

CalWORKs:

A Comprehensive Guide
to Welfare and Related
Medi-Cal Issues for
California Families

DORA LUNA
NU USAHA
Editors



3701 Wilshire Boulevard, Suite 208
Los Angeles, California 90010
(213) 487-7211
www.wclp.org

WINTER 2009 (fourth edition)
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Acknowledgments

This version of the CalWORKs manual is the result of many peoples' work: Western Center attorneys Nu Usaha, Dick Rothschild, Robert Newman each wrote chapters, as did Neighborhood Legal Services of Los Angeles County attorney Dora Luna. Jodie Berger of Legal Services of Northern California wrote Chapter VI; Curt Child of the Office of Governmental Affairs at the Administrative Office of the Courts wrote Chapter X on Child Support; Eve Hershcopf of the Child Care Law Center collaborated with Dora Luna to re-write Chapter VII on Child Care; Minouche Kandel of Bay Area Legal Aid revised the domestic abuse sections of various chapters; and Vanessa Lee of Neighborhood Legal Services of Los Angeles County revised sections on foster care issues. The original (1998) version of this manual was edited by former Western Center advocates Clare Pastore and Paula Gaber, and was modeled on "Mastering the Maze," a comprehensive guide to the AFDC program created by former Western Center advocates Kate Meiss and Beth Steckler.

We gratefully acknowledge the help of many others in editing and suggesting changes to the manual, especially Jodie Berger of Legal Services of Northern California, Minouche Kandel and Ariella Hyman of Bay Area Legal Aid, Leora Gershezov of the Assembly Judiciary Committee, Hope Nakamura of the Legal Aid Society of San Mateo, Stephen Goldberg of Legal Services of Northern California, Laurel Blankenship of Legal Services of Northern California, and Abby McClelland of Neighborhood Legal Services of Los Angeles County.

Special thanks to the following individuals who volunteered to cite-check most chapters in this manual: Esther Kim, Vanjo Lickhalter, Andrew Stanger, and Ian Wang of Kirkland & Ellis, LLP; and Veronica Cerruti, Sarah Fergusson, Jaime Heller, Kimberly Kerry, Amanda Knudsen, Amy Rooker, Jerald Sharum, Tatiana Small, Erin Stagg, Alison White, and Jean Yu of Manatt, Phelps & Phillips, LLP.

The administrative support of Marvin Katzoff of Quinn Emanuel, as well as that of Denise Williamson and Arlene Black of the Western Center, was indispensable.

We thank the Equal Access Fund for the grant to assist us in distributing this manual.

Dora Luna
Nu Usaha
Editors

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A. How to Use This Manual.

This manual was designed to be used by advocates for CalWORKs recipients and others whose work involves CalWORKs. It is being distributed to legal aid offices, community organizations, colleges and universities, and some county welfare departments. It is designed to be used by people who need to understand the CalWORKs rules and who will intercede with welfare offices on behalf of recipients. Thus, much of what the manual does is provide the authority for the rules it discusses so advocates can persuade a county worker about the proper resolution of a problem.

The manual is intended to be a plain-English synthesis of the complex maze of CalWORKs laws, regulations, and policy directives, along with the collective wisdom of advocates on how to approach various common problems. In general, we have attempted to state the rules in the text, with all citations to laws, regulations, state policy directives, and other materials in footnotes.

1. Table of Contents and Summary of Contents.

The Summary of Contents lists the title of each chapter and each Appendix. The Table of Contents is a full list of each chapter's sub-parts and each item in the appendices. The Table is designed to be a roadmap of the organization of the manual and a way to help advocates quickly find the section dealing with a subject they are researching, and find the information they are seeking. The appendices are organized by topic and contain client flyers, application forms for CalWORKs and certain CalWORKs-related emergency benefits, and more information on topics covered only briefly in the manual, including immigrant issues and domestic abuse.

2. Abbreviations Used in This Manual.

Several abbreviations appear throughout this manual. Information on how to get copies of the items mentioned is included in Section E of this chapter ("Building a Welfare Library").

- **ACIN:** All-County Information Notice. These are policy directives sent by the state welfare department to each county.

- **ACL:** All-County Letter. These are policy directives sent by the state welfare department to each county. Note that the state Department of Health Services also issues ACLs; in this manual, those are referred to as DHS ACLs.
- **AFDC:** Aid to Families With Dependent Children. This is the former cash aid program for needy families, which was replaced by TANF in 1996.
- **ALJ:** Administrative Law Judge, the independent decision-maker at a state fair hearing requested by a recipient to resolve a dispute with the county. (See Chapter XIV).
- **AU:** Assistance Unit. The assistance unit is the group of people receiving aid in a particular household. Chapters II and V explain when the assistance unit differs from the family.
- **CalWORKS:** The California Work Opportunity and Responsibility to Kids program, California's cash aid program for families with children. CalWORKS replaced AFDC in 1998.
- **CA-7:** The monthly income report CalWORKS recipients must submit to the county to maintain eligibility. The QR-7 form is now used instead of the CA-7. *See QR-7.*
- **CCR:** California Code of Regulations. State regulations (including Medi-Cal regulations) are published in the CCR. Note that state welfare regulations are not in the CCR, but in the Manual of Policies and Procedures (MPP).
- **CFR:** Code of Federal Regulations. This is the place to find federal TANF regulations.
- **CPS:** Child Protective Services, the agency that investigates suspected or reported child abuse or neglect.
- **DHS:** Department of Health Services. This is the state health department in Sacramento that administers the Medi-Cal program.
- **DRA:** The Deficit Reduction Act of 2005. This is the federal TANF Reauthorization that includes substantial changes in the welfare program.

- **DSS:** Department of Social Services. This is the state welfare department in Sacramento.
- **Educ. Code:** California Education Code. Many child care laws discussed in Chapter VII are found in the Education Code.
- **Et seq.:** a Latin term meaning “and following.” In a citation, this means the reference is to the listed section and the following sections. For example, a citation to “MPP §§ 42-711.4 *et seq.*” look at § 42-711.4 and the immediately following sections (probably §§ 42-711.5 and .6).
- **FPL:** Federal Poverty Level. This is the poverty guideline set each year by the federal department of Health and Human Services and used to determine eligibility for certain health care programs.
- **GAIN:** Greater Avenues to Independence. This is the former welfare to work program for AFDC recipients, replaced by CalWORKs in 1998. Some counties (such as Los Angeles) continue to call their CalWORKs program GAIN.
- **HHS:** Department of Health and Human Services. This is the federal department that administers the TANF program.
- **Id.:** an abbreviation for the Latin term “idem,” which means “something previously mentioned.” In a citation, *id.* at the end of a sentence means the authority for that point is the same as the preceding authority cited.
- **MOE:** Maintenance of Efforts requirement. This requires states to spend, in addition to the federal TANF block grant, a certain percentage of their historical state welfare funding.
- **MPP:** Manual of Policies and Procedures. These are the state welfare regulations. These are written by the Department of Social Services in Sacramento.
- **PRA:** The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This is the federal welfare reform law that abolished AFDC and created TANF.

- **QR-7:** The quarterly income report CalWORKs recipients must submit to the county to maintain eligibility.
- **TANF:** Temporary Aid to Needy Families. This is the federal block grant program that replaced AFDC in 1996. CalWORKs is California’s TANF program.
- **USC:** United States Code, the federal law. Federal laws are written by Congress and signed by the President.
- **WIC:** California Welfare and Institutions Code. This is state law, created by the state Legislature in Sacramento and signed by the Governor.

B. Brief Summary of Federal Welfare Developments.¹

In 1996, the 60-page Personal Responsibility and Work Opportunity Reconciliation Act² (“PRA”) eliminated and rewrote almost the entire Chapter IV-A of the Social Security Act,³ the former framework of laws governing the AFDC program, creating in its place the Temporary

¹ Many national advocacy and research groups, including the Center on Law and Social Policy (CLASP), the Center on Budget and Policy Priorities, the Children’s Defense Fund and others, have published extensive analyses of the PRA, its TANF provisions, and its reauthorization (Deficit Reduction Act of 2005). See Section E in this chapter on “staying in the loop” for how to access this information.

² Pub. L. No. 104-193, 110 Stat. 2112 (codified as amended at 42 USC §§ 601 *et seq.* (1996)). See Appendix A for materials on the 1996 federal welfare reform law.

³ 42 USC §§ 601 *et seq.*

Chapter I: Introduction

Assistance to Needy Families program, or TANF.⁴ TANF is now the federal name for each state's welfare program. CalWORKs is California's TANF program.⁵

While AFDC was a program of shared financial responsibility between the state and federal governments, with the two jurisdictions each paying roughly half the cost of each family's aid, TANF is a "block grant," a set sum of money provided to the state to spend as it sees fit, within broad parameters.⁶ The amount of each state's block grant is determined primarily by the state's historic spending on welfare.⁷ Block grants can be reduced, if states do not meet certain new requirements, including dramatic improvement in their child support systems, "maintenance of effort" state spending,⁸ and placement of large proportions of their caseload in jobs or "work activities."⁹ Conversely, states which perform well in certain areas of interest to Congress will receive additional funds.¹⁰

⁴ 42 USC § 601 *et seq.* The PRA did much more than change AFDC. For example, immigrant eligibility for programs including SSI disability benefits and Food Stamps was virtually eliminated for new immigrants, unemployed adults without children were made ineligible for Food Stamps in all but three of every 36 months, and disabled children's eligibility for federal disability payments was narrowed. These changes and the rest of the PRA are not discussed in this manual. For more information on these programs or the PRA, contact the organizations listed in Section E and Section F of this chapter.

⁵ Therefore, in this manual we use TANF only when referring to a federal requirement, statute, etc. When referring to California's specific program or statutes, we use CalWORKs.

⁶ For example, states must spend the majority of their TANF dollars on needy families with children, but need not provide any cash aid to families, if they chose instead for example to fund only job training, only child care, or some other mix of services. *See* 42 USC § 601 (purposes of TANF program are to increase state flexibility, end welfare dependence, reduce illegitimacy and encourage the formation of two-parent families); § 604 (states may spend TANF funds in any manner reasonably calculated to accomplish statute's purposes).

⁷ 42 USC § 603 (block grant funding formula).

⁸ The "maintenance of effort" (MOE) requirement means states may not simply stop spending their own dollars and use only federal TANF funds, but must continue spending a certain percentage of their historical welfare spending. *See* 42 USC § 609(a)(7).

⁹ 42 USC § 609; *see also* 42 USC § 607(d) (defining "work activities").

¹⁰ 42 USC § 603(a)(4).

TANF contains some things states *must* do, and some they may not do.¹¹ For example, states may *not* use TANF funds to aid families without minor children, adults who have received 60 months of aid after January 1998, teen parents who do not attend high school or live with a parent or other adult (with limited exceptions), fugitive felons, or probation or parole violators.¹² States *must* require individuals to sign an “Individual Responsibility Plan” and reduce aid to those who do not comply with the plan,¹³ and must require increasing percentages of the caseload to work or participate in “work activities,” with penalties against both the state and the individual for failure to do so.¹⁴ States’ ability to excuse welfare recipients from work requirements or time limits is limited.¹⁵

By the Deficit Reduction Act of 2005 (DRA)¹⁶, Congress reauthorized TANF and significantly changed the structure of the federal work requirements. The DRA makes four key changes:

- It modifies the caseload reduction credit so that as of October 1, 2006, reductions to the federal work participation rate (WPR) requirements are based on caseload declines after 2005, rather than after 1995 (as provided in PWRORA)¹⁷
- It specifies that as of October 1, 2006, a state’s participate rate includes the combined number of families receiving assistance in TANF and MOE-funded

¹¹ 42 USC § 608(a).

¹² 42 USC § 608(a)(1)(, (4), (5), (7), (9).

¹³ 42 USC §§ 607(e), 608(b).

¹⁴ See 42 USC §§ 607 (mandatory work requirements and participation rates), 602(a)(1)(A)(ii) (state plan must require parents to work).

¹⁵ 42 USC §§ 607, 608.

¹⁶ Pub. L. No. 109-171, 120 Stat. 135, 138 (codified at 42 USC §§ 603 *et seq.*) (2006).

¹⁷ Pub. L. No. 109-171, 120 Stat. 136 (codified at 42 USC § 607) (2006).

programs¹⁸ (Programs funded solely with state MOE money did not count toward federal work participation rates under the 1996 law)

- It limits state flexibility by directing the federal Department of Health and Human Services to adopt regulations defining “work activities” for purposes of federal WPR; specifying methods for reporting work hours and types of documentation needed to verify reported work hours; and specifying when a non-aided parent, who lives with a child receiving assistance should be included in the WPR¹⁹
- It establishes a new penalty of up to five percent of a state’s block grant if the state fails to comply with the HHS’ regulations.²⁰

In June 2006, HHS issued interim TANF regulations as directed by the DRA. These regulations define activities that count toward the federal WPR, describe how the states must monitor and verify TANF recipients’ work hours, and add some non-aided parents whose children receive aid to the WPR calculation.²¹ In February 2008, HHS issued the Final TANF regulations, which make slight improvements to the interim regulations.²²

¹⁸ Pub. L. No. 109-171, 120 Stat. 136 (codified at 42 USC § 607) (2006); TANF Interim Final Rule, 71 Fed. Reg. 37476 (June 29, 2006) (codified at 45 CFR § 261.2(n)).

¹⁹ Pub. L. No. 109-171, 120 Stat. 136 (codified at 42 USC § 607) (2006); TANF Interim Final Rule, 71 Fed. Reg. 37453 (June 29, 2006).

²⁰ Pub. L. No. 109-171, 120 Stat. 135, 137 (codified as amended at 42 USC § 609 (2006)).

²¹ TANF Interim Final Rule, 71 Fed. Reg. 37454-37483 (June 29, 2006), <http://www.acf.hhs.gov/programs/ofa/law-reg/tfinrule.html>, <http://www.gpoaccess.gov/fr/index/html>. See Appendix A for materials on TANF Interim Final Rules.

²² TANF Final Rule, 73 Fed. Reg. 6771-6828 (Feb. 5, 2008), http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/tanf_final_rule.htm. See Appendix A for materials on TANF Final Rule.

C. Overview of the CalWORKs Program.

CalWORKs, the California Work Opportunity and Responsibility to Kids Act,²³ was signed into law in the summer of 1997, approximately one year after federal PRA swept away 60 years of federal safety net aid to poor families. Like the PRA at the federal level, CalWORKs significantly changed the welfare landscape for poor families at the state level. Many changes were punitive: work requirements apply to far more people than before and are tougher,²⁴ time limits on aid were adopted for the first time,²⁵ access to education or training was narrowed,²⁶ and grant amounts for working families were reduced.²⁷

Despite the dreary similarity of more onerous requirements and less generous benefits, there are important differences between the California and federal versions of welfare reform. First, while at the federal level Congress specifically ended the “entitlement” status of welfare,²⁸ families in California remain entitled to aid for 60 months if they meet the eligibility rules.²⁹ Even after 60 months, children must continue to be aided as long as they qualify.³⁰ Moreover, critical services for families in training or going to work, in particular child care and

²³ California Welfare and Institutions Code (hereinafter WIC) §§ 11200 *et seq.*

²⁴ See Chapter VI on work requirements.

²⁵ See Chapter II for information on California’s five year lifetime limit on aid for adults.

²⁶ See Chapter VI.

²⁷ While the CalWORKs statute contains no reduction in aid *per se*, changes in the treatment of earned and other income leave most employed families with less income than under the AFDC rules. See Chapter III (Income) and Chapter V (How to Calculate a CalWORKs Grant) for details.

²⁸ 42 USC § 601(b).

²⁹ In other words, eligible families cannot be put on a waiting list or told no aid is available.

³⁰ WIC § 11454(a). When parents reach the time limit, the county can choose to aid these children with non-cash benefits in the form of vouchers or vendor payments. See Chapter II (time limits), and Chapter X (vouchers).

transportation, are also guaranteed in California.³¹ This means needy families have an enforceable right to receive them. California also did not choose some of the more draconian options available, such as ending all aid to legal immigrants.³²

Many aspects of CalWORKs mirror those of the former AFDC program. For example, it is still not enough merely to be poor and have children; CalWORKs, like the former AFDC, is only for families which also meet the “deprivation” requirement by showing that a parent is absent, disabled or unemployed.³³ The system of regionalized grants remains,³⁴ as do the exempt (for families in which all adults are disabled) and nonexempt categories for determining aid level.³⁵ The system of calculating grants still makes it pay to work, though less so for many families than under AFDC.³⁶ The list of possible “work activities” under CalWORKs is virtually identical to those used in California’s former education, training and work program for welfare recipients (GAIN) (though access to vocational or other education is more limited since many counties emphasize the work first” approaches, and rely more heavily on workfare to increase

³¹ WIC § 11323.2(a). See Chapter VI (Supportive Services) and Chapter VII (Child Care). Of course, these entitlements continue to be protected by due process, and remain subject to fair hearing rights. See Chapter XIII on appeals and fair hearings. Appendix G contains detailed materials on child care.

³² 8 USC § 1622. As discussed in Chapter II, most legal immigrants in California remain eligible for benefits on the virtually same terms as citizens, with the important exception of sponsored immigrants who enter the U.S. after December 1997. The PRA allows states to choose to provide *no* welfare aid to “qualified” immigrants. 8 USC § 1622.

³³ However, the requirements to get aid based on unemployment are somewhat more relaxed under CalWORKs than under the former AFDC program. See Chapter II for an explanation of the deprivation rules.

³⁴ As discussed in Chapter II, the state is broken into two regions based on estimated housing costs. In Region I (which includes most urban counties), grants are higher. See WIC § 11452.018.

³⁵ See Chapter IV on benefits. As explained there, the exemption criteria have become more restrictive under CalWORKs.

³⁶ See Chapter III for more on income and Chapter V for more on grant calculations.

WPR).³⁷ However, far more aid recipients will be required to meet the CalWORKs work requirements than in GAIN.³⁸

California is currently implementing changes required by TANF Reauthorization.³⁹ Note that despite the major TANF Reauthorization changes, counties must still follow the existing CalWORKs law.⁴⁰

Key aspects of CalWORKs include:

- **Time limits:** Before December 1, 2004, there was an 18 to 24-month time limit on how long recipients could receive education and training. This time limit has been eliminated, and adult recipients can now receive training and education for up to 60 months, as appropriate based on their assessment.⁴¹

Once a family has been on aid for 60-months, unless the adults have met the standards for “stopping” this time limit clock (exemptions), the adults are removed from the case, and only the children will receive aid.⁴² Some adults may qualify for an “exception/extension” to the 60-month time limit on aid. If they meet the exception/extension standards, then they can get aid beyond the 60-month time limit.⁴³

³⁷ See Chapter VI on welfare-to-work requirements.

³⁸ Federal law requires that fully 50% of all families be working or in “work activities” (defined by the federal HHS) and 90% for two-parent families. 42 USC §§ 607(a), 607(d). Approximately 10% of AFDC recipients participated in GAIN at any one time.

³⁹ See ACL 07-03 and ACL 08-07 for California’s response to TANF Reauthorization changes.

⁴⁰ ACL 07-03 at 1, ACL 08-07 at 2. See Chapter VI for a discussion on CalWORKs’ welfare-to-work program. For updates on what California is doing to finalize its policy implementing TANF Reauthorization changes, contact Mike Herald at Western Center, mherald@wclp.org.

⁴¹ WIC § 11454(a)(1); MPP § 42-716.11; ACL 04-41 at 7.

⁴² WIC §§ 11320.15, 11454(b); MPP § 42-301.2.

⁴³ WIC § 11454(c); MPP § 42-302.11. See Chapter II. F for a discussion on the 60-month time limit.

- **Work requirements and minimum hours of participation:** All adult recipients, as well as some teen parents and some children over 16 must work or participate in “work activities” for the entire time they are on aid, unless they are exempt or have good cause.⁴⁴ Single parents must work or participate in “work activities” for 32 hours per week to retain aid. As of December 1, 2004, there is no longer an 18 to 24 month time limit on training, and adult recipients can now receive training and education and have it count towards the 32 hour participation requirement for up to 60 months.⁴⁵ However, most of these adult recipients must meet the new core work requirement, which emphasize work.⁴⁶
- **Prohibitions on aid:** Certain adults are permanently ineligible for CalWORKs aid. These include persons convicted of a drug-related felony in or after 1998, “fleeing felons,” and persons convicted or found by administrative hearing to have committed welfare fraud three or more times.⁴⁷
- **Behavioral requirements:** Parents must immunize preschool children and prove older children are attending school, or lose benefits.⁴⁸
- **Formula for calculating income and grant levels:** The former child care work expense, income disregards, and the “fill-the-gap” budgeting system that rewarded recipients who worked, have been eliminated and replaced by a flat formula that is simpler but whose effect is to reduce the grants of working families.⁴⁹

⁴⁴ See Chapter VI for more on work requirements.

⁴⁵ WIC § 11454(a)(1); MPP § 42-716.11; ACL 04-41 at 7; Chapter VI.

⁴⁶ WIC § 11320.1 (c); MPP § 42-716.21; ACL 04-41 at 4; Chapter VI.

⁴⁷ See Chapter II for a discussion on categorical eligibility (who can get CalWORKs?).

⁴⁸ See Chapter II for a discussion on behavioral requirements.

⁴⁹ See Chapter III on income and Chapter V on calculating grants.

- **Special considerations for survivors of domestic abuse:** California has adopted the “Family Violence Option” in the federal TANF statute,⁵⁰ allowing program requirements such as work requirements and time limits to be waived for victims of domestic abuse under certain circumstances, and allowing domestic abuse services to count toward work participation requirements.⁵¹
- **Wide variation and substantial discretion among counties:** Counties are critical decision-makers in CalWORKs, determining the work activities to be offered, the criteria to determine who has good cause for not participating in work activities, what diversion services will be offered,⁵² how child care will be administered,⁵³ how compliance with behavioral requirements including school attendance and immunization will be enforced, what type of community service will be arranged, and much more. Some of these decisions are laid out in each county’s required CalWORKs plan, which must be certified by the state Department of Social Services (DSS).⁵⁴ Others are to be made on a less formal basis or revisited without much public notice or input.
- **Widespread county failure to create written policies and to implement critical aspects of the CalWORKs program.** Many counties have simply ignored or failed to follow the legal requirements of the program. For example, many counties have failed to provide independent third party assessments to participants dissatisfied with their assessments or the welfare-to-work plan

⁵⁰ 42 USC § 602(a)(7).

⁵¹ WIC § 11495 *et seq.* Appendix I contains materials on domestic abuse issues and services. See also Chapter VI for more on domestic abuse waiver of welfare-to-work rules.

⁵² “Diversion” is the option of counties to provide a lump sum of money or an in-kind benefit or service to a needy family to prevent them from going on welfare. See Chapter IV. Counties can fund car repairs, child care, foreclosure prevention, work equipment, or virtually anything else as a diversion service.

⁵³ See Chapter VII.

⁵⁴ WIC § 10531.

offered,⁵⁵ to advance supportive service payments needed for participants to do their assigned welfare-to-work activities, and to create written criteria for county discretionary policies. These include how recipients can claim exemptions from time limits, deciding when to shorten or eliminate job search requirements for particular individuals, determining when program requirements will be waived for domestic abuse survivors, setting good cause criteria for non-participation, and many other issues.⁵⁶

- **Widespread county failure to ensure families get Medi-Cal when they don't receive welfare.** Western Center publishes *Medical Eligibility Guide* that discusses how families' Medi-Cal eligibility is no longer tied to their receipt of welfare. Nevertheless, many families are wrongfully denied Medi-Cal benefits because the counties are confused about the Medi-Cal requirements. To order a copy of the guide, fax a request for the order form to Western Center at (213) 487-0242, or visit our website to order online or print the order form, <http://www.wclp.org/wclppublications/index.php>.<http://www.wclp.org/>

D. Administration of CalWORKs: Who's Who in the Zoo.

Congress passed the Personal Responsibility Act in 1996, establishing the TANF program. The United States Department of Health and Human Services (HHS) publishes federal regulations implementing the statute.⁵⁷ Within HHS, the Administration for Children and Families (ACF) office of Family Assistance is responsible for the administration of TANF.

In California, the state Department of Social Services (DSS) implements the statutes that the state Legislature adopts. DSS promulgates implementing regulations, All-County Letters,

⁵⁵ WIC § 11325.4(c)(1). Chapter VI discusses third party assessments.

⁵⁶ MPP § 11-501.3 requires written standards for county discretionary decisions. ACL 00-08 sets forth 19 specific areas in which counties must have written policies and procedures for implementing discretionary decisions. ACL 98-58 states that Administrative Law Judges are to disregard any claimed policy which is not in writing and reach decisions based on the facts and state regulations.

⁵⁷ 45 CFR §§ 201 *et seq.*

and All-County-Information Notices. DSS also conducts administrative hearings requested by recipients, and to a degree ensures county compliance with requirements. Each of California's 58 county welfare departments administers CalWORKs locally, determining eligibility, issuing checks, and operating the welfare to work system. Many counties, especially larger ones, draft county-level regulations, often with the same numbering system as the state regulations. County regulations must be consistent with state law and regulations, just as state regulations must be consistent with state laws. All county and state regulations and laws must be consistent with federal laws and regulations. Although under state law, counties have discretion in implementing certain elements of CalWORKs, their chosen policies cannot be more restrictive than the state law.

E. Building a Welfare Library and Staying in the Welfare Information Loop.

1. Federal resources.

The federal TANF statute amended the Social Security Act at 42 USC §§ 601 *et seq.* Amendments are published in the U.S. Code Congressional and Administrative News (USCCAN), available in law libraries or online (see Section F.5 below). Regulations published by HHS appear in the Code of Federal Regulations, primarily at 45 CFR §§ 201 *et seq.* Amendments to the CFR are published in the Federal Register. HHS also issues action transmittals and information memoranda interpreting the law. Other federal departments such as the Department of Labor (DoL) occasionally issue regulations touching upon TANF issues. (DoL, for example, has issued regulations dealing with workfare and other employment issues for welfare recipients.) Many of these materials can now be found on agency websites, which are easily accessed from the comprehensive Legal Services of Northern California (LSNC) site, www.lsn.net.

2. State resources.

In California, the state CalWORKs statutes are found at Welfare and Institutions Code (WIC) §§ 10000 - 10061, 10500 - 10965, and 11000 *et seq.*

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DSS publishes its regulations online, known collectively as the Manual of Policies and Procedures (MPP). The most important provisions pertaining to CalWORKs are: Eligibility and Assistance Standards (Divisions 40-50 and 80-89); Food Stamps (Division 63);⁵⁸ and Fair Hearings, Fraud, and Civil Rights (Divisions 19-22). The regulations are available at <http://www.dss.cahwnet.gov/ord/PG302.htm>.

