

DEPARTMENT OF BENEFIT PAYMENTS

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September 18, 1975

ALL-COUNTY LETTER NO. 75-197

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: COOPER v. OBLEDO

REFERENCE:

On July 28, 1975, the Sacramento County Superior Court issued a judgment in the case of Cooper v. Obledo. This case involves the retroactivity of the California Supreme Court's decisions in Cooper v. Swoap (see All-County Letter No. 74-199) and CWRO v. Brian (see All-County Letter No. 74-109), and the validity of the tables used to evaluate in-kind income (EAS § 44-115.8). Attachment 1 hereto is a copy of the Superior Court's judgment. As you will note, the Court has ruled that it is necessary to redetermine AFDC eligibility and grant amounts for families adversely affected by the regulations invalidated in Cooper v. Swoap and CWRO v. Brian. In addition, the Court has held that the in-kind income tables are invalid to the extent that they establish arbitrary income values for some need items. Therefore, it will also be necessary to retroactively redetermine eligibility and grant amounts for families adversely affected by the in-kind income tables. The purpose of this letter is to describe the procedure by which the necessary redeterminations will be made.

In order to comply with the attached judgment, it will be necessary for the Department of Benefit Payments and county welfare departments to take certain actions. The Department is required to amend the current regulation regarding in-kind income tables and to notify persons who may be eligible for redeterminations by: 1) issuing press releases; 2) including a "stuffer" with all Medi-Cal I.D. cards sent on October 1, 1975; and 3) requesting that notices be posted in county welfare departments, EDD offices, county general hospitals, and major social service agencies. Under the judgment, it will be necessary for county welfare departments to: 1) review every case record during annual redeterminations of AFDC eligibility to

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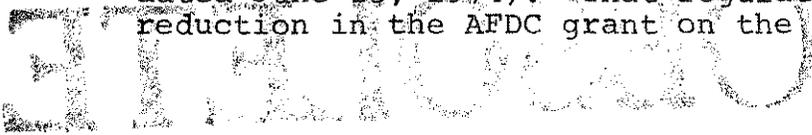
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determine whether recipient(s) may be eligible for retroactive aid; 2) identify eligible applicants and recipients who apply for retroactive aid; 3) redetermine eligibility and grant amounts for individuals who respond to the notices, and for affected recipients identified at annual redetermination; 4) distribute posters supplied by this Department to county general hospitals and major local social service agencies; and 5) keep a record of the number of individuals who are found eligible for retroactive aid and the amount of retroactive aid provided to those individuals. Each of these county responsibilities will be explained more fully below.

I. Annual Redetermination Review

The Cooper judgment requires that counties review each AFDC case at the time of annual redetermination to determine whether the recipients were affected by the invalid regulations. This review will cover all cases for which an annual redetermination is made between October 1, 1975 and September 30, 1976. As a part of the redetermination process, the county shall establish procedures to identify individuals who are or may be entitled to a refund of prior grant deductions made pursuant to the now invalid regulations. In order to determine whether an individual is or may be entitled to a refund, you should review the records of each case being redetermined from October 1, 1971 to the time of redetermination. Individuals who are or may be entitled to a refund can be described as follows:

- A. Persons who received a reduced AFDC grant as a result of former EAS § 44-115.8 (repealed in Manual Letter No. 40, dated February 27, 1975). That regulation provided for a reduction in the AFDC grant when the AFDC family shared housing and utility expenses with a recipient of adult aid (OAS, ATD, AB, APSB, SSI/SSP, EVH). Former EAS § 44-115.8 was effective October 1, 1971, and you were advised in All-County Letter No. 74-199 to cease applying that regulation effective October 1, 1974. These dates should be of assistance to you in identifying individuals who are now entitled to a refund. Any AFDC grant reductions based on former EAS § 44-115.8 made on or after October 1, 1974 should have been refunded pursuant to All-County Letter No. 74-199.
- B. Persons who received a reduced AFDC grant as a result of former EAS § 44-115.95 (repealed in Manual Letter No. 12, dated June 25, 1974). That regulation provided for a reduction in the AFDC grant on the basis of the reduced need



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of unborn children. Former EAS § 44-115.95 was adopted on August 16, 1972, and you were advised in All-County Letter No. 74-109 to cease applying that regulation effective June 1, 1974. These dates are provided for your convenience. Any AFDC grant reductions based on former EAS § 44-115.95 made on or after June 1, 1974 should have been refunded pursuant to All-County Letter No. 74-109.

- C. Persons whose AFDC grants were reduced as a result of the application of the in-kind income tables, former EAS § 44-115.9 (currently numbered EAS § 44-115.8). These are persons whose need for housing, utilities, food or clothing was met by earnings or contributions in-kind. Former EAS § 44-115.9 was effective October 1, 1971. The section was renumbered to EAS § 44-115.8 effective February 21, 1975 (Manual Letter No. 40, dated February 27, 1975). Current EAS § 44-115.8 will be amended in the near future to conform to the Cooper judgment.

