message continues with detailed information about reassessments, application of the cut to reassessments, requirements for reassessment. There are several messages concerning providers, timesheets, and share of cost.

The following page of the new Notice of Action, entitled Description of Services, includes a brief description of what each service entails. Each cites an MPP section for more information about that service.

By Notice of Action (NOA) dated June 9, 2014, Sonoma County informed the recipient that the services she can get are changed. However there is no change in hours from 29 hours per month. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral hygiene and Grooming, for a total of 29 hours per month. This notice is on a new form NA1253, which includes an additional blank page for individual messages.

Many additional messages to the claimant are entered in this space. They are the same as the individual messages on the previous Notice of Action. The following page of the new Notice of Action, entitled Description of Services, includes a brief description of what each service entails. Each cites an MPP section for more information about that service.

By Notice of Action (NOA) dated June 22, 2015, Sonoma County informed the recipient that the services she can get are changed. However there is no change in hours from 29 hours per month. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral hygiene and Grooming, for a total of 29 hours per month. This notice is on a new form NA1253, which includes an additional blank page for individual messages. No individual messages are entered on the blank page.

By Notice of Action (NOA) dated August 16, 2016, Sonoma County informed the recipient that the services she can get are changed. Her hours were increased to 195 hours per month, an increase of 146 hours and 30 minutes per month. Figures are entered in the "hours now" column for the services of Laundry, Bowel and Bladder care, Feeding, Dressing, Menstrual care, and Bathe, Oral hygiene and Grooming, for a total of 195 hours per month. This notice is on a new form NA1253, which includes an additional blank page for individual messages. On this page in the 8/16/16 notice is entered "This Notice of Action reflects the outcome of your state hearing."

On September 7, 2016, the claimant requested a hearing to dispute the county's denial of Protective Supervision to the child EM in all of the years from her application in 2010 through 2015.

A hearing was held on October 26, 2016 by telephone, in which the claimant participated, together with her authorized representative. An appeals specialist represented the county, together with a social work supervisor.

The county provided a Statement of Position (SOP) giving information about the history of the case. The county had requested bifurcation, a request which was denied by an Administrative Law Judge. However the Administrative Law Judge conducting this hearing bifurcated the hearing and heard the issue of jurisdiction only, as it is the critical issue in the hearing. The matter of the claimant's present eligibility for Protective Supervision had already been established by Sonoma County prior to this hearing, in an authorization of this service.

The authorized representative provided a SOP appealing the past de facto denials of Protective Supervision to the child EM and arguing that the Notices of Action are all inadequate because they do not inform the recipient of what Protective Supervision is, and how a person might qualify for this service. The claimant does not dispute that she received these notices.

The county in its SOP argued that the notices all meet the requirements of §§22-071.1 and 22-001(a)) and thus are all adequate at law. The county pointed out that Protective Supervision is listed on the notice of action along with other services and the absence of any number in the column for this service is sufficient notice that no award was made for this service. The county requested dismissal of all claims, on the ground of untimely filing.

The county also provided information that the child's DOB is May 24, 2000. She was 10 years old at the time of the first application for services and home visit in 2010. The county notes that the child had Down Syndrome and was a Regional Center client. The SOP includes notes from the various home visits made in EM's case, on August 10, 2010, 2012, 2013 and 2014. There

is no mention, in any of the home visit reports, of an assessment of the child for Protective Supervision, nor of any request by the social worker for Regional Center or school or psychologists' reports about the child. The SOC 873 in the file, dated 6/13/12, states that the child has developmental delay with Down Syndrome requiring close supervision. There is no SOC 821 in the file. The functional limitations section of the worksheet the worker has checked boxes under mental status to indicate "lucid" and under thought content, "normal". She did not check any box for mild confusion, severe confusion, mild memory deficit or severe memory deficit. The county's IHSS assessment worksheet from the 1/25/10 home visit includes notations in several of the service areas, but no notes under Protective Supervision. The form itself states: "please provide separate documentation and computation worksheet. Click on protective supervision worksheet." There is no protective supervision worksheet in the file. This form is filled out in exactly the same way for the 2012 home visit.

The brief notes from the 2013 home visit indicate that the child EM "continues to need assistance with activities of daily living, toileting, dressing, bathing, grooming, and adult supervision." It notes that she attends special-needs class at Petaluma junior high school. In the assessment worksheet for this year, the social worker made no entries under protective supervision.

The Notices of Action:

The county provided copies of all notices of action issued to the claimant since her first application in 2010. The notices in question are of two types: Notices in 2010, 2011, 2012, and 2013 use the previous state Notice of Action form for IHSS. Notices of 5/20/14, 6/9/14 and 6/22/15 use the newer state Notice of Action form for IHSS with different wording and more printed information. Different considerations apply to each group of notices and therefore they are described separately.

I. Notices of Action for 2010, 2011, 2012, and 2013

In its SOP the county contends that "Each Notice that was issued clearly states the hours assessed and clearly states the state law applied."

With regard to the notices of 9/15/10, 1/27/11, 1/30/12, 2/15/13, and 8/29/13 each notice shows figures in the columns following the name of the service for which the county assessed a need and awarded hours. In each notice, there is no figure in the column following Protective Supervision. There is no regulation describing Protective Supervision cited at the bottom of these notices. On each of these notices, the county had the capacity to enter specific information, and did so. On the notice of 9/15/10 the county entered information about proration of the first month, limitation of services because the recipient is a minor child, and proration of some services by a specific number of persons living in the household. The MPP sections cited on the notice were cited in connection with each of these added paragraphs. In each subsequent notice, different specific information was entered in the space at the bottom of the front page of the Notice of Action.

The notices of 2011, 2012 and 2013 offered substantially the same information with regard to figures in the columns following services. The child's assessment did not significantly change from 9/15/10 to 6/22/15. The specific information added at the bottom of each notice of action was accompanied by an MPP section related to that information. No added information referred to Protective Supervision. No MPP sections were cited which describe Protective Supervision.

II. Notices of Action of 2014 and 2015

In 2014 the DSS began using a new notice of action form in the IHSS program. The notices of action issued to the claimant on 5/20/14, 6/9/14 and 6/22/15 are on this form. On these notices of action, like the previous notice forms, all IHSS services are listed on the form and the county enters the number of hours and minutes given for each service (previously entered as decimal figures.) There are no short descriptions of any service, as on the old form. However on the first page of these new notices of action, numbered 3 of 6, in the heading of the form, is the following message:

"You will now get the services shown below for amount of time shown in the column "Final Amount of Service You Can Get". That column shows the hours/minutes you got before, the hours/minutes you will get from now on and the difference. If you are getting less time for a service, the reason is shown on the next page.

1. If there is a zero in the "Authorized Amount of Service You Can Get" column or the amount is less than the "Total Amount of Service Needed" column, the reason is explained on the next page (s).
2. "Not needed" means that your social worker found that you do not require assistance with this task. (MPP 30-756.11)
3. "Pending" means the county is waiting for more information to see if you need that service. See the next pages for more information."