DSS also publishes directives on CalWORKs policies in the form of All County Letters (ACLs) and All County Information Notices (ACINs). An index of all ACLs and ACINs issued since the 1970s, and copies of each one since 1974 are available online at <http://www.dss.cahwnet.gov/lettersnotices/>. The Department's website also contains PDF versions of most forms in English and other languages at http://www.dss.cahwnet.gov/cdssweb/FormsandPu_271.htm.

The State Hearing Division (SHD) of DSS, the unit employing the Administrative Law Judges (ALJs) who preside over state hearings, also publishes useful welfare materials in the form of "paraphrased regulations" and Notes from the Training Bureau. Paraphrased regulations are summaries of welfare, Food Stamp and Medi-Cal regulations, intended for use by ALJs in writing hearing decisions. The Notes explain DSS policy and often give useful examples. The Notes also sometimes suggest legal arguments or problems with regulations. SHD also posts its index to the paraphrased regulations, which is searchable by key word and gives both the cite to the paraphrased regulation and to the MPP. SHD's website is at www.dss.cahwnet.gov/shd.

Counties often publish administrative directives, administrative bulletins, manual letters, or other materials that interpret the state and federal materials for local workers. All of the state and county manuals, letters, etc., are valuable tools for the advocate to consult when anticipating the agency's interpretation of the regulations in a particular case and monitoring the agency to determine if its interpretations comply with the federal and state law.

⁵⁸ As discussed in Chapter III, CalWORKs follows the Food Stamp resource (property) rules. Thus, it is necessary to have the Food Stamp regulations to answer CalWORKs property questions.

3. Court Decisions.

Federal and state statutes and regulations are subject to interpretation by the courts. Therefore decisions of the U.S. Supreme Court and the lower federal courts and of the California Supreme Court and Courts of Appeal are important sources of TANF and CalWORKs law. Every legal services office should have access to the federal and California cases.

4. Obtaining a Welfare Library.

The federal statutes and regulations and state statutes must be purchased. State regulations are also online at http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm.

The HHS Action Transmittals for TANF are online at http://www.acf.hhs.gov/programs/cb/laws_policies/policy/at/index.htm.

County materials can be obtained by writing to the County Welfare Department or from the counties' websites.

5. Using the Internet.

The internet is a tremendous welfare resource. All federal and most state agencies have web pages, as do many advocacy groups including some of those listed below under "Getting Help With Questions." Western Center on Law and Poverty's website is at www.wclp.org. Legal Services of Northern California maintains an extensive website with links to all the relevant federal and state agencies, as well as advocacy organizations in California and the nation, flyers and publications on CalWORKs developed by LSNC, Western Center, and others, legal research sites, and much more. Visit the LSNC site at www.lsn.net. DSS' Welfare to Work Division has a site at <http://www.cdss.ca.gov/cdssweb/PG138.htm> on which county CalWORKs plans and other welfare to work materials are posted.

F. Getting Help With Questions.

Western Center will answer questions and provide advice on CalWORKs issues (as well as Food Stamps, Medi-Cal, General Relief/General Assistance, foster care, welfare-related child support issues, and more.) Call us at (213) 487-7211. We also coordinate Welfare Task Force

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meetings of advocates and regular mailings. To receive the Task Force Update, please go to <http://www.wclp.org/fourbuttons/maillinglist.php>.

Other nonprofit legal organizations in California which can answer questions include:

California Food Policy Advocates 436 14 th Street, Suite 1220 Oakland, CA 94612 (510) 433-1122 www.cfpa.net	Food Stamps, WIC, child nutrition and other food issues
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Child Care Law Center 221 Pine Street, 3 rd Floor San Francisco, CA 94104 (415) 394-7144 www.childcarelaw.org	Child care issues
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Health Consumer Alliance (Statewide office) 2639 South La Cienega Blvd. Los Angeles, CA 90034 (310) 204-4900 www.healthconsumer.org	An alliance of 8 legal services and health policy agencies, including WCLP and NHeLP, working on low income health issues.
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Legal Aid Society of San Francisco Employment Law Center 600 Harrison Street, Suite 120 San Francisco, CA 94107 (415) 864-8848 www.employmentlawcenter.org	Work requirements, workfare and employment issues
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National Center for Youth Law 405 - 14 th Street, 15 th Floor Oakland, CA 94612-2701 (510) 835-8098 www.youthlaw.org	Youth issues including healthcare & welfare
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National Health Law Program (NHeLP) 2639 S. La Cienega Blvd. Los Angeles, CA 90034 (310) 204-6010 www.healthlaw.org	Medi-Cal, county health, Healthy Families and other health care issues
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National Immigration Law Center
3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010
(213) 639-3900
www.nilc.org

Immigration issues and immigrant access to public benefits

National Senior Citizens Law Center
3435 Wilshire Blvd., Suite 2860
Los Angeles, CA 90034
(213) 639-0930
www.nsclc.org

SSI and other issues for the elderly

Protection and Advocacy
3580 Wilshire Blvd., Suite 902
Los Angeles, CA 90010
(213) 427-8747 (Los Angeles)
(510) 267-1200 (Oakland)
(916) 488-9950 (Sacramento)
www.pai-ca.org

Disability issues including SSI, In-Home Support Services, Medi-Cal disability

Some national and state organizations publish helpful materials even if they cannot always field questions from individual advocates. The **Food Research and Action Center (FRAC)** publishes the comprehensive “Guide to the Food Stamp Program.” Contact FRAC at www.frac.org or (202) 986-2200. The **National Center for Law and Economic Justice (formerly Welfare Law Center)** publishes updates on welfare developments and litigation around the country. Reach them at www.nclejw.org or (212) 679-3709. The **Center on Budget and Policy Priorities (CBPP)** publishes analyses of federal and selected state developments in welfare and budget issues. CBPP is at www.cbpp.org or (202) 408-1080. The **Center for Law and Social Policy (CLASP)** publishes “CLASP States Update” highlighting good and bad welfare developments around the nation, and sponsors frequent teleconferences (national listen-only conference calls) on welfare topics. Call CLASP at (202) 328-5140 or visit www.clasp.org. The **California Budget Project** ((916) 444-0500) or www.cbp.org publishes regular updates on state budget and policy issues of interest to low-income advocates.

G. Caveats Regarding This Manual.

Like CalWORKs itself, this manual is a work in progress. The first, second, and third editions were written as CalWORKs was implemented. This fourth edition incorporates changes in law, policy and regulations since 2000, including the recent changes enacted in the DRA of 2005 and its implementing TANF regulations, as well as the experience of advocates with the program. Inevitably, portions of the manual will be out of date as events or policies change. Also, as a practice manual, it is impossible to anticipate and address all the questions that advocates and CalWORKs recipients will face. Please contact us regarding errors or omissions, or regarding questions or suggestions for improvements.

Chapter II: <i>What Kinds of People Can Get CalWORKs - Categorical Eligibility and Time Limits</i>
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A. Eligibility Overview.

CalWORKs aid, like its predecessor AFDC, is not available to every person who happens to be poor, or even to every poor family with children. It is a program for poor families who also meet certain other requirements. However, because the CalWORKs law did eliminate one onerous requirement for two-parent families (see Chapter II), it is now easier for families to qualify for aid than under the old AFDC program. CalWORKs is cash aid to *needy* children, who are *deprived* of parental support, and to the *relatives* who take care of the children. The most common CalWORKs family is a single mother with young children, but there are also families with grandparents and grandchildren, families with both parents in the home, families with stepparents, and other variations. Children living with non-relative caretakers are not eligible for CalWORKs.¹

To be "needy" means to be very poor. To qualify for CalWORKs, a family cannot have more than \$2,000 in countable property,² and its *gross countable* income must be low - in many of California's counties, less than \$1116 per month for a family of three.³

If a child fits the profile of being needy and deprived, then the family will be able to get CalWORKs if it meets the other eligibility and cooperation requirements for CalWORKs. The additional eligibility requirements discussed in this chapter are age, residence, citizenship, alienage, criminal records, immunizations, school attendance, child support collection and time limits. Later chapters discuss the work requirements as well as other documentation and administrative requirements. A family must meet all requirements to qualify for CalWORKs.

¹ MPP § 82-804.1.

² An exception would apply if the household includes a person over age 60 or is disabled. See Chapter III. Generally, the CalWORKs resource limits follow those set by federal law for Food Stamps. 7 USC § 2014(g); WIC § 11155; ACL 97-66 at 1. See Chapter III for a full discussion of CalWORKs resource limits.

³ See Chapter III for a more thorough discussion of income limits.

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B. Deprivation.

The child or children must be "deprived of parental support or care" ⁴ The most common basis of deprivation is the absence from the home of one or both of the parents. However, deprivation can also exist when both parents are in the home if at least one parent is disabled or unemployed. ⁵ A parent is defined as the father or mother, natural or adoptive, whether married or unmarried. ⁶ Deprivation is not affected by the presence in the home of a stepparent or a boyfriend. ⁷ Deprivation exists in each of the following situations.

1. Single-Parent Families.

Deprivation exists when one of the natural parents is physically absent from the home and there is a substantial severance of marital and family ties. ⁸ That is, the absent parent's normal activities, duties, or responsibilities to the children have stopped or been reduced substantially due to his or her absence. No minimum period of absence is required to establish deprivation. ⁹ However, the necessary "continued absence" does not exist if the absence is only temporary. Temporary absences include absences for trips, visits or employment that take the parent away from home such as that of seasonal farm workers, truck drivers, or military

⁴ WIC § 11250; MPP § 41-400; *see also* 42 USC § 608(a) (states may only use federal welfare dollars to aid pregnant women and families with children). The old AFDC program also used the term "dependent" to describe children deprived of parental support or care.

⁵ WIC § 11250; MPP § 41-401.1.

⁶ MPP §§ 41-403, 80-301(p).

⁷ MPP § 41-403.3. See also Section G.3.b below for rules regarding unrelated adult males living in the home (MPP § 43-109). If the boyfriend and the mother have a child in common, eligibility may be affected. See Section B.2 below.

⁸ WIC § 11250(c); MPP § 41-450.11.

⁹ MPP § 41-450.

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personnel.¹⁰ A parent is considered absent if he or she is a convicted offender whose sentence is unpaid labor while living at home.¹¹

On the other hand, if a parent is "continuously absent," the fact that she visits the family on a regular basis does not affect the child's deprivation.¹² The applicant's written statement of when the absent parent left the home is usually sufficient.¹³

Deprivation also exists if either parent has died.¹⁴ A copy of the death certificate of the deceased parent or other acceptable evidence must be produced to support a determination of deprivation on this basis.¹⁵

2. Two-Parent Families.

a. Incapacity of at Least One of the Parents.

Deprivation due to incapacity exists when one of the parents has a physical or mental illness, defect or impairment that reduces substantially or eliminates the parent's ability to support or care for the child.¹⁶ The incapacity must be expected to last at least 30 days.¹⁷ Reduced ability to support the child exists if the parent, due to incapacity, cannot work full time or at full pay at a job for which she is equipped or could otherwise learn through on-the-job

¹⁰ MPP § 41-450.12-.13.

¹¹ MPP § 41-450.11. This rule applies to a caretaker relative as well as the parent. MPP § 82-808 *et seq.* However, the parent and caretaker relative will be ineligible for CalWORKs, if she has been convicted of any crime involving a controlled substance after December 31, 1997, or if she is a fleeing felon. See Section D below and Chapter XII for further discussion.

¹² MPP § 41-450.11; *see also* MPP § 82-808.413 (a discussion of joint custody).

¹³ MPP § 41-450.41.

¹⁴ WIC § 11250(a); MPP § 41-401.11.

¹⁵ MPP § 41-420.

¹⁶ WIC § 11250(a); MPP §§ 41-401.12, 41-430.

¹⁷ MPP § 41-430.1.

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training.¹⁸ Thus, deprivation may exist even if a parent works part-time. Also, incapacity exists if the parent is employed in a special job such as a sheltered workshop for people with disabilities.¹⁹ The regulations do not further define reduced ability to care for the child.²⁰

PRACTICE TIP

Note that reduced ability *either* to work *or* to care for the child qualifies as deprivation.

Although a finding of eligibility for Social Security Disability benefits,²¹ SSI,²² worker's compensation²³ or State Disability Insurance²⁴ is conclusive proof of incapacity for CalWORKs purposes, it is not required to establish incapacity.²⁵ Acceptable verification includes a doctor's or psychologist's written statement containing a diagnosis of the condition, an explanation of the extent to which it impairs the parent's ability to engage in employment or care for the child, and

¹⁸ MPP § 41-430.11.

¹⁹ MPP § 41-430.14.

²⁰ MPP § 41-430.15.

²¹ Old Age, Survivors and Disability Insurance (OASDI) is commonly called Social Security. The program is administered by the Social Security Administration.

²² Supplemental Security Income is commonly called SSI. It is the federal welfare program for people over age 65, blind or disabled. 42 USC § 1381. The program is administered by the Social Security Administration.

²³ Workers' Compensation is employer-funded insurance for workers who are injured on the job.

²⁴ The State Disability Insurance program provides benefits for up to one year to workers who are disabled. The program is administered by the State Employment Development Department.

²⁵ MPP § 41-430.2.

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the expected duration of the impairment.²⁶ Immediate eligibility for up to 60 days pending written verification can be established with a verbal statement from a doctor.²⁷

If deprivation is based on incapacity and the parent ceases to be incapacitated, CalWORKs will be discontinued, unless the family qualifies based on unemployment or the absence of a parent.²⁸ If the family is receiving CalWORKs based on a parent's absence and that parent returns, advocates should explore whether the family can still qualify for CalWORKs on another basis or for General Assistance.²⁹ Note that with the elimination of the work history requirement discussed in the next section, most families will still qualify for aid even if the absent parent returns, *unless* one parent is working 100 hours per month.

PRACTICE TIP

If deprivation is based on absence and the absent parent returns to the home, or if it is based upon incapacity and the incapacity ceases, advocates should see if the family can qualify for CalWORKs under another deprivation basis.

b. The Unemployment of the Breadwinner.

When both parents are in the home and neither is disabled, deprivation may also exist due to the unemployment or underemployment of one of the parents.³⁰ If the parent, who is the

²⁶ MPP § 41-430.22.

²⁷ MPP § 41-430.23.

²⁸ MPP § 41-405. Deprivation is evaluated at the time of application and at the time of redetermination of eligibility. MPP §§ 41-401.3, 41-430.3.

²⁹ General Assistance (GA) is the state-mandated, county-funded program of last resort primarily for indigent individuals with no other means of support. WIC §§ 17000 *et. seq.* As permitted by WIC § 17000.5, the GA grants may be equal or nearly equal to CalWORKs grants for comparably sized families. In counties able to convince the Commission on State Mandates that they are fiscally distressed, the grant may be reduced to 40% of the 1991 federal poverty guideline, or \$221 per month. WIC § 17000.6.

³⁰ WIC §§ 11201, 11250(b); MPP §§ 41-401.13, 41-440; ACL 97-65 at 4.

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traditional breadwinner (or principal wage earner (PWE)), has worked less than 100 hours in the four weeks preceding the family's application for benefits, or does not work at all, the family is potentially eligible for CalWORKs benefits.³¹ Unlike the old AFDC program, CalWORKs does not require that unemployed parents show quarters of work or that they were working previously.³² In addition, the 100-hour rule only applies to applicants, and not recipients. Once the family meets the unemployment requirements and begins receiving benefits, the applicants can continue to receive CalWORKs regardless of the number of hours the principal wage earner works so long as the family does not exceed the CalWORKs income and resource limits.³³

i. Who is the Principal Wage Earner?

The principal wage earner is the parent who *earned* the most during the 24 months prior to applying for CalWORKs.³⁴

PRACTICE TIP

In such cases, clients should be advised that if they reduce their hours below 100 hours per month, they can get aid.

³¹ WIC § 11201(b); MPP § 41-440.1(a)(1)(B).

³² WIC §§ 11201, 11250(b); MPP §§ 41-401.13, 41-440.

³³ WIC § 11201(c); MPP § 41-401.2.

³⁴ WIC § 11201(b) (which adopts the standards of 45 CFR § 233.100(a)(3)(vi)(A)); MPP § 41-440.1(c). Note that the PWE is *not* defined as the parent who worked the most hours during the four-week period before application. Advocates should be diligent because it is possible that the parent working 100 hours or more is *not* the PWE.

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PRACTICE TIP

Although a working family may qualify for CalWORKs, after all its earnings are counted,³⁵ it may only qualify for a small monthly CalWORKs grant. Caretaker relatives are limited to only 60 months of CalWORKs benefits.³⁶ The 60-month time limit clock ticks even though the family's CalWORKs monthly grant is very low. Given the 60 month time limit, eligible working families may want to consider foregoing a CalWORKs grant if their grant would be small and instead, save their 60 months of CalWORKs for a time when they have no other source of income.

ii. What Other Requirements or Limitations Are There on CalWORKs for Unemployed Families?

(a) Strikers Are Not Eligible.

The unemployment cannot be as a result of participation in a strike, unless the strike is because of an imminent health and safety hazard or abnormally dangerous working conditions.³⁷

(b) Four Week Look Back Period.

To qualify for CalWORKs, the principal wage earner must have worked less than 100 hours in the four weeks immediately preceding the date of application.³⁸ The 100-hour rule is unrelated to earnings, so it is possible for someone to be working, making less than she would get in CalWORKs and still not be eligible for CalWORKs.

³⁵ See Chapter V regarding how grants are calculated.

³⁶ See Section F below for discussion of 60 month CalWORKs time limit.

³⁷ WIC § 11250.4; MPP § 41-440.24.

³⁸ WIC § 11201.

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EXAMPLE

Eric and Suzanne apply for CalWORKs with their baby, Jessica, in early July. Suzanne, the principal wage earner, worked 108 hours in the four weeks immediately preceding their CalWORKs application. She worked most of these hours in early June. The family is not eligible for CalWORKs. However, the family will be eligible for CalWORKs if it reapplies one week later. This is because the hours Suzanne worked in early June will no longer fall within the four weeks immediately preceding the family's application and, as a result, will not count against eligibility.

(c) The PWE Must Register with EDD.

The principal wage earner in a family that qualifies for aid based on unemployment must meet certain work requirements. He or she must apply for unemployment benefits and register at the Employment Development Department.³⁹

(d) Old Requirements That Were Eliminated.

Effective January 1, 1998, the old AFDC requirements regarding having enough work quarters to be connected to the labor force and the prohibition against quitting or refusing a job or job training within the 30 days period prior to receiving aid have been eliminated.⁴⁰ The elimination of the labor force connection requirement should make it easier for teens and other young parents (who often have little work experience) to qualify for CalWORKs while remaining together as two-parent families.

c. What Happens When Deprivation Ceases?

Though deprivation is a fundamental aspect of eligibility for CalWORKs, aid is not automatically terminated when one basis for deprivation ceases. In such cases, “the county shall

³⁹ WIC § 11201(b) (which adopts the standards of 45 CFR § 233.100(a)(5) (1996)); MPP § 41-440.23. See Chapter VI for a complete discussion of CalWORKs work requirements.

⁴⁰ WIC § 11201(b); ACL 97-65 at 4.

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determine if any other basis for deprivation exists.”⁴¹ In addition, even if there is no other deprivation basis, counties cannot terminate aid to the families until the end of the current payment quarter.⁴²

C. Age, Residence and Citizenship.

1. Age.

A child is eligible for CalWORKs until her 18th birthday.⁴³ An 18-year-old child, who is not a teen parent, is eligible for CalWORKs until age 19 or until she completes school only if she is *both* a full-time student *and* reasonably expected to complete school by age 19 (completion rule).⁴⁴ The child may be a student in a high school or in a vocational or technical training program.⁴⁵

An 18-year-old child, who cannot meet the completion rule requirement due to her disability, can receive aid until age 19.⁴⁶ Any child, who has received or is currently receiving SSI benefits, Regional Center services, Individual Education Plan (IEP) services, or Section 504 Accommodation Plan services, is considered disabled.⁴⁷ If the child never received any of these

⁴¹ MPP § 41-405.1.

⁴² MPP § 41-405.1(QR). See Chapter IX for a detailed discussion of quarterly reporting.

⁴³ WIC § 11253; MPP § 42-101.1. See generally 42 USC § 608(a). See Chapter VIII for a summary of CalWORKs requirements for teen parents.

⁴⁴ WIC § 11253; MPP § 42-101.2. An 18-year-old child, who cannot meet the completion rule requirement due to domestic abuse, may be able to get a waiver of this requirement. WIC § 11495.1; MPP § 42-715.51.

⁴⁵ WIC § 11253; MPP § 42-101.2.

⁴⁶ MPP § 42-101.3-.6; *Fry v. Saenz*, 98 Cal. App. 4th 256 (2002); *Fry v. Saenz*, Case No. 00CS01350 (Sacramento County Superior Court), Judgment and Peremptory Writ of Mandate, July 7, 2004.

⁴⁷ MPP § 42-101.3-.5.

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benefits or services, a healthcare provider or a trained qualified disability evaluation professional can provide verification and documentation of the child's disability.⁴⁸

There is no minimum or maximum age requirement for caretaker relatives.⁴⁹ Age can be verified by birth certificate, baptismal record, school records, immigration documents, affidavits, etc.⁵⁰ The CWD must assist the applicant in getting or paying for such records.⁵¹

2. A Word About Teen Parents.

With limited exceptions, teenagers (under age of 18), who are pregnant or who already have a child and have never married, must live with their own parent(s), a guardian, another adult relative, or in an adult-supervised supportive living arrangement to qualify for CalWORKs.⁵² The only exceptions are as follows: a) the teen parent has no living parent or guardian, or their whereabouts are unknown; b) the parent will not allow the teen parent to live with her; c) the CalWORKs social worker determines that the teen parent or her child's physical or emotional health or safety would be in danger if she lived with these adults;⁵³ d) the teen

⁴⁸ MPP § 42-101.6. DSS does not specify what the standard of disability is for a child who meets this catch-all disability category. So long as a healthcare provider or a qualified disability evaluation profession can verify and document the child's disability, the child can get aid until age 19.

⁴⁹ Often teen parents receive CalWORKs for their own children.

⁵⁰ MPP § 42-111. Advocates have been able to defeat overpayments based on lack of such documents when they have shown that the worker failed to assist the client in obtaining them. Western Center has administrative hearing decisions on the worker's duty to assist.

⁵¹ WIC § 11275.10.

⁵² WIC § 11254; MPP §§ 89-200 *et seq.* See generally ACL 97-17, ACL 97-18, ACL 97-26; ACIN I-57-96, ACIN I-24-97.

⁵³ This can include domestic abuse situation in which teens would be put at risk of further abuse if they remain in the adults' homes. Counties can waive any program requirements that would make it more difficult for domestic abuse survivors or their children to escape abuse and that would be detrimental or unfairly penalize them. WIC § 11495.1(a)(3); MPP § 42-715.51.

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parent lived apart from her parents for at least 12 months before the child was born, or before applying for CalWORKs; or e) the teen is legally emancipated.⁵⁴

3. Residence.

An applicant or recipient must be a resident of California to qualify for CalWORKs.⁵⁵ A CalWORKs family establishes residence in California if it is living here with no present intention of moving to another state.⁵⁶ The state or a county cannot impose a set period of residence before giving CalWORKs to a family.⁵⁷

PRACTICE TIP

A person becomes a resident of California the day she arrives here, if she intends to stay.⁵⁸

a. Temporary Absence.

Leaving California or the county for a temporary period does not necessarily mean there has been a change in residency.⁵⁹ A CalWORKs recipient may be absent from the county where she maintains a home for up to 4 months, and still be considered a resident of that county.⁶⁰

⁵⁴ WIC § 11254; MPP § 89-201.2. If the teen does live with her parents, the parents' income will be counted against the teen parent when she applies. See Chapter III and Chapter V for details.

⁵⁵ WIC § 11100; MPP § 42-400.

⁵⁶ MPP §§ 42-403, 42-407.1(QR).

⁵⁷ MPP § 42-401. The United States Supreme Court has struck down WIC § 11450.03(a), which limited for one year the grant for a new resident to the grant amount in the state from which the family moved. *Saenz v. Roe*, 562 U.S. 489 (1999).

⁵⁸ MPP § 42-421.

⁵⁹ WIC §§ 11100, 11105; MPP § 42.403.2.

⁶⁰ MPP § 40-189.21. See Chapter IX for a discussion of what happens when a CalWORKs family moves to another county.

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However, the recipient's failure to respond within 30 days to county inquiry about residency may indicate an intent to change state residency and aid will be discontinued immediately.⁶¹ For this reason, recipients who leave the state are required to provide monthly written statements explaining the reasons for the absence and whether there is an intent to return to California.⁶² If the recipient intends to be out of the state for more than 60 days, there is a rebuttable presumption of a change of *state* residency.⁶³ Recipients are required to inform the county of departures from the state and any changes in living arrangements so the county can evaluate the recipient's intent to remain in the county or state.⁶⁴

4. Immigration Restrictions.⁶⁵

a. Acceptable Immigration Status.

A CalWORKs applicant or recipient must be either a U.S. citizen or fall within certain categories of lawfully present immigrants.⁶⁶ Much confusion existed in this area after 1996

⁶¹ MPP § 42-407.21. In addition, WIC § 11101 provides that absence from the country for more than 30 days requires suspension of aid.

⁶² WIC § 11100; MPP §§ 42-405.22, 42-406.

⁶³ WIC § 11100; MPP § 42-407.23.

⁶⁴ MPP § 40-181.5.

⁶⁵ WIC § 11104. See Appendix J for more information on immigrant issues.

⁶⁶ WIC § 11104; MPP § 42-430; ACL 98-65 (regarding immigrant eligibility generally), ACL 00-07 (battered immigrant eligibility), ACL 06-60 (eligibility rules for non-citizen victims of human trafficking, domestic abuse, and other serious crimes); ACIN I-47-99 (revision of CalWORKs application sections regarding immigrant eligibility).

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federal welfare law changes, until the State was sued.⁶⁷ Subsequently, the State issued clarifying instructions for counties.⁶⁸

Most legal immigrants are eligible for CalWORKs. Eligible immigrants *include* “qualified aliens.”⁶⁹ To be considered a “qualified alien”, a noncitizen must be either a 1) lawful permanent resident;⁷⁰ 2) refugee, asylee, person granted withholding of deportation, or paroled for at least one year;⁷¹ 3) Cuban or Haitian entrant; or 4) a battered spouse or child with a

⁶⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. No. 104-208, 110 Stat. 3009 (1996); Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997); *Tovar v. Anderson*, Case No. 98 7295DT(MAN) (stipulated settlement) (available from Western Center).