If at the time of annual redetermination you identify persons who fall within any of these three classes, you must proceed to determine the amount of any retroactive aid to which they may be entitled.

II. Applicants for Retroactive Aid

As mentioned above, this Department will be attempting to inform individuals affected by the Cooper judgment of their right to a redetermination of eligibility and grant amounts. Many of the AFDC applicants or recipients who are or may be entitled to retroactive aid will become aware of the Cooper case through press announcements, Medi-Cal I.D. card stuffers, or notices posted in various locations in each county. Attachment 2 hereto is the English and Spanish texts of the stuffer which will be included with Medi-Cal I.D. cards mailed to all current Medi-Cal beneficiaries on October 1, 1975. As you will note, this stuffer will request individuals who believe that they may be entitled to a refund to contact county welfare departments by March 31, 1976. Presumably, these individuals will contact county welfare departments by telephone, by mail, and in person. When you are contacted regarding a refund, you should secure all information necessary to identify the records pertaining to the individual requesting the refund. In securing the information necessary to process claims for retroactive aid, you should be aware that the individuals who respond to the press releases, posters, etc., may not be current AFDC recipients. Also, some individuals will be seeking a redetermination of their AFDC eligibility based on the Cooper case. Such individuals may never have been AFDC recipients. If any individual is unable to provide you with

any or all of the information you request, you must identify the case records, determine the individual's eligibility for retroactive aid, and redetermine eligibility and grant amounts based on the best information available to you.

When you have obtained the information necessary to locate the records pertaining to an individual who requests retroactive aid, you should determine his or her eligibility for a refund. This determination should be made by the same standards that are applied to identify affected recipients at the time of annual redeterminations described above. If you determine that an individual who requests a refund is within one of the three classes of affected applicants or recipients described above, you must proceed to determine the amount of any retroactive aid to which that person may be entitled.

III. Redetermination of Eligibility and Grant Amounts

The procedure for determining retroactive aid amounts and for paying such amounts to eligible individuals will depend on which of the invalid regulations was applied to reduce the AFDC grant. If you determine that an individual's grant was reduced as a result of the adult aid shared housing regulation (former EAS § 44-115.8) or the unborn regulation (former EAS § 44-115.95), you should calculate the amount of the grant reduction based on these regulations since October 1, 1971 and August 16, 1972, respectively. This calculation may be based on a redetermination of eligibility and grant amounts for each of the months in question. If an individual was denied AFDC eligibility partly because he or she lived with an adult aid recipient or because his or her child was not yet born, you should determine whether the individual would have been eligible for AFDC in any month if the adult aid shared housing regulation or the unborn regulation had not been applied. If so, you should determine the amount of the grant which he or she would have received. When you have determined the amount of any grant reduction based on the adult aid shared housing regulation or the unborn regulation, you should pay that amount to the affected individual. This payment should be made by supplemental warrant. Such warrants should be forwarded to the affected individuals as soon as possible, but not later than the second calendar month following the month of redetermination, or within 60 days after you have received a request for redetermination from an eligible individual.

A different procedure in determining retroactive aid amounts will be used for those recipients whose AFDC grants were reduced as a result of the application of the in-kind income tables. It is not necessary to refund all monies deducted pursuant to the

tables. The Cooper judgment holds only that the values established in the tables for certain need items are arbitrary and capricious. Therefore, it is necessary to provide recipients affected by the tables with an opportunity to establish that the in-kind income deduction from their grants was in excess of the value of the need item they received in-kind. If an individual's grant was reduced due to the application of the in-kind income tables, you should give or send a copy of form Temp 1060 to that individual. Attachment 3 is a copy of form Temp 1060 in English and Spanish. This is a required form. Any substitution must be approved by the Department of Benefit Payments. Due to time limitations, it will be necessary for you to duplicate this form in a sufficient quantity for your use during the next year.

Any individual who was affected by the application of the in-kind income tables in determining his or her eligibility or grant amount must receive a copy of form Temp 1060. This form should not be sent to individuals who are receiving refunds of grant deductions based on the adult aid shared housing regulation or the unborn regulation, and who were not otherwise affected by the in-kind income tables. Also, any person who applied for and received a refund of prior in-kind income deductions pursuant to All-County Letter No. 74-202 (Waits v. Swoap), and who was not otherwise affected by the in-kind income tables, need not receive a copy of form Temp 1060. All other individuals who were affected by the tables at any time after October 1, 1971 must be sent a copy of form Temp 1060.

If you identify an individual whose AFDC grant or eligibility was affected by the application of the in-kind income tables, it is necessary to give that person an opportunity to show that the in-kind housing, utilities, food or clothing which he or she received was less than the amount shown in the tables. In order to do this, you should indicate the amount of in-kind income applied for each item of need for each month the tables were applied. Thus, if an individual received housing and utilities in-kind for the months of November and December, 1972, you should fill out form Temp 1060 as follows:

*Month/Year	Housing	Utilities	Food	Clothing
November, 1972	\$81.00	\$14.00		
December, 1972	81.00	14.00		

*Values used are for a 3 person FBU from the tables then in effect.

