

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



October 6, 1997

ALL COUNTY LEITER NO. 97-57

TO: ALL COUNTY WELFARE DIRECTORS
ALL AFDC PROGRAM SPECIALISTS

- 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: MPP 44-113.14, 44-133, 44-207

The purpose of this letter is to provide counties with the attached proposed emergency regulations, which will be effective December 1, 1997, and other materials and instructions necessary for implementation. These regulatory amendments implement the Ortee:a v. Anderson court order which requires the consideration of the unmet needs of an ineligible alien spouse when determining the amount of countable income for the assistance unit (AU).

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.

The new regulations identify the following as ineligible alien family members when living in the same home: parent(s), spouse, and children who are siblings, half-siblings or step-siblings to the applicant/recipient child.

IMPLEMENTATION

Effective December 1, 1997, counties shall begin considering the needs and income of ineligible alien family members. Their needs will be met by including them in the family size for the Minimum Basic Standard Adequate Care (MBSAC) along with the members of the assistance unit for both income eligibility and grant computation. The income of ineligible alien family members will be countable, subject to income exemptions (see Section 44-111) and to specific income deductions presented in these proposed emergency regulations. Ongoing cases in retrospective budgeting will have their December payment reflect the change in treatment of income and needs based on what is reported in October. Please note

that this process to consider the needs and income of ineligible alien family members will change effective January 1, 1998, pursuant to CalWORKs implementation. Counties will receive further information and instructions regarding income and grant computation in subsequent All County Letters.

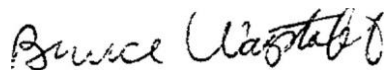
ORTEGA RETROACTIVITY

AFDC cases that have income and an ineligible alien spouse living in the home need to be evaluated for retroactive payments. Therefore, at redetermination or upon request of the AU, the county should review the case for eligibility and possible underpayment. The period of eligibility shall go back no further than the payment month of September 1995. Any underpayment issued as a result of the provisions of the Ortega court order is to be considered a corrective underpayment and is exempt from consideration as income and as property in the month received and the following month. Additionally, the underpayment is subject to balancing against any outstanding overpayment.

FORMS AND NOTICES OF ACTION (NOAs)

This letter transmits a copy of the TEMP CA 30, Budget Worksheet and NA forms that have been developed as a result of Ortega. See Attachment 1 for a copy of the CA 30 and an outline of the changes; and Attachment 2 for copies of the NA forms and other information such as NOA usage, updates to the NOA handbook and the availability of state stock, camera-ready copies and translations.

Sincerely,



BRUCE WAGSTAFF
Deputy Director
Welfare to Work Division