⁶⁸ MPP §§ 42-430, 42-431.1-2; ACL 98-65 (regarding immigrant eligibility generally), ACL 00-07 (battered immigrant eligibility); ACIN I-47-99 (revision of CalWORKs application sections regarding immigrant eligibility).

⁶⁹ WIC § 11104. “Qualified immigrants” must still meet the financial and categorical eligibility requirements applying to all CalWORKs applicants in order to be eligible. Sponsored “qualified immigrants,” (immigrants who come into the country through relatives) for example, may have difficulties meeting the financial requirements. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (1996), codified at 8 USC §§ 1601 *et seq.* changed the immigrant eligibility rules for federal and state public benefits. See Appendix J for a chart regarding major benefit programs available to Californian immigrants, prepared by the California Immigrant Welfare Collaborative. For a full discussion of the federal welfare reform changes to immigrant eligibility, see “Immigrants and the 1996 Welfare Law: A Resource Manual,” available from the National Immigration Law Center (NILC), (213) 639-3900, www.nilc.org. Note that California law does not distinguish immigrant eligibility based upon the date of entry into the United States. See WIC §§ 11104, 11008.13, 11008.135. Therefore, a legal immigrant’s date of entry will not affect her eligibility unless sponsor deeming applies. See later discussion on sponsor deeming in this chapter.

⁷⁰ MPP § 42-431.21.

⁷¹ MPP § 42-431.22. Refugees, political asylees and persons whose deportation are withheld are persons fleeing their homeland because of a well-founded fear of persecution based on race, religion or membership in a social group. 8 USC §§ 1157, 1158. Parole is an immigration status granted for “urgent humanitarian or significant public interest” (such as those with serious Medi-Cal conditions). 8 USC § 1182(d)(5); 8 CFR § 212.5(a)(1). See also *Tovar v. Anderson*, Case No. 98 7295DT(MAN) (stipulated settlement); ACL 00-07.

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pending or approved: (a) spousal visa, or (b) petition for relief under the Violence Against Women Act (VAWA), whose need for benefits has a substantial connection to the battery or cruelty.⁷²

Effective January 1, 2007, trafficking victims, who are preparing to file, or have filed, an application for a “T” visa or are otherwise taking steps to meet eligibility conditions for federal benefits are also eligible for state-funded CalWORKs.⁷³ If the individuals do not file the “T” visa application within one year of application, they will no longer be eligible for CalWORKs.⁷⁴ Domestic abuse survivors and victims of other serious crimes, who have filed an application for a “U” visa, are also eligible.⁷⁵ If the “T” or “U” visa application is denied, CalWORKs benefits will be terminated.⁷⁶

Immigrants who are permanently residing under color of law (PRUCOL) including persons paroled into the U.S. for less than a year, granted indefinite voluntary departure in lieu of deportation or granted an indefinite stay of deportation are also eligible.⁷⁷

U.S. citizens must verify their citizenship by providing a birth certificate, passport, citizenship papers or other evidence such as school records, military discharge papers, marriage

⁷² 8 USC § 1641(c); MPP § 42-431.23. VAWA allows abused spouses or children to apply directly on their own behalf for an immigrant visa without the consent or cooperation of a U.S. citizen or lawful permanent resident who is abusing the immigrant. It also provides battered women and children a defense to deportation. See ACL 00-07 for a detailed discussion of battered immigrants’ eligibility for CalWORKs (and Food Stamps).

⁷³ WIC §§ 13283, 18945; MPP § 42-431.23. ACL 06-60 discusses CalWORKs eligibility for these individuals in more detail. “T” visas are available to trafficking victims. 8 USC § 1101(a)(15). See Penal Code § 236.1; WIC § 18945(b)(1); MPP § 42-431.231(a) for the definition of “human trafficking.”

⁷⁴ WIC § 18945(c); MPP § 42-431.442.

⁷⁵ WIC § 18945(b)(2); MPP §§ 42-431.23, 42-431.51, 42-431.231(b) (defining “victims of serious crimes”).

⁷⁶ WIC § 18945(a); MPP § 42-431.441. Trafficking victims whose “T” visa applications have been approved will lose state-funded CalWORKs but will be evaluated for federally funded CalWORKs benefits. MPP § 42-431.445.

⁷⁷ WIC § 11104; MPP § 42-431.22; ACL 96-52, ACL 98-65 at 2, ACL 00-07.

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certificates or affidavits.⁷⁸ Citizens may be aided for up to 90 days while trying to obtain acceptable proof of citizenship.⁷⁹

Noncitizens must establish their eligible immigration status with some type of formal documentation *before aid will be granted*.⁸⁰ Once the noncitizen submits reasonable proof that she is within an eligible category of immigrants, her CalWORKs cannot be delayed or denied pending verification from the United States Citizenship and Immigration Services (USCIS), formerly known as Immigration and Naturalization Service (INS).⁸¹ If the applicant cannot produce such documentation or the documentation looks questionable, the county welfare department may ask the applicant to sign the CA-6 form to give permission for the welfare department to contact the USCIS, before aid is provided.⁸² Once documentation is provided, or the USCIS confirms the applicant's eligible immigration status, she will be aided retroactively to the application date or the date she meets eligibility requirements, whichever is later.⁸³ The county is required to explain the documentation requirements to immigrants in their native language, if they are not fluent in English.⁸⁴

⁷⁸ MPP § 42-433.21.

⁷⁹ MPP § 42-433.22. The county must assist clients in getting these records. WIC § 11275.10.

⁸⁰ 42 USC § 1320b-7; WIC § 11104; MPP § 42-433.31; *see also* 62 Fed. Reg. 61344-61416 (Nov. 17, 1997) (U.S. Attorney General's Interim Guidance to states regarding verification of immigrant eligibility); ACIN I-23-96. Appendix J includes a list of documents that "qualified immigrants" may have pursuant to immigration law. "Guide to Alien Eligibility for Federal Programs" by the National Immigration Law Center, (213) 639-3900, www.nilc.org, is also helpful.

⁸¹ 42 USC § 1320b-7. *See* MPP § 42-433.31 for a list of documentation that noncitizens claiming to be eligible must provide to the counties.

⁸² MPP §§ 42-333.33, 42-333.4.

⁸³ MPP §§ 42-433.5, 44-317.11.

⁸⁴ MPP § 42-435.

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i. Citizen Children of Non-Citizens with Unacceptable Immigration Status Are Eligible for CalWORKs.

The parent and any siblings with unacceptable immigration status are not entitled to aid and will be excluded from the CalWORKs assistance unit (AU).⁸⁵ If the undocumented parent or siblings have income, that income will be used and their needs will be considered in calculating the AU's grant.⁸⁶ Their property will also count against the AU when determining eligibility.⁸⁷

ii. Reporting of Immigrants with Unacceptable Immigration Status to the USCIS.

The 1996 federal welfare reform law requires the county to report to the USCIS the names, addresses, and other identifying information of persons “*known*” to be not lawfully present in the United States on a quarterly basis (and upon the USCIS’ request).⁸⁸ California welfare office, however, are prohibited from asking an individual whether she or anyone in the household is “undocumented.”⁸⁹ The CalWORKs (and Food Stamps) applications have been revised to only ask whether applicants are citizens or noncitizens; counties *must* use these revised application forms.⁹⁰

⁸⁵ See Section G below for a full discussion of assistance units and Chapter V for examples of grant calculations for CalWORKs families with ineligible members.

⁸⁶ MPP §§ 43-119.22, 44-133.51 to .53.

⁸⁷ MPP § 43-119.22.

⁸⁸ 42 USC §611(a)(1)(A); *see also* 8 USC §§1644, 1373.

⁸⁹ *Tovar v. Anderson*, Case No. 98 7295DT(MAN) (stipulated settlement); ACIN I-47-99 at 1.

⁹⁰ *Tovar v. Anderson*, Case No. 98 7295DT(MAN) (stipulated settlement); ACIN I-47-99 at 1.

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b. Unacceptable Immigration Status.

Those who are not eligible for CalWORKs due to immigration status include those who have been admitted with tourist or student visas,⁹¹ persons who have applied but not yet been granted political asylum,⁹² those who have applied for adjustment of status, and persons without immigration status (undocumented).⁹³

c. Sponsored Immigrants.

Sponsored immigrants are immigrants who had financial sponsors when they entered the U.S.⁹⁴ The sponsor signs a form, called “an affidavit of support” promising to financially support the immigrant.⁹⁵ Both the income and resources of individual sponsors are deemed available to the immigrant when she applies for CalWORKs.⁹⁶ This is called “sponsor deeming.” Thus, many of these immigrants are disqualified because their sponsor’s income and resources exceed the CalWORKs limits.

The federal welfare reform law drastically changed the rules for new sponsored immigrants.⁹⁷ As a result, it is very important to determine whether the immigrant’s sponsor signed the “old” affidavit of support form (I-134) or the new form (I-864). The new form took effect on December 19, 1997.⁹⁸

⁹¹ MPP § 42-433.32.

⁹² *Sdomir v. McMahon*, 767 F.2d 1456 (9th Cir. 1985).

⁹³ See MPP § 42-431.2 for a list of acceptable immigration status.

⁹⁴ MPP § 43-119.2. Note that refugees and asylees applying for adjustment of status are exempt from the requirement of obtaining a sponsor. 8 USC § 1159(c); MPP § 42-119.123 to 124.

⁹⁵ 8 USC § 1182(a)(4); 22 CFR § 40.41.

⁹⁶ WIC § 11008.135(a)-(b); MPP §§ 43-119.22, 44-133.71.

⁹⁷ 8 USC § 1183a.

⁹⁸ 8 CFR §§ 213A, 299.1, 299.5. Most family-based visa applicants who file their visa or adjustment applications after that December 19, 1997, will be required to use the new form and comply with the new rules. See also ACL 97-65 at 6.

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Immigrants with old affidavits of support (I-134) are subject to sponsor deeming for their first three years in the United States.⁹⁹ The sponsor and the sponsored immigrant are jointly liable for CalWORKs overpayments caused by the failure to report correct information regarding the sponsor's income or resources.¹⁰⁰

Effective December 19, 1997, immigrants with new affidavits of support (I-864), however, are subject to sponsor deeming until the immigrant becomes a naturalized citizen or can be credited with 40 qualifying quarters of work.¹⁰¹ However, immigrants with new affidavits of support will be exempt from sponsor deeming for one year if the welfare department determines that they would go hungry or homeless without the assistance or if they are victims of domestic abuse.¹⁰² Domestic abuse survivors can get benefits for even longer than 12 months if they can show a court order or a document from the USCIS about the abuse.¹⁰³

⁹⁹ 42 USC § 608(f); WIC § 11008.13. See Chapter III for a discussion of how sponsor's income is treated.

¹⁰⁰ 8 USC § 1183a(a) (enforceability of the sponsor's affidavit of support); 8 CFR § 213a.2(o)(2)(i)(C)(2). See Chapter XI for discussion of overpayments.

¹⁰¹ 8 USC § 1631(b); WIC § 11008.135; MPP § 43-119.214(a)-(b). A quarter is a calendar period of three months. Since 1973, an individual does not have to have actually worked in each different calendar quarter (i.e., January through March, April through June, etc.) to have earned a quarter of credit. The quarters are based solely on the total yearly earnings. The amount an individual needs to have earned to get a quarter changes every year to keep up with inflation. 20 CFR §§ 404.140, 404.146. Lawful permanent residents can earn credit for work performed 1) by parents when the immigrant was under 18, including time before they were born; and 2) by a spouse during the marriage (unless the marriage ended in divorce or annulment). 8 USC § 1183a(a)(3)(B). No credit is given for a quarter worked after December 31, 1996, if a federal means-tested benefit (SSI, Medi-Cal, Food Stamps, or CalWORKs) is received in that quarter. 8 USC §§ 1183a(a)(3)(B), 1645; 8 CFR § 213a.2(e)(2)(i)(B). See "Immigrants and the 1996 Welfare Law: A Resource Manual" by the National Immigration Law Center (NILC) or call NILC at (213) 639-3900 for more information.

¹⁰² 8 USC §§ 1159(c), 1631(e)-(f); WIC § 11008.135; MPP § 43-119.221; ACL 00-07 at 6.

¹⁰³ 8 USC § 1631(f)(1)(B); WIC § 11008.135; MPP § 43-119.222. Note that these deeming exceptions apply to the persons who sign the *new* affidavits of support.

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Sponsors who sign the new affidavits of support may be liable for the value of any CalWORKs benefits the sponsored immigrant received, even benefits correctly paid.¹⁰⁴

To be eligible, all sponsored immigrants must provide information to the county regarding the income and resources of the sponsor.¹⁰⁵ Sponsors are also required to submit quarterly reporting forms and comply with other reporting requirements.¹⁰⁶ If an alien has been granted political asylum or was admitted as a refugee or public interest parolee, she is not considered sponsored for CalWORKs purposes.¹⁰⁷

D. Persons Convicted of Drug-Related Felonies and Persons Fleeing Parole Are Not Eligible.¹⁰⁸

1. Persons Convicted of Drug-Related Felonies.

Persons convicted of any federal or state crime involving a controlled substance are not eligible for CalWORKs if the conviction occurred after December 31, 1997.¹⁰⁹ A domestic abuse waiver of program requirement does not apply to this prohibition of aid.¹¹⁰ If otherwise eligible, the rest of the family may receive CalWORKs benefits, but they will not receive cash. Counties must issue vendor or voucher payments for at least the rent and utilities.¹¹¹

¹⁰⁴ 8 USC § 1183a(a); 8 CFR §§ 213a.2(c)(2)(C), (d)). The federal government has issued clarification regarding “public charge” (i.e. how receipt of public benefits will affect immigration status). *See* 8 USC § 1182(a)(4); 22 CFR §§ 40.7(a)(15), 40.41; 64 Fed. Reg. 28675-88 (May 26, 1999) (Proposed Rule); 64 Fed. Reg. 28689-93 (May 26, 1999) (Policy Memo). The federal government has not yet, however, issued any clarification regarding sponsor liability.

¹⁰⁵ WIC §§ 11008.13, 11008.135(b); MPP § 43-119.231.

¹⁰⁶ See Chapter IX for reporting requirements for all CalWORKs recipients.

¹⁰⁷ 8 USC § 1159(c); MPP § 43-119.12; ACIN I-02-94.

¹⁰⁸ See Chapter XII for a more detailed discussion of prohibitions of aid to persons convicted of drug-related felonies and fleeing felons and persons committing welfare fraud.

¹⁰⁹ WIC §§ 11251.3; 17012.5; MPP §§ 40-034.1, 82-832(j).

¹¹⁰ ACIN I-02-06, Attach. at 3.

¹¹¹ WIC § 11251.3(b); ACL 97-65 at 5.

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2. Fleeing Felons and Parole or Probation Violators.

Two other groups of persons in trouble with the law are also ineligible for CalWORKs. First, persons fleeing to avoid prosecution, custody, or confinement after conviction of a felony may not receive benefits.¹¹² The existence of an arrest warrant is evidence of fleeing, unless the person can prove lack of knowledge that she is being sought by law enforcement.¹¹³ Second, an individual is not eligible for aid if she is violating a condition of probation or parole in any court.¹¹⁴

3. Conditions That Apply to All.

Applicants and recipients must declare under penalty of perjury whether they have been convicted of drug-related felonies or are fleeing felons.¹¹⁵ A county may also initiate termination proceedings if it learns from another source that a recipient has been convicted of a drug-related felony or is a fleeing felon.¹¹⁶ Drug felons and persons fleeing parole are not subject to the work requirements because they are excluded from the AU.¹¹⁷

E. Other Requirements.

CalWORKs also imposes other behavioral or conduct requirements upon recipients, including immunizations of children, school attendance, and child support cooperation.¹¹⁸ If the recipient does not satisfy these additional requirements, the family's aid will be reduced.¹¹⁹

¹¹² WIC § 11486.5(a)(1); MPP §§ 40-034.2, 82-832(h); ACL 97-65 at 5.

¹¹³ MPP § 82-832(h).

¹¹⁴ WIC § 11486.5(a)(2); MPP § 82-832(i). The initial offense for which probation or parole was ordered need not have been a felony. MPP § 82-832(i).

¹¹⁵ ACL 97-65 at 5.

¹¹⁶ ACL 97-65 at 5.

¹¹⁷ ACL 97-65 at 5. See Chapter VI for a full discussion of work requirements.

¹¹⁸ WIC §§ 11265.8, 11253.5, 11477.

¹¹⁹ WIC §§ 11265.8(a) (immunizations), 11253.5(a), (d), (e) (school attendance); 42 USC § 608(a)(2); MPP § 82-510.41 (child support).

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Every applicant and recipient must be given notice of her responsibility to comply with these and other requirements before she can be sanctioned for noncompliance.¹²⁰ Further, every applicant and recipient can request an administrative hearing if she disputes the county's determination that she has not complied with these requirements.¹²¹

An important exception applies to these behavioral requirements. A county may waive any CalWORKs requirement, except those concerning deprivation, assets, income and homeless assistance, for a recipient who has been identified as a victim of domestic abuse when “good cause exists”¹²²

1. Immunizations.

All CalWORKs caretaker relatives and parents must verify that all children under six within their assistance unit have received age-appropriate immunizations, unless the parents have religious, medical or personal objections to immunization.¹²³ All applicants and recipients *must* be informed in writing at the time of application and redetermination of this requirement, the recommended immunizations, the potential exemptions and how they can obtain the immunizations.¹²⁴

¹²⁰ WIC § 11004(a) (generally); *see, e.g.*, WIC §§ 11265.8 (immunizations); 11253.5 (school attendance).

¹²¹ See Chapter XIII regarding hearings.

¹²² WIC § 11495.1(a)(3); MPP § 42-715.51.

¹²³ WIC § 11265.8; MPP § 40-105.4; ACL 97-70 at 1. Age-appropriate immunizations are defined as those recommended from the American Academy of Pediatrics and American Academy of Family Physicians. WIC § 11265.8(b)(1). The recommended immunizations are listed in MPP § 40-105.4(b).

¹²⁴ WIC § 11265.8(b); MPP §§ 40-105.4(c), 40-131.3(x), 40-181.1(m). WIC § 11265.8(b) requires that the notice given to applicants and recipients contain two schedules for childhood immunizations: 1) the recommended childhood immunization schedule and, 2) the recommended schedule for children not immunized in the first year of life. The schedules are found in MPP § 40-105.4(b).

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a. How Long Do Caretakers and Parents Have to Verify That They Have Satisfied This Requirement?

Applicants must verify within 30 days of their applicable child’s Medi-Cal eligibility determination that their children are immunized.¹²⁵ If the child is already receiving Medi-Cal at the time the family applies for CalWORKs, the parent has 45 days from the date of the CalWORKs application to show proof of immunization.¹²⁶ Recipients have 45 days from their annual CalWORKs redetermination of eligibility.¹²⁷ The county has the discretion to determine what type of proof is acceptable.¹²⁸ Families must continue to verify until the affected child receives all the appropriate immunizations or reaches six years of age.¹²⁹

b. What Happens If the Family Does Not Comply?

When a family does not comply with the immunization requirement, its grant will be reduced by an amount equal to portion of the grant provided to the parent or caretaker relative.¹³⁰ Thus, if a mother does not prove her two children are immunized, the family’s grant may be reduced from the MAP for a three-person family to the MAP for a two-person family.¹³¹ For two parent families, *both* parents or caretakers will be excluded from the grant.¹³² This sanction is imposed on a month-to-month basis until the family complies with the requirement.¹³³ During the time of the sanction, the parent(s) and caretaker(s) must still comply with any work

¹²⁵ WIC § 11265.8(a); MPP § 40-105.4(e)(1); ACL 97-70 at 2.

¹²⁶ WIC § 11265.8(a); MPP § 40-105.4(e)(1); ACL 97-70 at 2.

¹²⁷ WIC § 11265.8(a); MPP § 40-105.4(e)(2); ACL 97-70 at 2.

¹²⁸ MPP § 40-105.4(d); ACL 97-70 at 2.

¹²⁹ MPP § 40-105.4(d); ACL 97-70 at 2.

¹³⁰ WIC § 11265.8(a); MPP § 40-105.4(g); ACL 97-70 at 2.

¹³¹ An example of a grant reduction for failure to verify immunization can be found at MPP §40-105.4(g)(1).

¹³² WIC § 11265.8(a); MPP § 40-105.4(g); ACL 97-70 at 2.

¹³³ MPP § 40-105.4(h); ACL 97-70 at 2.

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requirements.¹³⁴ Further, any nonexempt income of the sanctioned parent(s) or caretaker(s) will be counted against the eligible children's grant.¹³⁵

c. Which Families Are Exempt From This Requirement?

The immunization requirement does not apply if the family submits a doctor's written statement that the child should not be immunized for medical reasons or if the family submits an affidavit that immunizations are contrary to the family's beliefs.¹³⁶ Also, a family which demonstrates a lack of reasonable access to immunization services has good cause for the failure to immunize and will have an additional 30 days in which to submit verification.¹³⁷ State law does not limit how many times the 30 day good cause extension can be granted.¹³⁸

¹³⁴ ACL 97-70 at 2. Caretakers who do not comply with work requirements can be sanctioned. See Chapter VI for a discussion on work requirements. It is uncertain, however, how a caretaker relative already sanctioned for failure to comply with work requirements will be sanctioned for failure to comply with the immunization requirement. Presumably, this doubly sanctioned caretaker would potentially be removed from the grant until she complied with both requirements.

¹³⁵ MPP § 44-133.4.

¹³⁶ WIC § 11265.8(a), (b)(3); MPP § 40-105.4(f); ACL 97-70 at 2. Note that the beliefs do not have to be religious. WIC § 11265.8(a); MPP § 40-105.4(f)(1).

¹³⁷ WIC § 11265.8(a); MPP § 40-105.4(i); ACL 97-70 at 3.

¹³⁸ WIC § 11265.8(a); MPP § 40-105.4(i); ACL 97-70 at 3.

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EXAMPLE

Manny and Lois have failed to timely verify that their 5 year old son, Vinnie, has received the appropriate immunizations. Their \$723 maximum aid payment for a nonexempt family of three in Region 1 would be reduced to \$359 per month (the amount of a grant for one) until they comply, unless they were not properly notified of the requirement, have good cause, or qualify for an exemption. In the meantime, any non-exempt income Manny or Lois earned would be counted against Vinnie’s grant of one person.¹³⁹

2. School Attendance.

CalWORKs families must verify that all children in the assistance unit between ages six and 17 are attending school “‘regularly’ as defined by the county.”¹⁴⁰ Applicants and recipients must be informed of this requirement.¹⁴¹

a. When Must the Family Verify School Attendance?

Verification of attendance is not required as a condition of approval of the CalWORKs application.¹⁴² Recipients must cooperate, however, with county requests for documentation.¹⁴³

b. What Happens if the Family Does Not Comply?

Non-complying families will be sanctioned.¹⁴⁴ The amount of the sanction depends on the age of the child who is not attending school. The grant will be reduced by an amount equal to the caretaker or parent’s share or to both parents’ share in a two-parent family if the child is

¹³⁹ The rules regarding income calculations and disregards are discussed in detail at Chapters V and IX. Maximum aid payments are discussed at Chapter IV and listed in the flyers in Appendix D.

¹⁴⁰ MPP § 40-105.5(a); *see generally* WIC § 11253.5. The regulations do not define what constitutes “regularly” attending school.

¹⁴¹ WIC § 11253.5(b); MPP §§ 40-131.3(y), 40-181.1(n); ACL 97-70 at 5.

¹⁴² MPP § 40-105.5(b); ACL 97-70 at 4.

¹⁴³ WIC § 11253.5(c); MPP § 40-105.5(b); ACL 97-70 at 4.

¹⁴⁴ WIC § 11253.5; MPP § 40-105.5(d); ACL 97-70 at 4.

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under 16 years of age.¹⁴⁵ If the child is 16 years or older, the child’s portion of the grant will be cut, while the grant of the parent or parents will be unaffected.¹⁴⁶ Note that effect is the same except for two-parent families. Just as with immunizations, sanctioned persons must still comply with welfare-to-work requirements, and their nonexempt income will count against the family’s grant.¹⁴⁷

c. Which Families Are Exempt?

Families can be exempt from compliance if they have good cause.¹⁴⁸ The county has the discretion to determine what constitutes good cause.¹⁴⁹

3. Child Support Cooperation.

All CalWORKs recipients must assign child and spousal support rights to the county.¹⁵⁰ Receipt of CalWORKs cash aid is an assignment of these rights by operation of law.¹⁵¹ Recipients can refuse to assign the rights in writing, but they will not be eligible for CalWORKs.¹⁵² Recipients must also cooperate with the county to collect child support from

¹⁴⁵ WIC § 11253.5(d); MPP § 40-105(d)(1); ACL 97-70 at 4.

¹⁴⁶ WIC § 11253.5(e); MPP § 40-105.5(d)(2); ACL 97-70 at 4.

¹⁴⁷ ACL 97-70 at 4.

¹⁴⁸ WIC § 11253.5(d), (e); MPP § 40-105.5(e). MPP § 40-105.5(c) exempts pregnant and parenting teens eligible for Cal-Learn and children subject to the Merced and San Diego County school attendance demonstration projects from the mandatory school attendance requirement. *See also* ACL 97-70 at 4. Advocates might also argue that the Education Code should be used as guidance in determining “good cause.” Educ. Code § 48205 provides several excuses for failure to attend school, including illness, absences for religious reasons, doctor visits, attending a funeral for a family member and the illness of a student recipient’s child.

¹⁴⁹ WIC § 11253.5(d)-(e); MPP § 40-105.5(f); ACL 97-70 at 4.

¹⁵⁰ 42 USC § 608(a)(3)(A); WIC § 11477(a)(1); MPP § 82-506.1.

¹⁵¹ WIC § 11477(a)(1); MPP § 82-506.2.

¹⁵² WIC § 11477; MPP §§ 82-506.1-2; ACL 97-65 at 3.

