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Code § 10962

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Superior Court Of California
County Of Los Angeles

AUG 11 2017

Sherri R. Carter, Executive Officer/Clerk
By: Charlie L. Coleman, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

BS 170518

14 MATEBE TESMA) Case No.:
15) Unlimited Civil Case
16)
17) PETITION FOR WRIT OF
18) MANDATE
19) [Code of Civ. Proc. §§ 1085,
20) 1094.5; Welf. & Inst. Code
21) § 10962]
22)
23) Respondents.

24 INTRODUCTION

25 1. This action challenges the CALIFORNIA DEPARTMENT OF SOCIAL
26 SERVICES' failure to follow federal and state statutes and regulations that are essential to the
27 fair and efficient operation of the public welfare system, specifically the Cash Assistance
28 Program for Aged, Blind, and Disabled Legal Immigrants (CAPI). The statutes and regulations at
issue require the State and the County to provide an exception to income-deeming rules for
indigent aged and disabled legal immigrants whose sponsors have abandoned them to ensure that

1 this vulnerable population does not lose critical subsistence cash aid due solely to third party
2 negligence.

3 2. Petitioner, MATEBE TESMA is a disabled legal permanent resident. Mr.
4 TESMA was approved for CAPI benefits because he is unable to work due to a severe and life-
5 threatening seizure disorder that has damaged his cognition and memory. He is regularly
6 hospitalized from these seizures, which in addition to incrementally harming his brain function
7 also impairs his breathing during acute episodes. Because of his cognitive and memory
8 impairments and the danger of asphyxiation during acute seizures, Mr. TESMA receives In-
9 Home Supportive Services to assist with his daily affairs and to provide continual monitoring
10 and crisis response in the event he suffers a seizure while at home. Mr. Tesma was originally
11 sponsored by one of his adult daughters at the time he immigrated around 2012. His sponsor has
12 since abandoned him, has ceased to provide him with any financial support, and has refused to
13 provide her whereabouts, phone number, or any other means to allow him to initiate contact with
14 her. Mr. TESMA's modest CAPI income is his sole means of financial survival, which he relies
15 upon to pay for rent, food, medicine, and other basic life necessities.

17 3. Federal and State rules and regulations allow for sponsor deeming rules to be
18 waived under the indigence exception if a CAPI beneficiary would go hungry and homeless were
19 sponsor deeming rules enforced. The indigence exception is expressly allowed even in cases
20 where the sponsor is unavailable. In an unlawful effort to severely restrict access to the indigence
21 exception, Respondents incoherently maintain that CAPI rules allow a beneficiary to qualify for
22 the indigence exception to sponsor deeming if the beneficiary's sponsor is unavailable, yet
23 simultaneously require a beneficiary's termination from the program unless the sponsor is also
24 available to provide a signed income and asset verification. Respondents have relied on this
25 absurd interpretation to terminate Mr. TESMA's subsistence CAPI welfare benefits. The
26 Respondents' interpretation of program rules makes a cruel parody of logic and if left
27 uncorrected will cause material prejudice to the rights of other disabled immigrants in this state
28 like the Petitioner.

4. The Petitioner, MATEBE TESMA (“Mr. TESMA” or “Petitioner”) seeks a writ of mandate pursuant to California Code of Civil Procedure Sections 1085 to compel the Respondents WILL LIGHTBOURNE and the CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS) (hereinafter, collectively, “Respondents”) to comply with state and federal statutes and regulations requiring suspension of sponsor-deeming rules for indigent CAPI beneficiaries whose sponsors are unavailable.

5. Mr. TESMA also petitions the Court for a writ of mandate pursuant to California Welfare and Institutions Code Section 10962 and Code of Civil Procedure Sections 1094.5 to overturn Respondents' administrative decision upholding the termination of Mr. TESMA'S CAPI welfare benefits, order Respondents to approve his application for the indigence exception to sponsor deeming, and reinstate his CAPI benefits on an ongoing basis.

6. Mr. TESMA also seeks an immediate stay of enforcement of Respondents' termination decision to prevent the prejudicial loss of subsistence income during the pendency of the instant proceedings.

PARTIES

7. The Petitioner, MATEBE TESMA, age 57, is originally from Ethiopia and is a native Amharic speaker. He has limited English proficiency and suffers from several severe disabilities, including a seizure disorder, memory and cognitive impairment, and cerebral toxoplasmosis, among other conditions. Mr. TESMA is regularly hospitalized from his seizures, which in addition to incrementally harming his brain function also impairs his breathing during acute episodes, creating a risk of asphyxiation. Mr. Tesma was originally sponsored by one of his adult daughters, who has since abandoned him, has ceased to provide him with any financial support, and has refused to provide her whereabouts, phone number, or any other means to allow him to initiate contact with her. Respondents have terminated Mr. TESMA's CAPI benefits because his sponsor is unavailable to provide a signed income and asset verification as part of the CAPI redetermination process, even though Mr. TESMA's modest CAPI income is his sole means of financial survival that he relies upon to pay for rent, food, medicine, and other basic

1 life necessities. Besides his CAPI benefits, Mr. TESMA is only able to earn around \$48-\$96 per
2 month for parking lot services provided to his local church on Sundays when he is physically
3 able, and he receives approximately 80 hours per week for in-home supportive services due to
4 his disabling medical conditions. Mr. TESMA has at all relevant times resided in the city and
5 county of Los Angeles.

6 8. The Respondent, WILL LIGHTBOURNE, is the Director of the California
7 Department of Social Services. As Director, he is charged under Welfare and Institutions Code
8 Section 10553 with administering the CAPI program. His duties with respect to the CAPI
9 program are partially set out in Welfare and Institutions Code Section 18937, *et seq.* The
10 Respondents must comply with both state and federal law. The Respondents WILL
11 LIGHTBOURNE is sued in his official capacity.

12 9. The Respondent, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
13 (CDSS), is the single state agency responsible for supervising the administration of public social
14 services in California, including the CAPI program, in order to secure full compliance with
15 applicable state and federal laws. Welf. & Inst. Code §10600. For Los Angeles County, the
16 Respondent has delegated responsibility for administration of the CAPI program to the Los
17 Angeles County Department of Public Social Services ("the County"). At all relevant times, the
18 County was and is the agent of the Respondents.

20 **FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY**

21 10. Mr. TESMA, age 57, is originally from Ethiopia and is a native Amharic speaker
22 with limited English proficiency. Mr. Tesma is a legal immigrant who obtained permanent legal
23 resident status on or about February, 2012. Mr. TESMA has resided in the city and county of Los
24 Angeles at all times relevant to this case.

25 11. Mr. TESMA was approved for CAPI benefits because he is unable to work due to
26 a severe and life-threatening seizure disorder that has damaged his cognition and memory. He
27 also suffers from cerebral toxoplasmosis and a serious condition affecting his immune function.
28 He is regularly hospitalized due to his seizures, which in addition to incrementally harming his

1 brain function also impairs his breathing during acute episodes. Because of his cognitive and
2 memory impairments and the danger of asphyxiation during acute seizures, Mr. TESMA receives
3 approximately 80 hours per month for In-Home Supportive Services to assist with his daily
4 affairs and to provide continual monitoring and crisis response in the event he suffers a seizure
5 while at home.

6 12. Mr. TESMA applied for CAPI benefits on or about October 28, 2015. His
7 application was approved on or about April 26, 2016 and he began receiving approximately \$880
8 per month in cash assistance, which he has relied upon to secure food, housing, medicine, and
9 other basic life necessities.

