



CDSS

WILL LIGHTBOURNE
DIRECTOR

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

744 P Street • Sacramento, CA 95814 • www.cdss.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

January 21, 2015

ALL COUNTY LETTER NO. 15-08

REASON FOR THIS TRANSMITTAL

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

TO: ALL COUNTY WELFARE DIRECTORS
ALL CalWORKs PROGRAM SPECIALISTS
ALL COUNTY WELFARE-TO-WORK COORDINATORS
ALL CONSORTIUM PROJECT MANAGERS

SUBJECT: CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS (CalWORKs) WELFARE-TO-WORK (WTW) PROGRAM GUIDANCE FOR DISABILITY EXEMPTIONS

REFERENCES: WELFARE AND INSTITUTIONS CODE (WIC) §11320.3, 11320.85, AND 11454.5; MANUAL OF POLICIES AND PROCEDURES (MPP) §42-302.21, 42-302.3, 42-302.32, 42-302.34, 42-701.2, SUBDIVISION (d)(2), 42-712.442, SUBDIVISION (a), 42-712.443, AND 44-340.

The purpose of this letter is to provide County Welfare Departments (CWDs) with clarifying guidance on granting Welfare-to-Work (WTW) participation, WTW 24-Month Time Clock, and California Work Opportunity and Responsibility to Kids (CalWORKs) 48-month time limit exemptions to CalWORKs clients who have a physical and/or mental health disability that has been verified by a doctor. The California Department of Social Services (CDSS) has received questions from both CWDs and welfare advocates regarding how a disabled exempt client's case should be handled when a doctor indicates that the onset of the client's condition for disability predated the client's exemption request. This includes (1) when is it appropriate to grant retroactive aid payments and (2) how time should be counted towards the client's WTW 24-Month Time Clock and CalWORKs 48-month time limit. This letter provides guidance on granting disability exemptions retroactively and prospectively for clients in these types of situations which will be effective the date of this letter.

CalWORKs Disability Exemptions – General Information

The Welfare and Institutions Code (WIC) §11320.3 states that a client who has a verified disability is exempt from WTW participation when the following conditions exist:

- The disability is expected to last at least 30 calendar days.
- The disability significantly impairs the client's ability to be regularly employed or participate in WTW activities.
- The client is actively seeking appropriate medical treatment.

The CWDs are reminded that clients must provide verification from a doctor, defined by the CDSS Manual of Policies and Procedures (MPP) as a health care professional who is licensed by a state to diagnose/treat physical and mental impairments that can affect an individual's ability to work or participate in WTW activities (MPP §42-701.2, subdivision(d)(2)). The CDSS definition of state refers only to states within the United States.

The verification must: (1) identify the existence of a disability, (2) include the expected duration of the disability, and (3) include the extent to which the disability impairs the client's ability to be employed and/or participate in WTW activities (MPP §42-712.442, subdivision (a)). Any month in which a client is exempt from WTW participation due to a verified disability shall not count toward the client's WTW 24-Month Time Clock or CalWORKs 48-month time limit (WIC §11320.3, 11322.85, and 11454.5; MPP §42-302.21).

Requests for CalWORKs Disability Exemptions

Requesting a disability exemption from WTW participation, the WTW 24-Month Time Clock, and the CalWORKs 48-month time limit is a single process. A client may request an exemption verbally or in writing (MPP §42-302.3). This can be done at application, on a *Semi Annual Eligibility Status Report* (SAR 7, Question #13), or as an informal written or verbal report to the CWD at any time.

When a client informs his or her CWD of a disability that is impairing his or her ability to be regularly employed or participate in WTW activities, the CWD shall document the situation in the client's case file and explain to the client that medical verification is necessary to process his or her request. The CWD then must provide the client with the *CalWORKs Exemption Request Form* (CW 2186A) and the *Authorization to Release Medical Information* (CW 61) in order for the client to complete his or her request (MPP §42-302.3).

The client may use the CW 61 or provide other medical verification which (1) states that the client has a disability, (2) includes the beginning date and expected duration of the disability, and (3) includes the extent to which the disability impairs the client's ability to be employed and/or participate in WTW activities. The client must also submit

verification that he or she is seeking appropriate medical treatment for the disability. If the recipient prefers that the county obtain this information on the client's behalf, the CWD shall have the recipient sign a release that is compliant with the Health Information Insurance Portability and Accountability Act (HIPAA). For more information about HIPAA, go to <http://www.hhs.gov/ocr/privacy/>.

Granting CalWORKs Disability Exemptions

When a CWD receives a completed CW 2186A and the required disability verification components, the CWD must grant the disability exemption for WTW participation requirements, the WTW 24-Month Time Clock and the CalWORKs 48-month time limit as indicated by the required verification, and prospectively for as long as the disability and treatment continues to exist and can be verified. If the client's condition impaired his or her ability to be employed or participate in WTW activities and the client provides verification that they were actively seeking treatment prior to the exemption request date, the exemption must be granted retroactively for the months that verification is provided. If there is a delay in granting the exemption due to reasons outside of the client's control (i.e. delay on the part of an examining doctor to provide the necessary information or CWD error), and during the delay the client's condition impaired his or her ability to participate in WTW activities, at the time all proper verification is submitted, retroactivity must also be applied based on the date the client began treatment for the disability. In these situations, the client's CalWORKs 48-month time limit and WTW 24-Month Time Clock should be adjusted accordingly.