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noncustodial parents, unless they have good cause for noncooperation.¹⁵³ Cooperation includes providing information about the absent parent, agreeing to genetic testing and to serve as a witness in child support hearings, forwarding payments received directly from the absent parent, and performing other tasks necessary to establish paternity and securing support.¹⁵⁴ A parent who refuses to cooperate without good cause will be sanctioned and the family's CalWORKs grant will be decreased by 25% until the parent cooperates.¹⁵⁵ The children will still receive aid if eligible.¹⁵⁶

4. Fingerprinting.

Applicants and recipients are also subject to fingerprinting requirements.¹⁵⁷ Failure to cooperate may disqualify a family for aid.¹⁵⁸

F. Time Limits: Adults Cannot Receive CalWORKs for More Than 60 Months.

Beginning January 1, 1998, most parents and caretaker relatives cannot receive CalWORKs benefits for more than 60 cumulative months in their lifetime.¹⁵⁹ TANF benefits received from any other state after January 1, 1998, count against the 60 month time limit.¹⁶⁰ Partial months of aid count against the time limits.¹⁶¹ State law does *not* impose a time limit on

¹⁵³ WIC §§ 11477.02, 11477.04; MPP § 82-510.1; ACL 97-65 at 3. See Chapter X for a more detailed discussion of good cause for noncooperation.

¹⁵⁴ MPP § 82-510.1.

¹⁵⁵ WIC § 11477; MPP § 82-510.41.

¹⁵⁶ MPP § 82-506.4; ACL 97-65 at 2. See Chapter X for a complete discussion of child support rights and responsibilities.

¹⁵⁷ WIC § 10830; MPP § 40-105.3.

¹⁵⁸ WIC § 10830; MPP § 40-105.31. See Chapter IX for a discussion on fingerprinting requirement.

¹⁵⁹ WIC § 11454(b); MPP § 42-301.

¹⁶⁰ WIC § 11454(b); MPP § 42-302.1.

¹⁶¹ ACL 98-37, Attach., # 42.

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minor children.¹⁶² Further, as explained below, most teen parent recipients will *not* have the months during which they are teenagers count against the 60 month time limits, even though they are getting aid for their children.¹⁶³ Aid received before January 1, 1998, does not count toward the time limit.¹⁶⁴ There is a special formula for determining whether diversion payments are counted against the time limits; this is discussed in Chapter IV of this manual.

Advocates should also note that CalWORKs recipients' aid may stop before reaching the 60-month time limit. As explained in Chapter VI and Section E in this chapter, sanctioned recipients may be cut off of aid unless they comply with welfare-to-work or other program requirements.¹⁶⁵

1. Certain People Can Get Aid Beyond 60 Months: Exception/Clock Extenders.¹⁶⁶

Recipients who meet the “exception” criteria below can get aid even after they have reached their 60-month time limits.

¹⁶² WIC § 11454(b); MPP § 42-302.1; ACL 97-65 at 1-2, ACL 99-90, Attach. B (chart).

¹⁶³ WIC §§ 11454.5(a), (b)(2); MPP § 42-302.21(d).

¹⁶⁴ WIC § 11454(c); ACL 97-65 at 1. Note that the federal five-year TANF limit began November 26, 1996. 42 USC § 608(a)(7)(A). Because California's 60-month clock began ticking after the federal clock, California will use state only funds to cover persons after the federal limit is exhausted and until the state time limit is reached.

¹⁶⁵ WIC § 11327.5(c); MPP § 42-721.43.

¹⁶⁶ The state law language is confusing. While Welfare and Institutions Code section 11454 uses the term “exemptions” to describe when recipients can get aid beyond 60 months, DSS uses the term “exceptions,” “extensions,” and “extenders.” DSS uses “exemptions” to describe the criteria to stop the 60-month clock, which will be discussed below. For purposes of this manual, we will use DSS' terms.

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The 60 month time limit does not apply when ALL parents or caretakers in the AU are:

- Aged 60 or older;
- Caring for an ill or incapacitated household member;
- Caring for a dependent of the court or a child at risk of placement in foster care;
- Disabled and receiving specified disability benefits;
- Unable to maintain employment or participate in work activities, as determined by the county;
- Not receiving aid because of a sanction or exclusion; or
- Domestic abuse survivors when the county finds good cause for waiving the time limit.

Adults who have reached their time limit can still aid after 60 months if *all* the parents or caretaker relatives in an assistance unit meet *any* of the following conditions:

- they are 60 years of age or older;¹⁶⁷
- they have primary responsibility to care for a child who is a dependent of the court or who is at risk of being placed in foster care, when the county determines these responsibilities go beyond “normal-day-to-day parenting responsibilities” and impair their ability to be regularly employed or participate in welfare-to-work activities;¹⁶⁸

¹⁶⁷ WIC § 11454(c)(1); MPP § 42-302.111.

¹⁶⁸ WIC §§ 11454(c)(2). 11320.3(b)(4); MPP § 42-302.112(b). The regulation does not specify how a county is to determine that a child is at risk of placement in foster care. Advocates may argue that any child living with a non-parent caretaker relative is at risk of placement, but the caretaking responsibilities must be beyond the “normal day-to-day parenting responsibilities” for the caretaker to qualify for the extension beyond 60 months.

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- they are providing care for an ill or incapacitated household member and these responsibilities impair their ability to be regularly employed or to participate in welfare-to-work activities;¹⁶⁹
- they are disabled *and* receiving Supplemental Security Income (SSI), In-Home Supportive Services, State Disability Insurance, or Workers' Compensation Temporary Disability Insurance benefits, if the disability significantly impairs their ability to be regularly employed or to participate in welfare-to-work activities;¹⁷⁰
- they are incapable of maintaining employment or participating in welfare-to-work activities as determined by the county (based upon individual assessments) and they have a history of participating and fully cooperating in welfare-to-work activities;¹⁷¹
- they are not included in the assistance unit because of sanction, refusal to assign child support, or status as a drug felon or fleeing felon;¹⁷² or
- they are a domestic abuse survivor and the county finds good cause for waiving the time limit.¹⁷³

¹⁶⁹ WIC §§ 11454(c)(2), 11320.3(b)(5); MPP § 42-302.112(a).

¹⁷⁰ WIC § 11454(c)(4); MPP § 42-302.113.

¹⁷¹ WIC § 11454(c)(5); MPP § 42-302.114.

¹⁷² WIC § 11454(c)(3); MPP § 42-302.115. The regulation simply says those who are “excluded from the AU for reasons other than exceeding the time limit” are exempt from the limit. ACL 98-09, page 3, acknowledges that caretaker relatives who are sanctioned and no longer in the assistance unit are exempt from the time limits. *See also* ACIN I-09-98 (chart showing who is in and out of the AU), ACL 99-09, Attach. C (chart showing effect of sanctions and penalties on time limits). Section F.2 in this chapter discusses the distinction between sanctions and penalties.

¹⁷³ WIC § 11495.15; MPP §§ 42-302.12, 42-715.51. The regulations do not specify what factors a county must consider in determining good cause. The domestic abuse regulations are found at MPP §§ 42-715 *et seq.* A comprehensive memo on CalWORKs domestic abuse issues is found in Appendix I of this manual.

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2. Certain Months on Aid Do Not Count Toward the 60 Month Time Limit: Exemptions/Clock Stoppers.

Some months during which adult recipients receive aid do not count against the 60-month time limit. These are known as months that are “exempt” from the 60-month time limit.

Months do not count when a recipient is:

- Exempt from work requirements because of a disability;
- Exempt from work requirements because she takes care of an ill or incapacitated household member;
- Exempt from work requirements because she takes care of a child who is a dependent of the court or at risk of placement in foster care;
- A domestic abuse survivor and the county finds good cause;
- A teenage parent under 19 without a high school diploma;
- A teenage parent age 19 who is participating in the Cal-Learn program;
- 60 years of age or older;
- Not receiving aid because of sanction or exclusion;
- Receiving aid which is fully reimbursed by child support from an absent parent;
- Living in Indian country with high unemployment;
- Receiving only supportive services such as child care, transportation, etc;
- In a “zero basic grant” month in which no aid is received because the aid would be less than \$10.

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Months do not count against the 60-month time limit if:¹⁷⁴

- The parent or caretaker relative is exempt from work participation requirements due to a verified disability that is expected to last at least 30 days;¹⁷⁵
- The parent or caretaker relative is 60 years or older;¹⁷⁶
- The parent or caretaker relative is excluded from the assistance unit;¹⁷⁷
- The parent or caretaker relative is needed at home to care for an ill or incapacitated household member;¹⁷⁸
- The parent or caretaker relative cares for a child who is a dependent of the court or at risk of foster care placement;¹⁷⁹

¹⁷⁴ As discussed earlier in this section, *all* the adult recipients in the assistance unit must meet certain conditions in order to meet the “exceptions” to get cash aid beyond 60 months. By comparison, if *one* of the adult recipients in a two-parent families meets one of the exemption criteria in any month on aid, that month does not count toward the time limit for that recipient. MPP § 42-302.21. However, it will count against the second adult recipient’s time limit, unless that adult recipient also meets an exemption criteria.

¹⁷⁵ WIC §§ 11454, 11454.5, 11320.3; MPP § 42-302.21(a); ACL 97-65 at 2. The county can grant this exemption retroactive to the date of the onset of the disability. ACL 03-21 at 4.

¹⁷⁶ WIC § 11454.5(c)(1); MPP § 42-302.21(e).

¹⁷⁷ WIC § 11454(c)(3); MPP § 42-302.21(f).

¹⁷⁸ WIC § 11454.5(a)(1); MPP § 42-302.21(b)(1).

¹⁷⁹ WIC § 11454.5(a)(1); MPP § 42-302.21(b)(2). For the exemption to apply, the county must determine that the caretaking responsibilities are “beyond those considered normal day-to-day parenting responsibilities so that they impair the individual’s ability to be regularly employed or to participate in welfare-to-work activities.” WIC § 11454.5(a)(1); MPP § 42-302.21(b)(2). The regulations contain no guidance as to how the counties must make this determination, but MPP § 11-501.3 requires that the counties make discretionary determinations using written standards. Advocates may argue that a child who lives with a non-parent caretaker relative is at risk of foster care placement and should qualify for this exemption if the caretaking responsibilities are beyond the normal day-to-day parenting responsibilities.

Note that months in which a parent is exempt from work participation requirements based on caretaking responsibilities for an infant count against the 60-month time limit. See WIC § 11454.5(b), MPP § 42-302.21.

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- The parent or caretaker relative is a victim of domestic abuse and the county finds good cause for waiving the limit;¹⁸⁰
- The parent or caretaker relative is eligible for, participating in, or exempt from Cal-Learn or another teen parent program approved by the state.¹⁸¹ By definition, this means that teen parents under 19 without high school diplomas or GED, and 19 year old teen parents participating in Cal-Learn do not have those months on aid counted against the time limit.¹⁸²
- The aid for that month is completely reimbursed by child support;¹⁸³
- The adult received aid while living in Indian country¹⁸⁴ or in an Alaska Native Village where the adult “unemployment” rate is more than 50%;¹⁸⁵
- The adult is a former recipient who receives no cash aid, but only child care, case management or other supportive services;¹⁸⁶

¹⁸⁰ WIC §§ 11495.1, 11495.15; MPP § 42-302.21(c).

¹⁸¹ WIC § 11454.5(a)(2); MPP § 42-302.21(d). See Chapter VIII on Cal-Learn.

¹⁸² MPP § 42-302.21(d). See Chapter VIII regarding the participation of 19-year olds in Cal-Learn.

¹⁸³ WIC § 11454.5(a)(3); MPP § 42-302.21(g); ACL 97-65 at 2. This applies whether the child support is collected in that month or in subsequent months. Note that is unclear how counties will track child support receipt for the time limit purposes. Advocates should raise this issue in county level advocacy. See Chapter X for more on how child support collection is used to take months on aid off the 60-month time limit clock.

¹⁸⁴ As defined by 18 USC § 1151. WIC § 11454.5(a)(5); MPP § 42-302.21(h).

¹⁸⁵ 42 USC § 608(a)(7)(D); WIC § 11454.5(a)(5); MPP § 42-302.21(h). California Indian Legal Services (CILS) recommends that advocates contact the reservation’s tribal government to see whether it has maintained employment statistics for the relevant period. The best alternative source of information is the Bureau of Indian Affairs. For more information, contact CILS at (510) 835-0284 or (619) 746-8941.

CalWORKs also mandates that counties consult with eligible federally recognized Indian tribes within the county to ensure that American Indian recipients will have “equitable access to assistance.” WIC § 10553.25(d). Advocates are encouraged to call CILS to discuss the implementation of these provisions.

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- The family receives no cash aid because its grant is calculated at \$10 or less.¹⁸⁷

State regulations require that county discretionary determinations be made according to publicly available written criteria.¹⁸⁸

a. Domestic Abuse Waivers.

It is to a county's and the state's advantage to grant time limit waivers to past and present victims of domestic abuse because doing so may help California meet its federal TANF requirement of not aiding adult recipients for more than 60 months.¹⁸⁹ Federal law does not specify the exception/clock extender criteria but allows each state to aid up to 20% of its caseload beyond 60 months.¹⁹⁰ Penalties apply to a state that exceeds this 20% limit, unless the state can show that it exceeds the limit due to domestic abuse waivers.¹⁹¹

In California, counties must adopt the domestic abuse waivers of the 60-month time limit and have a protocol for granting the waivers.¹⁹² Counties cannot require the recipients, who receive domestic abuse waivers, to obtain a temporary restraining order or to participate in county-designated activities since recipients are entitled to welfare-to-work plans that are based on their individual assessments.¹⁹³

¹⁸⁶ WIC § 11454.5(a)(4); MPP § 42-302.21(i).

¹⁸⁷ MPP § 42-302.21(j).

¹⁸⁸ MPP § 11-501.3. See ACL 00-08, ALL 98-58, and ACIN I-32-99, regarding written policies. ACL 98-58 specifies that Administrative Law Judges may not rely in state hearings on county policies that are not in writing.

¹⁸⁹ See generally 42 USC § 608(a) (requirements states must meet to receive federal TANF funding).

¹⁹⁰ 42 USC § 608; 45 CFR § 264.1.

¹⁹¹ 42 USC §§ 608(a)(7)(C), 609(a)(9); 45 CFR §§ 260.55, 260.58, 260.59, 264.3.

¹⁹² WIC § 11495.1.

¹⁹³ MPP § 42-715.21; ACIN I-02-06, Attach., #5 and #8.

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Counties have been reluctant in granting domestic abuse waivers. Recipients can receive retroactive domestic abuse waivers.¹⁹⁴ When looking at recipients' time limit issues, advocates should determine whether domestic abuse waiver to stop the 60-month clock or exception to extend the 60-month clock apply at any time while the recipients have been on aid.

b. Penalties v. Sanctions.

The 60-month time limit does not apply to any month in which a caretaker relative is removed from the assistance unit (AU) because of a welfare-to-work sanction or because she is ineligible for aid as a drug or fleeing felon or for failure to assign child support rights.¹⁹⁵ The time limit *does* apply to months in which a caretaker relative is under a *penalty* since the penalty does not remove her from the AU.¹⁹⁶ Thus, as explained in ACL 99-90 at Attachment C, the 60-month clock *does* run during months in which an adult is penalized for failure to submit immunization verification without good cause,¹⁹⁷ failure to verify school attendance,¹⁹⁸ or failure to cooperate with child support requirements.¹⁹⁹ Likewise, the time limit runs during months in which a caretaker relative is subject to penalties for intentional program violations.²⁰⁰ It does not run during sanction months.²⁰¹

¹⁹⁴ ACIN I-02-06, Attach., # 6.

¹⁹⁵ MPP §§ 42-302.115, 42-302.21(f). ACL 98-09 likewise specifies at page 3 that months in which a recipient is subject to a penalty or sanction are counted against the time limit, unless the penalty or sanction removes the recipient from the AU. ACIN I-09-98 contains a chart which clarifies DSS' view that a penalty does not remove a person from the AU (and thus does not stop the clock), while a sanction does.

¹⁹⁶ See ACL 99-90, Attach. C (chart showing penalties, sanctions, and exclusions, and effect of each on time clocks).

¹⁹⁷ See Section E.1 in this chapter for information on the immunization requirement.

¹⁹⁸ See Section E.2 in this chapter.

¹⁹⁹ See Section E.3 in this chapter.

²⁰⁰ ACL 99-90, Attach. C. See Chapter XII in this manual for information on intentional program violations and penalties.

²⁰¹ ACL 99-90, Attach. C.

3. What Happens After the Time Limit is Reached?

a. How the Children’s Safety Net Grant Is Calculated.

After 60 months, the adult will be removed from the assistance unit.²⁰² The aid to eligible children must continue, though whether to provide it in cash or vouchers is at the county’s option.²⁰³

How a timed-out adult’s income affects the children’s grant depends on the relationship between the adult and the children. A timed out parent’s income will be considered, but her needs will not be included in determining the AU’s monthly grant.²⁰⁴ If the timed out adult is a non-parent caretaker relative, her income and needs are not considered.²⁰⁵ If the timed-out adult is a stepparent, her income and needs are counted.²⁰⁶

b. Post Time Limit Supportive Services.

Counties have the option to continue to provide welfare-to-work activities to the caretaker.²⁰⁷ They also have the option to provide supportive services to all former recipients.²⁰⁸ Counties, however, must provide Stages 1 and 2 child care to timed-out adults for up to 24

²⁰² WIC §§ 11320.15, 11450.13; MPP § 42-301.2. The AU’s maximum aid payment will be reduced by the removed caretaker’s gross income minus any applicable deductions. WIC §§ 11450.13, 11451.5.

²⁰³ WIC § 11450.13.

²⁰⁴ MPP § 44-133.81. This means that in calculating the monthly grant for a family of three, the timed-out parent’s net nonexempt income will be deducted from the MAP for a family of two. See Chapter V for a detailed discussion on grant calculation.

²⁰⁵ MPP § 44-133.82. This means that a family of three will receive the maximum grant amount (or the MAP) for two.

²⁰⁶ MPP § 44-133.83. This means that in calculating the monthly grant for a family of three, the timed-out stepparent’s net nonexempt income will be deducted from the MAP for a family of three. See Chapter V for a detailed discussion on grant calculation.

²⁰⁷ WIC § 11320.15. This is voluntary for the parent and, if provided, the parent must do community service.

²⁰⁸ WIC §§ 11320.15, 11323.2; MPP § 42-717; ACL 02-92.

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months if they are working.²⁰⁹ Medi-Cal *will continue* for adults and children as long as they meet the Medi-Cal income and resource requirements in effect on July 16, 1996.²¹⁰ Adult parents or caretakers who reach the 60 month time limit will not be eligible to receive General Assistance until all of their children, for whom they received CalWORKs aid, whether or not currently living in the home, are 18 years or older.²¹¹

4. Tracking Time Limits and Notice to Inform Recipients about Their Time Limit Status.

At the time of application and redetermination, counties must provide “in writing and orally as necessary, a description of the 60-month time limit requirements, including the exemptions from the time limit . . . and the process by which recipients can claim the exemptions.”²¹² Counties must provide information to current and former recipients of their time limit status as to the number of months used and remaining, at the time of application, redetermination, during the 54th month on aid, and between 54th and 58th months on aid.²¹³ Counties must also provide this information, in writing, within 30 calendar days from the date of the recipients’ request.²¹⁴ In the 60th month, counties are required to send a notice of action informing recipients of the reduction in the grant amount due to the expiration of the 60-month time limit.²¹⁵ Recipients have the right to a hearing to challenge the accounting or the failure to provide exemptions or exceptions upon receiving any of these notices.²¹⁶ Recipients, who are

²⁰⁹ Educ. Code § 8353(a); 5 CCR § 18405(c), WIC § 11323.2(a)(1); MPP § 47.230.142. See Chapter VII for a discussion on child care for current and former recipients.

²¹⁰ 42 USC § 608(a)(11); WIC § 14005.30(b).

²¹¹ WIC § 17021. In other words, adults who exhaust their CalWORKs benefits may not turn to General Assistance as a replacement until all their children reach age 18.

²¹² MPP § 40-107(a)(4).

²¹³ MPP § 40-107(a)(4)(C) and (D).

²¹⁴ MPP § 40-107(a)(4)(F).

²¹⁵ MPP § 40-107(a)(4)(G).

²¹⁶ See Chapter XII for discussion on hearing rights and process.

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about to time out and have received the notice in the 60th month, can get aid paid pending (APP) the outcome of the hearing if they request a hearing immediately (before the reduction of the monthly grant).²¹⁷ If unsuccessful at the hearing, recipients may be assessed with an overpayment.²¹⁸

PRACTICE TIP

Since the process for granting exemptions and exceptions was not in place until 2002 when DSS issued the final time limit regulations, counties may not have properly granted exemptions and exceptions to recipients. The recipients should review the information about the months used and remaining to see if the counties have accurately counted the months and whether the recipients should have been exempt during any month. DSS has stated that retroactive exemptions may be granted. If the recipients disagree with the counties' accounting of the months or the counties' decision regarding exemptions and exceptions, they should request a hearing immediately. Note that recipients should keep all notices of action about time limits and keep track of the months on aid, sanctions, their illnesses or disabilities and those of their family members, and any other information that could help to show that they qualify for an exemption.

G. The Assistance Unit (AU) and the Family.

Under CalWORKs, financial eligibility and the amount of aid a household can receive are subject to two related concepts: (1) The Assistance Unit (AU), that is, the grouping of persons on whose behalf aid is being provided, and (2) the "Family," which consists of all those family members whose income will be considered in determining aid, and may include other relatives, who themselves are not in the AU but who live with the persons who are in the AU. The AU and the Family may or may not be identical for a particular household. There also may be persons (e.g., people with more distant relationships to the AU members) living in the home who are not in either the AU or the Family.

²¹⁷ MPP § 22-072.5. See Chapter XII for discussion on aid paid pending.

²¹⁸ MPP § 44-350.15.

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1. What is the Assistance Unit (AU)?

The AU is a term of art and is not synonymous with the general concepts of family or household. The AU is only the people, who live together and who qualify for CalWORKs as a unit.²¹⁹ Often relatives, boyfriends, stepparents and house mates live in the same home. Some may qualify for CalWORKs and others may not. As noted above, other family members may be considered “non-AU family members” whose income and presence will affect the amount of aid provided to the household.²²⁰ The composition of the AU is important because the most a household can receive is the maximum aid payment (MAP) for the AU members. The benefits will be the lower of the maximum aid for the AU members, or the computed aid for the “family,” which includes certain non-AU members. The county has a duty to advise families of their choices in including and excluding people from the AU, and of the combination which will result in the most income to the family.²²¹ In some instances, this advice will involve creating more than one AU and having more money coming in as a result. There are some basic rules that apply to all AUs.

2. What Are the General Rules for AUs?

a. Every AU Must Contain An Eligible Child, With Three Exceptions.

Every AU must have an eligible child.²²² To be eligible for aid a child must be under the age of 18 (or 19, if she is in high school and expected to graduate by 19),²²³ “deprived of parental support or care,”²²⁴ and living with a caretaker relative.²²⁵

²¹⁹ WIC §11450.16; MPP §§ 82-800 *et seq.*

²²⁰ MPP §§ 44-133.52, 44-207.22; ACL 97-59 at 2.

²²¹ MPP § 82-828.1.

²²² WIC §§ 11250, 11450(a)(1), 11450.16(b)(1)(A); MPP § 82-820.2.

²²³ See Section C.1 in this chapter for age requirements.

²²⁴ See Section B in this chapter for a discussion of the deprivation requirement. *See also* WIC § 11250; MPP §80-301(e)(1).

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There are three exceptions to the eligible child requirement.

i. The Parent of a Child Receiving SSI.

A caretaker relative can get CalWORKs to cover her own needs when her child receives SSI.²²⁶ However, the child is excluded from the AU (since he gets SSI).

ii. A Pregnant Woman With No Other Children.

A pregnant woman can get aid as an AU of one.²²⁷ She is eligible from the date she provides medical verification of the pregnancy, the date of her application, or the date three months prior to the anticipated date of birth, whichever is later.²²⁸ However, teens eligible for Cal-Learn²²⁹ are eligible from the point of verification of pregnancy, even if that is before the beginning of the third trimester.²³⁰ A pregnant woman cannot qualify for assistance as a separate AU if she is already a member of an existing AU. She will be a member of an existing AU if she is a pregnant teenager living with a mother, who receives CalWORKs aid.²³¹ Finally, it is necessary that she and the baby meet all other eligibility requirements, including deprivation, if the baby is born and living with her.²³² The father of an unborn child will not be aided, even if

²²⁵ Not all relatives can be caretaker relatives and get aid. Caretaker relatives must be blood relatives of a certain degree. See Section G.2.b in this chapter. If the person isn't a relative, she may be able to get foster care as a guardian or as a foster parent. MPP § 82-808.1. See Chapter IV.

²²⁶ WIC § 11450.16(b)(1)(B); MPP § 82-820.22; ACL 97-59 at 2.

²²⁷ WIC §§ 11450(b), 11450.16(b)(2); MPP § 82-836.1.

²²⁸ WIC § 11450(b).

²²⁹ See Chapter VIII for information on Cal-Learn.

²³⁰ WIC § 11450(b); MPP §§ 42-762.7, 82-836.15.

²³¹ In such cases, the \$47 per month pregnancy special needs allowance would be added to the CalWORKs grant beginning in the third trimester (7th month) of her pregnancy. After the baby is born, if she is still living with her mother, her mother's income will be deemed to her and her baby.

²³² WIC § 11450(b). See Section B above for a discussion of deprivation.

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he is living in the home, if there are no *other* eligible children. However, his unemployment or disability can be the basis of deprivation entitling the pregnant woman to CalWORKs. The father will be added to the AU when the baby is born.²³³

iii. The Parent of a Child Receiving Foster Care.

The caretaker relative can get cash assistance to cover his or her own needs when the dependent child receives foster care.²³⁴

b. Every AU Has a Caretaker Relative.

An eligible child must be living in the home of a "caretaker relative" to be eligible for CalWORKs. The "caretaker relative" is the person responsible for the care and control of the child.²³⁵ Determining the caretaker is usually simple; most often it is the mother. At other times, it can be complicated. Only certain relatives can be a CalWORKs caretaker, i.e., those related by blood, marriage, or adoption within at least the fifth degree of kinship to the eligible child.²³⁶ Those relatives are: parents, stepparents; siblings, stepsiblings, half-siblings; grandparents, great-grandparents, great-great grandparents; great-great-great grandparents, aunts, great-aunts, uncles, great-uncles, first cousins, first cousins once removed, nieces and nephews, steprelatives and the spouses of any divorced or deceased relative listed above.²³⁷

i. Who is the Caretaker When the Parents Have Joint Custody?

When parents have joint physical custody of a child, there are special rules for determining who is the caretaker relative. The person who has the child more than half of the time is considered the caretaker relative.²³⁸ If both parents have the child half the time, the

²³³ MPP § 82-832.131.

²³⁴ WIC § 11450.16(b)(1)(B); ACL 94-91.