10 13. Mr. TESMA's immigration sponsor is Kalkidan Matebe Teshale (hereinafter
11 "Kalkidan"), one of his two adult daughters. Kalkidan previously lived at Mr. TESMA's current
12 residence but moved out of state sometime in the last few years. Kalkidan did not provide Mr.
13 TESMA any means to contact her, neither her address nor her phone number. Since leaving,
14 Kalkidan has unilaterally contacted Mr. TESMA by telephone on occasion and indicated that she
15 cannot help him anymore because she is now married, has a child and housing costs, and is also
16 taking care of her mother. Mr. TESMA does not remember when these phone calls occurred, but
17 he attempted to obtain Kalkidan's phone and address and she has refused to provide this
18 information or to provide him with any financial support. To the best of his ability given his
19 memory and cognitive impairments, Mr. TESMA recalled that the last of these phone calls
20 occurred prior to the County commencing the CAPI redetermination and sponsor verification
21 process at issue in this case. Mr. TESMA does not know Kalkidan's whereabouts or what her
22 current income and assets are, nor does he have the ability to initiate contact with her.

24 14. On or about September 20, 2016, Mr. TESMA appears to have gotten assistance
25 to submit a SOC-804 form¹ to the County on which it was indicated that his daughter had
26 previously provided him with approximately \$150 worth of assistance, but that this assistance
27

28 ¹ The title of this form is "Statement of Facts for Determining Continuing Eligibility for the Cash Assistance Program for Immigrants (CAPI)."

1 “stopped since 5/1/2016” or earlier. May 1, 2016 represents the date when Mr. TESMA was
2 approved for CAPI benefits and on information and belief, Mr. TESMA may have ceased
3 receiving assistance from his sponsor sometime prior to May 1, 2016 but indicted this date on
4 this form because it was the first month he believed was relevant for CAPI program purposes.
5 Mr. TESMA does not specifically remember completing and submitting this SOC-804 form.

6 15. On November 2, 2016 and November 22, 2016, the County allegedly sent notices
7 to Kalkidan requesting verification of her income and resources via a SOC-860 form.² The
8 second request gave a December 7, 2016 response deadline. These requests were apparently sent
9 to Mr. TESMA’s home address, where Kalkidan previously resided but was no longer residing.
10 Mr. TESMA does not remember receiving these notices and would not have been able to
11 understand and competently respond to them on his own due to his cognitive impairments and
12 limited English proficiency. Even if they were delivered, there was no way for Mr. TESMA to
13 contact Kalkidan to request that she submit this information, and she had already indicated that
14 she had abandoned Mr. TESMA and had no intention of providing him with any financial
15 support.
16

17 16. Mr. TESMA obtained legal assistance through the Legal Aid Foundation of Los
18 Angeles (LAFLA) beginning on November 21, 2016, initially to help him with an In-Home
19 Supportive Services (IHSS) issue. While interviewing Mr. Tesma regarding his IHSS problem,
20 Mr. Tesma mentioned to LAFLA attorney Yolanda Arias that he was told by the County that his
21 CAPI benefits were going to be stopped but he did not know why. Ms. Arias initiated an inquiry
22 with the County regarding the status of Mr. TESMA’s CAPI benefits. Human Resources
23 Administrator Karine Tioufenktchian responded via email that Mr. TESMA’s CAPI would be
24 terminated unless his sponsor provided her signed income verification, citing Manual of Policies
25 and Procedures section 49-037.512 (hereinafter “MPP”). In response, LAFLA attorney Andrew
26
27
28

² The title of this form is “Sponsor’s Statement of Facts[:] Income and Resources.”

1 Kazakes prepared a SOC-809 form³ to request the indigence exception and a signed statement in
2 support thereof from Mr. TESMA indicating that Mr. TESMA did not know his sponsor's
3 current whereabouts, that Mr. TESMA's sponsor had indicated she had financially abandoned
4 Mr. TESMA, and requested that Mr. TESMA be evaluated for the indigence exception to
5 sponsor deeming rules because he relied on his CAPI benefits to buy food and pay rent. These
6 documents were submitted to Mr. TESMA's eligibility worker Shakeh Hartoonian on December
7 1, 2016 via fax. After Ms. Hartoonian did not respond, Mr. Kazakes forwarded these documents
8 directly to Ms. Tioufenkchian on December 20, 2016. The County acknowledged receipt of Mr.
9 TESMA's request for the indigence exception.

10
11 17. In response, Ms. Tioufenkchian informally and ambiguously indicated in an
12 email to Attorney Kazakes dated January 17, 2017 that Mr. TESMA's request for the indigence
13 exception could not be evaluated (neither approved nor denied) without first submitting a signed
14 statement from the sponsor regarding her income and resources, and indicated that the sponsor's
15 failure to do so would result in termination of Mr. TESMA's CAPI benefits without review of
16 the indigence exception. After Mr. Kazakes sought further clarification, Ms. Tioufenkchian
17 further responded in a January 18, 2017 email that Mr. TESMA could qualify for the indigence
18 exception if he asked his daughter to provide her income information and provide a letter stating
19 that she is refusing to cooperate. These shifting, inconsistent responses from the County failed to
20 account for the fact that Mr. TESMA was unable to initiate contact with his sponsor and that Mr.
21 TESMA had already indicated in writing that his sponsor had unequivocally told him that she
22 was refusing to cooperate with her sponsorship responsibilities. The County also improperly
23 failed to approve Mr. TESMA's indigence application even though he satisfied all criteria for
24 approval under state and federal statutes, regulations, and rules.

25 18. The very next day, and without providing any formal notice of action in response
26 to Mr. TESMA's indigence exception request, the County issued three concurrent termination
27

28 ³ The title of this form is "Cash Assistance Program for Immigrants (CAPI) Indigence Exception Statement."

1 notices dated January 19, 2017 for alleged non-cooperation with CAPI program requirements.⁴
2 These notices were inadequate and did not provide any explanation, as required by due process
3 and state and federal regulations, as to why Mr. TESMA's application for the indigence
4 exception was not approved or even considered. These notices also failed to explain what
5 allegedly missing information or incomplete action was requested from Mr. TESMA or his
6 sponsor in order to comply with CAPI program requirements or indigence exception criteria,
7 which left Mr. TESMA unaware of the specific reason for the termination or the opportunity to
8 comply with any performance that allegedly remained due from him.

9 19. Attorney Kazakes initiated further communications on January 24, 2017 to
10 explain to the County why it was logically and practically problematic to require a signed
11 sponsor verification before considering the indigence exception to sponsor deeming given that
12 the sponsor had abandoned Mr. TESMA and the indigence exception regulations expressly
13 provide for circumstances in which the sponsor cannot be located. Human Services
14 Administrator Alma Calvelo, on behalf of the County, responded in a January 25, 2017 email by
15 reiterating the position that the indigence exception could not even be considered because Mr.
16 TESMA's sponsor had not submitted her signed income and asset verification.

17 20. In this January 25, 2017 email, the County also informally refused to accept Mr.
18 TESMA's statement that he was dependent on CAPI to pay for food and shelter and was
19 receiving no financial support from his sponsor, incorrectly claiming there was a conflict
20 between Mr. TESMA's statements regarding sponsor abandonment and the County file because
21 the sponsor's last known address was listed at Mr. TESMA's residence. This informal position
22 by the County was later abandoned by Respondents at the May 2, 2017 hearing and did not form
23 any part of the basis of the Respondents' decision to uphold the termination of Mr. TESMA's
24 CAPI benefits.
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28 ⁴ The County had previously issued a pair of CAPI termination notices on Oct. 19, 2016, asserting an effective termination date of October 31, 2016. These notices were apparently canceled or rescinded.

