

STATE OF CALIFORNIA HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814

March 11, 1985

ALL-COUNTY LETTER NO. 85-31

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: MAJOR VS, McMAHON COURT ORDER - SSI/SSP BENEFITS FOR
DISABLED MINORS

This is to provide instructions on the final settlement of the Major vs. McMahon lawsuit filed in June 1983 against the State. The Major case allows eligibility for the Supplemental Security Income/State Supplementary Program (SSI/SSP) nonmedical out-of-home care (NMOHC) benefit level to disabled minors living with a non-parent relative. A prior policy in State regulations allowed disabled minors to receive the NMOHC benefit level only if they resided with a non-relative guardian. Disabled minors living with relatives were eligible only for the lower "disabled minor" benefit level. The court case was certified as a class action suit and involves approximately 1200 potential recipients statewide.

Effective April 1, 1985 and retroactive to January 1, 1984, disabled minors who are receiving care and supervision in the home of a non-parent relative will be eligible for the higher NMOHC benefit level. Pursuant to the court order and the recently proposed (EAS Division 46 and 50) regulations, county certification instructions found in EAS 46-325.35 will apply to disabled minors in this non-parent relative living arrangement. Your county will be sent an advance copy of these proposed regulations on March 20, 1985.

Application/Certification Process

On April 1, 1985 the State Department of Social Services will send notices to all individuals identified by the State Data Exchange as potentially eligible for Major benefits during any month beginning January 1984 until the present. Application for benefits will be made at Social Security Administration (SSA) field offices throughout the State. The application period will be 60 days following receipt of the notice, with a 60 day extension period to be allowed for those recipients showing "good cause" as determined by SSA. The amount of retroactive benefits will be, for each month in the retroactive period, the difference between the NMOHC rate and the disabled minor rate in effect for that month. For calendar year 1984 benefits, the difference is \$161 per month; for calendar year 1985 benefits, the difference is \$170 per month.

Certifications for the NMOHC living arrangement will be processed in the same manner as they are currently for adult SSI/SSP applicants/recipients. For each application, SSA will send Authorizations for Nonmedical Out-of-Home Care (form SSP-22) to County Welfare Departments to obtain certification for the living arrangement. For retroactive and prospective eligibility, the county must enter the effective date on the form SSP-22, For retroactive eligibility only, the county must enter a beginning and ending date, e.g. 1/1/84 to 5/31/84. For control purposes, these forms will be separately identified by the words "Major vs. McMahon" in bold print at the top. Counties are asked to expedite these requests for certification so that, in no event, will the turnaround time exceed 13 working days as required by EAS 46-325.351b.

The court order also requires the State to have counties maintain a copy of all suit-related forms SSP-22 in an "easily identifiable and retrievable manner" for a period of six months beginning April 1, 1985. A separately-maintained alphabetical file containing only Major forms will easily meet this requirement.

Administrative costs for county certification activities on Major cases are reimbursable the same as all other NMOHC certifications. Certification time spent by social service workers is to be recorded on the form DFA 46, Social Services Worker Individual Time Study, line U (SSI/SSP Out-of-Home Care Need - Unlicensed home).

State Hearings

The court order also requires that, within 30 days of receiving a request for certification from SSA, each county shall send a notice of action to the applicant which states whether the county has certified the applicant for receipt of the NMOHC rate. The notice shall inform the applicant of the right to request a state hearing if dissatisfied with the county action.

State hearings will follow the same procedures as set forth in EAS Division 22. In no event will applicants be eligible for the nonmedical out-of-home care benefit level to a date preceding January 1, 1984,

Form Temp 1624 provides for a "Description of the Action" section. In this section, one box must be checked showing eligibility, ineligibility, or mixed eligibility (retroactive, but not current). The effective date(s) of the action taken must always be shown.

For the purpose of administrative expedience and simplicity, the Major settlement agreement provides a set of rules for counties to follow when assessing NMOHC eligibility for Major cases on the form Temp 1624. They are as follows:

- If a disabled minor child is found to be currently eligible for the NMOHC rate, he/she shall be presumed to be eligible for as much of the retroactive period as he/she was residing with the same relative.
- If the minor child is currently ineligible for the NMOHC rate, he/she shall be presumed to be ineligible for as much of the retroactive period as he/she was residing with the same relative.
- These presumptions may be rebutted by the county or the recipient.
- If the minor child was living with another non-parent relative during the retroactive period he/she must be given the opportunity to present evidence regarding eligibility for the NMOHC rate in that home.

Recipient Consultations

It is anticipated that recipients or their representatives will have questions about the notice they receive from SSA Recipients should be referred to an SSA field office for all SSI/SSP eligibility consultations with the exception of those related directly to NMOHC certifications or the In-Home Supportive Services Program (IHSS). Specific questions regarding the NMOHC living arrangement which are most likely to be asked of the county will involve the difference between receiving the NMOHC SSI/SSP rate and IHSS, Recipients may not receive both IHSS and the higher SSI/SSP NMOHC rate at the same time. Even if potentially eligible for the NMOHC rate, recipients may continue to receive the lower SSI/SSP disabled minor rate along with IHSS.

If you have any questions regarding implementation of the Major vs. McMahon court order, contact CDSS at (916) 651-8848

A handwritten signature in black ink, appearing to read "Robert A. Horel", written over a horizontal dashed line.

ROBERT A. HOREL

Deputy Director

Attachments removed as were out of date and no longer applicable.

cc: CWDA