²³⁵ WIC § 11203; MPP § 80-301c(2).

²³⁶ MPP § 82-808.11.

²³⁷ MPP §§ 82-808.111-.114.

²³⁸ MPP § 82-808.4.

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caretaker relative is the parent designated by court order as the caretaker.²³⁹ If there is no court order and both parents are eligible for aid, the caretaker relative is the parent who is responsible for the care and control of the child as evidenced by responsibilities for the child's education, medical care, dental care, etc.²⁴⁰ If both parents are equally eligible, and they cannot agree on who should be the caretaker, aid will be given to the parent who applies first.²⁴¹ Each case must be evaluated on its own facts. Since circumstances may change over time, the actual situation on the date of a county's proposed action (such as the granting of aid) is determinative.²⁴²

ii. How Does Temporary Absence Affect the Caretaker?

Temporary absence of either the child or the caretaker relative from the home does not affect eligibility.²⁴³ Temporary absence includes absence due to hospitalization, attendance at school, vacations, trips made to pursue employment, etc.²⁴⁴ To be considered temporary, an absence must be one full calendar month or less.²⁴⁵ A full calendar month means from the first through the last day of the month, so if a recipient leaves home on February 2 and returns on March 16 she is considered temporarily absent.²⁴⁶ A calendar month is a minimum of 30 days; a person leaving home on February 2 during a non-leap year has until March 3 to return.²⁴⁷ A child in a public hospital can be absent from home for up to two full calendar months and still be

²³⁹ MPP § 82-808.413.

²⁴⁰ MPP § 82-808.3.

²⁴¹ MPP § 82-808.413(d).

²⁴² MPP § 82-808.2.

²⁴³ MPP § 82-812; *see also* WIC § 11269 (child receiving medical care in public hospital not exceeding two calendar months is eligible). For a discussion of how absence from the state affects eligibility, see Section C.3 of this chapter.

²⁴⁴ MPP §§ 82-812.52, .6.

²⁴⁵ MPP § 82-812.5.

²⁴⁶ MPP §§ 82-812.51, 82-812.52(a).

²⁴⁷ MPP §§ 82-812.51, 82-812.52(c).

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considered temporarily absent.²⁴⁸ However, if a parent is in jail on the first of the month and expected to be there for the full calendar month or more, she will be considered permanently absent.²⁴⁹ A parent should continue to receive CalWORKs when a child enters a licensed group home under certain conditions.²⁵⁰

If a child is absent from the home for more than one full calendar month due to parental kidnapping or other coercive behavior, the caretaker relative should try to obtain a domestic abuse waiver of this requirement.²⁵¹

3. What Choices Are There in the Composition of the AU?

The number of people in the assistance unit and the number of assistance units in a household can make a substantial difference in the amount of money paid to the household members. There are some family members who *must be in* the AU, others who *cannot be in*, and still others who *may be in* the AU, at the family’s option. Sometimes families have choices in the makeup of the AU’s which could affect their benefits. There are two times when this could matter: (1) when there is more than one AU in a home because there is more than one caretaker, each responsible for different eligible children; or (2) when there is a stepparent in the home.

²⁴⁸ MPP § 82-812.62.

²⁴⁹ MPP § 82-812.61; ACL 97-14.

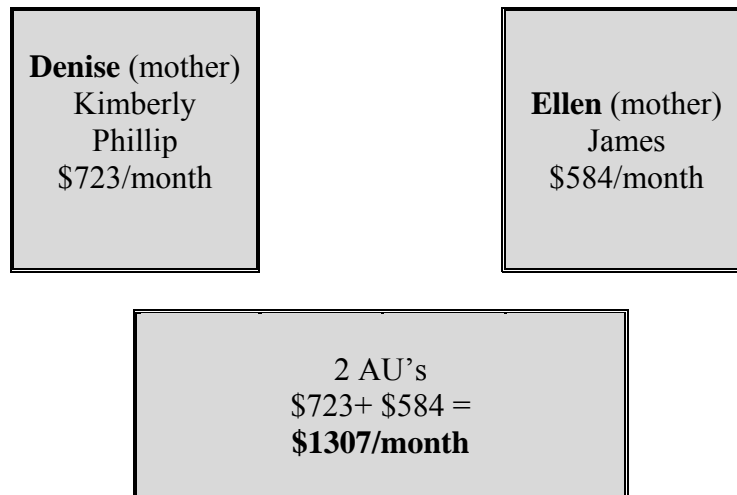
²⁵⁰ MPP § 82-812.67.

²⁵¹ A county may waive any CalWORKs program requirements, except those concerning deprivation, assets, income, and homeless assistance, for a recipient, who has been identified as a victim of domestic abuse when “good cause exists” WIC § 11495.1(a)(3); MPP § 42-715.51.

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EXAMPLE

Denise has two children, Kimberly and Phillip, and moves in with her sister Ellen, who has a child of her own (James). All are in need of aid. Instead of considering this a single assistance unit of five persons, (eligible for a maximum nonexempt grant of \$980 in Region 1),²⁵² it should instead be considered two units, one of three persons (\$723) and another of two (\$584), qualifying for a total of \$1,307.



It is always in the interests of household members to maximize the number of AU's in the home, since the grant structure assumes that larger family units have better economies of scale and can live on less per person than separate sets of smaller units.

If Ellen is not in the home, but her child James is living with Denise, this household will be considered a single family unit of four (MAP = \$862) rather than two separate units of three persons (\$723) and one person (\$359) receiving a total of \$1,082 per month.

²⁵² See Chapter IV for a chart showing maximum grant levels in each region.

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**Denise (mother
and aunt)**
Kimberly (daughter)
Phillip (son)
James (nephew)
\$862/month

When there is only one caretaker adult in a household, the AU's are always combined.²⁵³ Thus, the family cannot get more aid by remaining two separate AU's. Also, if two unmarried partners are living together and have separate children, they can be considered separate AU's. But if they have a child in common, all of the persons in the household are combined into a single AU.²⁵⁴ If they marry, regardless of whether they have a child in common, there is also only one AU.²⁵⁵

As is evident, identifying who is in an assistance unit may change the amount of money to a family. Advocates need to examine these rules carefully to best help clients. It is, however, important to remember that the determination of the amount of aid paid is also based upon defining the members of the "family," which could be the same as the AU, but which could also contain persons not included in the AU.

²⁵³ WIC § 11450.16(e); MPP § 82-824.13. The U.S. Supreme Court, in *Anderson v. Edwards*, 514 U.S. 143 (1995), held that a previous version of this policy did not violate the former federal AFDC law.

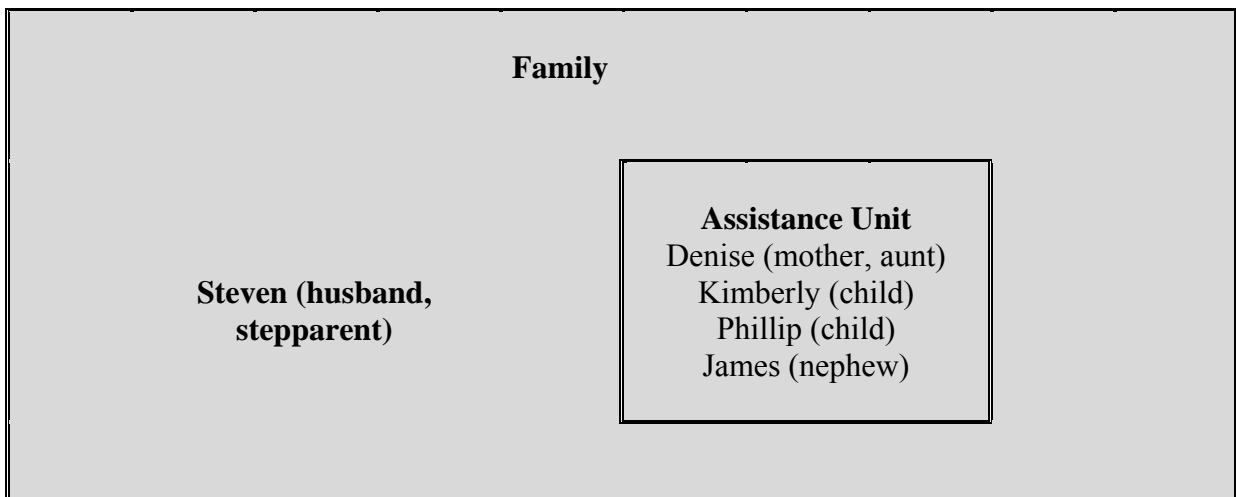
²⁵⁴ WIC § 11450.16(e)(3); MPP § 82-824.12.

²⁵⁵ WIC § 11450.16(e)(2); MPP § 82-824.11.

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EXAMPLE

Denise from the prior example marries Steven, who is not the father of any of the children in the AU. He earns \$1200 per month. The family consists of all members of the household, including Steven as a stepparent. At its option, Steven could be included in the AU. If he is not, the household composition is as follows:



As is explained in Chapter IV, Steven’s income must be counted whether he is in the AU or not because he is a stepparent.

a. People Living in the Home Who Must be Included in the AU.

i. Parents and Their Children.

All parents must be included in the AU with their children.²⁵⁶ Marital status is irrelevant.²⁵⁷

²⁵⁶ WIC § 11450(a)(1); MPP § 82-820.3.

²⁵⁷ WIC § 11450(a)(1); MPP § 82-820.33. The AU is not required to include a parent who is “alternatively sentenced,” i.e., who is a convicted offender permitted to live at

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ii. Siblings (Brothers and Sisters).

All brothers, sisters, half brothers, and half sisters who meet the age and deprivation requirements *must* be included in the AU.²⁵⁸ However, assistance will not increase to include a child born into the family if the family received aid for ten months in a row right before the child's birth.²⁵⁹ This is called the Maximum Family Grant (MFG) rule.²⁶⁰

b. People Living in the Home Who Cannot be Included.

The following people cannot be included in the AU, even if they are parents or siblings.

i. People Receiving Certain Other Aid.

(a) Supplemental Security Income (SSI).²⁶¹

A caretaker relative or child who is receiving SSI is not eligible for CalWORKs.²⁶² Her income, including Social Security benefits, and resources that are considered in the SSI eligibility determination, are not counted in the CalWORKs eligibility determination.²⁶³

(b) Foster Care.²⁶⁴

Caretaker relatives, other than parents, have the option of receiving foster care benefits, rather than CalWORKs on behalf of the children for whom they are caring.²⁶⁵ Foster care

home while serving a court-imposed sentence that precludes the parent from providing support through paid employment. MPP §§ 80-301a(6), 82-820.33.

²⁵⁸ WIC §§ 11450(a)(1), 11450.16(c); MPP § 82-820.32.

²⁵⁹ WIC § 11450.04(a); MPP § 44-314.3; ACL 97-29 at 1.

²⁶⁰ See Chapter IV for details on MFG.

²⁶¹ See MPP § 40-103.86 for the definition of SSI.

²⁶² WIC § 11005.5; MPP § 82-832.1(a).

²⁶³ MPP §§ 44-111.1, 44-133.21, 44-133.26, 44-133.27; ACL 97-59 at 2.

²⁶⁴ Note that when a child is on foster care, a needy caretaker relative is eligible for a CalWORKs grant for herself. ACL 94-91. See Chapter IV on foster care.

²⁶⁵ MPP §§ 40-109.2, 45-202.212(a).

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benefits are higher, but a juvenile court order or voluntary placement agreement placing the child with the caretaker relative is required.²⁶⁶

A child who is getting foster care benefits may not receive CalWORKs.²⁶⁷ A minor, who is receiving foster care benefits and who has a baby, may not get CalWORKs aid for herself or her baby.²⁶⁸ Instead, the foster care payment is increased to cover the needs of the baby.²⁶⁹

(c) Recipients of Refugee Cash Assistance (RCA) and Refugee Demonstration Project (RDP).²⁷⁰

The RCA and RDP programs are also administered by the county welfare departments. They provide benefits to refugees for a limited period of time. Once these benefits are exhausted, a family may receive CalWORKs if it meets all of the eligibility criteria. Although RCA and RDP recipients may not get CalWORKs,²⁷¹ a family may include both RCA (or RDP) and CalWORKs recipients.

²⁶⁶ MPP §§ 45-100 *et seq.* for foster care requirements. Chapter IV discusses foster care. See *The Foster Care Manual; A Guide to Benefits and Services for Children* (at wclp.org) for more detailed discussion of foster care eligibility.

²⁶⁷ MPP § 82-832.1(e).

²⁶⁸ WIC § 11263.5. MPP; § 82-832.1(a), (d). However, a mother who is a California Youth Authority parolee in a foster home can get CalWORKs for her children, but the mother is excluded from the AU. MPP § 40-125.7.

²⁶⁹ WIC § 11465.

²⁷⁰ 8 USC § 1522; 45 CFR § 400.60; MPP § 69-200.

²⁷¹ MPP § 82-832.1(d). The federal Office of Refugee Resettlement has indicated that it plans to amend the federal regulations which govern the RCA program in light of federal welfare reform. However, until that is done, the state and counties are directed to continue to follow existing AFDC requirements as they relate to RCA. ACL 97-62; ORR State Letter 96-14.

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ii. Certain Immigrant Siblings and Parents.

People who do not have acceptable immigration status are not eligible for CalWORKs even if they are siblings or parents.²⁷² Acceptable status includes legal permanent residents (those with a “green card”) and certain categories of eligible immigrants. The most common situation in which a person will be excluded is a family with a mother with unacceptable immigration status and citizen children. In such cases, the AU does not include the mother with unacceptable immigration status, but she will be included in the “family,” and all her income will be counted in the determination of the household’s aid.²⁷³

Siblings with unacceptable immigration status of eligible children and spouses with unacceptable immigration status are also excluded from the AU, and their income is also considered as part of the family’s income.²⁷⁴ Immigrants whose needs are met by a sponsor, or who are ineligible for CalWORKs because of sponsor deeming, are excluded.²⁷⁵

²⁷² 8 USC § 1621; WIC §11104; MPP § 82-832.1(b). Acceptable status includes citizens and certain categories of eligible aliens. See Section C.4 of this chapter for immigrant eligibility discussion.

²⁷³ MPP §§ 44-133.5, 44-133.6, 44-207.22; ACL 97-59 at 2. A different method of treating income when there are ineligible family members was required by *Ortega v. Anderson* (Alameda Superior Ct. 1995), and was in effect for the month of December, 1997. This method included ineligible family members for purposes of determining the MBSAC and making the grant computation under the pre-CalWORKs method, but allowed only limited disregards. ACL 97-57. The new procedure under CalWORKs treats ineligible immigrants the same as all non-AU persons in the household. See Chapter V for more on how to calculate month grant amounts for an AU with excluded AU members.

²⁷⁴ ACL 97-59 at 2, MPP § 44-133.51.

²⁷⁵ MPP § 82-832.1(e).

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iii. People Excluded Due to a Refusal to Cooperate With the CalWORKs Program.

A person will be sanctioned and excluded from the AU even though she would otherwise be eligible if she: (1) refuses to furnish a social security number (SSN),²⁷⁶ (2) refuses to assign rights to collect child support to the county;²⁷⁷ (3) fails or refuses without good cause to meet CalWORKs work program requirements;²⁷⁸ (4) refuses without good cause to apply for or accept unemployment insurance benefits;²⁷⁹ (5) fails to meet requirements to have pre-school children immunized;²⁸⁰ (6) is a needy caretaker for eligible children under 16, who fail to meet school attendance requirements;²⁸¹ or (7) is 16 or older and fails to meet school attendance requirements.²⁸² Where a parent or caretaker fails to meet program requirements, the eligible child remains in the AU.²⁸³

²⁷⁶ WIC § 11268; MPP §§ 82-832.24, 40-105.23. See Chapter IX for information on the SSN requirement.

²⁷⁷ 42 USC § 608(a)(3); WIC § 11477; MPP § 82-832.21; ACL 97-65 at 2-3. The exclusion from the AU now applies only to parents, who *refuse to assign support rights* to the county. Those who fail to cooperate in establishing paternity or collecting child support without good cause subject the family to a 25% penalty, but are not excluded from the AU. 42 USC § 608(a)(2); WIC § 11477.02. See Chapter X for more on child support.

²⁷⁸ WIC § 11327.5(c); MPP § 82-832.23. Chapter VI discusses work requirements.

²⁷⁹ WIC § 11270; MPP §§ 82-610, 82-612.1. The statute, last amended in 1982 (Stats. 1982, ch. 1037, §4), only applies the disqualification to persons who are not “exempt from registration under § 11310,” a section repealed in 1995 (Stats. 1995, ch. 306). It is unclear whether those now exempt under WIC § 11320.3(b) are covered by the disqualification provision of § 11270.

²⁸⁰ WIC § 11265.8; MPP § 40-105.4; ACL 97-70. See Section E.1. of this chapter for more on immunization requirement.

²⁸¹ WIC § 11253.5(d); MPP § 40-105.5; ACL 97-70 at 4. See Section E.2. of this chapter for more on school attendance requirement.

²⁸² WIC § 11253.5(e); MPP § 40-105.5; ACL 97-70 at 4.

²⁸³ If the excluded person has income, the income will be counted against the CalWORKs grant with the income disregards allowed. MPP §§ 44-133.51 - .52; ACL 98-17 at 2. While not expressly set forth in the statute or ACL, the excluded person would presumably be

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iv. Persons Excluded for Reasons Other than Non-Cooperation with CalWORKs Requirements.

Some people are excluded from eligibility because they have certain characteristics which are disfavored by policymakers. These include (1) adult caretakers who have exhausted the 60-month time limit for receipt of aid;²⁸⁴ (2) children born to a family that has received aid for 10 months (with no more than a one-month break) immediately before the birth;²⁸⁵ (3) persons convicted as of January 1, 1998, of a drug-related felony;²⁸⁶ (4) persons fleeing to avoid felony prosecution or violating a condition of probation or parole;²⁸⁷ (5) persons who have been found to have committed an Intentional Program Violation (IPV) or have been convicted of welfare fraud;²⁸⁸ (6) a non-caretaker family member, who is participating in a strike on the last day of the month, unless the strike is necessitated by an imminent health or safety hazard or abnormally dangerous working conditions.²⁸⁹ As with other exclusions, aid continues on behalf of the eligible child(ren).

considered a family member for grant calculation purposes, with the potential grant compared to the MAP for the AU without the excluded member. See Chapter V on how to calculate grants. *See also* MPP § 44-133.41 (requiring consideration of the income of sanctioned or penalized persons who are required to be in the AU).

²⁸⁴ WIC § 11454(a); MPP § 42-302.1 (60-month time limit). See Chapter VI on work requirements and Section F of this chapter for more on time limits.

²⁸⁵ WIC § 11450.04(a); MPP § 44-314; ACL 97-29.

²⁸⁶ WIC § 11251.3(a); MPP § 82-832.1(j); ACL 97-65 at 5. In these cases, vendor/voucher payments for rent and utilities must be made on behalf of the eligible family members. The excluded person's income is counted when calculating the grant. ACL 98-17 at 2. See Section D of this chapter for more on the drug-related felon exclusion.

²⁸⁷ WIC § 11486.5(a); MPP § 82-832.1(i); ACL 97-65 at 5-6. The excluded person's income is counted when calculating the grant. ACL 98-17 at 2. See Section D of this chapter for more on "fleeing felons."

²⁸⁸ WIC § 11486; ACL 97-69. See Chapter XII for more on fraud and IPVs.

²⁸⁹ WIC § 11250.4; MPP §§ 44-206.1(b), 44-206.21, 82-832.25. If the striker is the caretaker relative, the entire family is ineligible for CalWORKs aid. MPP § 44-206.21.

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v. The Father Of An Unborn Child.

When a pregnant woman is receiving aid and living with the father of the unborn child, the father is excluded from the AU if he is not the father of other eligible children in the home.²⁹⁰ His income will be counted, however.²⁹¹

vi. “Boyfriends” or Unrelated Adult Males (UAM).

An unrelated adult male (UAM) (generally a “boyfriend”) is someone who is over 18 years old, is not the father of any children in the home, and lives with the CalWORKs family.²⁹² Roomers and boarders are not UAMs.²⁹³ A UAM is required to have income or resources sufficient to make a financial contribution to the household of at least \$422 per month in Region 1, and \$412 in Region 2.²⁹⁴ Because use of CalWORKs grants for anything other than the support of the CalWORKs family is prohibited,²⁹⁵ both the CalWORKs mother and the boyfriend must sign sworn statements explaining his actual financial contribution and his income.²⁹⁶

²⁹⁰ MPP § 82-832.1(c).

²⁹¹ ACL 98-17 at 2.

²⁹² WIC § 11351.5; MPP § 43-109.21.

²⁹³ WIC § 11351.5; MPP § 43-109.2.

²⁹⁴ WIC § 11351.5; MPP §§ 43-109.23, 43-109.1, 44-115.311; ACL 08-27. These numbers are adjusted annually at the same rate as the need standard, or MBSAC. The required contribution is higher for members of the Assistance Payment Demonstration Project control group in Alameda, Los Angeles, San Bernardino and San Joaquin counties. See Chapter III for more on UAMs.

²⁹⁵ WIC § 11480.

²⁹⁶ MPP §§ 43-107.1 and .12. If the mother refuses to sign, aid is denied or discontinued. MPP § 43-107.13. If the boyfriend refuses to sign, or has insufficient income, the matter is investigated further for possible misuse of CalWORKs funds. MPP §§ 43-109.3, 43-107.14, 20-101. Any money the boyfriend gives the family to meet their needs, not his, is counted against the CalWORKs grant. MPP § 44-113.441(QR) However, the boyfriend need only designate the money as available for something other than rent, food, utilities and clothing

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vii. Spouse of Eligible Child With No Common Children.

When a minor living with her parents and receiving CalWORKs gets married, the spouse of the minor cannot be included in the AU unless the couple has common children.²⁹⁷ However, the spouse will be considered a family member whose income will be considered in the grant calculation.²⁹⁸

c. People Living In The Home Who May Be Included or Excluded at the Family's Option.

i. Stepparents.

A stepparent may be included in or excluded from the AU at the family's option. However, with the new method of computing aid based on family income, this choice is less significant. The stepparent's income is counted, including any available disregards, and aid is computed based on a family size including the stepparent.²⁹⁹ The only financial significance of including the stepparent in the AU is for the purpose of determining the Maximum Aid Payment, against which the calculated grant is compared. **If the stepparent is in the AU, the MAP will be based on a larger family size and will be higher. Therefore, there is an advantage to including the stepparent in the AU.** The only time when not including the stepparent would be advised is if some other factor, such as the resources of the stepparent, would disqualify the family if included, or if the stepfather does not wish to use up one of his 60 months of CalWORKs eligibility.³⁰⁰

for the CalWORKs family members, and it will be excluded income. MPP §§ 44-113.422, 44-113.424. See Chapter III for more information on income.

²⁹⁷ MPP § 82-832.1(f).

²⁹⁸ MPP § 44-133.515; ACL 97-59 at 2, ACL 98-17 at 2.

²⁹⁹ MPP § 44-133.51; ACL 98-17 at 2.

³⁰⁰ See Section F of this chapter on time limits and chapter V on the advantages and disadvantages of including the stepparent.

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Also note, however, that if the stepparent is in the AU, he is subject to CalWORKs welfare-to-work requirements unless he is exempt. If neither the parent nor the stepparent is exempt, they would be subject to the hourly requirements for two-parent families.³⁰¹

EXAMPLE

Jack is married to Roxanne and is the stepfather of Nicole. He earns \$200 per month, and they live in Region 1. All of the income is disregarded under the \$225 + ½ method, and the grant calculation based on the three person family is the maximum nonexempt payment for three, or \$723. However, if the AU only consists of Roxanne and Nicole, the most they can receive is a two-person grant, or \$584. If Jack is in the AU, they can get \$723. However, if Jack has a new car worth \$8,000, the family would exceed the resource limit if he were included in the AU.³⁰²

ii. Caretaker Relatives.

A caretaker relative, other than a parent, may be included in or excluded from the AU at the family's option.³⁰³ Non-parent caretaker relatives are not required to be in the AU. Nor are they among the persons whose income must be considered and who must be in the family.³⁰⁴ However, they do qualify as relatives who can be caretakers. If a relative caretaker is excluded, neither the income nor the resources of the relative are considered in determining eligibility or the grant level.³⁰⁵ Generally, a non-needy caretaker (someone with her own income) would opt to be off aid to maximize the child's grant. If, however, the caretaker has little or no income of her own, then including her would increase the family's aid, since the MAP would be based on a

³⁰¹ See Chapter VI for more on work requirements.

³⁰² See Chapter III on resources.

³⁰³ MPP § 82-828.21.

³⁰⁴ WIC §§ 11450(a)(1), 11008.14; MPP § 44-133.52; ACL 97-59 at 2.

³⁰⁵ However, if the relative agrees to contribute cash to the support of the child, it will be counted against the child's CalWORKs grant. MPP § 44-133.6.

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larger family size. As with other members, including the caretaker in the AU means consideration of her resources, and potentially subjecting her to work requirements and time limits.³⁰⁶

iii. Senior Parent.

A senior parent is the grandparent in a three generation household where the mother is a minor teen parent. A minor teen *must* live with her own parent or guardian or in another “adult-supervised supportive living arrangement” (such as a group home-type setting) to qualify for aid, subject to certain exceptions.³⁰⁷ If the senior parent is included in the AU then all her income and resources are considered available to the AU.³⁰⁸ If the senior parent is excluded, then the senior parent’s income still counts as part of the family income calculation, as would the income of a stepparent.³⁰⁹ The senior parent’s income may be high enough to result in ineligibility of the minor parent and her child. That is, if the result of the consideration of the senior parents’ income is a potential grant of \$0 under the family income calculation, then both the minor parent and her child will not be eligible for CalWORKs.³¹⁰

The same considerations apply here as apply in the stepparent situation: since the senior parent’s income is going to be counted in the family income calculation anyway, it now makes sense to include the senior parent in the AU, unless to do so would threaten eligibility because of

³⁰⁶ See Chapter VI on work requirements and Section F of this chapter on time limits.

³⁰⁷ WIC § 11254; MPP § 89-201; ACL 97-26. Exceptions include the absence of a living or known senior parent, risk of abuse to the minor parent or her child if they were to live with the grandparent, emancipation of the minor parent, or other good cause. WIC § 11254; MPP § 89-201; ACL 97-26.

³⁰⁸ See Chapter III for discussions on income and resources.

³⁰⁹ MPP § 89-201.513; ACL 98-17 at 2.