1 21. Mr. TESMA, through counsel, requested a state hearing on January 19, 2017 to
2 challenge the termination of his CAPI benefits and a state hearing was held on May 2, 2017
3 (Hearing No. 2017025357). Mr. TESMA was present and all parties and the ALJ had the
4 opportunity to question Mr. TESMA at the hearing, with the assistance of an Amharic interpreter
5 provided by Respondents.

6 22. During the hearing, the County did not dispute that Mr. TESMA's sponsor could
7 not be located or contacted, or that Mr. TESMA would be unable to secure food and shelter
8 without his CAPI cash aid, and no evidence was offered to contradict Mr. TESMA's statements
9 that he is not receiving any financial support from his sponsor. Nor was a determination ever
10 made that Mr. TESMA lacked credibility with respect to any testimony or statements made
11 before, during, or after the hearing.

12 23. At the conclusion of the hearing, the ALJ inquired whether the parties were aware
13 of recent All-County Letter (ACL) No. 17-33. Representatives for the parties indicated that they
14 were not. At the time, CDSS policy guidance on the indigence exception was contained in ACL
15 No. 02-63 and ACIN No. I-47-12. ACL No. 02-63 contained language allowing the indigence
16 exception where the sponsor could not be located to provide a signed income and asset
17 verification. Similarly, ACIN No. I-47-12 directed county welfare departments to "presume that
18 sponsor deeming would affect CAPI eligibility and/or grant amounts in all [indigence exception]
19 cases, thereby meeting the requirement in MPP Section 49-037.411." ACL No. 17-33 purported
20 to supersede ACIN No. I-47-12 and implicitly departed from CDSS policy contained in ACL No.
21 02-63.

22 24. The ALJ consequently provided the parties with two weeks to submit
23 supplemental briefing regarding ACL No. 17-33. LAFLA submitted a supplemental brief on
24 behalf of Mr. TESMA on May 16, 2017 along with written objections to ACL No. 17-33 as an
25 improper and retroactive effort to interfere with Mr. TESMA's right to a fair hearing and a
26 subpoena request for communications by state officials to obtain corroborating evidence of the
27 improper purpose behind ACL No. 17-33. On June 12, 2017, the ALJ issued a written decision
28

1 (“the decision”) upholding the termination of Mr. TESMA’s CAPI benefits, affirming the state’s
2 failure to approve or even consider Mr. TESMA’s application for the indigence exception. The
3 decision also overruled the objections to ACL No. 17-33 and denied the subpoena request.
4 Counsel received this decision in the mail on June 19, 2017.

5 25. Principally relying on ACL No. 17-33, the ALJ’s asserted basis for the decision
6 was the absence of evidence that Mr. TESMA had asked his sponsor to sign an income and asset
7 verification form, even though the County and the ALJ failed to address or develop this issue
8 during the hearing.

9 26. Counsel for Mr. TESMA submitted a request for rehearing on July 13, 2017 with
10 a supplementary statement by Mr. TESMA. This request has been acknowledged by
11 Respondents but at the time of filing the instant action no action has yet been taken in response.⁵
12

13 27. Mr. TESMA’s supplemental statement was necessary because the ALJ and the
14 County failed to develop the record concerning the ultimate reasons asserted for the decision,
15 namely his alleged failure to ask his sponsor to provide a signed income and asset verification. In
16 his supplemental statement, Mr. TESMA provided clarification that to the best of his disability-
17 impaired memory, the phone calls from his sponsor that the ALJ cited as alleged opportunities to
18 request the sponsor’s signed income and asset verification all occurred prior to the
19 commencement of the sponsor verification process at issue in the case. The statement also
20 indicated that even during these past phone calls, his sponsor had begun to hang up on him as
21 soon as he broached the subject of her sponsorship responsibilities and that it would be futile,
22 even if he had the present opportunity to do so, for him to request a signed income and asset
23 verification from his sponsor. This statement also indicated that Mr. TESMA does not know
24 what his sponsor’s income or assets are currently, and that Mr. TESMA does not recall ever
25 being told by Respondents that there was a requirement for him to ask his sponsor over the
26

27
28 ⁵ Pursuant to Welfare and Institutions Code Sections 10960(e) and 10962, submission of a rehearing
request or the rendering of a decision on a rehearing request are not prerequisites to filing the instant
Petition.

1 phone to provide her income and asset verification in order to qualify for the indigence exception
2 to sponsor deeming.

3 28. Ms. Tesma respectfully petitions this court for a writ of administrative mandate,
4 pursuant to California Code of Civil Procedure Sections 1085 and 1094.5, to overturn the
5 Respondents's decision and to Order Respondents to conform their policies and procedures to
6 the law. Mr. TESMA is entitled to CAPI benefits from January 19, 2017, to the present and
7 ongoing.

8 **BACKGROUND ON CAPI PROGAM AND INDIGENCE EXCEPTION**

9 29. This case involves the CAPI indigence exception to sponsor-deeming rules. CAPI
10 is a California public welfare program that provides cash assistance to aged and disabled legal
11 immigrants who would otherwise be eligible for Federal Supplemental Security Income (SSI)
12 cash assistance but for immigration status.

13 30. Deeming rules provide that the income and assets of certain individuals, including
14 immigration sponsors, can be deemed as the income and assets of the beneficiary in determining
15 CAPI eligibility and benefit amount. The indigence exception to sponsor-deeming allows a
16 beneficiary to be financially eligible for CAPI, despite having an immigration sponsor who has
17 signed an affidavit of support, if the individual would be unable to obtain food and shelter
18 without CAPI cash aid. The express policy purpose underlying the indigence exception is "to
19 prevent the sponsored immigrant from falling into total distress if the sponsor defaults on his or
20 her obligation. The agency may then provide assistance, assuming the sponsored immigrant is
21 otherwise eligible, and collect the cost of the benefits from the sponsor." 71 FR 35732, 35743
22 (Vol. 71, No. 119, Part II, Wednesday, June 21, 2006).⁶
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27 ⁶ Provisions in the I-864 Affidavit of Support form assign liability to the sponsor for failure to comply
28 with sponsorship obligations. See 71 FR 35732, 35741 (Vol. 71, No. 119, Part II, Wednesday, June 21,
2006)("Moreover, the Form I-864 . . . makes the sponsor responsible for reimbursing agencies for the
costs of means-tested public benefits.").

1 Legislative Incorporation of Federal Statutes, Regulations, and Rules

2 31. The authorizing statute for the CAPI program is found at California Welfare and
3 Institutions Code Section 18937 *et seq.* Through Section 18940(b), the California Legislature
4 expressly incorporated federal deeming rules and related exceptions governing the SSI/SSP
5 program to apply to the CAPI program, and specifically emphasized that this included “all
6 federal and state laws and regulations designed to protect SSI/SSP recipients and their resources
7” Welf. & Inst. Code § 18940(b)(emphasis added).

8 32. The federal law creating the indigence exception to sponsor deeming is located at
9 8 U.S.C. Section 1631(e):

10
11 (e) Indigence exception[:] (1) In general[:] For an alien for whom
12 an affidavit of support [] has been executed, if a determination
13 described in paragraph (2) is made, the amount of income and
14 resources of the sponsor [] which shall be attributed to the
15 sponsored alien shall not exceed the amount actually provided
16 for a period beginning on the date of such determination and
17 ending 12 months after such date.