The next page, numbered page 4 of 6, explains the recipient's state hearing rights.

The next page, numbered 5 of 6, provides space for explanations.

The Notice of Action of May 20, 2014, has the same information on the heading as described above, and shows many zeroes in the column marked "Authorized Amount of Service You Can Get", including in the line for Protective Supervision. There is no explanation of the zero allocation on any subsequent page of this notice. The fifth page of this notice of action contained many additional messages. One is a 'no change' message, another is for the 8% reduction under the new law, with explanations as to how the recipient can choose the areas to cut. This message continues with detailed information about reassessments, application of the cut to reassessments, requirements for reassessment. There are several messages concerning providers, timesheets, and share of cost. No message concerns Protective Supervision.

On the Notice of Action of June 9, 2014, has the same information on the heading as the notice of May 20, 2014, and shows many zeroes in the column marked "Authorized Amount of Service You Can Get", including in the line for Protective Supervision. There is no explanation of the zero allocation on any subsequent page of this notice. The fifth page of this notice of action contained information about the state law effective 7/1/13 which cuts authorized hours by 8% with explanations as to how the recipient can choose the areas to cut. This message continues with detailed information about reassessments, application of the cut to reassessments, requirements for reassessment. There are several messages concerning providers, timesheets, and share of cost.

The Notice of Action of June 22, 2015 has the same information on the heading as the two notices of 2014, and shows many zeroes in the column marked "Authorized Amount of Service You Can Get", including in the line for Protective Supervision, and there is no explanation of the zero allocation on any subsequent page of this notice.

There are no individual messages to the claimant on the fifth page of this Notice of Action.

The sixth page of all of these notices is entitled Description of Services and lists all of the available services under the IHSS program, giving a brief description of each. The Protective Supervision description is as follows: "Observing the behavior of a non-self-directing, confused, mentally impaired or mentally ill recipient and assisting as appropriate to guard recipient against injury, hazard or accident. Certain limitations apply. MPP 30-757.17."

The claimant testified at the hearing that she was employed full time cleaning houses, and then in a retirement community, prior to the birth of EM, but had to quit to stay home with EM. She stated that she was not married at that time and had to go on public assistance in order to stay home with her daughter. She further testified that since her marriage, during which she has had three more children, she tried several times to work, but every time had to quit because she could not find a babysitter who was careful enough with EM. Finally she and her husband agreed that he would be the breadwinner and she would stay at home, but it has been difficult for them and he works long hours to support the family. She testified that since EM has been receiving Protective Supervision she has been able to hire others at times to take care of her other children so that she can devote more time to EM's needs.

LAW

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

JURISDICTION: TIMELINESS

A request for state hearing must be filed within 90 days of the action or inaction with which the claimant is dissatisfied. In the CalFresh Program, the appropriate time limits are set forth in §§63-802.4 and 63-804.5. Except for cases involving informal hearings concerning foster care overpayments (see §45-306.3) if the claimant received an adequate and language-compliant notice of the action, the date of the action is the date the notice was mailed or given to the claimant. If adequate notice was required but not provided, or if the notice is not adequate and/or language-compliant, any hearing request (including an otherwise untimely hearing request) shall be deemed a timely hearing request. (§22-009.1 revised effective January 24, 2007)

Welfare and Institutions Code (W&IC) sections 10951 and 10960 allow for good cause exceptions to the 90-day period for filing a hearing request and the 30-day period for filing a rehearing request. Good cause is defined as a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language compliant notice, in and of itself, shall not constitute good cause. Good cause cannot be applied if the request for hearing is made over 180 days from the order or action in dispute. In addition, the Administrative Law Judge is authorized to use equitable estoppel principles in appropriate cases to find hearing requests timely if the filing date exceeds the 180 day good cause limitation.

(Welfare and Institutions Code 10951, 1060, All County Information Notice I-66-08, November 19, 2008)

A notice of action must be adequate before the 90-day time limit for filing a state hearing request begins to run. The fact that the recipient knows, or should have known, of the action

does not start the running of the time period. (*Morales v. McMahon* (1990), 223 Cal. App. 3d 184, 272 Cal. Rptr. 688)

MPP § 22-009 requires that an appeal be filed within 90 days of adequate notice in order to be timely. However if notice is not adequate, any appeal is timely.

JURISDICTION: ADEQUACY OF NOTICE

The county is required to provide adequate notice when aid is granted, increased, denied, decreased, not changed following a recipient mid-quarter report, cancelled or discontinued. Adequate notice must also be provided when the county demands repayment of an overpayment or CalFresh overissuance. Adequate notice is defined as written notice informing the claimant of the action that the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested. When appropriate, the notice shall also inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid. In CalWORKs (formerly AFDC), the notice shall state that if the county action is upheld, aid pending must be repaid. In all cases, the notice is to be prepared on a standard form approved by the California Department of Social Services. The notice shall be prepared in clear, nontechnical language and if a claimant submits a request for a state hearing on the back of the notice, a duplicate copy shall be provided to the claimant on request. (§§22-071.1 and 22-001(a))

22-000 STATE HEARINGS

.1 The responsibility for providing a full and impartial hearing to the claimant rests jointly with the county and the state department.

HANDBOOK BEGINS HERE

.11 The state department is responsible for the overall administration of the hearing process and the conduct of each hearing.

HANDBOOK ENDS HERE

.12 Since the right to request a state hearing belongs to the claimant, the regulations in this chapter shall be interpreted in a manner which protects the claimant's right to a hearing.

.13 Although the specific duties and responsibilities of each agency are set forth in the following regulations, these rules shall not be used to suppress the claimant's right to a hearing. For example, although the county shall justify its action when appropriate, the county shall not discourage the claimant from proceeding with the hearing request nor relinquish its responsibility to assist the claimant in this process. The Administrative Law Judge shall conduct the hearing according to applicable procedures and the claimant shall be allowed to present evidence relevant to his/her own case.

.14 The regulations in this chapter shall apply to all public social services programs subject to a state hearing.

.15 Any part of these regulations which apply only to specific aid programs shall be so designated.

22-001 DEFINITIONS

The following definitions shall apply wherever the terms are used throughout Division 22.

(a)(1) Adequate Notice - A written notice informing the claimant of the action the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested, and for the California Work Opportunity and Responsibility to Kids (CalWORKs) Program, if the county action is

upheld, that the aid paid pending must be repaid. In the Food Stamp Program, see Section 63-504.2.

(a) (3) Aid - For purposes of this Division "aid" includes all public social services programs subject to a state hearing.

(A) Such public social services programs include, but are not limited to, CalWORKs, the State administered programs for recipients of SSI/SSP (Division 46), Refugee Resettlement Program (RRP), the Cuban/Haitian Entrant Program (CHEP), the Food Stamp Program (FS), the California Medical Assistance Program (Medi-Cal), Stage One Child Care, California Assistance Program for Immigrants (CAPI), Personal Care Services Program (PCSP), Kinship Guardian Assistance Program (Kin-GAP), AFDC-Foster Care, California Food Assistance Program (CFAP), the Social Services Programs described in Divisions 30 and 31 of the Manual of Policies and Procedures (MPP), Aid for the Adoption of Children Program (AAC), Adoption Assistance Program (AAP), and Multipurpose Senior Services Program (MSSP).