³¹⁰ The old “Baby MAP” has been eliminated effective October 1, 2002. WIC §§ 11008.14, 11254; MPP § 89-201.5; ACL 03-20. Under the old “Baby MAP” rule, if the senior parent’s income made the minor parent ineligible, the minor parent would be excluded from the AU, and the minor parent’s child would receive a grant for one person.

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the resource limits, or to avoid application of work requirements.³¹¹ A minor parent is required to provide verification of the senior parent's income regardless of whether the senior parent is included or excluded.³¹²

³¹¹ A person may be exempt from work requirements due to “advanced age.” WIC § 11320.3(b)(3)(B). DSS defines this to mean that a person must be at least 60 years old. ACL 97-72 at 15.

³¹² MPP § 40-128.121.

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EXAMPLE

Angela is 17. She has a 1 year old child, Rebecca. She has lived away from home since her baby was born and worked to take care of her. She is laid off and she returns to her mother's house in Region 1 to live. Her mother, Maria, gets CalWORKs for herself and Angela's brother, Bob. Even though Angela could not be denied aid if she applied when she lived apart from Maria (since she would meet an exception to the teen residency requirement), once she returns to the home, she is a dependent child and part of the AU headed by Maria. Thus, there is a single AU consisting of a family of four, eligible for \$862, rather than two AU's, each eligible for \$584.

Single Assistance Unit, Headed By Senior Parent

Maria,
senior parent

Angela,
Maria's daughter
Rebecca's mother

Bob,
Maria's son

Rebecca,
Angela's daughter

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4. Who Is In The “Family”?

In determining the amount of assistance a household can receive, one must also take into account members of the “non-AU family.” These are people who are not in the AU, but whose presence and income are required to be considered when aid is computed.³¹³

While “non-AU family members” is a new concept under CalWORKs, it refers to persons whose income had always been required to be taken into account for AFDC purposes, albeit under different formulas.³¹⁴ Thus even though they may not be in the AU, the following persons will be included in the “family” for purposes of CalWORKs grant computation:

- the spouse of the eligible parent,
- the sibling of an eligible child,
- the parent or guardian of a minor parent, and
- the ineligible (because of immigration status) parent of an eligible child.³¹⁵

“Non-AU family members” do not include other adult family members (aunts, uncles, grandparents when the parent is not a minor, etc.)³¹⁶

When a household contains these non-AU family members, there are two groupings of persons in the home which matter in determining benefits: (1) the AU, and (2) the “family,” which includes the AU and non-AU family members.

As is described in Chapter V on grant computation, the income of the non-AU members is counted for the purpose of calculating the benefits paid on behalf of the AU. However, the

³¹³ As noted earlier, this concept is not based on any express statutory change, but was developed by DSS through All-County Letter. MPP § 44-133.5; ACL 97-59, ACL 98-17.

³¹⁴ WIC § 11008.14; MPP § 44-133.5; ACL 97-59 at 2.

³¹⁵ WIC § 11008.14; MPP § 44-133.5; ACL 97-59 at 2.

³¹⁶ MPP § 44-133.52; ACL 97-59 at 2.

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non-AU members are allowed the disregards available to anyone receiving aid (e.g., earned, disability-based and self-employment income).³¹⁷

The charts on this and the following page shows mandatory and optimal members of the AU.

**WHO'S IN AND WHO'S OUT
OF THE CalWORKs ASSISTANCE UNIT**

WHO MUST BE IN THE AU

- ✓ Parents of Eligible Children
- ✓ Siblings of Eligible Children

³¹⁷ Income of these persons was considered in the former AFDC program under a “deeming” formula, although non-AU members were not allowed earned income and other disregards. Under the CalWORKs method of grant computation, these non-AU family members do get the income disregards. MPP §§ 44-133.54, 44-207.1-.2, 44-315.13 -.3; ACL 97-59 at 2.

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WHO CANNOT BE IN THE AU

- ✓ People Without Acceptable Immigration Status
- ✓ Recipients of SSI, Foster Care, RCA & RDP
- ✓ People Sanctioned for Non-Cooperation on:
 - Social Security Number
 - Child Support Assignment
 - Welfare-to-Work
 - UIB or Other Unconditionally Available Income
 - School Attendance
 - Immunization
- ✓ Father of Unborn (no other children in home)
- ✓ Non-relatives (including boyfriends)
- ✓ Spouse of Eligible Child With No Common Children
- ✓ Strikers
- ✓ Adults Who Have Already Gotten Aid for 60 Months
- ✓ Children Born to Welfare Recipients and Excluded Under “MFG”
- ✓ People With Drug-related Felony Convictions
- ✓ Fleeing Felons, Parole Violators
- ✓ People With Certain Welfare Fraud Convictions or Intentional Program Violation

**WHO CAN BE IN OR OUT
AT THE FAMILY’S OPTION**

- ✓ Stepparents
- ✓ Caretaker Relatives Other Than Parents
- ✓ Senior Parents in a 3 Generation Household

Chapter III: Determining If a Family Is Needy Enough to Get CalWORKs: Financial Eligibility

A. General Principles Regarding Income and Resources.

1. Overview of Financial Eligibility.

In order to get CalWORKs, a family must be very poor. Families who are poor enough are "financially eligible." Financial eligibility is based on a consideration of both *income* and *resources*. There is a special income test for applicants.

The following tests determine financial eligibility:

1) *For applicant families*, total gross income¹ per month must be below the "need standard" for a family of its size. Gross income is all earnings before taxes and other deductions, less \$90 for each employed person, plus any "unearned" income; *and*

2) *For both applicant and recipient families*, total countable resources or property must be less than \$2,000 for households which do not include someone who is disabled or at least 60 years of age. Households with a person who is disabled or at least 60 years or older can have up to \$3,000 in countable resources;² *and*

3) *For both applicant and recipient families*, total countable income (after disregards for earned income and disability-based income, explained below) must be less than the CalWORKs grant level for a family of its size.³

¹ Income is "any benefit in cash or in-kind which is reasonably anticipated to be available or is received by him as a result of current or past labor or services, business activities, interests in real or personal property, or as a contribution from persons, organizations or assistance agencies." MPP § 44-101(QR). See Section B in this chapter for a full discussion of the income rules. This gross income test applies only to applicant families. *Both applicants and recipients* must meet the countable income test discussed at the next bullet. MPP §§ 44-207.11, 44-207.2.

² WIC § 11155, MPP §§ 42-207. Personal property is defined by Food Stamp regulations (MPP § 63-501.1), while real property (real estate) is defined by CalWORKs rules. MPP §§ 42-211 *et seq.*; MPP § 42-203.2.

³ Charts showing the grant levels are found in Chapter IV and Appendix D. Chapter V illustrates and explains grant computation rules.

Chapter III: *Determining If a Family Is Needy Enough to Get CalWORKs: Financial Eligibility*

There are very specific regulations (discussed in this chapter) setting out what income and resources count. Generally, only the *resources* of persons on the grant (in the Assistance Unit or “AU”⁴) are counted.⁵ The *income* of both the AU and certain family members excluded from the AU is considered.⁶ Not everything a family has will always count against the limits. In order to see if someone is poor enough to get CalWORKs, there are five general questions to ask with respect to property and income.

- First, is the money or item *income* or is it a *resource* (property)?⁷
- Second, is the money or property really *available* to the family?⁸
- Third, if it is available, is there a special policy or rule that says CalWORKs won't count it (is it “excluded” or “exempt”)?
- Fourth, how much of it counts?⁹
- Fifth, is the amount that counts over the limits to qualify for aid?

In the following sections, we explain how to analyze and answer these questions for most income and property.

⁴ See Chapter II for an explanation of who is in an AU.

⁵ MPP §§ 42-203.8 (defining CalWORKs family), § 63-501.21 (jointly owned resources). See Section C in this chapter on resources.

⁶ WIC § 11008.14. See Chapter II for a description of the rules governing the AU and the family.

⁷ In some cases this is obvious: a paycheck is income; a home is property. But sometimes it can be difficult to tell. For example, money from a court settlement could be either income or property, depending on the circumstances. Do not guess or presume it is logical. Check the regulations.

⁸ See Section A.3 and Section C.3.a in this chapter on what "available" means. See Chapter V on whose income is considered available.

⁹ For instance, for community property or property owned with others, only a portion of the value may count.

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2. Differentiating Income and Resources.

All funds received or owned by the family are either income or resources. Generally, most money received during the calendar month is income,¹⁰ and any income held until the following payment quarter may become a resource.¹¹ CalWORKs looks at families' income and resources quarterly.¹² With Quarterly Reporting, eligibility is determined based upon projected ("reasonably anticipated") income and resources for the upcoming quarter ("payment quarter").¹³ If the family expects to have income and resources that are within the financial eligibility rules for the upcoming quarter, they will be eligible for the entire next quarter, even if the resources exceed the limits in the current quarter.¹⁴

In order to determine if money is a resource (property) or income, carefully review the resource¹⁵ and income¹⁶ regulations.

3. Actual Availability.

After determining whether the item should be treated as income or as property, ask whether it is actually available to the family. If it is not, it generally cannot be considered in determining eligibility for CalWORKs.¹⁷ For example, if a member of the AU owns land worth

¹⁰ MPP §§ 44-101(QR) *et seq.*

¹¹ MPP §§ 63-503.242(b)(1)(QR), 44-101(d)(1), 44-102.1(QR).

¹² WIC § 11265.2; ACL 03-18. Chapters V and IX cover Quarterly Reporting.

¹³ MPP §§ 44-313.1, 44-315.316(QR); ACL 03-18 at 2, 9.

¹⁴ MPP §§ 44-207.23(QR), 44-316.3(QR); ACL 03-18 at 2.

¹⁵ MPP §§ 42-203.2 - .10, 42-207, 42-211, 42-213, 63-501 *et seq.*

¹⁶ MPP §§ 44-101(QR) *et seq.*

¹⁷ See MPP § 42-201 (resources), MPP § 44-101(QR) (income). For cases discussing resource availability principles under the Food Stamp program rules which now apply to CalWORKs, see *Shrader v. Idaho Department of Health and Welfare*, 768 F.2d 1107 (9th Cir. 1985); *Deel v. Lukhard*, 830 F.2d 1283 (4th Cir. 1987); *Randall v. Lukhard*, 709 F.2d 257 (4th Cir. 1983); 45 CFR § 233.20(a)(3)(ii)(D); and *Galster v. Woods*, 173 Cal.App.3d 529 (1985).

Chapter III: Determining If a Family Is Needy Enough to Get CalWORKs: Financial Eligibility

over \$2,000 which she is unable to sell because she needs the consent of a non-household member, such as an ex-husband, the value of the land is not counted.¹⁸

Two noteworthy exceptions to the availability rule exist in the CalWORKs program. First, in determining a family's eligibility and grant level, counties can presume that certain specified relatives living together, even if they are not all being aided, make their income available to one another, whether they actually are doing so or not.¹⁹ Secondly, as explained further in the next section, counties can also deem the income or resources of senior parents and immigrant sponsors as available to the AU.

a. Presuming Income or Resources Are Available - "Deeming."

Deeming is when income from a non-AU member is "deemed" or presumed available, whether provided or not. Currently, deeming only occurs in cases of grandparents (also known as senior parents) and sponsored noncitizens.

i. Senior Parent Deeming.

When a minor parent is living with her senior parent (the grandparent of her child), the senior parent's income is considered available to meet the needs of the minor parent and her child, even if the senior parent is not in the AU.²⁰

ii. Deeming for Sponsored Noncitizens.²¹

Under immigration law, certain noncitizens must have a "sponsor" who agrees to provide support to the noncitizen.²² When a noncitizen is sponsored by an individual, the income and

¹⁸ MPP § 63-501.2 includes the rules for joint ownership.

¹⁹ MPP § 44-133.5. Generally, income sharing can be presumed between parents and children, among siblings, and between stepparents, spouses, and children. See Chapter V for details on the grant computation rules when a CalWORKs household includes both aided and unaided family members.

²⁰ WIC § 11008.14; MPP § 89-201.5; ACL 02-94; ACL 03-20.

²¹ Note that noncitizens with approved VAWA petitions, T-Visas, and U-Visas are not typically sponsored noncitizens and deeming does not apply. For more information on T-Visas and U-Visas, go to the National Immigration Law Center website at www.nilc.org.

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resources of the sponsor may be deemed available to the sponsored noncitizen.²³ If the sponsor is an organization, there is no deeming.²⁴

Whether or not the income and resources of the sponsor are counted depends in part on which USCIS²⁵ “affidavit of support” was signed by the sponsor.²⁶ An “affidavit of support” is a contract which obligates a sponsor to provide support to maintain the sponsored noncitizen in accordance with the affidavit’s terms.²⁷ If the sponsor signed an “old” affidavit of support²⁸ (generally one signed before December 1997),²⁹ there is no deeming.³⁰ If the sponsor signed the “new” affidavit of support³¹ in effect on December 19, 1997,³² the deeming rules are very

²² 8 USC § 1183a.

²³ WIC § 11008.135; MPP §§ 42-205.5, 43-119.22, 44-133.7. Note that the income and resources of both the sponsor and the sponsor’s spouse are considered.

²⁴ MPP § 43-119.212.

²⁵ Affidavits of support were previously filed with the Immigration and Nationality Service (“INS”). Now the affidavits of support are filed with the United States Citizenship and Immigration Service (“USCIS”). www.uscis.gov/portal/site/uscis.

²⁶ See Chapter II for more on sponsored noncitizens.

²⁷ 8 USC § 1182(a)(4)(C)(ii); 8 USC § 1183a(a)(1)(A).

²⁸ Form I-134, in use prior to December 1997.

²⁹ Advocates, however, should check which affidavit form was signed because the affidavit form used, not the date it was signed, determines which deeming rules apply.

³⁰ MPP § 43-119.126.

³¹ Form I-864. Almost all family-based immigrants entering this country since December 1997 must submit this new affidavit of support form. 8 USC §§ 1183a, 1631. Generally only immigrants who adjust their immigration status through a family-based petition, and a small number of immigrants who adjust through employers who are also relatives, must complete the I-864. See http://www.nilc.org/ce/nonnilc/sponsoredimm&bens_ca_2006-10.pdf for an explanation.

³² Advocates report that many I-134 affidavits of support were signed by sponsors after December 19, 1997. This means that the rules for the I-134 apply, regardless of the date signed.

**Chapter III: *Determining If a Family Is Needy Enough to Get
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harsh.³³ In this case, generally all of the income and resources of the sponsor and the sponsor's spouse are counted against the noncitizen until the noncitizen becomes a naturalized citizen or can be credited with 40 quarters of qualifying work.³⁴

If the sponsored noncitizen is *not* included in the AU, the deemed income from the sponsor is not used in determining AU eligibility unless the income is actually available to the AU.³⁵ When the sponsored noncitizen is a member of the AU, the deemed income from the sponsor is treated as unearned income.³⁶ The income of a sponsor, who is an excluded parent or stepparent, is treated according to the excluded parent or stepparent deeming rules.³⁷

There are, however, two exceptions to this deeming rule. The sponsors' income is exempt for one year where: (1) the CalWORKs benefits are necessary to avoid homelessness and hunger. That is, the noncitizen has been abandoned by the sponsor or the sponsor's contribution is so inadequate that the sponsored person would otherwise go without food or shelter;³⁸ or (2) the sponsor has abused the noncitizen or her/his child.³⁹ The one-year exemption due to abuse may be extended where the noncitizen can show that continuing abuse by a sponsor has been

³³ 8 USC § 1631; WIC § 11008.135; MPP 43-119.22.

³⁴ 8 USC § 1631(b); WIC § 11008.135; MPP §§ 43-119.214, 43-119.22, 44-133.7. See Chapter II for a definition of a "quarter." Noncitizens can receive credit for work of their spouse while married, as well as work their parents performed while the noncitizen was under 18 years of age including time before the noncitizen was born. After December 31, 1996, the noncitizen cannot receive credit for work performed during any quarter when she or he received federal means tested public benefits (SSI, Medi-Cal, Food Stamps and CalWORKs). 8 USC § 1645.

³⁵ MPP § 44-133.714.

³⁶ MPP §§ 44-133.715, 44-113, 44-315.4.

³⁷ MPP §§ 44-133.716, 44-113.3, 44-133.63.

³⁸ 8 USC § 1631(e); WIC § 11008.135; MPP § 43-119.221.

³⁹ USC §§ 1631(f), 1159(c); WIC § 11008.135; MPP § 43-119.222.

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recognized by either the USCIS or an ALJ.⁴⁰ Arguably, most every CalWORKs sponsored noncitizen applicant or recipient not actually supported should qualify at least for the homeless exception.

The deemed resources from the sponsor are not used in determining the AU eligibility unless the resources are actually available to the AU.⁴¹

B. Income.

1. Financial Eligibility: Is the Family Poor Enough?

In order for a family to get CalWORKs aid, it must be poor enough to qualify under the program's income limits. Applicants need to meet two tests: one for applicants, and the second for applicants and recipients.

a. Applicant Eligibility Test.

A family (which includes both AU and certain non-AU members living in the home),⁴² seeking aid is financially eligible if its gross income, less the first \$90 in earned income for each person with earnings, is below the Minimum Basic Standard of Adequate Care (MBSAC), also

⁴⁰ 8 USC § 1631(f)(1)(B); MPP§ 43-119.222. The regulations provide that there must exist in the opinion of the county "a substantial connection between the battery or extreme cruelty and the need for the aid." MPP §§ 43-119.223, 43-119.3.

⁴¹ MPP § 42-205.54.

⁴² MPP §§ 44-133 *et seq.* explains how the income of excluded noncitizens, sanctioned persons and stepparents is treated.

**Chapter III: *Determining If a Family Is Needy Enough to Get
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known as the “needs standard.”⁴³ The following chart shows the maximum qualifying amounts depending upon the region in which the family resides and applies as of July 1, 2008.⁴⁴

⁴³ WIC § 11450.12(a). The needs standard is the amount of income the Legislature decided a family must have to meet minimum survival needs. WIC § 11452. It has been adjusted for inflation, but is still not a very accurate figure of what it takes to survive. Under WIC § 11453(a), the needs standard (and the maximum aid payment or MAP) will be adjusted each October 1st for inflation.

⁴⁴ The needs standard in effect as of July 1, 2008 is found in ACL 08-27. Advocates can call Western Center or go to the DSS website to see if the needs standard has been adjusted.

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Amounts updated as of July 1, 2008.

Size of AU	MBSAC (Needs Level) Region 1⁴⁵	MBSAC (Needs Level) Region 2⁴⁶
1	\$532	\$504
2	872	828
3	1,080	1026
4	1,282	1,220
5	1,464	1,392
6	1,645	1,565
7	1,807	1,717
8	1,969	1,873
9	2,135	2,025
10 ⁴⁷	2,318	2,204

⁴⁵ Region 1: Alameda, Contra Costa, Los Angeles, Marin, Monterey, Napa, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, and Ventura Counties. The Handbook section in the regulations following MPP § 44-315.321 lists the Region 1 and Region 2 counties.

⁴⁶ Region 2: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Nevada, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties.

⁴⁷ For each additional person after 10, add \$20 in both regions. MPP § 44-315.321; ACL 08-27, Attach. 1.

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APPLICANT ELIGIBILITY TEST EXAMPLE

Ms. Lopez earns \$600 per month in gross earned income. She has 2 children, and lives in Region 1. MBSAC for 3 = \$1026 in Region 1.

\$600 (gross earned income)
-\$90 (earned income disregard)
\$510 (countable income)

Since her countable income of \$510 is less than the MBSAC for 3 in Region 1 of \$1026, she passes the applicant eligibility test.

Generally, all of the income from anyone on the CalWORKs grant counts towards the applicant eligibility determination, except where income is specifically exempted from consideration.⁴⁸ Earned income is the full gross income; mandatory payroll deductions are not deducted.⁴⁹ However, when determining gross income from self-employment, the business costs are subtracted.⁵⁰ Gross income includes child and spousal support payments made directly to the AU by the absent parent.⁵¹ Gross income does not include the earnings of a child who is a full-time student.⁵² See Section A.3.a.ii for information on how to determine how much of a sponsor's income would be "deemed" available to the applicant family.

The *only* "disregard" (deduction) from the applicant's countable income is the \$90 disregard for each person with earnings.⁵³

⁴⁸ WIC § 11450(a)(1), 11450.12; MPP § 44-111. See Section B.3 in this chapter for more information about excluded income.

⁴⁹ WIC § 11451.5(b)(1); MPP § 44-101 (d) and (e).

⁵⁰ MPP § 44-113.212.

⁵¹ The first \$50 is not counted. MPP § 44-111.472(QR). See Chapter X for a discussion of child support.

⁵² MPP § 44-111.224. See Section B.3.o in this chapter for more on earnings of a child.

⁵³ WIC § 11450.12; MPP § 44-207.11.

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b. Recipient Financial Eligibility Test: Net Income Below the CalWORKs Maximum Aid Payment Level.

If the family passes the applicant eligibility test, its income will then be judged under the *recipient* financial eligibility test.⁵⁴ This measures net income after all allowable deductions (known as “disregards”) have been made.⁵⁵ The family's net income after applying the disregards must be below the Maximum Aid Payment (MAP) level for a family of its size.⁵⁶

As of Fall 2008, these limits⁵⁷ are:

Size of Family	Region 1 MAP		Region 2 MAP	
	Non-exempt	Exempt	Non-exempt	Exempt
1	\$359	\$398	\$340	\$378
2	584	653	555	623
3	723	808	689	771
4	862	961	821	916
5	980	1,094	934	1,045
6	1,101	1,229	1,049	1,172
7	1,210	1,350	1,150	1,288
8	1,318	1,473	1,255	1,403
9	1,424	1,591	1,356	1,518
10 or more	1,530	1,709	1,456	1,629

⁵⁴ MPP § 44-207.2. When a person is added to the existing AU, the AU is subject to the *recipient* eligibility test. MPP § 44-207.25.

⁵⁵ WIC § 11450.12(b); MPP §§ 44-111; 44-207.2; ACL 97-59 at 5. The principal income disregards are at WIC §§11451.5 (earned and disability-based income), and 11155.3 (self-employment income). See Section B.4 in this chapter for more on how much of the income counts.

⁵⁶ MPP §§ 44-207.211(QR)-.212(QR).

⁵⁷ ACL 07-23, Attach. 1; ACL 07-34. The Legislature suspended the Cost of Living Adjustment (COLA) increase in 2008-2009. ACIN I-77-08.

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The exempt/nonexempt distinction is discussed in Chapter IV.

CalWORKs uses a quarterly budgeting system.⁵⁸ Basically, the county bases the grant on what it determines the family reasonably expects to have as income in the upcoming quarter (3 months). To calculate the family's monthly grant, the county will look at this "anticipated" income after applying any appropriate exemptions or deductions.⁵⁹ Section B.3 explains what income is "exempt" or not counted. The total of the countable income is called the "net non-exempt income" for the quarter.⁶⁰ The county then will apply a \$225 and 50% deduction or disregard to the net non-exempt income.⁶¹ If the recipient's countable income after these deductions is less than the grant for the AU size, the family is eligible. Chapter V discusses in more detail how the disregards are applied.

Using Ms. Lopez's example again, let's look at how this works.

⁵⁸ See Chapters V and IX for more information on Quarterly Reporting.

⁵⁹ WIC §11451.5; MPP §§ 44-113.2 *et seq.*

⁶⁰ MPP §§ 44-207.211(QR), 44-207.221. A recipient AU will remain financially eligible during the quarterly reporting payment quarter if the family's combined monthly net non-exempt income does not exceed the family's MAP level for more than one month of the quarterly reporting payment quarter. MPP § 44-207.212(QR). See Chapter V for more information on budgeting and Chapter IX on quarterly reporting.

⁶¹ MPP §§ 44-113.214(QR), 44-113.216.

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RECIPIENT INCOME TEST FOR MS. LOPEZ

Income minus Income Deductions = Net Non-exempt Income

\$600 (Income)
- \$225 (Income Disregard)
\$375 (Subtotal)
- \$187.50 (50% Earned Income Disregard)
\$187.50 (Total Net Nonexempt Income)

Since her net nonexempt income of \$187.50 is less than the MAP of \$723, she passes the recipient income test.

Since she passes *both* the gross and net income tests, she is eligible for CalWORKs.⁶² Chapter V explores the aid computation rules in greater depth and provides examples.

2. What is Income?

It isn't always obvious what is considered income, or what kind of income is counted in the CalWORKs program.

a. Cash or in-kind benefits actually received is income.

Income under CalWORKs is generally any benefit in cash or in-kind, which is reasonably anticipated to be available to the individual.⁶³ It includes income received as a result of current or past labor or services, business activities, interest in real or personal property, or as a contribution from persons, organizations, or assistance agencies.⁶⁴ It can be money or "in-kind" contributions of items. Unless income is exempt (not counted), as discussed below, it is considered available in the month it is received.⁶⁵

⁶² WIC § 11450.12.

⁶³ MPP § 44-101(a)(QR).

⁶⁴ WIC § 11451.5(b)(1); MPP § 44-101(a)(QR).

⁶⁵ For exceptions, *see* MPP § 44-102.

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The most important factor in determining whether income is counted in CalWORKs, or how much of it is counted, is the *source* of the income. As discussed in Section B.4 below, earned income is treated more favorably than any other type of income, and specific rules govern how much of a family’s earned, disability, and unearned income is counted against their CalWORKs grant.⁶⁶ In addition, the source of the income also determines whether all or part of it is excluded income and, therefore, not counted at all.

b. *Duty to seek “potentially available income.”*

Applicants and recipients have a duty to seek any unemployment insurance benefits (UIB) for which they are “apparently eligible.”⁶⁷ Every applicant whom the county verifies may be eligible for UIB,⁶⁸ is to be referred to the Employment Development Department for a determination of UIB eligibility. The county is *not* to make the referral if the applicant is already working, has not worked in a covered job for the past 19 months, is already receiving UIB or disability benefits, has a claim pending, has had no relevant change in circumstances since a prior UIB denial, is ill or injured, or is participating in a strike.⁶⁹ Aid will be denied or terminated if a person who is apparently eligible for UIB fails without good cause to apply for or accept it or to meet the UIB eligibility conditions.⁷⁰

Although the statute requires only that applicants and recipients seek and accept all UIB for which they are apparently eligible, DSS’ regulations require applicants and recipients to seek and accept *any* “potentially available income,” including disability, military, or retirement benefits and any debts owed to the recipient.⁷¹ The regulations specify that if any AU member

⁶⁶ See Chapter V (“How to Calculate a CalWORKs Grant”).

⁶⁷ WIC § 11270; MPP § 82-612.