18 (2) Determination described[:] A determination described in this
19 paragraph is a determination by an agency that a sponsored alien
20 would, in the absence of the assistance provided by the agency, be
21 unable to obtain food and shelter, taking into account the alien’s
22 own income, plus any cash, food, housing, or other assistance
23 provided by other individuals, including the sponsor. 8 U.S.C §
24 1631. (emphases added).

25 33. 8 U.S.C. Section 1631(e) consists of a protection for SSI/SSP recipients pursuant
26 to Welfare and Institutions Code Section 18940(b) and is incorporated thereby into the Welfare
27 and Institutions Code as a statutory provision governing the CAPI program.

28 34. 8 U.S.C. Section 1631(e) creates an exception and qualification to the general
federal sponsor deeming rules found in 42 U.S.C.S. Sections 1382j(b) and (d). These sections do
not require collection of any specific forms of information (such as a sponsor’s signed
verification of income and assets), but instead place a general responsibility on the beneficiary to

1 provide information necessary to make an overall determination about the application of sponsor
2 deeming rules:

3 (b) Determination of amount and resources. (1) The amount of
4 income of a sponsor (and his spouse) which shall be deemed to be
5 the unearned income of an alien for any year shall be determined
6 as follows: [describing sponsor income and asset deeming
calculation methods].

7 (d) Information and documentation (1) Any individual who is
8 an alien shall . . . be required to provide [] such information and
9 documentation with respect to his sponsor as may be necessary in
10 order [] to make any determination required under this section, and
to obtain any cooperation from such sponsor necessary for any
such determination. 42 USCS § 1382j (emphasis added).

11 35. 8 U.S.C Section 1631(e) augments 42 USCS Section 1382j by rendering
12 unnecessary a determination of the sponsor's specific income and assets because under Section
13 1631(e)(1), "the amount of income and resources of the sponsor . . . which shall be attributed to
14 the sponsored alien shall not exceed the amount actually provided" Under 8 U.S.C. Section
15 1631(e)(2), the sponsor-deeming determination is made without reference to the sponsor's actual
16 income and assets, but considers only the "cash, food, housing, or other assistance provided by
17 other individuals, including the sponsor." Section 1631(e) thereby sets an express limitation on
18 the information necessary to make a sponsor-deeming determination under 42 USCS § 1382j(b);
19 when the indigence exception under Section 1631(e) applies, only the assistance actually
20 provided by the sponsor is necessary to make a sponsor-deeming determination under 42
21 U.S.C.S. Section 1382j(b).

22 36. 8 U.S.C. Section 1631(e) does not require as a prerequisite for the indigence
23 exception any demonstration by the beneficiary that imputation of verified income or assets from
24 the sponsor would affect program eligibility, only that the beneficiary would be unable to obtain
25 food and shelter if deprived of CAPI benefits. Under California law (through incorporation of
26 these federal provisions) where the indigence exception applies under 8 U.S.C. 1631(e), it is
27 unnecessary to make a determination about the actual income and assets of the sponsor because
28

1 the only information necessary to make a sponsor-deeming determination under 42 U.S.C.S.
2 Sections 1382j(b) and (d) in that circumstance is the amount of income and assets actually
3 provided to the beneficiary, which the beneficiary can self-verify under federal regulations.

4 37. The Social Security Administration uses the Program Operations Manual System
5 (the POMS) to administer a range of Social Security programs, including SSI. The POMS
6 sections that pertain to deeming rules and related exemptions are expressly incorporated into the
7 California Welfare and Institutions Code. Welf. & Inst. Code § 18940(b).

8 38. POMS SI Section 00502.280 sets forth the procedure for applying the indigence
9 exception to sponsor deeming. Under this POMS Section, the indigence exception applies, and
10 sponsor-deeming is suspended, when two criteria are met:

11 [1] sponsor deeming results in denial or suspension of an alien's
12 SSI eligibility, or reduction in the SSI benefit payable to an alien;
13 and

14 [2] the alien is unable to obtain both food and shelter. POMS SI §
15 00502.280(B).

16 39. POMS SI Section 00502.280(D) expressly provides that a beneficiary can qualify
17 for the indigence exception by self-verifying the income and assets made available by the
18 sponsor in circumstances where the sponsor is unavailable and cannot be located:

19 **D. Procedure--Developing And Documenting Deeming Exception**

20 Cases involving the indigence exception are sensitive cases and, as
21 such, require tactful questioning.

22 ...

23 **1. Determine Whether Deeming Exception Applies**

24 If the alien lives with his or her sponsor, determine that the
25 exception does NOT apply. If the alien lives apart from his or her
26 sponsor, develop the alien's income and resources. If the income []
27 the alien actually receives is less than the FBR and resources
28 available to the alien are under the applicable resource limit,
determine that the alien meets the criteria for exception from
deeming.

2. Contact the Sponsor

Contact the sponsor to confirm the alien's allegations regarding amounts of income and resources the sponsor provides or makes available to the alien. If the alien does not know the sponsor's whereabouts, contact DHS using DHS Form G-845 to obtain the sponsor's address. **If you cannot locate the sponsor, accept the alien's signed allegation if the allegation is credible and does not conflict with other information in file.** If the allegations are not creditable or conflict with other information in file, weigh all evidence in file and make a decision based on all the information you have obtained. POMS SI § 00502.280(D)(2) (textual emphases added, bold headings in original).

CDSS Manual of Policies and Procedures and Policy Interpretations

40. CDSS publishes regulations governing its program operations in the Manual of Policies and Procedures (MPP). Pursuant to Government Code Section 11342.2, the MPP must be in accord with governing statutory provisions, and MPP provisions that conflict with governing statutes are void and unenforceable. Derived from governing federal statutes and regulations, as incorporated by state statute, MPP Section 49-037 contains CDSS policy on sponsor deeming and the indigence exception.

41. MPP Section 49-037 is entitled "Sponsor Deeming." Under MPP Section 49-037.23, "Sponsor deeming does NOT apply under either basic CAPI or extended CAPI if a sponsor has signed a New Affidavit of Support and any of the following is true: . . . [] The county determines that the non-citizen meets the criteria for the indigence exception as described in MPP Section 49-037.4." (MPP § 49-037.23). Under the MPP, a person is therefore exempt from CAPI sponsor deeming rules in Section 49-037 if:

.411 Sponsor-deeming results in denial, suspension, or reduction of CAPI benefits;

.412 The non-citizen is unable to obtain both food and shelter;

.413 The non-citizen completes and signs the CAPI Indigence Exception Statement (SOC 809); and

.414 The county determines that the indigence exception applies. (MPP § 49-037.4 et. seq.)

1 42. Like the POMS, the MPP provides for approval of the indigence exception in
2 circumstances where the sponsor cannot be located:

3 [49-037].46 The county must do all of the following whenever the
4 non-citizen has requested the indigence exception:

5 .461 Obtain a completed form (SOC 809) signed by the non-
6 citizen specifically applying for the exception that
7 provides information regarding his or her living
8 arrangements and income.

9 .462 Contact the sponsor to confirm the non-citizen's
10 allegations regarding the amount of income and
11 resources that the sponsor provides or makes available to
12 the non-citizen.

13 (a) Contact INS for the sponsor's address if the
14 sponsor's whereabouts are unknown.