(a)(6) County Action - All actions which require adequate notice (see Section 22-071) and any other county action or inaction relating to the claimant's application for or receipt of aid.

ACIN I-151-82 defines adequate notice in the Department of Social Services (DSS). The ACIN state that "the notice is intended to be a personal communication to the recipient, addressing the recipient's own unique situation and circumstances. It provides important information to the recipient concerning the amount of the family's aid. As with any communication, it is necessary to focus on the person receiving the communication. What does the recipient need to know and be able to do as a result of the communication? [emphasis in original] In broadest terms, the recipient needs to know and understand what is happening to family's aid. The recipient needs enough information to be able to judge whether or not the action is correct – including the detail of computations affecting the amount of aid. The recipient should be informed of what facts are used and how they were used so that he or she can make an informed decision whether or not to request corrective action or to appeal the action."

"What information is needed to inform the recipient adequately?" The ACIN cites the elements of adequate notice as outlined in MPP 22-001.1, then gives further instruction with regard to the element of reasons for the action. "When the reason for inaction is difficult to explain clearly, the following approach can be helpful. 1. Tell the recipient the rule that you are applying. In other words clearly state the essence of the regulation that applies. 2. Circumstances. Apply the circumstances of the recipient to the rule."

"The focus on the recipient leads beyond a consideration of what information recipient needs, to how the information is provided. The primary emphasis should be on providing the information in a way that it can be understood. Every effort should be made to express the information on the notice clearly and simply. [emphasis in original] This will include the following elements:

- Relatively short, direct sentences.
- Words that the recipient can reasonably be expected to understand.
- Avoidance of welfare program jargon.
- Avoidance of abbreviations.
- Sufficient explanation of complicated ideas.
- Clarity

ACIN I-02-14, issued 1/3/14, cites ACIN I-151-82 and states in pertinent part:

In addition, each NOA must include client-specific information that is sufficient enough for the client to determine what the issue is, be able to understand the action taken, and decide if a request for a hearing is warranted. The worker should take the following into consideration to ensure the NOA is adequate under the guidelines provided in this letter and at MPP Sections 22-001 and 22-071:

- What does the client need to know to understand what is happening and why?
- Does the information provided enable the client to decide if he or she agrees or disagrees with the CWD's proposed action?
- Can the client understand if there is something he or she needs to do in response to the NOA to stop or change the CWD's proposed action?

EQUITABLE ESTOPPEL:

The reference to equity jurisdiction was added to W&IC §§ 10951(B)(3) and 10960(f)(3) to confirm that ALJs have authority to apply equitable principles (e.g., equitable estoppel) in appropriate circumstances where the hearing request is not filed within the time limits set out in regulation and statute, even if the hearing request was filed more than 180 days from the NOA. An ALJ would only apply equitable estoppel if there was no remedy at law. A determination of good cause for an otherwise untimely filing is a legal remedy and would be applied before a judge would consider equitable estoppel. (ACIN I-66-08, November 19, 2008).

The doctrine of equitable estoppel has been applied to acts of the government when an individual has been injured because of reliance on governmental conduct. For equitable estoppel to apply, all four elements cited in *Canfield v. Prod* must be present:

- (1) The party to be estopped must be apprised of the facts;
- (2) The party must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;
- (3) The other party must be ignorant of the true state of facts; and
- (4) The other party must rely on the conduct to his injury.

In the *Canfield* case cited above, the Court of Appeal analyzed each of the elements of equitable estoppel as that doctrine was applied in this specific case against the Department of Benefit Payments. The court stated:

"In the instant case, the Director, through his agent the County, was apprised of the facts. He recognizes that during the period in question the County had the responsibility of informing recipients of their duty to pay social security taxes for household employees and that Canfield was entitled to receive a larger grant in 1969 and 1970 because of such liability. We observe that the requirement that a party must be apprised of the facts encompasses not only actual knowledge but to conduct consisting of silence and acquiescence where the party ought to have known the real facts or where ignorance of such facts was occasioned by culpable negligence. (See *City of Long Beach v. Mansell*, 3 Cal.3d 462, 491, fn. 28, 91 Cal.Rptr. 23, 476 P.2d 423.)

"It is further concluded that the facts of this case satisfy the second requirement, i.e., that the party to be estopped must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended. There is no question but that the County intended that Canfield would rely on its conduct. Subdivision (c) of [Welfare and Institutions Code] section 11004 provides: 'Any person who makes full and complete disclosure of those facts as explained to him pursuant to subdivision (a) is entitled to rely upon the award of aid as being accurate, and that the

warrant he receives currently reflects the award made,' Subdivision (a) provides: 'Any applicant for, or recipient or payee of, such public social services shall be informed as to the provisions of eligibility and his responsibility for reporting facts material to a correct determination of eligibility and grant.'

"Adverting to the third requirement, we observe that there is no question that Canfield was ignorant of the true facts, i.e., that she was obligated to pay social security taxes as an employer and that she was eligible to receive a grant of additional sums in order to pay such taxes. Nor is there any question that the fourth requirement is satisfied, i.e., that she relied on the County's conduct to her injury.

"With respect to the application of equitable estoppel to the government the established rule is that the doctrine may be applied against the government where justice and right require it, but that an estoppel will not be so applied if to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. (*City of Long Beach v. Mansell*, *supra*, 3 Cal.3d 462, 493, 91 Cal.Rptr. 23, 476 P.2d 423.) Although we are not privy to the legislative intent in enacting subdivision (g) of section 11004, we do not perceive that the statute is declarative of a strong rule of policy adopted for the benefit of the public. We may speculate that the statute was enacted to prevent a recipient from receiving a windfall in the sum of a lump-sum payment not related to the present needs of the recipient. Such a contention was rejected in *Bd. of Soc. Welfare v. County of L.A.*, *supra*, 27 Cal.2d 81, 85-86, 162 P.2d 630, wherein it was held that the obligation to pay benefits becomes a debt due from the county to the applicant as of the date the latter was entitled to receive the aid. The reviewing court pointed out that the clear public purpose is to secure to those entitled to aid the full payment thereof from the date they were entitled thereto regardless of errors or delays by local authorities. (At p. 86, 162 P.2d 630.)

"We observe that section 10000 provides that the purpose of public social services is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life,' We apprehend that Canfield's receipt of retroactive payments directly relate to her present needs in view of the tax lien on her home and the possibility of a loss of that home to satisfy the lien. Accordingly, we do not perceive that the raising of an estoppel will result in a significant frustration of public policy but that to apply the doctrine of equitable estoppel in the present case is required by justice and right and is in keeping with the declared paramount public purpose of providing protection, care and assistance to those in need.