You should attach additional sheets of paper to form Temp 1060 as necessary to provide the applicant or recipient with a complete list of the in-kind income deductions taken from his grant since October, 1971. For your convenience, in-kind income tables in effect between October, 1971 and July, 1975 are included as Attachments 4, 5, 6, 7, 8 and 9.

Individuals who believe that the amounts deducted from their AFDC grant for in-kind income were in excess of the value of the items they received are required to provide some evidence of the value of the item they received. This evidence can be in the form of receipts or other records, or a statement from the person who provided the item. If a person believes that the value of the item he or she received was less than the amount shown on form Temp 1060 but they cannot produce evidence of the market value of the item, you may use any information contained in the case record to establish a market value. However, no refund can be provided unless the market value of the item can be verified in some way.

If you have or receive information which establishes that the market value of the housing, utilities, food or clothing received in-kind was less than the amount deducted from the AFDC grant pursuant to the in-kind income tables for any month, you should calculate the amount of the difference. This amount should be paid to the affected individual by supplemental warrant as soon as possible. If the amount of the in-kind income deduction was less than the market value of the item which an applicant or recipient received in-kind, there will be no recomputation for that item in that month.

All individuals who return form Temp 1060, or who otherwise request a redetermination of the in-kind income amounts, should be notified of the results of the redetermination. This notice must advise the individual of his or her right to a fair hearing regarding their right to a refund or the amount of the refund.

Presumably, individuals who become aware of the refunds will contact the local county welfare department. If you are contacted by an individual who previously applied for or received AFDC in another county, you should assist that individual in contacting the county in which he applied for aid or the county from which he last received aid. If an individual last applied for or received aid in your county and you have information that he previously applied for or received aid in another county, you should compute and pay any retroactive aid to which the individual is eligible for the months he or she was in your county and forward all available information concerning the individual to the other county. If you receive

information concerning an individual from another county, you should compute the amount of any retroactive aid to which that individual is entitled and make an appropriate refund to cover the time period for which he or she was receiving, or was eligible to receive, AFDC from your county.

IV. Posters

The judgment in Cooper requires the Department to prepare notices in English and Spanish regarding the availability of retroactive aid as a result of the Court's ruling. We are also required to request that these notices be posted in the lobbies and waiting rooms of county welfare departments, Employment Development Department offices, county general hospitals and major social service agencies. The required notices are now being printed. The text of these notices will be substantially similar to the text of the Medi-Cal I.D. card stuffer notices (Attachment 2).

In order to comply with the terms of the Court's order regarding distribution of the notices, it will be necessary for county welfare departments to assist in the distribution process. Enclosed is a supply of notices for posting in county welfare department offices, county general hospitals, and major social service agencies. These notices must be posted in all county welfare department offices on or before October 1, 1975. In addition, you should use your best efforts to see that the notices are posted in county general hospitals and major social service agencies as soon as possible. Among the social service agencies which you should contact concerning posting of the notices are legal aid organizations, senior citizens centers, housing authorities, welfare rights organizations, and day care centers. However, this list should not be considered to exhaust all possible agencies to be contacted. You should attempt to have notices posted in any other community agency which serves individuals who may be affected by the Cooper judgment. It is not necessary for you to contact local EDD offices concerning the posting of notices. The Employment Development Department has agreed to distribute the notices to its local offices throughout the state.

All notices posted pursuant to these instructions should remain on display until at least March 31, 1976. Additional information concerning the notices to be posted will be forwarded to you at the time the notices are distributed.

V. Records

The judgment in Cooper also requires the Department to periodically report to the Court on the number of affected cases that have been

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identified and the dollar amount of the refunds that have been paid out. In order to comply with this portion of the judgment, we are now preparing a monthly reporting form specifically designed to keep track of the results of the redetermination procedure. This form, with all necessary instructions will be forwarded to you within the next two weeks.

Hopefully, these instructions will answer any questions you may have concerning the procedures for retroactive eligibility and grant determinations pursuant to the Cooper case. It is necessary to emphasize that AFDC applicants and recipients are entitled to a refund of all AFDC grant reductions which were due to the application of the three regulations invalidated in Cooper. Therefore, you should use your best efforts to locate all affected individuals and to assist them in obtaining any AFDC benefits wrongfully denied. Your success in this regard will be measured by the Superior Court when it determines whether supplemental and further relief should be awarded to the class of affected individuals.

If you have any questions about the redetermination and refund procedure described herein, you should contact the AFDC Program Operations Bureau at (916) 445-4458.

Sincerely,


MARION J. WOODS
Director

Attachments

cc: CWDA