⁶⁸ MPP § 82-612.6; ACIN I-27-07.

⁶⁹ MPP § 82-612.6.

⁷⁰ WIC § 11270; MPP § 82-612.1. Good cause is discussed in detail at MPP §§ 82-614 *et seq.*

⁷¹ Compare WIC § 11270 with MPP §§ 82-610.1 *et seq.*

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fails to seek or accept any such potentially available income, aid to the AU will be denied or discontinued.⁷² This sweeping condition appears to be unauthorized by statute.⁷³

c. Deeming of Sponsor Income.

Generally, all of the income of the sponsor and the sponsor's spouse may be considered available to the sponsored individual until the noncitizen becomes a U.S. citizen or has received credit for 40 quarters of work in the U.S.⁷⁴ See Section A.3.a.ii for a detailed discussion regarding how the sponsor's income counts.

3. Excluded Income.⁷⁵

For a variety of reasons, CalWORKs does not count some things that would be considered available income in most people's minds. Income that is not counted is called "excluded" or "exempt" income. We list here the most common types of such income. Each is discussed in detail below.

- In-kind income for *partial* items of need
- Food Stamps
- Any in-kind income provided by a nonprofit organization or charity on the basis of need
- Income of an SSI or CAPI recipient
- Personal loans (documented in writing)
- Earned income tax credit funds and certain other tax refunds
- Educational grants and loans

⁷² MPP § 82-610.11. If the person who refuses to seek or accept the income is an optional AU member, only that person shall be discontinued. MPP § 82-610.12. See Chapter II for optional AU members.

⁷³ Contact Western Center if your clients are threatened with denial or termination of benefits for failure to seek or accept non-UIB income.

⁷⁴ 8 USC § 1631(b)(1) and (2); MPP §§ 42-205.5, 43-119.214.

⁷⁵ MPP § 44-111.

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- College work-study payments
- Any child support collected on behalf of an “MFG child”
- Contributions by a live-in boyfriend to cover his expenses
- Contributions of an unrelated adult living in the home to cover his or her expenses
- The first \$50 per month of child or spousal support
- Corrective payments for CalWORKs or underpayments
- Child Care Payments, and Kin-GAP Payments
- Earnings of a child
- Infrequent income such as gifts up to \$30 every three months
- Relocation assistance benefits
- Certain government payments

See MPP §§ 44-111 *et seq.*

a. In-Kind Income For Partial Items of Need.

In-kind income is any benefit received other than cash.⁷⁶ It is usually received as barter for services, but it can also be a payment made by someone outside the AU to a third party on behalf of the recipient (such as a direct payment to the landlord of the recipient’s rent). In-kind income can also be in the form of a free “item of need.” “Items of need” are defined by the regulations as *only* housing, utilities, food and clothing.⁷⁷ No other things, (for example, child care or bus passes) are “items of need.” If a family’s “full item of need” is provided by someone else, except non-profit organizations (See Section B.3.c below), the family’s CalWORKs cash aid will be cut.⁷⁸ *Partial* items of need provided in-kind do *not* count as income.⁷⁹ Providing an

⁷⁶ MPP § 44-101 (j).

⁷⁷ MPP § 44-115.

⁷⁸ Unless the full item of need is a free home (MPP § 44-111.453) or it is provided by someone living in the home but not in the AU (such as a boyfriend) in exchange for the CalWORKs family providing a different item of need. For example, if the mother and the

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item of need to the family at a reduced rate (below market) is considered a partial item of need and not counted as income to the family. Thus, families must pay at least \$1/month toward the need item (rent, utilities, or food) to avoid a reduction of the CalWORKs grant. Families should report in-kind income, whether or not it affects their grant.

IN-KIND INCOME EXAMPLES

Janice receives CalWORKs for herself and her 3 children. She has no other income and is having a hard time making ends meet on her \$862 per month nonexempt grant in Region 1. Her sister decides to help her out and offers to pay Janice's rent, which is \$600 per month. There are three different ways Janice's sister can help her with the rent.

- 1) If Janice's sister pays all of her rent directly to the landlord, then Janice will be receiving a "full item of need" in-kind. Therefore her CalWORKs grant will be reduced by \$349, the in-kind value assigned to housing for a family of four (see chart in Section B.4.a.v of this chapter). Although her grant is reduced to \$513, she is still better off than if her sister did not help out.
- 2) If Janice's sister gives her \$600 to pay the rent, the entire amount is unearned income and Janice's grant is reduced by \$600, to \$262. Janice is no better off than if her sister did not help out (and may in fact be worse off, since she is using up a month of her 60 lifetime months of eligibility, but receiving a grant of only \$262.)
- 3) If Janice's sister pays \$599 directly to the landlord, and Janice pays the remaining \$1, the \$599 is a partial item of need and there is no reduction in her CalWORKs grant. This is the best option for Janice.

boyfriend agree that he pays the rent and she buys the food, the rent is not in-kind income to her. MPP § 44-113.412(QR).

⁷⁹ MPP § 44-111.452.

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b. Food Stamps.

Food Stamps received by a CalWORKs family are not counted as income.⁸⁰

c. In-Kind benefits provided by a nonprofit organization or charity on the basis of need.

In-kind benefits such as shelter, clothing, or food provided by a private nonprofit organization are exempt from consideration as income if they are provided on the basis of the family's need, even if they make up a full item of need.⁸¹ Private nonprofit organizations are religious, charitable, educational, or other such organizations including the Salvation Army, Red Cross, churches, etc.⁸²

d. Income of an SSI or CAPI Recipient.

Any aid payment or income to an SSI/SSP or CAPI recipient living in the same household with the family is not considered income to the AU.⁸³ This includes retroactive lump sum SSI benefits and Social Security benefits (OASDI) paid to an *SSI or CAPI recipient*.⁸⁴ Social Security benefits and other disability pensions, however, *are counted as income*, if the recipient is not also eligible for SSI.⁸⁵ If the person gets *any* SSI, even a small amount (because

⁸⁰ WIC § 11450(a)(1).

⁸¹ MPP § 44-111.454.

⁸² MPP § 44-111.454.

⁸³ WIC § 18937; MPP § 44-133.21; ACL 98-82. CAPI (Cash Assistance Program for Immigrants) is a cash aid program for immigrants who are elderly or disabled. Payments to the CalWORKs family by an SSI or CAPI recipient for goods or services and voluntary contributions *are* considered income to the AU, except for pooled income to meet shared living expenses or payments for living expenses made in lieu of other payments in a shared living arrangement. WIC § 11005.5; MPP §§ 44-115.21, 44-133.21-.25.

⁸⁴ MPP § 44-133.22. If the SSI recipient is a child, SSI benefits paid to a representative payee who receives CalWORKs are not income to the CalWORKs representative. MPP § 44-133.21.

⁸⁵ MPP §§ 44-113.3(QR), 44-133.21.

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she also receives Social Security benefits, for example), *all* her income (both SSI and non-SSI) is excluded.

SSI INCOME EXAMPLE

Connie gets SSI for herself and CalWORKs for her two children. Connie and her children get \$60 per month each in Social Security benefits because the children's father is deceased. Because Connie is an SSI recipient, her \$60 in Social Security does not count against the children's CalWORKs grant. However, because the children do not get SSI benefits, their \$120 in Social Security counts against their CalWORKs aid.

e. Personal Loans.

Bona fide loans from any source are exempt if there is a written agreement.⁸⁶ The agreement does not have to be a formal loan contract, but must state, in writing, that there is an obligation to repay the loan in installments until fully paid, and the agreement is signed and dated by the lender and recipient.⁸⁷ The loans may be from family, friends or a business.

The regulations do not require that this agreement be signed at the actual time of the loan. This means that the document can “memorialize” the original oral agreement. To be an exempt loan, the written document must clearly specify the obligation of the recipient to repay the loan, as well as a repayment plan (regular installments of specified amounts that continue until the loan is repaid).⁸⁸ As long as there is a written agreement, it is irrelevant for CalWORKs purposes whether the recipient complies with the payments. So if a recipient fails to make or falls behind on the payments, CalWORKs will still exempt the funds as a loan.⁸⁹ The regulations

⁸⁶ MPP § 44-111.437, ACL 97-05.

⁸⁷ MPP § 44-111.437, ACL 97-05. The regulation indicates that the loan is defined as specified by a written agreement that specifies an obligation to repay the loan and a repayment plan.

⁸⁸ MPP § 44-111.437(a).

⁸⁹ Although the lender can take action against the recipient. MPP § 44-111.437.

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do not exempt loans which have no repayment terms specified. However, advocates can argue that they are still bona fide loans.⁹⁰

f. Earned Income Tax Credit (EITC) and Other Tax Refunds Including Renter's Credit.

Earned Income Tax Credit funds, whether received at the end of the year or in monthly installments, are exempt from consideration as income.⁹¹ Certain other tax refunds including the California renter's credit⁹² and certain senior citizen credits⁹³ are also exempt. Tax refunds generally are property, not income.⁹⁴

⁹⁰ This exemption resulted from a 1986 federal lawsuit, *Noia v. McMahon*, (N.D. CA Case No. S-86-0353), which prohibited DSS from treating bona fide loans as income because the funds are not available. Advocates can also argue that the regulation improperly narrows the law, and this exemption still exists when the lender expects repayments but has not specified a payment plan, because the law still requires that real and personal property shall only be considered when it is both "actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make that sum available for support and maintenance." WIC § 11257(a); MPP § 63-501.2.

⁹¹ MPP § 44-111.61(1); ACL 99-82.

⁹² MPP § 44-111.3(k)(1).

⁹³ MPP § 44-113.3(k)(2)-(3).

⁹⁴ MPP § 44-111.3(l)(Handbook). See Section C in this chapter for information on resources.

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g. Educational Grants and Loans.⁹⁵

All student loans made by the *federal* government under Title IV of the Higher Education Act or the Bureau of Indian Affairs to graduate or undergraduate students, except Carl Perkins Vocational Education Loans and Grants, are exempt.⁹⁶ Any other undergraduate grant or loan from any source awarded on the basis of need is not considered income for CalWORKs.⁹⁷ Also excluded are: Pell Grants, Guaranteed Student Loans, Stafford Loans, SEOG Grants, and Cal Grants, state student incentive grants and others listed in the regulations.⁹⁸

If the loan or grant cannot be fully exempted under the above criteria (because it is a non-federal grant for a graduate student, for example), only the portion that is used to pay educational expenses is exempt.⁹⁹ However, educational expenses are broadly defined to include school fees, equipment, special clothing, transportation to school, child care, etc.¹⁰⁰ If the student uses the car to get to school, the CalWORKs recipient's proportionate share of costs of car payments, insurance, registration and gas may be considered educational expenses.¹⁰¹ Receipts for expenses are required.¹⁰²

⁹⁵ Western Center has produced a detailed memorandum on the treatment of student financial aid in CalWORKs and Food Stamps which is included in Appendix F.

⁹⁶ WIC 11250.8; MPP § 44-111.43. The Perkins Vocational Loan and Perkins Vocational Grant are exempt only to the extent they are used to meet attendance costs (broadly defined) for a student attending school on at least a half-time basis. MPP §§ 44-111.431, .435. Note that the Carl D. Perkins Loan (not the Perkins *Vocational* Loan discussed above) *is* exempt. MPP § 44-111.432(b)(2).

⁹⁷ MPP § 44-111.435.

⁹⁸ WIC § 11008.10; MPP § 44-111.432(b).

⁹⁹ MPP §§ 44-111.431, 44-111.435.

¹⁰⁰ MPP §§ 44-111.431, 44-111.435.

¹⁰¹ MPP § 44-111.435(a). The student should only count costs for which she is actually responsible. If she receives reimbursement through the welfare-to-work program for these costs, she cannot claim the costs again to exclude income.

¹⁰² MPP § 44-111.435(b).

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It should be noted that the portion of the student loan which is not used to pay for educational expenses may be exempt if it meets the personal loan criteria.¹⁰³ See Section B.3.e, above.

h. College Work Study.

Earnings from any college Work Study program are fully exempt income for CalWORKs.¹⁰⁴ This includes CalWORKs Work Study.¹⁰⁵

i. Child Support Collected On Behalf of An “MFG Child.”

As discussed in Chapter IV, a family’s CalWORKs grant generally does not increase with the birth of a child if the family had notice of the policy and had been receiving aid for ten months in a row before the child’s birth.¹⁰⁶ This policy is called “Maximum Family Grant” or MFG, and the affected child is called an “MFG child.”¹⁰⁷ Any child support collected by the family or the district attorney on behalf of an MFG child does *not* go to the county to reimburse welfare, but is paid directly to the family and is exempt from consideration as income.¹⁰⁸

j. Contributions From a Live-In Boyfriend.

A boyfriend (or unrelated adult male [UAM] other than a bona fide lodger, roomer or boarder) living in the same household with a CalWORKs family is required to make a minimum contribution (currently \$422 per month in Region I, \$412 in Region II), for his own needs.¹⁰⁹

¹⁰³ MPP § 44-111.436.

¹⁰⁴ WIC 11157(b)(2); MPP §§ 44-111.24, 44-111.432(b)(7).

¹⁰⁵ MPP § 44-111.24; ACL 98-85.

¹⁰⁶ WIC § 11450.04(a); MPP § 44-314.2.

¹⁰⁷ MPP § 44-314.14.

¹⁰⁸ WIC § 11450.04(e); MPP § 44-314.62. Treatment of child support is discussed in detail in Chapter X.

¹⁰⁹ WIC § 11351.5; MPP § 43-109.1. The amount he must contribute is the sum of the in-kind values for housing, utilities, and food. MPP § 43-109.23. These amounts are set forth at MPP § 44-115.3 (Handbook) and in the chart at the end of Section B. ACL 08-27. If a

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This contribution is not income to the CalWORKs family.¹¹⁰ Any other contributions he makes, which *he designates as not available to meet the basic needs of the CalWORKs family*, are also not counted.¹¹¹ Also, as noted in Section B.3.a above, any in-kind “partial item of need” from anyone (including an “unrelated adult male” or UAM) is not counted.¹¹²

k. Contributions of Other Unrelated Adult Living in the Home.

Actual contributions in cash or of full items of need from any other unrelated adult (i.e. bona fide roommates) living in the same household with a CalWORKs family count toward the family’s income.¹¹³ If the unrelated adult pools her income with the CalWORKs family, the income is treated as if cash were given to the AU.¹¹⁴ Any other contributions she makes, *designated as not available to meet the basic needs of the CalWORKs family*, are not counted.¹¹⁵ As always, any in-kind “*partial* item of need” from an unrelated adult living in the home is not counted.¹¹⁶

live-in boyfriend refuses to cooperate in establishing that he is making this required contribution, the family’s aid may be terminated. WIC § 11351.5; MPP § 43-109.1. Presumably, this rule would also apply to girlfriends of male CalWORKs recipients.

Registered domestic partners are treated in the same manner as stepparents, and not subject to this rule. § 43-103.3.

¹¹⁰ MPP §§ 44-113.422-423.

¹¹¹ MPP § 44-113.424. The regulations do not specify *how* a UAM makes this designation. Presumably, a written statement would suffice.

¹¹² MPP § 44-111.452. *See* the examples following Section B.3.a above.

¹¹³ MPP § 44-113.4.

¹¹⁴ MPP § 44-113.43.

¹¹⁵ MPP § 44-113.424. Again, the regulations do not specify *how* an unrelated adult makes this designation. Presumably, a written statement would suffice.

¹¹⁶ MPP § 44-111.452. *See* the examples following Section B.3.a above.

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I. First \$50/Month of Child or Spousal Support.

When the county receives child or spousal support paid on behalf of the children or parent receiving CalWORKs cash aid,¹¹⁷ it forwards the first \$50 to the CalWORKs family.¹¹⁸ This is called the "child support disregard." It is excluded from consideration as income.¹¹⁹

m. Corrective Payments For CalWORKs Underpayments.

Corrective payments (CalWORKs underpayments) are not considered income in the month received or in the month following.¹²⁰

n. Child Care Payments and Kin-GAP Payments.

Childcare payments made by CalWORKs are not income.¹²¹ Kin-GAP payments are not considered income to a kinship guardian for purposes of determining the kinship guardian's eligibility.¹²²

¹¹⁷ See Chapter X, Child Support, for a discussion of the requirement that CalWORKs aid recipients assign their child support rights to the county.

¹¹⁸ WIC § 11475.3; MPP §§ 44-111.47, 82-520.2. Remember that if the support is for an "MFG child," all of it goes to the family and it is not income for CalWORKs. See Section B.3.i above.

¹¹⁹ WIC § 11475.3; MPP §§ 44-111.47, 82-520.2.

¹²⁰ WIC § 11004(k); MPP § 44-340.6.

¹²¹ MPP § 44-111.3(f). See Chapter VII for more information about CalWORKs child care.

¹²² WIC § 11371; MPP § 90-105, *et seq.* Under Kin-GAP (Kinship Guardian Assistance Payment Program), kinship guardians receive the same amount of aid as foster care providers. WIC § 11364; MPP §§ 90-100, *et seq.* See Chapter IV for more on Kin-GAP.

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o. Earnings of a Child.

i. Earnings exempt for the applicant income eligibility test.

All the earnings of a child under age 19 are exempt from consideration in the applicant eligibility test¹²³ if the child is a full-time student.¹²⁴ All Job Training Partnership Act (“JTPA”) earnings of a child under 19 are exempt.¹²⁵

ii. Earnings exempt for the recipient income test.

All the earnings of a child under age 19 are exempt from the recipient financial eligibility test¹²⁶ if the child is a full time student.¹²⁷ If the child is not a full time student, the earnings are exempt if the child is in school at least half-time and does not work more than 173 hours per month.¹²⁸ All Job Training Partnership Act (“JTPA”) earnings of a child under 19 are exempt.¹²⁹

¹²³ See Section B.1.a of this chapter for more on the applicant eligibility test.

¹²⁴ MPP § 44-111.221(a). In order for the income to be excluded, the child must be a full-time student for the *applicant* eligibility test, but may be full or part-time for the *recipient* financial eligibility test. MPP § 44-111.224(a).

¹²⁵ WIC § 11008.15; MPP § 44-111.211. WIC § 11008.15; MPP § 44-111.211 refer to JTPA, however, as July 1, 2000, the JTPA program was replaced with the Workforce Investment Act (“WIA”) of 1998. <http://www.doleta.gov/programs/factsht/wialaw.cfm>.

¹²⁶ See Section B.1.b of this chapter for more on the recipient financial eligibility test.

¹²⁷ WIC § 11008.15; MPP §§ 44-111.221(a).

¹²⁸ WIC § 11008.15; MPP §§ 44-111.221(b), 44-111.222(b), 44-111.224(a).

¹²⁹ WIC § 11008.15; MPP § 44-111.211. WIC § 11008.15; MPP § 44-111.211 refer to JTPA, however the JTPA program was replaced with the Workforce Investment Act (“WIA”) of 1998.

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iii. Earnings and other funds received by a child with disabilities participating in the Independent Living Program.

All income and incentive payments earned by a child with a disability aged 16 or older, who is participating in the Independent Living Program (ILP) are exempt, when received as part of the ILP written transitional independent living plan.¹³⁰

p. Infrequent income up to \$30 every three months.

Any income (such as gifts) received “too infrequently or irregularly to be reasonably anticipated” up to \$30 per quarter, is exempt.¹³¹

q. Relocation Assistance Benefits.

If a person receives money to relocate after being forced to move due to redevelopment, highway construction or any other public development, that money is excluded income.¹³²

r. Certain Government Payments.

Certain government payments which are also excluded are: HUD rental assistance;¹³³ Job Training Partnership Act (JTPA) expense reimbursements (not earnings);¹³⁴ advance payments

¹³⁰ WIC § 11008.15; MPP § 44-111.251. There is no limit to the amount exempted pursuant to this provision. *Id.* See MPP §§ 31-002(i)(1), 31-525, and 30-442.5 for more information on ILPs.

¹³¹ WIC § 11157(b)(1); MPP §§ 44-111.441, 63-502.2(d). The statute says the CalWORKs exemption shall conform to the federal Food Stamp regulation on infrequent income. The federal Food Stamp regulation is found at 7 CFR § 273.9(c)(2). The corresponding state Food Stamp regulation is MPP § 63-502.2(d).

¹³² 42 USC § 4636; 49 CFR § 24.209; WIC § 11008.6; Gov. Code § 7269(b); MPP § 44-111.3(a). Controversies occasionally arise over whether relocation benefits paid pursuant to legal settlements are excluded. For more information, contact Lynn Martinez at smartinez@wclp.org.

¹³³ MPP § 44-111.422(a).

¹³⁴ MPP § 44-111.3(c). MPP § 44-111.3(c)(2) refers to JTPA, however the JTPA program was replaced with the Workforce Investment Act (“WIA”) of 1998.

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or reimbursements for CalWORKs child care;¹³⁵ Department of Rehabilitation training allowances;¹³⁶ Low-Income Energy Assistance Program (LIEAP) or Emergency Crisis Assistance program funds;¹³⁷ WIC and school lunches;¹³⁸ payments from Victims of Crimes funds;¹³⁹ wartime relocation restitution to Aleuts and those of Japanese ancestry;¹⁴⁰ settlements from Agent Orange lawsuits;¹⁴¹ Radiation Exposure Compensation Act payments;¹⁴² disaster relief payments from voluntary (e.g., Red Cross), state and local government,¹⁴³ and FEMA resources;¹⁴⁴ reimbursement to volunteers in the VISTA, SCORE and ACE service programs;¹⁴⁵ stipends, meals, transportation, or other income from the foster grandparents, senior companion, or other senior service program;¹⁴⁶ reimbursement for out-of-pocket expenses for persons serving on DSS advisory groups;¹⁴⁷ Alaskan Native Claims Settlement Act funds;¹⁴⁸ federal payments to Native Americans;¹⁴⁹ and restitution payments to victims of Nazi persecution.¹⁵⁰

¹³⁵ MPP § 44-111.3(f).

¹³⁶ MPP § 44-111.3(n).

¹³⁷ MPP § 44-111.3(o).

¹³⁸ MPP § 44-111.61(e).

¹³⁹ MPP § 44-111.3(m).

¹⁴⁰ WIC § 11008.17; MPP § 44-111.61(h).

¹⁴¹ MPP § 44-111.61(j).

¹⁴² MPP § 44-111.61(k).

¹⁴³ MPP § 44-111.61(i).

¹⁴⁴ 42 USC § 5155(d); MPP § 44-111.61(i); ACIN 1-20-99.

¹⁴⁵ MPP § 44-111.61(f).

¹⁴⁶ WIC §§ 11008.11, 11008.12; MPP § 44-111.61(d).

¹⁴⁷ MPP § 44-111.3(j).

¹⁴⁸ MPP § 44-111.61(g).

¹⁴⁹ WIC § 11008.7; MPP § 44-111.61(a)-(b). Also exempt for Native Americans is income of up to \$2000 per year derived from individually owned interests in trust or restricted lands. MPP § 44-111.61(c).

4. How Much of the Income Counts?

Generally, all of a person's income counts, if it is not excluded. However, some income is reduced by certain deductions. As noted above, the most important factor in determining whether or how much income counts for CalWORKs recipients is the *source* of the income. Earned income and certain disability income is treated more favorably than unearned income. Still another formula applies to income from self-employment.

This section provides a brief overview of the five kinds of income (earned, disability-based, unearned, self-employment, and in-kind income for full items of need) and how they are treated under CalWORKs rules. Chapter V (“How to Calculate a CalWORKs Grant”) contains more detail and examples.

a. Earned Income.

Earned income means gross income received in cash or in-kind as wages, salary, employer-provided sick leave benefits, commissions, or profits from self employment or farming.¹⁵¹ Training grants or earnings under some, but not all, job programs are also considered earned income.¹⁵² Wage replacement programs, such as Unemployment Insurance benefits, State Disability Insurance and worker’s compensation benefits, however, are not treated as earned income.¹⁵³

To determine how much earned income is countable against a CalWORKs grant (for a family with earned but no disability-based income),¹⁵⁴ take the gross (pre-tax) income and

¹⁵⁰ WIC § 11008.20; MPP § 44-111.61(m).

¹⁵¹ WIC § 11451.5(b)(1); MPP § 44-101(e).

¹⁵² MPP § 44-101 (e)(2)(C)-(F).

¹⁵³ WIC § 11451.5(b)(2)-(3); MPP §§ 44-101(f)(1)(C)-(D), 44-101(f), 44-101(e)(3)(B), 44-101(g).

¹⁵⁴ The payment calculation formula is discussed in detail in Chapter V (“How to Calculate a CalWORKs Grant”).

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subtract \$225.¹⁵⁵ Then subtract half of that amount. The remainder of the income is nonexempt, or countable.¹⁵⁶

EXAMPLE

Holly receives CalWORKs for herself and her 2 children. She earns \$500 per month from part time employment and lives in Region 1.

\$525 (Earned Income)
- \$225 (Income Disregard)
\$300 (Subtotal)
- \$150 (50% Earned Income Disregard)
\$150 (Net Nonexempt Income)
this is the amount of income that counts

\$723 (MAP for 3 in Region 1)
-\$150 (Total Non-Exempt Income)
\$573 (Grant)

Chapter V contains more detailed examples.

b. Disability-Based Unearned Income.

Disability-based unearned income is State Disability Insurance benefits, private disability insurance benefits,¹⁵⁷ temporary worker's compensation benefits, and social security disability benefits.¹⁵⁸ Only the first \$225 of disability-based unearned income is disregarded.¹⁵⁹ Title II dependent benefits (received by a child based on a parent's disability) are also considered

¹⁵⁵ WIC § 11451.5(a); MPP § 44-111.23; ACL 97-59 at 3. The \$225 deduction is a fixed amount for the household. If any portion of it is used for disregarding disability income, it is only the remainder that is available to reduce the earned income. MPP § 44-111.231.

¹⁵⁶ WIC § 11451.5(a); MPP § 44-111.23; ACL 97-59 at 3.

¹⁵⁷ Private disability insurance benefits do not include disability benefits that are not insurance, such as veterans benefits. MPP § 44-101(f)(1)(B).

¹⁵⁸ WIC § 11451.5(b)(2); MPP § 44-101(f)(1)(C)-(D).

¹⁵⁹ WIC § 11451.5(a)(1)(A); MPP § 44-111.231.

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disability-based unearned income and likewise receive the \$225 disregard.¹⁶⁰ The rest is deducted dollar-for-dollar from the MAP.¹⁶¹

EXAMPLE

Debra receives CalWORKs for herself and her 2 children. She receives \$300 in State Disability Insurance benefits each month.