"We observe, further, that in determining whether an estoppel may be raised against a public agency an important consideration is the degree of 'culpability or negligence of the public agency or its representatives in their conduct or advice' and 'the seriousness of the impact or effect of such conduct or advice on the claimant.' (*Driscoll v. City of Los Angeles*, *supra*, 67 Cal.2d 297, 306, 61 Cal.Rptr. 661, 667, 431 P.2d 245, 251) In the instant case Canfield was a person who purported to have no knowledge or training which would aid her in determining her rights. The public agency, on the other hand, purported to be informed and knowledgeable with respect to attendant care grants and the obligations of the recipient of such grants.

"There existed a confidential relationship between the County and Canfield entitling Canfield to repose trust and confidence in the County whose representatives were cognizant of this fact. (See *Driscoll v. City of Los Angeles*, *supra*, at p. 308, 81 Cal.Rptr. 661, 431 P.2d245; *Vai v. Bank of America* 56 Cal.2d 329, 338, 15 Cal.Rptr. 71, 364 P.2d 247.) Under these circumstances the conduct of the public agency may be deemed to have been unreasonable and to have had a serious impact or effect on Canfield.

"It is concluded, therefore, that the Director was estopped to assert the provisions of subdivision (g) of section 11004."

(*Canfield v. Prod* (1977) 67 Cal.App.3d 722 at 730-733)

IHSS: PROTECTIVE SUPERVISION – MINORS

Assessing a Minor For Protective Supervision:

A county social worker should always assess an IHSS eligible minor for mental functioning. (§§30-756.1, 756.2, 761.261; Welfare & Institutions Code (W&IC) §§12300(d)(4), 12301.1, 12309, (b)(1)(2)(c)) The following shall be used to assess a minor's mental functioning:

The county social worker must review a minor's mental functioning on an individualized basis and must not presume a minor of any age has a mental functioning score of "1". (§30-756.372; W&IC §§12301(a), 12301.1)

A county social worker must assess all eligible minors for a mental impairment. In doing so, the worker must request the parent or guardian to obtain available information and documentation about the existence of a minor's mental impairment. A county social worker is not required to independently obtain such information and documentation, but must review any information provided. (§§30-756.31, 756.32, 761.26). For example, is the minor SSI eligible based on mental impairments, or is the minor eligible for regional center services based on mental retardation, autism, or a condition like mental retardation or does the minor need services like someone with mental retardation?

A county social worker must evaluate a mentally impaired minor in the functions of memory, orientation, and judgment. (§30-756.372)

A county social worker must advise parents or guardians of a minor with a mental impairment of the conditions for receiving protective supervision, and the availability of that service. (§§30-760.21, 760.23, 760.24; W&IC §§10061, 12301.1, 12309(c)(1))

A county social worker is not to presume that services, which are otherwise compensable, will be provided voluntarily by a parent or guardian or anyone else in accordance with §30-763.622.

A county social worker must assess the minor's need for protective supervision under §30-757.17 based on the minor's individual need, if the minor has a mental impairment. (§§30-756.1, 756.2, 761.261; W&IC §§12300(d)(4), 12301.1, 12309(b)(1)(b)(2)(C))

A county social worker must determine whether a minor needs more supervision because of his/her mental impairments than a minor of the same age without such impairment. (W&IC §12300(d)(4))

A minor must not be denied protective supervision based solely on age, or solely because the minor has had no injuries at home due to the mental impairment, as long as the minor has the

potential for injury by having the physical ability to move about the house (not bedridden). (§§30-761.26, 30-763.1; W&IC §§12300, 12301.1)

A minor must not be denied protective supervision solely because a parent leaves the child alone for some fixed period of time, like five minutes. (§§30-761.26, 30-760.24, 30-763.1; W&IC §12301.1)

A county social worker must consider factors such as age, lack of injuries and parental absence, together with the other facts, in determining whether or not a minor needs protective supervision. (W&IC §12301.1)

(These instructions are based on the above-cited state laws and regulations, and the court order in *Lam v. Anderson* and in *Garrett v. Anderson*, San Diego County Superior Court No. 712208, Stipulation for Entry of Final Judgment and Judgment, June 12, 1998 and implemented through All-County Letter (ACL) No. 98-87, October 30, 1998.)

CONCLUSION

Evaluation of the Notices of Action (NOAs) of 2010-2013

The notices of action of 2010, 2011, 2012 and 2013 do not meet the tests of adequacy set forth in the state hearing regulations and the two ACINs cited above which define adequate notice. The mere listing of available services, and the absence of a numerical allocation after a service, does not constitute "written notice informing the claimant of the action that the county intends to take, the reasons for the intended action, the specific regulations supporting such action."

"Protective Supervision" is not a word that the recipient, or in the case of a minor the parent or guardian of the recipient, is expected to understand. There is no explanation, let alone a sufficient explanation, of the complex idea of Protective Supervision.

The definition of this service is as follows, in state regulations:

"Protective Supervision consists of monitoring the behavior of non-self-directing, confused, mentally impaired or mentally ill recipients in order to safeguard the recipient against injury, hazard or accident. (§30-757.171)" The definition of "nonself directing" has been problematic within DSS and has recently been clarified by the extensive All County Letter (ACL) 15-25. Additional requirements for Protective Supervision include the requirement that there be a 24 hour a day need, and the limitations on this service include the following:

"Protective Supervision is not available for: friendly visiting or other social activities; when the need is due to a medical condition and the form of supervision required is medical; in anticipation of a medical emergency; to prevent or control antisocial or aggressive behavior; to guard against deliberate self-destructive behavior, such as suicide, or when an individual knowingly intends to harm himself/herself."

It is not reasonable to assume that a parent applicant for Protective Supervision for his/her child would be aware of this complex definition simply by reading the words "Protective Supervision" on the Notice of Action. The notices of action at issue do not inform the recipient of what facts are used and how they were used so that he or she can make an informed decision whether or not to request corrective action or to appeal the action."

Therefore it is concluded that none of the Notices of Action (NOAs) of 2010, 2011, 2012 and 2013 is adequate at law.

Evaluation of the Notices of Action (NOAs) of 2014 and 2015:

With regard to the Notices of Action (NOAs) of 2014 and 2015, the new Notice of Action form does provide a brief explanation of what Protective Supervision is. However there is no explanation, on the pages following the first page, of why a zero was given in the column for this service, and no column is marked "Not needed". It is not possible to tell, from the information on the Notice of Action whether the county evaluated the child for this service, and determined that she did not need it, or whether she was not evaluated, or whether the county determined that this service did not apply to the claimant's child. The recipient was not informed of "what facts were used and how they were used so that she could make an informed decision whether or not to request corrective action or to appeal the action."