Example 1:

On October 1, 2013, Ms. Smith informs her CWD that she has become ill and is unable to participate in WTW activities. The CWD sends Ms. Smith the CW 2186A and CW 61 (to be completed by her doctor). On October 12th, Ms. Smith returns a doctor's note to the CWD which states that Ms. Smith has a disability that impairs her ability to work or participate in WTW activities, and that she is now working with her doctor to create a plan to treat her condition. The worker then asks Ms. Smith to request from her doctor the expected time period the disability will last, or to sign a release for the CWD to request this information directly from the doctor. She chooses to sign a release. There is a delay by the doctor's office in returning the requested verification to the CWD. On December 15th, the CWD is able to verify that the condition is expected to last for the next six months.

The CWD grants the exemption and adds months back towards Ms. Smith's CalWORKs 48-month time limit and (if applicable) WTW 24-Month Time Clock retroactively up to October 2013 (October 2013, November 2013, and December 2013 would be 'un-ticked').

If granting of the disability exemption results in the client no longer being sanctioned and being added back into the Assistance Unit (AU), the client must receive underpayments for those sanctioned months which he or she was verified as qualifying for the disability exemption. The CWDs are also reminded that in accordance with MPP §44-340, any resulting underpayment needs to be first used to offset existing overpayments for the AU. Months that were not counted towards the client's WTW 24-Month Time Clock and CalWORKs 48-month time limit (WIC §11454 and 11322.85) due to sanction, remain uncounted due to the disability exemption.

Example 2:

Ms. Johnson has been sanctioned since June 1, 2013, due to failing to participate in Job Club and/or Job Search. On November 15, 2013 Ms. Johnson brings in a note from her psychologist that says she is suffering from a condition that impairs her ability to participate in WTW activities. The psychologist also states that he or she began treating Ms. Johnson as a patient on October 5, 2013, and expects that he or she will need to continue treating Ms. Johnson for at least six more months.

Ms. Johnson is granted a disability exemption retroactively back to the month of October 2013 and prospectively. The client is not entitled to retroactive payments prior to October 2013 because she did not provide verification that she actively sought treatment for her illness prior to October 2013. Any resulting underpayment is first used to offset any existing overpayments for the AU. No Time On Aid (TOA) adjustments are necessary because the client was sanctioned and while in sanction status, time does not count towards either the WTW 24-Month Time Clock or CalWORKs 48-month time limit.

Noticing Clients of Approval/Denial of CalWORKs Disability Exemptions

The CWD shall inform the client of the approval or denial of the requested exemption using the *CalWORKs Exemption Determination Form* (CW 2186B) no later than 15 calendar days after receipt of the exemption request. This written notification shall state whether the request was granted or denied, and, if denied, the specific reason for the basis of the denial must be included on the form (MPP §42-302.34). The specified response time may be exceeded in situations where completion of the determination is delayed because of circumstances beyond the control of the CWD, including delay on the part of the examining doctor to provide the necessary information. When these situations occur, CWDs are instructed to document in the case file the cause for the delay (MPP §42-302.32).

If granting the exemption, the CWD must provide the client with the *Your Welfare-to-Work 24-Month Time Clock* notice (CW 2208) to inform him or her of any necessary adjustments to the WTW 24-Month Time Clock. The CWD must also provide a Notice of Action (NOA) that informs the client of any necessary adjustments to the CalWORKs 48-month time limit. The CDSS is in the process of developing a NOA message with the specific purpose of notifying clients of TOA adjustments. Until this form is released, CWDs shall use the existing M40-107b NOA (*Time on Aid at Redetermination or Application*), as an interim means of advising clients of any retroactive adjustments to their time limits/clocks related to disability exemptions.

For situations in which granting of a disability exemption results in the client no longer being sanctioned and being added back into the AU, the CWD must send out a NOA that advises the client of the change in the AU's grant amount (M40-107k – *Increase in Grant Due to TOA Adjustment*). This NOA will be updated to include language that identifies a disability exemption as a reason for an increase to a client's grant. Both this revised NOA and the new TOA adjustment NOA mentioned above will be released under separate cover.

A client's exemption shall be reviewed at the time the condition is expected to end, or sooner if there is reason to believe that the client's condition has changed or improved to a point where he or she may no longer qualify for the disability exemption (MPP §42-712.443). The CWDs are reminded to include on the client's CW 2186B the expected exemption end date. The expected exemption end date should be based on the exemption verification received from the client's doctor. For cases in which the client's doctor has stated in writing that the condition is permanent or chronic with no end date, the CWD shall establish an appropriate re-evaluation time period. It is recommended this re-evaluation occur at a minimum annually (i.e. at redetermination), and the CWD assist the client in exploring more permanent disability assistance options such as Supplemental Security Income (SSI).

Although the CW 2186B notice provides the start and end dates of the exemption to the client, as a best practice, CDSS recommends CWDs contact the client with a reminder, allowing the client a reasonable amount of time to submit any verification of continued exemption eligibility before the exemption is scheduled to end. When the client does not qualify for a continued exemption, the county shall attempt to engage the client in work or appropriate WTW activities prior to beginning the non-compliance process.

Anticipated Form Revisions

The CDSS, in conjunction with welfare advocates and representatives from the various CWDs, formed a workgroup to revise the CW 61 to better assist clients to obtain the critical information that CWDs need in order to make a disability exemption determination. The revised CW 61 (including provider instructions), *Physical Capacities Form* (CW 61A), *Mental Capacities Form* (CW 61B), and new *Work Capacity Verification Form* (CW 62) will be released under separate cover.

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If you have questions or need additional information regarding this letter, please contact your CalWORKs Employment Bureau county consultant or your CalWORKs Eligibility Bureau county consultant at (916) 657-2128.

Sincerely,

Original Document Signed By:

TODD R. BLAND
Deputy Director
Welfare to Work Division