15 **(b) If the sponsor cannot be located, accept the non-**
16 **citizen's allegation if it is credible and does not conflict**
17 **with other information in the file.**

18 .463 Based on all available evidence, prepare a written
19 determination as to whether the indigence exception
20 applies or not. If the exception does apply:

21 (a) Determine the amount of income and support the
22 non-citizen receives from the sponsor plus other sources,
23 and the resources available to the non-citizen. Determine
24 CAPI eligibility and payment amount based on these
25 figures.

26 (b) Notify the Immigration and Naturalization Service
27 and the Department of the determination.

28 MPP § 49-037.46 (emphasis added).

1 43. Federal regulations define the term "deeming" to identify not just the
2 computational act of imputing verified sponsor income and assets to the beneficiary, but rather
3 the entire "process of considering another person's income to be your own." 20 C.F.R.
4 § 416.1160 (a). This sponsor deeming process includes verification of sponsor income and assets
5 as an initial step:

1 *Steps in deeming.* Although the way we deem income varies
2 depending upon whether you are an eligible individual, an eligible
3 child, an alien with a sponsor, or an individual with an essential
4 person, we follow several general steps to determine how much
5 income to deem.

6 (1) We determine how much earned and unearned income your . . .
7 sponsor . . . has, and we apply the appropriate exclusions.

8 ...

9 (2) Before we deem income to you . . . we allocate an amount for
10 each ineligible child in the household.

11 ...

12 (3) We then follow the deeming rules which apply to you.” 20
13 C.F.R. § 416.1160(c)(first emphasis in original, second emphasis
14 added).

15 44. Federal regulations define the term “deeming” to include the verification of a
16 sponsor’s income and assets as a first step in the overall deeming process. This definition
17 clarifies the scope of the term “sponsor-deeming” as used in MPP Section 49-037.411. Under the
18 federal definition of deeming, MPP Section 49-037.411 is satisfied when either sponsor income
19 and asset verification rules (20 C.F.R. § 416.1160(c)(1)) or income imputation rules (20 C.F.R. §
20 416.1160(c)(3)) adversely affects a beneficiary’s CAPI benefits. This plain-meaning statutory
21 construction of indigence exception rules is buttressed by the express allowance for the
22 indigence exception in circumstances where the sponsor cannot be located (and by extension is
23 unavailable to provide sponsor verification). POMS SI § 00502.280(D)(2). This construction also
24 comports with the common-sense purpose of the indigence exception, which is to provide a safe-
25 harbor to prevent the loss of subsistence income to disabled immigrants due solely to sponsor
26 non-compliance.

27 45. In addition to promulgating rules through the MPP, CDSS from time to time
28 issues All-County Letters (ACLs) and All-County Information Notices (ACINs) providing policy
guidance and interpretation of program rules.

1 46. In January 2017, when Respondents took action to terminate Mr. TESMA's CAPI
2 benefits, CDSS guidance on the indigence exception was contained in ACL No. 02-63 and ACIN
3 No. I-47-12. ACL No. 02-63 contained language allowing the indigence exception where the
4 sponsor could not be located to provide a signed income and asset verification. It also mandated
5 the issuance of a written determination notice in response to any indigence exception application,
6 as required by POMS SI Section 00502.280(D):

7
8 Determine, based on the immigrant's living arrangements and
9 income (and sponsor's verification, **when available**), if the
10 indigence exception applies. Include a written determination (use
the attached Indigence Exception Determination form SOC 813) in
the casefile. ACL No. 02-63, Pg. 5 (emphases added).

11 Similarly, ACIN No. I-47-12 directed county welfare departments to "presume that
12 sponsor deeming would affect CAPI eligibility and/or grant amounts in all [indigence exception]
13 cases, thereby meeting the requirement in MPP Section 49-037.411."

14 47. In direct response to Mr. TESMA's case, and after the hearing process
15 challenging the termination of his CAPI benefits was already underway, CDSS issued a new
16 letter, ACL No. 17-33 containing a change in policy upon which the ALJ retroactively relied in
17 upholding the termination of Mr. TESMA's benefits for lack of a signed sponsor income and
18 asset verification. ACL No. 17-33 reads, in relevant part:

19
20 For the indigence exception to apply, sponsor deeming must result
21 in denial, suspension or reduction of CAPI benefits. MPP §49-
22 037.411. . . . In cases where the sponsor fails to complete SOC 860
23 (or equivalent) to the county's satisfaction (including requested
24 verifications), the county will not be able to accurately determine
25 whether sponsor deeming applies or whether the indigence
exception applies. Accordingly, the county must deny or terminate
CAPI benefits pursuant to MPP §49-037.512. ACL No. 17-33,
Page 4, last full paragraph.

26 48. On its face, ACL No. 17-33 purports to supersede ACIN No. I-47-12, but does not
27 purport to supersede nor reference ACL No. 02-63.
28

SUMMARY OF RESPONDENTS' ERRORS OF LAW

49. ACL No. 17-33 erroneously, and in excess of statutory authorization, asserts that signed sponsor verification of income and assets is a requirement to qualify for the indigence exception:

Additionally, as part of the indigence exception, CAPI regulations specifically require that the county obtain a signed statement from the sponsor(s) regarding the sponsor's income and resources. MPP §49-037.53.

Not only is this signed sponsor verification requirement absent from governing statutes and regulations setting forth indigence exception rules, but this requirement is not even included in MPP criteria for the indigence exception contained in Section 49-037.4. As such Respondents indigence exception policy both illegally impairs the scope of governing statutes contrary to legislative intent and to the detriment of vulnerable California welfare recipients whose sponsors have abandoned them, and constitutes a failure by Respondents to follow their own published policy. The ALJ erroneously relied on ACL No. 17-33 to justify Respondents' termination decision.

50. ACL No. 17-33, both on its face and as applied by Respondents, conflicts and is inconsistent with state and federal statutes and regulations, including Welfare and Institutions Code Section 18940(b), 8 U.S.C. Section 1631(e), 42 U.S.C.S. Sections 1382j(b) and (d), 20 C.F.R. § 416.1160, and POMS SI Section 00502.280. None of these authorizing statutes and rules requires submission of a signed income and asset verification from an immigration sponsor for a CAPI beneficiary to be eligible for the indigence exception to sponsor-deeming. Instead, these authorities all recognize, implicitly and explicitly, that the indigence exception is available even if the sponsor's whereabouts are unknown and the beneficiary cannot secure the sponsor's signed income and asset verification.

51. ACL No. 02-63 apparently remains in effect yet is in direct conflict with ACL No. 17-33 with respect to whether obtaining a sponsor signed verification of income and assets is a prerequisite to qualifying for the indigence exception to sponsor deeming, though the

1 Respondents', through the ALJ, failed to reconcile this conflict. In addition, ACIN No. I-47-12,
2 which ACL No. 17-33 purports to supersede, remained in effect at the time Respondents made
3 the decision to terminate Mr. TESMA's CAPI benefits, yet Respondents retroactively applied
4 ACL No. 17-33 as a legal justification for the decision, in violation of basic principles of fairness
5 and due process as set forth in the California Constitution, Article I, Section 7, as well as the
6 Administrative Procedures Act. Cal. Gov. Code § 11340.5 (proscribing formal adoption and
7 presentation of regulations to Secretary of State); Cal. Gov't Code § 11343.4 (specifically
8 indicating effective date of properly adopted regulations).