Inadequacy of all notices at issue:

The requirement of adequate notice applies to all programs administered by the DSS. MPP §22-000.14 states that the regulations in this chapter shall apply to all public social services programs subject to a state hearing, and § 22-000.15 states that any part of these regulations which apply only to specific aid programs shall be so designated. No hearing regulation cited in this letter is explicitly restricted to programs other than IHSS/PCSP. The Section 30 IHSS regulations are specifically named in the regulation defining which programs are covered by state hearing regulations (MPP § 22-001 (a)(3)(A))

State hearing regulations at 22-000.12 provide that, since the right to request a state hearing belongs to the claimant, the regulations in this chapter shall be interpreted in a manner which protects the claimant's right to a hearing. Both of the ACINs cited above were written in response to adequacy of notice problems in the AFDC, or later the CalWORKs, program. However they were written to interpret MPP Section 22-001 in state hearing regulations, and they express the understanding of the Department of Social Services (DSS) of adequacy of notice for any social service program. These Notices of Action (NOAs) constitute a rational basis for analysis of whether any claimant received due process in the state hearings and appeals process. The definition of adequate notice in MPP 22-001 is "a written notice informing the claimant of the action the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing." The written notices issued by the State of California and used by Sonoma County in informing the claimant of her IHSS authorizations from 2010 to 2015 do not meet this definition because they do not inform the claimant whether the child was assessed for Protective Supervision, that the county intends to deny the recipient Protective Supervision, or give the reasons why they are denying this service to the child, or provide regulations governing Protective Supervision so that the claimant could understand what action had in fact been taken.

All of the other categories of service listed on the notice of action form for IHSS are words in common parlance understood by the population in general, such as meal preparation, laundry, bowel and bladder care, dressing, shopping, feeding, routine bed baths, menstrual care, ambulation, move in/out of bed, bathe, oral hygiene and grooming, rub skin, repositioning, on/off seats, in/out vehicles, care/assistance with prosthesis (although this term does not clearly disclose that it is used for assistance with medications), accompaniment services to medical appointments, etc.

The only uncommon term on this notice is Protective Supervision. The words themselves do not convey the nature of the service, the requirements for the service, or the limitations of the

service. In the older notices, explanatory notes are provided for Domestic Services and Yard Hazard Abatement but not the complex service of Protective Supervision.

A member of the general population reading these notices might be expected to understand that food shopping means, but it is not reasonable to assume that everyone would know what Protective Supervision means and whether their family member might qualify for this service. In effect a county determination, or failure to assess, is hidden behind this uncommon and unexplained term.

Therefore based on the notices at issue in this hearing, and on the cited regulations and ACINs, it is concluded that the notices of action provided to the claimant in this matter, from 2010 through 2015, were all inadequate.

MPP § 22-009 requires that an appeal be filed within 90 days of adequate notice in order to be timely. However if notice is not adequate, any appeal is timely, and therefore the claimant's appeals of county actions in 2010, 2011, 2012, 2013, 2014 and 2015 are timely and there is jurisdiction to hear the appeals.

EQUITABLE JURISDICTION:

In the alternative, if the notices are in another forum deemed adequate, the issue of equity jurisdiction must be considered. Welfare and Institutions Code 10951 (b)(3) provides that the Administrative Law Judge is authorized to use the principles of equity jurisdiction in appropriate cases to find hearing requests timely if the filing date exceeds the 180 day good cause limitation.

In the instant case all of the elements of equitable estoppel are present.

For equitable estoppel to apply, the party to be estopped must be apprised of the facts. It is undisputed that Sonoma County had knowledge of the facts concerning the IHSS service "Protective Supervision", its requirements and limitations. The county through the home visit of its social worker to the child's house was apprised of the child's Down syndrome diagnosis. The county social worker was also aware of the requirement, in effect since 1998, to assess all minors for mental functioning. The SOC 873 in the file, dated 6/13/12, states that the child has developmental delay with Down Syndrome requiring close supervision. Therefore it is concluded that the first element of estoppel is met, as the county was apprised of the facts about the existence of this service, as well as the facts of the mental disabilities of the child EM and the county's responsibility.

The second element of estoppel is that the party must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended. In the instant case Sonoma County assessed the child, and either did not assess her for Protective Supervision or assessed her and determined her to be ineligible, and did not award hours in that service category. There is no doubt that the county intended that the claimant receive the amount of benefits which was authorized, in each of the years at issue. Therefore the second element of estoppel is met.

The third element of estoppel is that the other party must be ignorant of the true state of facts. In the instant case there is no contention that the claimant knew about Protective Supervision and simply declined to challenge the absence of this service in her child's authorization. On the contrary, the claimant testified clearly that she had no idea what Protective Supervision was

until in 2016 she obtained the services of an advocate and learned about this service. The claimant then requested this service, the county assessed for it, and it was approved effective 9/1/16. The claimant has testified to her struggles to care for the child and also work outside the home, which finally she could not do, and resorted to public assistance in order to care for her child. It is clear that if the claimant had known about and understood Protective Supervision she surely would have requested it.

Finally, the fourth element of equitable estoppel is that the other party must rely on the conduct to his or her injury. The claimant testified at the hearing that before she gave birth to EM, she had previously worked full time cleaning houses, and then worked in a retirement community, but had to quit her job because she could not find babysitters who were sufficiently careful and vigilant with EM. She stated that she went on public assistance in order to be at home to care for the child. The claimant is now married and has had three children with her husband, who works long hours to support the family; the claimant still does not work outside the home because of the need to care for EM on a constant basis. She testified that since EM was given Protective Supervision she is able to be at home with EM all day and also at the same time to earn enough money to hire people to provide at times much-needed care for her other children, so that she can spend more time on some of EM's personal issues.

Further, it is determined that justice and right require that the doctrine of equitable estoppel be applied to prevent dismissal of the claim based on the county's argument that the appeals were untimely. As the court in *Canfield* observed, the Welfare and Institutions Code, § 10000 provides that the purpose of public social services is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, The court determined that the raising of an estoppel would not result in a significant frustration of public policy but that to apply the doctrine of equitable estoppel is required by justice and right and is in keeping with the declared paramount public purpose of providing protection, care, and assistance to those in need. Similarly in the present case the raising of estoppel would not result in frustration of a public policy but would support the policy of providing protection, care and assistance to those in need, and would support the statutes, regulations, ACLs defining and implementing Protective Supervision for minors.

The court further observed that in determining whether an estoppel may be raised against a public agency an important consideration is the degree of 'culpability or negligence of the public agency or its representatives in their conduct or advice' and 'the seriousness of the impact or effect of such conduct or advice on the claimant. In the instant case the claimant is a person who had no knowledge or training which would aid her in determining her rights. The public agency, on the other hand, was informed and knowledgeable with respect to in home supportive services and the criteria for eligibility for each of those services.' The county of Sonoma social workers made home visits to the claimant's home in most of the years from 2010 to the present year, and during all of those years the child had Down Syndrome and was a Regional Center client. During all of those years the county failed to assess the child for Protective Supervision, despite a court mandate to do so, as set forth above in the law and regulation section of this letter (*Lam v. Anderson* and *Garrett v. Anderson*, 1998.) These court orders require that a county social worker must assess all eligible minors for a mental impairment, and in doing so, must request the parent or guardian to obtain available information and documentation about the existence of a minor's mental impairment. The SOC 873 in the file, dated 6/13/12, states that the child has developmental delay with Down Syndrome requiring close supervision. There is no evidence in the county's statement of position (SOP) or any of its attachments that the

county social workers assigned to this case ever followed up on this medical evaluation, or requested school or regional center information, or assessed the child for Protective Supervision in any way, or that the subject of Protective Supervision was ever discussed with the claimant in any of the home visits from 2010 to 2015. The county should not now profit by its failure to assess the child for Protective Supervision, or by its failure to make the claimant aware of this service which could help her mentally impaired child, or by its failure to adequately inform the claimant that the child had been determined ineligible for Protective Supervision if such was the case.

