

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



May 1, 1997

ALL COUNTY LETTER NO. 97-30

TO: ALL COUNTY WELFARE DIRECTORS

**REASON FOR THIS TRANSMITTAL**

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

SUBJECT: IMPLEMENTATION OF THE ORTEGA v. ANDERSON DECISION IN THE AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC) PROGRAM

REFERENCE: Manual of Policies and Procedures (MPP) Section 44-113.14

The purpose of this letter is to provide you with the attached emergency draft regulations which will be effective July 1, 1997. These regulatory amendments implement the Ortega v. Anderson court order which provides for a deduction from the aided parent's income to meet any unmet needs of his/her ineligible alien spouse.

**OVERVIEW**

On July 11, 1995, the Superior Court (Alameda County) issued a decision in the Ortega v. Anderson case. The court directed the California Department of Social Services (CDSS) to conform its policies to the holding of the California Supreme Court in Darces. The new policy requires that the needs of an undocumented live-in spouse must be considered when determining cash aid benefits. This decision was stayed during the CDSS's appeal. However, on December 11, 1996, the State's request for review by the California Supreme Court was denied.

**IMPLEMENTATION**

Effective July 1, 1997, counties shall begin allowing the unmet needs of an ineligible alien spouse using the same needs differential computation as is done for ineligible alien children pursuant to MPP Section 44-113.14. Ongoing cases in retrospective budgeting shall have the July payment reflect the income and unmet needs from the May budget month. MPP Section 44-113.14 has been amended and reformatted for clarity.

Because the Ortega order became final in December 1996, AFDC cases that have income and an ineligible alien spouse living in the home need to be evaluated. Therefore, at redetermination or upon request of the assistance unit, the county should review the case for eligibility and possible underpayment. The period of eligibility shall go back no further than December 1, 1996. Any underpayment issued as a result of the provisions of the Ortega order shall be considered a corrective underpayment. These are exempt from consideration as income and from consideration as property in the month received and the following month. Additionally, the underpayment is subject to balancing against any outstanding overpayment.

## FORMS AND NOTICES

Affected forms and notices of action (NOA) are currently being reviewed and amended to conform with the provisions of the Ortega court order. They will be available prior to the July 1, 1997 effective date and will be mailed under separate cover. Counties will be notified when the translated forms and NOAs in Spanish, Chinese, Cambodian and Vietnamese are available for order through the Language Services Bureau.

If you have any questions please contact Jane Laciste of the AFDC Policy Implementation Bureau at (916) 654-1047. Calnet prefix is 464.

Sincerely,



BRUCE WAGSTAFF  
Deputy Director  
Welfare Programs Division

Attachment