9
10 52. ACL No. 17-33 constitutes a regulation under Government Code Section
11 11342.600. Respondents never submitted ACL No. 17-33 to the Secretary of State as required by
12 Government Code Section 11340.5, as confirmed by the fact that ACL No. 17-33 does not
13 appear on the Office of Administrative Law's website on its listing of regulations recently filed
14 with the Secretary of State.⁷

15 53. Respondents, acting through the ALJ, incorrectly narrowed MPP Section 49-
16 037.411 to mean that a beneficiary such as Mr. TESMA must establish that the imputation of a
17 sponsor's verified income must result in termination, suspension, or reduction of CAPI benefits
18 in order for the indigence exception to be available. Federal definitions make clear, however, that
19 the term "sponsor deeming" in MPP Section 49-037.411 includes the process of verifying the
20 sponsor's income and assets as well as the computational imputation of said income to the
21 beneficiary once verified. Thus, proper construction of MPP Section 49-037.411 entails that this
22 indigence exception criterion is satisfied if application of either sponsor verification rules or
23 computational deeming rules result in termination, suspension, or reduction of CAPI benefits.
24 The ALJ therefore misapplied the law in finding that Mr. TESMA could not qualify for the
25 indigence exception because a signed sponsor verification was required to satisfy the indigence
26 exception criterion in MPP Section 49-037.411.

27
28
⁷ See https://oal.ca.gov/regulations_recently_filed_with_the_sos/

54. When read as a whole, the statutory scheme setting forth the requirements for the indigence exception allows for approval of the exception even when the sponsor's whereabouts are unknown and the sponsor fails to submit a signed income and asset verification. Respondents' written interpretation of indigence exception rules, as adopted and applied by the ALJ in this case, is in conflict with the statutory scheme and is also internally incoherent in that it expressly permits sponsor unavailability yet simultaneously requires the sponsor to be available to provide a signed verification. It also renders as mere surplusage governing rules that allow for sponsor unavailability in violation of well-established norms of statutory construction. Respondents' ultra vires, incoherent policy has been deployed to unlawfully prejudice disabled, indigent immigrants like Mr. TESMA who rely on CAPI benefits as their sole subsistence-level income.

REQUISITES FOR RELIEF

55. The instant application for writ of administrative mandate and traditional mandate herein requested under Code of Civil Procedure §§ 1085 and 1094.5 is Mr. TESMA'S sole and exclusive remedy for review of Respondents' decision upholding the termination of Mr. TESMA's CAPI benefits. Mr. TESMA has a beneficial interest in the outcome of the § 1085 and § 1094.5 proceedings.

56. This verified petition is brought under Code of Civil Procedure §1094.5 and is authorized by Welfare & Institutions Code Section 10962, which permits filing a petition to review the entire proceeding conducted by the Department of Social Services (CDSS). Under Code of Civil Procedure Section 1094.5 and Welfare and Institutions Code Section 10962, no filing fee or bond is required for such filing.

57. This verified petition is also brought under Code of Civil Procedure Section 1085 and is authorized by Conlan v. Bonta, 102 Cal.App.4th 745, 751-52 (2002) to be asserted simultaneously with a Section 1094.5 action to compel Respondents' compliance with its duty to administer public welfare benefits programs and administrative procedures in accordance with state and federal statutes, regulations, and rules.

1 58. California has declared that public social services are to be administered in full
2 compliance with applicable federal and state laws. Welf. & Inst. Code §10600.

3 59. Respondents each have a ministerial duty to comply with the state and federal
4 regulations set forth above and they continue to violate these statutes and regulations.

5 60. An actual and continuing controversy exists between Petitioner and Respondents
6 regarding Respondents' duties as alleged above. Petitioners contend that the actions of
7 Respondents violate the law as specified above. Petitioners are informed and believe that
8 Respondents will dispute this contention.

9 61. Petitioner is beneficially interested in the faithful execution of Respondents'
10 duties, has exhausted available administrative remedies, and has no other adequate, plain or
11 speedy remedy at law to obtain Respondents' compliance other than the relief sought by this
12 complaint and petition. Respondents' failure and refusal to carry out the aforesaid duties has
13 caused substantial hardship to Petitioner and other persons similarly situated.
14

15 62. Unless compelled to perform their duties and obligations in accordance with law,
16 Respondents will continue to fail to do so.

17 63. This is a matter of significant public concern. The ongoing violation and
18 misapplication of the indigence exception to sponsor deeming rules causes the unjust and
19 unlawful deprivation of subsistence income to aged and disabled immigrants whose sponsors
20 have ceased to provide them with support, and will continue to needlessly cause affected
21 beneficiaries to challenge this violation, causing a drain on public funds.

22 64. The real parties in interest here and those who will be affected by the judgment of
23 this court are the Petitioner and Respondents named above, as well as similarly situated public
24 welfare recipients subject to sponsor deeming rules who have or will apply for the indigence
25 exception to sponsor deeming or who challenge agency actions with the expectation that the
26 adjudicatory process is administered fairly and in compliance with standards of substantive and
27 procedural due process.
28

1 **FIRST CAUSE OF ACTION**

2 **(Abuse of Discretion - Failure to Proceed in the Manner Required by Law)**

3 (Administrative Mandamus Pursuant to Code of Civil Procedure § 1094.5)

4 65. Petitioner realleges and incorporates by reference each and every paragraph and
5 allegation contained in this Petition as though fully set forth herein.

6 66. The Respondents prejudicially abused their discretion by adopting a decision that
7 failed to proceed in the manner required by law. The Respondents' decision does not comply
8 with applicable state and federal statutes and regulations governing the administration of the
9 CAPI program (specifically including, without limitation, those statutes, regulations, and rules
10 governing the indigence exception to sponsor deeming) and state hearings, as set forth in
11 Paragraphs 7-54.

12 67. Respondents, through the actions of the ALJ, committed errors of law by failing
13 to approve, or even to consider, Mr. TESMA's indigence exception application as previously set
14 forth above in Paragraphs 7-54 and summarized in Paragraphs 49-54.

15 68. The issue in this cause of action concerns a matter of law and de novo review of
16 the Respondents' decision is thereby authorized; the reviewing court does not defer in any way
17 to the Respondents' interpretation of the law. Ruth v. Kizer, 8 Cal.App.4th 380, 385 (1992).

18 **SECOND CAUSE OF ACTION**

19 **(Abuse of Discretion - Failure to Proceed in Manner Required by Law)**

20 (Traditional Mandamus Pursuant to Code of Civil Procedure § 1085)

21 69. Petitioner realleges and incorporates by reference each and every paragraph and
22 allegation contained in this Petition as though fully set forth herein.

23 70. The Respondents prejudicially abused their discretion by adopting a decision that
24 failed to proceed in the manner required by law. The Respondents' decision does not comply
25 with applicable state and federal statutes and regulations governing the administration of the
26 CAPI program (specifically including, without limitation, those statutes, regulations, and rules
27
28

governing the indigence exception to sponsor deeming) and state hearings, as set forth in Paragraphs 7-54.

71. Respondents, through the actions of the ALJ, committed errors of law by failing to approve, or even to consider, Mr. TESMA's indigence exception application as previously set forth above in Paragraphs 7-54 and summarized in Paragraphs 49-54.

72. The Respondents are willfully failing to perform their public duty to fully and fairly administer the CAPI program (specifically including, without limitation, those statutes, regulations, and rules governing the indigence exception to sponsor deeming) and state hearings in accordance with governing statutes, regulations, and rules, as set forth in Paragraphs 7-54. An Order of Mandamus from this Court directing Respondents to comply with the law in the administration of its public duties is required to protect Petitioner and those similarly situated from prejudicial harm to their vested right to public benefits that will foreseeably continue in the absence of such Order.