Therefore it is determined that equitable principles of justice and right dictate that the claimant's appeals from 2010 through 2015 not be dismissed but, instead, that jurisdiction be found, and the issue of Protective Supervision be remanded to Sonoma County to assess the child for each year since her application in 2010.

ORDER

The case is remanded to Sonoma County to assess the child EM for Protective Supervision from the date of her application in September of 2010 through the date of the county's award of Protective Supervision to the child in 2016, and provide benefits as otherwise eligible.

EXHIBIT 4

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
DEPARTMENT OF HEALTH CARE SERVICES

Hearing No. 2016256251

In the Matter of Claimant(s):

Vanessa Landeros-Martinez
35 E Washington # 311
Petaluma, CA 94952

DIRECTOR'S
ALTERNATE
DECISION

I exercise my authority to issue the attached Decision of the Director as the decision in this matter.
The Administrative Law Judge's proposed decision, which is enclosed, was not adopted and has no effect.


for
Will Lightbourne
Director

Date: December 13, 2016

State Hearing Record

Hearing Date:	October 26, 2016	Release Date:	December 13, 2016
Aid Pending:	Not Applicable	Issue Codes:	[004-2]
Agency:	Sonoma County	Agency Representative:	Rocio Tamburrino
Agency:		Agency Representative:	
Authorized Rep. Organization:		Authorized Rep:	Myra Galt
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's request for hearing must be dismissed for untimely filing within the window of State Hearings jurisdiction. The Claimant received adequate Notices of Action numerous times from September 2010 to September 2015 without requesting a hearing.

There is no dispute about the current IHSS services being received. [004-2]

FACTS

By Notice of Action (NOA) dated September 15, 2010, Sonoma County informed the recipient that her application for IHSS dated 8/11/10 had been approved effective 8/11/10, and that she is authorized to receive the services listed below. The NOA lists each category of IHSS services, including protective supervision, with explanatory notes for some. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral Hygiene and Grooming, for a total of 20 hours per month authorized at that time. No figure is listed in the service category for protective supervision, indicating that no time was allowed for that category, among numerous others. Four further messages are entered in the space at the bottom of the Notice of Action, for proration of less than a full month, limit on services to minors living with parent, proration of domestic and related services, and assignment to PCSP. IHSS regulatory sections are cited.

By Notice of Action (NOA) dated January 27, 2011, Sonoma County informed the recipient that upon reassessment we find there is no change from your previous authorization for IHSS effective February 1, 2011. All IHSS service categories, including protective supervision, are listed with explanatory notes for some. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral Hygiene and Grooming, for a total of 20 hours per month. No figure is listed in the service category for protective supervision, indicating that no time was allowed for that category, among numerous others. Two further messages are entered in the space at the bottom of the Notice of Action, for the 3.6% reduction under the new law, and transfer from PCSP to IHSS. A W&IC section is cited for the reduction.

By Notice of Action (NOA) dated January 30, 2012, Sonoma County informed the recipient that upon reassessment we find there is no change from your previous authorization for IHSS services effective February 1, 2012. All IHSS service categories, including protective supervision, are listed with explanatory notes for some. The same figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral Hygiene and Grooming, for a total of 20 hours per month. No figure is listed in the service category for protective supervision, indicating that no time was allowed for that category, among numerous others. Two further messages are entered in the space at the bottom of the Notice of Action, one for the 3.6% reduction under the new law. A W&IC section is cited for the reduction. A second message states "No change" and cites IHSS regulations.

By Notice of Action (NOA) dated February 15, 2013, Sonoma County informed the recipient that upon reassessment we find there is no change from your previous authorization for IHSS effective February 1, 2013. All IHSS service categories, including protective supervision, are listed with explanatory notes for some. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral hygiene and Grooming, for a total of 20 hours per month. No figure is listed in the service category for protective supervision, indicating that no time was allowed for that category, among numerous others. Five messages are entered in the space at the bottom of the Notice of Action, for the

3.6% reduction under the new law, and transfer from PCSP to IHSS. A W&IC section is cited for the reduction. A second message states "No change" and cites IHSS regulations. A third message states that her service assessment includes consideration of alternative resources for bowel and bladder, feeding, bathing and oral hygiene. A fourth message states limitation on services for a minor living with a parent provider. The fifth message states services are prorated by 6 persons living in the home.

By Notice of Action (NOA) dated August 29, 2013, Sonoma County informed the recipient that her authorization for IHSS has been changed effective September 1, 2013. All IHSS service categories, including protective supervision, are listed with explanatory notes for some. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral Hygiene and Grooming, for a total of 29 hours per month. No figure is listed in the service category for protective supervision, indicating that no time was allowed for that category, among numerous others. Four messages are entered in the space at the bottom of the Notice of Action, for the 8% reduction under the new law. A W&IC section is cited for the reduction. A second message states you have been found in need of additional hours of service and cites IHSS regulations. A third message states that her alternative resources for bathing oral hygiene and grooming have been reduced. A fourth message states limitation on services for a minor living with a parent provider.

By Notice of Action (NOA) dated May 20, 2014, Sonoma County informed the recipient that the services she can get are changed. However, there is no change in hours from 29 hours per month. Figures are entered in the "hours now" column for the services of Bowel and Bladder Care, Feeding, Dressing, and Bathe, Oral Hygiene and Grooming, for a total of 29 hours per month. No figure is listed in the service category for protective supervision, indicating that no time was allowed for that category, among numerous others. This notice is on a new form NA1253, which includes an additional blank page for further messages.

Many additional messages to the claimant are entered in the space on the page following the list of services. One is a 'no change' message, another is for the 8% reduction under the new law, with explanations as to how the recipient can choose the areas to cut. This message continues with detailed information about reassessments, application of the cut to reassessments, requirements for reassessment. There are several messages concerning providers, timesheets, and share of cost.

The following page of the new Notice of Action, entitled Description of Services, includes a brief description of what each service entails. Each cites an IHSS regulation section for more information about that service.