73. The issue in this cause of action concerns a matter of law and de novo review of the Respondents' decision is thereby authorized; the reviewing court does not defer in any way to the Respondents' interpretation of the law. Ruth v. Kizer, 8 Cal.App.4th 380, 385 (1992).

THIRD CAUSE OF ACTION

(Denial of Fair Trial)

(Administrative Mandamus Pursuant to Code of Civil Procedure § 1094.5)

74. Petitioner realleges and incorporates by reference each and every paragraph and allegation contained in this Petition as though fully set forth herein.

75. The Respondents failed to conduct a fair trial in violation of Petitioner's substantive and procedural due process rights.

76. As set forth in Paragraphs 7-54, Respondents, through the actions of the ALJ failed to provide Mr. TESMA with a fair trial by:

- a. Terminating Mr. TESMA's CAPI benefits without adequate or proper notice;

- 1 b. Failing to approve or even consider his formal, timely, and complete request
2 for the indigence exception to sponsor deeming;
- 3 c. Upholding the County's termination decision without addressing issues raised
4 by Mr. TESMA during the hearing, including Respondents' failure to issue an
5 adequate pre-termination notice, Respondents' failure to comply with the
6 express statutory duty to provide Mr. TESMA with assistance as needed to
7 establish or maintain eligibility, and Respondents' failure to issue a written
8 pre-termination decision approving or denying Mr. TESMA's indigence
9 exception request;
- 10 d. Failing in the written decision to address and reconcile patent conflicts
11 between state and federal statutes and regulations and the County's
12 interpretations of indigence exception criteria;
- 13 e. Failing to adequately develop the record during the hearing process but
14 relying on this undeveloped factual record to justify the termination decision;
- 15 f. In relying on an undeveloped factual record, disregarding or failing to
16 consider the effect of Mr. TESMA's medical impairments to his cognition
17 and memory on his ability to provide comprehensive and specific factual
18 testimony;
- 19 g. Retroactively applying an agency rule interpretation (contained in ACL No.
20 17-33) of indigence exception rules issued after the termination decision in a
21 manner fundamentally inconsistent with due process;
- 22 h. Overruling Mr. TESMA's timely and proper objection to ACL No. 17-33;
23 and
- 24 i. Failing to issue a subpoena for internal agency communications pertaining to
25 the apparently intentional abuse of the agency rule interpretation process to
26 prejudice Mr. TESMA's right to a fair and impartial adjudicative process.
27
28

1 77. The issue in this cause of action concerns a matter of law and de novo review of
2 the Respondents' decision is thereby authorized; the reviewing court does not defer in any way
3 to the Respondents' interpretation of the law. Ruth v. Kizer, 8 Cal.App.4th 380, 385 (1992).

4 **FOURTH CAUSE OF ACTION**

5 **(Denial of Fair Trial)**

6 (Traditional Mandamus Pursuant to Code of Civil Procedure § 1085)

7 78. Petitioner realleges and incorporates by reference each and every paragraph and
8 allegation contained in this Petition as though fully set forth herein.

9 79. The Respondents failed to conduct a fair trial in violation of Petitioner's
10 substantive and procedural due process rights.

11 80. As set forth in Paragraphs 7-54, Respondents, through the actions of the ALJ
12 failed to provide Mr. TESMA with a fair trial by:
13

- 14 a. Terminating Mr. TESMA's CAPI benefits without adequate or proper notice;
- 15 b. Failing to approve or even consider his formal, timely, and complete request
16 for the indigence exception to sponsor deeming;
- 17 c. Upholding the County's termination decision without addressing issues raised
18 by Mr. TESMA during the hearing, including Respondents' failure to issue an
19 adequate pre-termination notice, Respondents' failure to comply with the
20 express statutory duty to provide Mr. TESMA with assistance as needed to
21 establish or maintain eligibility, and Respondents' failure to issue a written
22 pre-termination decision approving or denying Mr. TESMA's indigence
23 exception request;
- 24 d. Failing in the written decision to address and reconcile patent conflicts
25 between state and federal statutes and regulations and the County's
26 interpretations of indigence exception criteria;
- 27 e. Failing to adequately develop the record during the hearing process but
28 relying on this undeveloped factual record to justify the termination decision;

- 1 f. In relying on an undeveloped factual record, disregarding or failing to
2 consider the effect of Mr. TESMA's medical impairments to his cognition
3 and memory on his ability to provide comprehensive and specific factual
4 testimony;
5 g. Retroactively applying an agency rule interpretation (contained in ACL No.
6 17-33) of indigence exception rules issued after the termination decision in a
7 manner fundamentally inconsistent with due process and the Administrative
8 Procedures Act;
9 h. Overruling Mr. TESMA's timely and proper objection to ACL No. 17-33;
10 and
11 i. Failing to issue a subpoena for internal agency communications pertaining to
12 the apparently intentional abuse of the agency rule interpretation process to
13 prejudice Mr. TESMA's right to a fair and impartial adjudicative process.
14

15 81. The Respondents are willfully failing to perform their public duty to conduct fair
16 trials in the administration and adjudication of matters under the CAPI program (specifically
17 including, without limitation, proceedings pertaining to the indigence exception to sponsor
18 deeming). An Order of Mandamus from this Court directing Respondents to comply with the law
19 in the administration of its public duties is required to protect Petitioner and those similarly
20 situated from prejudicial harm that will foreseeably continue in the absence of such Order.

21 82. The issue in this cause of action concerns a matter of law and de novo review of
22 the Respondents' decision is thereby authorized; the reviewing court does not defer in any way
23 to the Respondents' interpretation of the law. Ruth v. Kizer, 8 Cal.App.4th 380, 385 (1992).

24 **FIFTH CAUSE OF ACTION**

25 **(Abuse of Discretion – Decision not Supported by Findings)**

26 (Administrative Mandamus Pursuant to Code of Civil Procedure § 1094.5)

27 83. Petitioner realleges and incorporates by reference each and every paragraph and
28 allegation contained in this Petition as though fully set forth herein.

1 84. The Respondents prejudicially abused their discretion by adopting a decision not
2 supported by the findings.

3 85. As set forth in Paragraphs 7-54, Respondents, through the actions of the ALJ,
4 prejudicially abused their discretion by issuing a decision not supported by the findings by:

- 5 a. Concluding that Mr. TESMA's application for the indigence exception could
6 not be approved or even be considered based on an undeveloped absence of
7 evidence regarding whether Mr. TESMA asked his sponsor on the phone to
8 provide a signed income and asset statement;
- 9 b. Failing to make a finding that any phone call between Mr. TESMA and his
10 sponsor occurred at a time relevant to Mr. TESMA's CAPI redetermination
11 process;
- 12 c. Expressly acknowledging that governing state and federal statutes and
13 regulations contain no signed sponsor verification requirement for the
14 indigence exception and yet approving the lack of a signed sponsor
15 verification as the legal basis for the termination decision, thereby failing to
16 bridge the explanatory gap between evidentiary findings and conclusions of
17 law;
- 18 d. Expressly acknowledging that the indigence exception criteria in the MPP
19 contain no signed sponsor verification requirement for the indigence
20 exception and yet approving the lack of a signed sponsor verification as the
21 legal basis for the termination decision, thereby failing to bridge the
22 explanatory gap between evidentiary findings and conclusions of law;
- 23 e. Failing to establish Mr. TESMA was formally given proper notice of any
24 obligations or requirement giving rise to a duty to perform further actions to
25 qualify for the indigence exception, nor the specific conduct requested from
26 Mr. TESMA to comply with such an alleged duty;
- 27
- 28

- 1 f. Disregarding substantial evidence that Mr. TESMA's sponsor refused to
2 provide her phone number or address to him and that he had no way to
3 initiate contact with her, even if Respondent had established the existence of
4 this alleged duty;
5 g. Retroactively relying upon ACL No. 17-33 to justify a termination decision
6 that pre-dated issuance of this ACL, thereby failing to bridge the explanatory
7 gap between findings and the law.