By Notice of Action (NOA) dated June 9, 2014, Sonoma County informed the recipient that the services she can get are changed. However, there is no change in hours from 29 hours per month. Figures are entered in the "hours now" column for the services of Bowel and Bladder care, Feeding, Dressing, and Bathe, Oral Hygiene and Grooming, for a total of 29 hours per month. No figure is listed in the service category for protective supervision, indicating that no time was allowed for that category, among numerous others. This notice is on a new form NA1253, which includes an additional blank page for individual messages.

Many additional messages to the claimant are entered in this space. They are the same as the individual messages on the previous Notice of Action. The following page of the new Notice of Action, entitled Description of Services, includes a brief description of what each service entails. Each cites an IHSS regulation section for more information about that service.

By Notice of Action (NOA) dated June 22, 2015, Sonoma County informed the recipient that the services she can get are changed. However, there is no change in hours from 29 hours per month. Figures are entered in the "hours now" column for the services of Bowel and Bladder Care, Feeding, Dressing, and Bathe, Oral Hygiene and Grooming, for a total of 29 hours per month. No figure is listed in the service category for protective supervision, indicating that no time was allowed for that category, among numerous others. This notice is on form NA1253.

By Notice of Action (NOA) dated August 16, 2016, Sonoma County informed the recipient that the services she can get are changed. Her hours were increased to 195 hours per month, an increase of 146 hours and 30 minutes per month. Figures are entered in the "hours now" column for the services of Laundry, Bowel and Bladder care, Feeding, Dressing, Menstrual Care, and Bathe, Oral hygiene and Grooming, and Protective Supervision for a total of 195 hours per month. This notice is on form NA1253. On the 8/16/16 notice is entered: "This Notice of Action reflects the outcome of your state hearing."

On September 7, 2016, the claimant requested a hearing to dispute the county's denial of Protective Supervision to the child EM in all of the years from her application in 2010 through 2015.

A hearing was held on October 26, 2016, by telephone, in which the claimant participated, together with her authorized representative. An appeals specialist represented the county, together with a social work supervisor.

The county provided a Statement of Position (SOP) giving information about the history of the case. The county had requested bifurcation, a request which was denied by an Administrative Law Judge. However, the Administrative Law Judge conducting this hearing bifurcated the hearing and heard the issue of jurisdiction only, as it is the critical issue in the hearing. The matter of the claimant's present eligibility for Protective Supervision had already been established by Sonoma County prior to this hearing, in an authorization of this service.

The authorized representative provided a SOP appealing the past de facto denials of Protective Supervision to the child EM and arguing that the Notices of Action are all inadequate because they do not inform the recipient of what Protective Supervision is, and how a person might qualify for this service. The claimant does not dispute that she received these notices.

The county in its SOP argued that the notices all meet the requirements of §§22-071.1 and 22-001(a)) and thus are all adequate at law. The county pointed out that Protective Supervision is listed on the notice of action along with other services and the absence of any number in the column for this service is sufficient notice that no award was made for this service. The county requested dismissal of all claims, on the ground of untimely filing.

The claimant testified at the hearing that she was employed full time cleaning houses, and then in a retirement community, prior to the birth of EM, but had to quit to stay home with EM. She stated that she was not married at that time and had to go on public assistance in order to stay home with her daughter. She further testified that since her marriage, during which she has had three more children, she tried several times to work, but every time had to quit because she could not find a babysitter who was careful enough with EM. Finally she and her husband agreed that he would be the breadwinner and she would stay at home, but it has been difficult for them and he works long hours to support the family. She testified that since EM has been receiving Protective Supervision, she has been able to hire others at times to take care of her other children so that she can devote more time to EM's needs.

LAW

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

JURISDICTION: TIMELINESS

A request for state hearing must be filed within 90 days of the action or inaction with which the claimant is dissatisfied. In the CalFresh Program, the appropriate time limits are set forth in §§63-802.4 and 63-804.5. Except for cases involving informal hearings concerning foster care overpayments (see §45-306.3) if the claimant received an adequate and language-compliant notice of the action, the date of the action is the date the notice was mailed or given to the claimant. If adequate notice was required but not provided, or if the notice is not adequate and/or language-compliant, any hearing request (including an otherwise untimely hearing request) shall be deemed a timely hearing request. (§22-009.1 revised effective January 24, 2007)

Welfare and Institutions Code (W&IC) sections 10951 and 10960 allow for good cause exceptions to the 90-day period for filing a hearing request and the 30-day period for filing a rehearing request. Good cause is defined as a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language compliant notice, in and of itself, shall not constitute good cause. Good cause cannot be applied if the request for hearing is made over 180 days from the order or action in dispute. In addition, the Administrative Law Judge is authorized to use equitable estoppel principles in appropriate cases to find hearing requests timely if the filing date exceeds the 180 day good cause limitation.

(Welfare and Institutions Code 10951, 1060, All County Information Notice I-66-08, November 19, 2008)

A notice of action must be adequate before the 90-day time limit for filing a state hearing request begins to run. The fact that the recipient knows, or should have known, of the action does not start the running of the time period. (*Morales v. McMahon* (1990), 223 Cal. App. 3d 184, 272 Cal. Rptr. 688)

MPP § 22-009 requires that an appeal be filed within 90 days of adequate notice in order to be timely. However if notice is not adequate, any appeal is timely.

JURISDICTION: ADEQUACY OF NOTICE

The county is required to provide adequate notice when aid is granted, increased, denied, decreased, not changed following a recipient mid-quarter report, cancelled or discontinued. Adequate notice must also be provided when the county demands repayment of an overpayment or CalFresh overissuance. Adequate notice is defined as written notice informing the claimant of the action that the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested. When appropriate, the notice shall also inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid. In CalWORKs (formerly AFDC), the notice shall state that if the county action is upheld, aid pending must be repaid. In all cases, the notice is to be prepared on a standard form approved by the California Department of Social Services. The notice shall be prepared in clear,

nontechnical language and if a claimant submits a request for a state hearing on the back of the notice, a duplicate copy shall be provided to the claimant on request.
(§§22-071.1 and 22-001(a))

22-001 DEFINITIONS

The following definitions shall apply wherever the terms are used throughout Division 22.

(a)(1) Adequate Notice - A written notice informing the claimant of the action the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested, and for the California Work Opportunity and Responsibility to Kids (CalWORKs) Program, if the county action is upheld, that the aid paid pending must be repaid. In the Food Stamp Program, see Section 63-504.2.

(a)(6) County Action - All actions which require adequate notice (see Section 22-071) and any other county action or inaction relating to the claimant's application for or receipt of aid.

ACIN I-151-82 defines adequate notice in the Department of Social Services (DSS). The ACIN state that "the notice is intended to be a personal communication to the recipient, addressing the recipient's own unique situation and circumstances. It provides important information to the recipient concerning the amount of the family's aid. As with any communication, it is necessary to focus on the person receiving the communication. What does the recipient need to know and be able to do as a result of the communication? [emphasis in original] In broadest terms, the recipient needs to know and understand what is happening to family's aid. The recipient needs enough information to be able to judge whether or not the action is correct – including the detail of computations affecting the amount of aid. The recipient should be informed of what facts are used and how they were used so that he or she can make an informed decision whether or not to request corrective action or to appeal the action."