8 86. The issues in this cause of action concern a vested fundamental right to welfare
9 benefits, and the appropriate standard of review is this Court's independent judgment. Code Civ.
10 Proc. § 1094.5(c).

11 SIXTH CAUSE OF ACTION

12 (Abuse of Discretion – Findings not Supported by the Evidence)

13 (Administrative Mandamus Pursuant to Code of Civil Procedure § 1094.5)

14 87. Petitioner realleges and incorporates by reference each and every paragraph and
15 allegation contained in this Petition as though fully set forth herein.

16 88. The Respondents prejudicially abused their discretion by adopting a decision
17 based on findings not supported by the evidence.

18 89. As set forth in Paragraphs 7-54, Respondents, through the actions of the ALJ,
19 prejudicially abused their discretion by making findings not supported by the evidence by:
20

- 21 a. Making the finding, without evidence, and despite substantial evidence to the
22 contrary, that Mr. TESMA had the opportunity to initiate contact with his
23 sponsor during the CAPI redetermination process to request her signed
24 income and asset verification;
25 b. Making the implicit finding, without evidence, that any phone call between
26 Mr. TESMA and his sponsor occurred at a time relevant to the CAPI
27 redetermination process;
28

- 1 c. Making the finding that no evidence was presented that Mr. TESMA asked
2 his sponsor on the phone to provide a signed income and asset verification
3 when this issue was not materially asserted at the hearing by Respondents and
4 the ALJ failed to adequately develop the administrative record regarding this
5 factual issue;
6 d. Making the implicit finding that Mr. TESMA failed to meet his burden of
7 proof to proffer evidence that the termination decision was incorrect when it
8 was Respondents' burden of proof to establish that the termination decision
9 was proper and justified;

10 90. The issues in this cause of action concern a vested fundamental right to welfare
11 benefits, and the appropriate standard of review is this Court's independent judgment. Code Civ.
12 Proc. § 1094.5(c).
13

14 **SEVENTH CAUSE OF ACTION**

15 **(Underground Regulation – Violation of Administrative Procedures Act)**

16 (Mandamus Pursuant to Code of Civil Procedure § 1085)

17 91. Petitioner realleges and incorporates by reference each and every paragraph and
18 allegation contained in this Petition as though fully set forth herein.

19 92. The Administrative Procedure Act (APA) provides, in pertinent part, that “[n]o
20 state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin,
21 manual, instruction, order, standard of general application, or other rule, which is a regulation as
22 defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order,
23 standard of general application, or other rule has been adopted as a regulation and filed with the
24 Secretary of State pursuant to this chapter.” Cal. Gov. Code § 11340.5(a)(emphasis added).

25 93. “Regulation” is broadly defined as “every rule, regulation, order, or standard of
26 general application or the amendment, supplement, or revision of any rule, regulation, order, or
27 standard adopted by any state agency to implement, interpret, or make specific the law enforced
28 or administered by it, or to govern its procedure.” Cal. Gov. Code § 11342.600.

1 94. ACL No. 17-33 constitutes a regulation as defined by Government Code Section
2 11342.600.

3 95. ACL No. 17-33 was improperly adopted by Respondents without complying with
4 the requirements set forth in the Administrative Procedures Act. Cal. Gov. Code § 11340 *et seq.*
5 Pursuant to Government Code Section 11340.5, ACL No. 17-33 is invalid as a matter of
6 California law and Respondents violated the Administrative Procedures Act in seeking to use or
7 enforce ACL No. 17-33 in Mr. TESMA's case and the cases of others similarly situated.

8 96. Respondents' use of ACL No. 17-33 in Mr. TESMA's case and the cases of
9 others similarly situated has caused substantial injury by providing a false basis for the
10 termination of Mr. TESMA's and others' subsistence public welfare benefits through the CAPI
11 program.

12 97. Mr. TESMA timely objected to Respondents' use of ACL No. 17-33 in the course
13 of the hearing process. Respondents, acting through the ALJ, improperly overruled Mr.
14 TESMA's objection.

15 98. The issue in this cause of action concerns a matter of law and de novo review of
16 the Respondents' decision is thereby authorized; the reviewing court does not defer in any way
17 to the Respondents' interpretation of the law. Ruth v. Kizer, 8 Cal.App.4th 380, 385 (1992).

18
19 **PRAYER FOR RELIEF**

20 Wherefore, Petitioners pray relief as follows:

21 99. That this Court issue a writ of mandate pursuant to Code of Civil Procedure
22 Section 1094.5 commanding the Respondents to rescind their decision in Administrative Hearing
23 No. 2017025357;

24 100. That this Court issue a writ of mandate pursuant to Code of Civil Procedure
25 section 1094.5 commanding the Respondents to issue a new decision cancelling its notices of
26 termination dated January 19, 2017, approving Mr. TESMA's application for the indigence
27 exception to sponsor-deeming, and reinstating Mr. TESMA's CAPI cash aid with no interruption
28 in entitlement;

1 101. That this Court issue a writ of mandate pursuant to Code of Civil Procedure
2 Section 1094.5 commanding the Respondents to pay Petitioner any benefits improperly withheld
3 on the basis of the termination of Mr. TESMA from the CAPI program, plus interest at the
4 statutory rate of ten percent on all benefits due to Petitioner here until paid in full;

5 102. That this Court issue a writ of mandate pursuant to Code of Civil Procedure
6 Section 1085 commanding the Respondents to order his agents to comply with the mandatory
7 requirements of federal and state law with regard to CAPI eligibility requirements, indigence
8 exception criteria, substantive and due process rights to pre-termination notice and fair hearing,
9 and to assume full legal and financial responsibility for any failure to do so;

10 103. That this Court issue a writ of mandate pursuant to Code of Civil Procedure
11 Section 1085 commanding the Respondents to rescind and recall any and all policy statements or
12 interpretive documents, including without limitation All-County Letter No. 17-33, that conflict
13 with federal and state statutes and regulations regarding CAPI eligibility requirements and the
14 indigence exception;


15 104. That this Court award Petitioner his costs of suit;

16 105. That this Court award Petitioner his reasonable attorneys' fees under Code of
17 Civil Procedure Section 1021.5, Welfare and Institutions Code Section 10962; Government Code
18 Section 800, and/or any other applicable provisions of California law; and
19

20 106. The Court award such other and further relief as it deems proper.
21
22

23 DATED: 08/11/2017

Respectfully submitted,
LEGAL AID FOUNDATION OF LOS ANGELES,

24
25 By: 
26 Andrew Kazakes, Esq.
27 Attorney for Petitioner MATEBE TESMA
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VERIFICATION


STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I, Andrew Kazakes:

1. Am an attorney licensed to practice law in California and represent the Petitioner, MATEBE TESMA.
2. I have read the foregoing petition for Writ of Mandate, and know the contents thereof. They are true to the best of my knowledge except those allegations on information and belief which I believe to be true. I am more familiar with the factual and legal claims raised in this petition than the Petitioner.

I declare under penalty of perjury under the law of California that the foregoing is true and correct.

Date: 08/11/2017

Signed: 

Andrew Kazakes, Esq.
Attorney for Petitioner