"What information is needed to inform the recipient adequately?" The ACIN cites the elements of adequate notice as outlined in MPP 22-001.1, then gives further instruction with regard to the element of reasons for the action. "When the reason for inaction is difficult to explain clearly, the following approach can be helpful. 1. Tell the recipient the rule that you are applying. In other words clearly state the essence of the regulation that applies. 2. Circumstances. Apply the circumstances of the recipient to the rule."

"The focus on the recipient leads beyond a consideration of what information recipient needs, to how the information is provided. The primary emphasis should be on providing the information in a way that it can be understood. Every effort should be made to express the information on the notice clearly and simply. [emphasis in original] This will include the following elements:

- Relatively short, direct sentences.
- Words that the recipient can reasonably be expected to understand.
- Avoidance of welfare program jargon.
- Avoidance of abbreviations.
- Sufficient explanation of complicated ideas.
- Clarity

ACIN I-02-14, issued 1/3/14, cites ACIN I-151-82 and states in pertinent part:

In addition, each NOA must include client-specific information that is sufficient enough for the client to determine what the issue is, be able to understand the action taken, and decide if a

request for a hearing is warranted. The worker should take the following into consideration to ensure the NOA is adequate under the guidelines provided in this letter and at MPP Sections 22-001 and 22-071:

- What does the client need to know to understand what is happening and why?
- Does the information provided enable the client to decide if he or she agrees or disagrees with the CWD's proposed action?
- Can the client understand if there is something he or she needs to do in response to the NOA to stop or change the CWD's proposed action?

This ACIN information was specifically intended to apply to the CalWORKs and CalFresh programs, and was not authorized or adopted by the IHSS program in either instance.

EQUITABLE ESTOPPEL: The reference to equity jurisdiction was added to W&IC §§ 10951(B)(3) and 10960(f)(3) to confirm that ALJs have authority to apply equitable principles (e.g., laches, or unclean hands) in appropriate circumstances where the hearing request is not filed within the time limits set out in regulation and statute, even if the hearing request was filed more than 180 days from the NOA. An ALJ would only apply equitable estoppel in extraordinary circumstances, when justice and right require such a remedy and there was no legal remedy available. (ACIN I-66-08, November 19, 2008).

CONCLUSION

Legal Adequacy of the Notices of Action:

The county provided copies of all notices of action issued to the claimant since her first application in 2010. The notices in question are of two types: Notices in 2010, 2011, 2012, and 2013 use the previous state NOA form for IHSS. Notices of 5/20/14, 6/9/14 and 6/22/15 use the newer state NOA form for IHSS with different wording and more printed information.

Since a single adequate NOA would be sufficient to render the Claimant's hearing request untimely, it is only necessary to evaluate the most recent NOA, from June 22, 2015. On this NOA, all IHSS service categories are listed and the county enters the number of hours and minutes given for each service (previously entered as decimal figures.)

Preceding this section, however on the first page is the following message:

"You will now get the services shown below for amount of time shown in the column "Final Amount of Service You Can Get". That column shows the hours/minutes you got before, the hours/minutes you will get from now on and the difference. If you are getting less time for a service, the reason is shown on the next page.

1. If there is a zero in the "Authorized Amount of Service You Can Get" column or the amount is less than the "Total Amount of Service Needed" column, the reason is explained on the next page (s).
2. "Not needed" means that your social worker found that you do not require assistance with this task. (MPP 30-756.11)
3. "Pending" means the county is waiting for more information to see if you need that service. See the next pages for more information."

The next page, numbered page 4 of 6, explains the recipient's state hearing rights. The next page, numbered 5 of 6, provides space for explanations.

The Notice of Action of June 22, 2015, shows many zeroes in the column marked "Authorized Amount of Service You Can Get," including in the line for Protective Supervision.

The sixth page of this NOA is entitled Description of Services and provides a description of each of the available services under the IHSS program. The Protective Supervision description is as follows: "Observing the behavior of a non-self-directing, confused, mentally impaired or mentally ill recipient and assisting as appropriate to guard recipient against injury, hazard or accident. Certain limitations apply. MPP 30-757.17."

This NOA does provide an explanation of what Protective Supervision is and the Claimant can clearly determine that those service hours for Protective supervision were not authorized. While some would like a detailed evaluation in each NOA of what information was considered and which element was found lacking, the IHSS program finds that is not necessary to meet the legal adequacy standard. Indeed, many individual parents request a state hearing each year, without the benefit of a professional advocate, solely on the basis of the information provided on the NOA. The NOA is already 6 pages long, and at some point adding more detail only confuses the issues. The recipient was definitely informed of the conclusion that certain services were authorized, others were not and she could request a hearing, get more information from the regulations, or inquire of the county if she sought additional information. The record shows none of these actions were pursued during the legal period for disputing the service authorization, so the request for hearing must be dismissed as untimely.

EQUITABLE JURISDICTION:

For equitable estoppel to apply, the party to be estopped must be apprised of the facts. It is undisputed that Sonoma County had some knowledge through the home visit of the child's Down syndrome diagnosis. The SOC 873 in the file, dated 6/13/12, states that the child has developmental delay with Down Syndrome requiring close supervision. These facts alone do not compel a conclusion that protective supervision was needed and the records from the period are less detailed, making the testimony of the actual evaluating social worker more relevant. In this instance, the passage of time places the County at a disadvantage. Therefore, it is concluded that the first element of estoppel is not met.

The second element of estoppel is that the party must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended. In the instant case, Sonoma County appears to have assessed the child and determined her to be ineligible, and thus did not award hours in that service category. There is no doubt that the county intended that the claimant receive the amount of benefits which was authorized, in each of the years at issue. However, this does not show any indication that the County would not have willingly entertained a hearing request and provided a SOP at the relevant time. No contact from the Claimant was recorded that expressed any concerns about the service authorization, so the County did not take any action to dissuade the Claimant from exercising her right to seek additional service hours, which she was clearly notified of on each annual NOA. The second element is also not met.

The third element of estoppel is that the other party must be ignorant of the true state of facts. In the instant case the presence of the category of Protective Supervision on the NOAs is sufficient to prevent the claimant from claiming ignorance of the service of Protective Supervision. Other categories also listed were likewise not granted, and there was no uncertainty about those categories. Moreover, each pay period, the Claimant specifically claimed the hours of authorized care, so it is undisputed that Claimant was aware that she was receiving 20-29 hours of authorized service for her daughter.

Finally, the fourth element of equitable estoppel is that the other party must rely on the conduct to his or her injury. There is no conduct by the County, outside of providing the state approved NOAs to Claimant clearly setting forth the hours authorized for each category of care. The Claimant never inquired, and the County took all required steps to inform the Claimant. Moreover, even after the forms were changed to provide descriptions of each service category, the Claimant still made no inquiry. The fourth element is also not met.

ORDER

The claim is dismissed for lack of jurisdiction.