\$300	(Disability Based Income)
- \$225	(Income Disregard)
\$75	(Net Nonexempt Disability Based Income)
	<i>this is the amount of income that counts</i>
\$ 723	(MAP for 3 in Region 1)
- 75	(Total Non-Exempt Income)
\$648	(Grant)

Chapter V contains more detailed examples.

If a family has both disability and earned income, the \$225 is deducted first from the disability income.¹⁶² If the family has less than \$225 in disability-based income, the remainder of the \$225 deducted is taken from the earned income before half of the rest of the earned income is excluded.¹⁶³

¹⁶⁰ ACL 98-37, # 14. *See also* MPP § 44-315.39, example 2 (QR). Social Security *survivor* benefits (received by a child based on a deceased parent's account) do not qualify for the disability based income disregard. ACL 98-62.

¹⁶¹ WIC § 11451.5(a); MPP § 44-111.23.

¹⁶² WIC § 11451.5; MPP § 44-111.23.

¹⁶³ MPP § 44-111.23.

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EARNED AND DISABILITY INCOME EXAMPLE

Assume that Emma receives \$225 in State Disability Insurance benefits each month and Paul makes \$500 per month from part-time employment.

\$225 (Disability income)
-225 (Disability Disregard)
\$ 0 (Countable disability income)

\$500 (earned income)
- \$250 (50% Earned Income Disregard)
\$250 (Net Nonexempt Earned Income)
this is the amount of income that counts

\$862 (MAP for 4 in Region 1)
-\$250 (Total Non-Exempt Income)
\$612 (Grant)

Chapter V contains more detailed examples.

c. Unearned income.

Unearned income is any income that does not meet the definition of earned or disability-based income.¹⁶⁴ It includes payments such as unemployment insurance benefits; Social Security, Railroad Retirement and other pensions;¹⁶⁵ annuities; death benefits, including life insurance; strike benefits; child support and alimony payments. Unearned income is deducted dollar-for-dollar from the MAP.¹⁶⁶

¹⁶⁴ WIC § 11451.5(b)(3); MPP § 44-101(g).

¹⁶⁵ See ACL 00-13 for an explanation of how Medicare and other deductions from pension payments are treated.

¹⁶⁶ WIC §§ 11451.5, 11450(a). Remember that child support for an “MFG child” is not income. MPP § 44-314.62. See Chapter IV and Section B.3.i in this chapter.

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d. Self-employment income.

There are two steps in determining how much self-employment income counts against the CalWORKs grant. First is determining the “net self-employment income.” To account for business costs, applicants and recipients may choose to deduct 40% of gross income or may use actual expenses.¹⁶⁷ Recipients may change the method of determining net income every six months or at redetermination, whichever occurs first.¹⁶⁸

Then, from the net income, subtract the standard earned income disregards (the \$225 and 50%)¹⁶⁹ to determine the countable self-employment income. This amount is then deducted from the MAP to determine the family’s aid.¹⁷⁰

¹⁶⁷ WIC § 11155.3(c); MPP § 44-113.212(a)(QR). The Food Stamp rules at MPP § 63-503.4 allow for averaging income and expenses in certain situations.

¹⁶⁸ WIC § 11155.3(c); MPP § 44-113.212(b).

¹⁶⁹ WIC § 11451.5; MPP §§ 44-111.23, 44-113.214(QR) - .216.

¹⁷⁰ WIC § 11155.3(b); MPP §§ 44-113.21(QR), 44-113.212-.218.

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EXAMPLE

Jane has 2 children and lives in region 1. She earns \$1000 in self-employment income. She has \$500 in business expenses, and chooses to use actual expenses.

\$1,000	(gross self-employment income)
- \$500	(actual expenses)
\$500	(self-employment income)
- \$225	(disregard)
\$275	
- \$137.50	(50% disregard)
\$137.50	(countable self-employment income)
\$723	(MAP for 3 in region 1)
- \$137	(countable self employment income)
\$586	(grant)

e. In-Kind Aid - Full Items of Need.

If a person receives free housing, utilities, clothes or food, whether in exchange for a service or as a gift, the value of the item is counted as unearned income.¹⁷¹ DSS assigns a value, listed on the chart below.¹⁷² These amounts represent the maximum assigned to the value of need--the recipient may submit evidence that the value of the item is less than that contained in the following chart.¹⁷³

¹⁷¹ MPP §§ 44-101(j), 44-115. See Section B.2.a in this chapter for a discussion of "partial items of need" which are excluded from consideration as income.

¹⁷² MPP § 44-115.3 (Handbook); ACL 08-27.

¹⁷³ MPP § 44-115.32(QR).

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Size of Family	Region 1 – Income In-Kind				Region 2 - Income In-Kind			
	Housing	Utilities	Food	Clothing	Housing	Utilities	Food	Clothing
1	\$239	\$51	\$132	\$40	\$229	\$51	\$132	\$40
2	321	57	282	79	304	57	282	79
3	351	50	360	117	334	60	360	117
4	367	63	446	156	351	63	446	156
5	367	63	540	196	351	63	540	196
6	367	63	625	234	351	63	625	234
7	367	63	697	276	351	63	697	276
8	367	63	762	307	351	63	762	307
9	367	63	738	354	351	63	738	354
10	367	63	905	388	351	63	905	388
or more ¹⁷⁴								

Amounts are current as of Fall 2008.

5. Treatment of Lump Sum Income.

A nonrecurring ¹⁷⁵ lump sum payment is treated as a resource.¹⁷⁶

6. Rule Regarding Penalty for Transferring Income is Obsolete.

Quarterly Reporting has rendered the former transfer of income penalty obsolete. The former rule applied a penalty to CalWORKs recipients who transferred nonexempt, nonrecurring

¹⁷⁴ For housing, add \$20 for each additional person over 10. ACL 08-27.

¹⁷⁵ *Recurring* lump sum payments are treated as income when received. WIC § 11157(A).

¹⁷⁶ WIC § 11157(a); MPP §§ 42-209.2(QR), 44-101(l)(QR); ACL 03-18 at 19; ACIN I-29-04, #15. See Section C.1.a in this chapter for more information on treatment of non-recurring lump sum payments.

The former lump sum income rule, under which AFDC recipients were expected to retain lump sums from lawsuits, worker’s compensation claims, or other sources, and live on them for months or years in lieu of AFDC benefits, has been repealed. Anyone on a period of ineligibility from receipt of a lump sum prior to January 1998 should immediately reapply for CalWORKs benefits if needed. ACL 97-63.

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income for less than fair market value. The new rule is that income that is received on a nonrecurring basis is considered lump sum income and is treated as property.¹⁷⁷

C. Resources.

There are limits on the amount of resources in the form of real estate or personal property a household may have and still receive either CalWORKs benefits or lump-sum diversion services.¹⁷⁸ The resource limits affect eligibility for assistance and not the amount aid. Thus, a household which has excess resources will either be denied or terminated from aid.¹⁷⁹

While counties have discretion in designing parts of their CalWORKs programs, they cannot make their resource limits more restrictive than those set by state law.¹⁸⁰ There are three basic concepts relevant to resources: 1) resource limits, 2) how to determine the value of resources, and 3) which resources are excluded from consideration. With some exceptions (cars and real property), the Food Stamp resource rules apply to CalWORKs.¹⁸¹

With the Food Stamp personal property rules being brought into the CalWORKs framework, advocates can now draw on the body of federal Food Stamp law. The Food Resource & Action Center publishes an excellent guide to the Food Stamp program, complete with citations to federal case law.¹⁸²

¹⁷⁷ WIC § 11157(a); MPP §§ 42-209.2(QR), 44-101(1)(QR); ACL 03-18 at 19; ACIN I-29-04, #15. Contact Western Center if you have questions. See section C.6. in this chapter for more on the rule regarding the penalty for the transfer of property.

¹⁷⁸ WIC §§ 11155, 11257; MPP § 42-207.

¹⁷⁹ MPP §§ 42-207, 63-409.1, 63-409.12.

¹⁸⁰ WIC § 11155.

¹⁸¹ WIC § 11155; ACL 98-47. *See also* MPP §§ 42-203.2 (personal property is defined in accordance with Food Stamp regulations), 42-203.21 (citing to food stamp regulations at MPP § 63-501.1). The state Food Stamp regulations governing property and resources are found at MPP §§ 63-501, 63-506 and 63-507. Federal Food Stamp regulations are found at 7 CFR §§ 271.1 *et seq.* CalWORKs property regulations are at MPP § 42-201.

¹⁸² FRAC's Guide to the Food Stamp Program (Eleventh Edition) is available from FRAC, 1875 Connecticut Ave., N.W., Suite 540, Washington, D.C. 20009. Download the order

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1. What Are Resources?¹⁸³

In general, money is considered income during the month it is actually received,¹⁸⁴ and any income held until the following QR payment quarter may become a resource.¹⁸⁵ The exception is that nonrecurring income is treated as a resource in the month received and in subsequent months.¹⁸⁶ Note that money is treated as *either* income or a resource.¹⁸⁷ Thus, CalWORKs should not count the same money as both income and as a resource in the same quarter.

a. Non-Recurring Lump Sum Payments.

A nonrecurring lump sum payment is treated as a resource.¹⁸⁸ This means that if the total AU resources, including the lump sum, do not exceed the resource limit, the family is considered resource eligible for the entire upcoming QR Payment Quarter.¹⁸⁹ The county does not redetermine eligibility based on resources within a payment quarter.¹⁹⁰ So if the family receives a lump sum in excess of the property limit during the quarter, the county is not to terminate

form at www.frac.org. Access the California version of the FRAC Guide online at <http://lsnc.net/fsguide/>.

¹⁸³ The Food Stamp regulations apply only to personal property (except for cars), while the CalWORKs regulations apply to real property. MPP §§ 42-203.1-.2; ACL 98-47.

¹⁸⁴ MPP §§ 63-503.242(b)(1)(QR), 44-101(d)(1), 44-102.1(QR).

¹⁸⁵ MPP §§ 44-313.1, 44-315.316(QR), 44-102.1(QR); ACL 03-18 at 2, 9.

¹⁸⁶ MPP §§ 42-209.2(QR), 44-101 (l)(QR); ACL 03-18 at 19; ACIN I-29-04, #15.

¹⁸⁷ 7 CFR § 273.8(e)(9) (aid counted as income is not a resource). *See also* MPP §§ 42-209 and 44-105 and *compare* 7 CFR § 273.9(b)(1) and (2) (income definitions) *with* 7 CFR § 273.8(c)(1) and (2) (resources definitions).

¹⁸⁸ WIC § 11157(a); MPP §§ 42-209.2(QR), 44-101(l)(QR); ACL 03-18 at 19; ACIN I-29-04, #15.

¹⁸⁹ WIC § 11155; MPP §§ 42-207.2, 63-1101.1; ACL 03-18 at 17.

¹⁹⁰ MPP § 40-181.1(a)(1)(QR); ACL 03-18 at 18.

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benefits during that payment quarter.¹⁹¹ If the family exceeds the resource limit based on a lump sum received in the data month (second month) of the quarter, the CWD will discontinue the case at the end of the QR submit month (third month) of the quarter, with timely and adequate notice.¹⁹² However, if the family provides verification prior to the effective date of discontinuance that their resources have dropped below the resource limit, the family will be considered property eligible for CalWORKs, and the discontinuance will be rescinded and benefits reinstated.¹⁹³

For Example: The designated quarter is January/February/March. The recipient submits a timely and accurate QR 7 for February on March 5 with no anticipated changes in the family's resources. The family is eligible for the next quarter, April through June. The family unexpectedly receives an inheritance of \$5000 (a non-recurring lump sum payment) in April. Although the \$5,000 is above the \$2,000 limit, the family remains eligible for the quarter. The recipient reports the funds on the QR 7 due in June. If the funds are spent down prior to the end of June, the family remains eligible.¹⁹⁴ But if the family has not spend down the inheritance to

¹⁹¹ ACL 03-18 at 17. A lump sum received in the QR Submit Month (third month of the current quarter) or the first month of the upcoming QR Payment Quarter does not affect the family's eligibility in the entire quarter the lump sum is received. See Chapter IX for more information regarding Quarterly Reporting.

¹⁹² ACL 03-18 at 17.

¹⁹³ ACL 03-18 at 17.

¹⁹⁴ If the family is over the resource limit in the report month, the County will take action to discontinue the family by the end of the quarter. (June in the example.) If the family spends the inheritance to below the resource limit by the end of June and provides proof of this to the County, the County will rescind the discontinuance and CalWORKs benefits will continue. ACL 03-18 at 17.

What this means for lump sum payments is that it is important to time the receipt of the lump sum payment to give the family the most time possible to spend the lump sum down. Remember to advise your clients to document how they spend down the lump sum payment. Otherwise, they may face a period of disqualification.

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below the allowable resource limit by the end of June the family's CalWORKs will be terminated.

2. What Are the CalWORKs Resource Limits?

Theoretically, resource limits allow people receiving aid to have a home, to have income to meet their needs and to provide a reserve to meet future needs.¹⁹⁵ CalWORKs applicants and recipients are allowed to have *countable* resources in an amount equal to that permitted by federal law for qualification for Food Stamps.¹⁹⁶ Resource limits differ somewhat for applicants and recipients, and there are lower limits for receiving supplemental payments, such as CalWORKs Homeless Assistance and Non-Recurring Special Needs.¹⁹⁷

a. Applicant Resource Limit.

An *applicant* is someone who is not yet on aid. Applicants may have no more than \$2,000 in countable resources for households. If the household includes someone disabled *or* 60 years or older, it is allowed up to \$3,000 in countable resources.¹⁹⁸

b. Recipient Resource Limit.

Once eligibility is granted, the person becomes a *recipient*. Like applicants, recipients may have no more than \$2,000 in countable resources. Households which include *someone who is disabled or 60 years or older are allowed up to \$3,000 in countable resources*.¹⁹⁹

¹⁹⁵ MPP § 42-201.3. Note also that this regulation specifies that “policies governing eligibility with respect to property shall be administered with consideration to the ability and circumstance of the person in order that undue hardship not be imposed upon him in making his plans to comply with property provisions.”

¹⁹⁶ WIC § 11155; MPP § 42-207. Food stamp property limits are found at 7 USC § 2014(g); 7 CFR § 273.8(b); WIC § 11155; MPP §§ 63-1101.1, 63-1101.3.

¹⁹⁷ See Chapter IV for homeless assistance and IV for non-recurring special needs.

¹⁹⁸ 7 USC § 2014(g); 7 CFR § 273.8(b); WIC § 11155; MPP §§ 42-207.2, 63-1101.1.

¹⁹⁹ 7 USC § 2014(g); 7 CFR § 273.8(b); WIC § 11155; MPP §§ 42-207, 63-1101.1.

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In addition, recipient households (but *not* applicants) may have restricted accounts.²⁰⁰ These accounts may only be used for the purpose of purchasing a home, starting a business, paying for education or job training expenses.²⁰¹ Effective January 1, 2008 there is no maximum amount that current CalWORKs recipients may save in a restricted account.²⁰² These accounts must be set up properly to be excluded as a resource, and have penalties for improper withdrawals.²⁰³

c. CalWORKs Diversion Services.

CalWORKs diversion is a program intended to aid families for whom a lump sum payment would avoid the need for a monthly welfare grant.²⁰⁴ It is only available to applicants who appear eligible for CalWORKs, prior to being authorized for aid.²⁰⁵ The diversion program uses the same resource rules and limits as are used for CalWORKs applicants.²⁰⁶

d. Non-Recurring Special Needs & Homeless Assistance.

CalWORKs has two programs to provide special supplemental grants to recipients. The first is for “nonrecurring special needs,”²⁰⁷ and the other is “homeless assistance”²⁰⁸ to help families facing evictions and homeless families with rent and temporary shelter.²⁰⁹ For the non-recurring special needs program, the household must have less than \$100 countable (non-

²⁰⁰ WIC § 11155.2; ACL 08-11 at 1.

²⁰¹ WIC § 11155.2.

²⁰² WIC § 11155.2 (a); ACL 08-11 at 1.

²⁰³ See Section C.4.e.iv in this chapter for a full description of restricted accounts.

²⁰⁴ WIC § 11266.5; MPP §§ 81-215 - 215.7. See Chapter IV for a description of the diversion program.

²⁰⁵ WIC § 11266.5; MPP § 81-215.

²⁰⁶ WIC § 11266.5; MPP § 81-215.

²⁰⁷ WIC § 11450(f)(1). MPP § 44-211.311.

²⁰⁸ WIC § 11450(f)(2); MPP §§ 44-211.52 - .53.

²⁰⁹ See Chapter IV for a description of these programs.

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exempt) liquid resources.²¹⁰ For the homeless assistance program the limit is also \$100,²¹¹ but it looks at both exempt and non-exempt liquid resources that are “immediately available and reasonably convertible” to cash.²¹²

3. What Resources Are Counted?

a. A Resource Must Be Owned by and Available to the CalWORKs Family to Be Counted.

Generally, a resource must be both *owned* by²¹³ and *available* to²¹⁴ a CalWORKs family or “household”²¹⁵ in order for it to be counted in determining eligibility for assistance. Resources which have a cash value but which are not available to the household must be excluded when determining CalWORKs eligibility.²¹⁶ Property, other than financial instruments (such as stocks or bonds) or vehicles which would produce \$1500 or less if sold, is “unavailable.”²¹⁷

²¹⁰ MPP § 44-211.32.

²¹¹ MPP § 44-211.33.

²¹² MPP § 40-129.15.

²¹³ 7 CFR § 273.8(d) and (e)(15); MPP § 63-501.2.

²¹⁴ 7 CFR § 273.8(e)(8); WIC §11257(a); MPP § 63-501.3(i) and (n). *See also* MPP §§42-201.1 and 213.11 (availability of real property).

²¹⁵ Unlike the CalWORKs statutes, Food Stamp regulations typically refer to “household” rather than “family” or “assistance unit” when discussing those persons who are applying for or eligible for benefits together. Under Food Stamp rules, a household is a group of people (who need not be related) who buy and prepare food together. 7 CFR § 273.1(a)(1); MPP § 63-402.13.

²¹⁶ 7 CFR § 273.8(e)(8); MPP §§ 63-501.21, 63-501.3(i). The regulations at § 63-501.3(i) provide examples of unavailable resources, including property which cannot be sold or is in probate, irrevocable trusts, and security deposits held by a landlord.

²¹⁷ MPP § 63-501.3(i)(5).

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For applicants, availability is determined at the time of application.²¹⁸ For recipients, availability is determined once every quarter.²¹⁹

Resources which are "excluded" do not count for purposes of determining eligibility.²²⁰ Section C.4 in this chapter lists each item excluded by statute or regulation.

b. Resources of Members of the AU Are Counted, Including Resources of Persons Barred From Receiving Aid.

Generally, only the property of persons receiving aid or in the AU counts toward the resource limits.²²¹ People receiving aid are always in the AU,²²² but some people in the AU may not receive aid. Examples of this are a child not aided due to the "Maximum Family Grant" rule²²³, or a parent who is on a child support penalty.²²⁴

The nonexempt resources of persons barred from receiving CalWORKs benefits but who would otherwise be included in the household will also be counted.²²⁵ These excluded family members include ineligible noncitizens,²²⁶ certain drug felons,²²⁷ and people sanctioned for

²¹⁸ 7 CFR § 273.10(b); MPP § 63-501.61.

²¹⁹ MPP § 44-313.1. See Chapter IX for more on Quarterly Reporting rules.

²²⁰ MPP § 63-501.3.

²²¹ MPP § 42-203.8 (defining CalWORKs family). See also MPP § 63-501.21 (jointly owned resources). Note that state law requires that the *income* of certain family members be counted even if they are not included in the AU. WIC § 11008.14; MPP § 44-133.5.

²²² This will generally include the child, his or her parent(s) living in the same home, siblings, stepparents if they are aided, and needy caretaker relatives. MPP § 42-203.8. The resources (and income) of an SSI recipient are excluded from consideration in CalWORKs. MPP §§ 63-503.45, 63-503.443.

²²³ See Chapter IV for more information on the Maximum Family Grant rule.

²²⁴ See Chapter X for more information on Child Support penalties.

²²⁵ 7 CFR § 273.8(d); MPP §§ 63-501.21, 63-503.44.

²²⁶ MPP § 63-503.442.

²²⁷ ACIN I-57-97, referencing MPP § 63-503.441. See Chapter II.

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intentional program violations.²²⁸ If the excluded person has left the household, her resources are not counted, unless they continue to be available to the household.²²⁹ The resources of an absent parent, unless made available to the household, are not counted despite the parent's legal duty to support the child.²³⁰ Half of any real property owned by a stepparent is presumed to be available to the spouse, unless the family can demonstrate that it is the separate property of the stepparent.²³¹

c. Jointly Owned Resources.

Any personal property owned jointly with someone outside the household will be considered available to the household and counted in its entirety (i.e. as if the CalWORKs recipient owned all of it) for purposes of CalWORKs eligibility unless the household can show that it does not have access to the resource.²³² If the household can show that it only has access to a portion of the resource, only that portion which is available will be counted for purposes of CalWORKs eligibility. If the resource cannot be subdivided so that the CalWORKs family can convert it to cash, it is considered unavailable.²³³ Although the terminology is different, the same concepts apply to real property.²³⁴

²²⁸ See Chapter XII.

²²⁹ MPP § 63-501.3(i) (unavailability).

²³⁰ WIC § 11259.

²³¹ MPP §§ 42-205.3, 42-213.1(e).

²³² 7 CFR § 273.8(d); MPP §§ 42-203.43, 42-203.51, 42-213.11, 63-501.2.

²³³ CFR § 273.8(d); MPP § 63-501.2.

²³⁴ MPP §§ 42-201.1, 42-203.3, 42-205.2.

EXAMPLE

Gene has a 1/8 interest in a share of stock which is worth \$8000. Gene's cousin Muriel has the stock certificate and has declared that she will not sell the stock until her granddaughter graduates from high school in 2012. Since Gene's \$1,000 interest in the stock is not available to him, it is an excluded resource.

d. Resources of Sponsored Noncitizens.

Generally, all of the resources of the sponsor and the sponsor's spouse may be considered available to the sponsored individual until the noncitizen becomes a U.S. citizen or has received credit for 40 quarters of work in the U.S.²³⁵ See Section A.3.a.ii for a detailed discussion regarding how the sponsor's resources count.

4. What Resources Are Excluded?

Some property, which is actually available, does not count towards the family's CalWORKs resource limit.²³⁶ These "uncounted" property items are sometimes called "exempt" or "excluded" resources.²³⁷ DSS' CalWORKs regulations adopt the Food Stamp resource exclusions for personal property (except for cars), but not for real property.²³⁸ Note that excluded funds which are kept in a separate account and not commingled with non-excluded funds remain excluded for an unlimited period of time.²³⁹ Once commingled, they are excluded only for either their prorated period or for six months if there is no proration period.²⁴⁰

²³⁵ 8 USC § 1631(b)(1)-(2); MPP §§ 42-205.5, 43-119.214.

²³⁶ 7 USC § 2014(g); WIC § 11155; MPP § 63-501.3.

²³⁷ MPP § 63-501.3.

²³⁸ MPP §§ 42-203.1-.2, 42-211.2, 42-213.1; ACL 98-47.

²³⁹ MPP § 63-501.41.

²⁴⁰ 7 CFR § 273.8(g); MPP §§ 63-501.42-.43.

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a. Property Which Is Not Available to Support the Family.

- Except for motor vehicles, property is considered not available to the family if: it is encumbered by a loan or not paid for (to the extent that the property's equity value is reduced by the amount of the loan or the amount still owed)²⁴¹; or
- the cash value is not available to the household (such as irrevocable trusts,²⁴² property in probate, property the family is trying to sell, and security deposits)²⁴³; or
- it has only insignificant value if sold or cashed in. The regulations say “insignificant value” means less than half the \$2000 or \$3000 resource limit after taking into account the costs of sale or disposition.²⁴⁴

b. Property Which Belongs to Someone Not In the Assistance Unit.

Property is excluded if it belongs to someone who is not in the AU, including roommates, SSI recipients²⁴⁵ and absent parents.²⁴⁶ However, the property of ineligible noncitizens,²⁴⁷

²⁴¹ MPP §§ 42-215.1 (real property), 63-501.5 (personal property).

²⁴² MPP § 63-501.3(i)(1) contains detailed rules governing trusts. Note that there is no requirement akin to the former AFDC rule (former MPP § 42-211.56) requiring that a family petition the court to determine if the funds can be made available. *See* ACIN I-92-01. Contact Western Center if your county insists CalWORKs recipients must still do this.

²⁴³ 7 CFR § 273.8(e)(8); MPP § 63-501.3(i). For real property *see* MPP § 42-213.11(a); WIC § 11260 (child's share in undistributed estate).

²⁴⁴ 7 CFR § 273.8(e)(18); MPP § 63-501.3(i)(5).

²⁴⁵ 7 CFR § 273.8(e)(17); MPP §§ 63-503.45 (referring to SSI exclusion at § 63-402.226), 63-503.443 (personal property of SSI recipient), and 63-503.45 (non-household members).

²⁴⁶ WIC § 11259; MPP § 42-213.11(d) and (h)(QR) (real property).

²⁴⁷ MPP § 63-503.442.

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people sanctioned for not meeting work requirements,²⁴⁸ certain drug felons,²⁴⁹ people sanctioned for intentional program violations,²⁵⁰ and people without good cause for failing to apply for a social security number²⁵¹ are considered available to the family and the regular rules for excluding and determining the value apply.²⁵²

c. Special Exclusions for Abuse Survivors.²⁵³

The resources of a woman and her children who are temporarily in a shelter for battered women are considered inaccessible for CalWORKs purposes if, at the time they apply for assistance: (1) the resources are jointly owned by the woman and member(s) of the household from which she fled, *and* (2) the woman's access to these resources requires consent of one of the members of the former household.²⁵⁴

Thus, a woman and her children who flee to a shelter because of domestic violence should not have money in accounts counted for purposes of CalWORKs eligibility where the account is either in the batterer's name or access requires the batterer's consent. Similarly, the value of a car should not be counted where it is registered in the batterer's name or even owned jointly but still in the batterer's possession.

²⁴⁸ MPP § 63-503.441. Work requirements are discussed in Chapter VI.

²⁴⁹ ACIN I-57-97, referencing MPP § 63-503.441. See Chapter II.

²⁵⁰ See Chapter XII.

²⁵¹ MPP § 63-503.442.

²⁵² 7 CFR § 273.11(c); MPP § 63-503.44. Special rules for sponsored noncitizens are discussed in Section A.3.a.ii of this chapter.

²⁵³ See Chapter II for more on Abuse Survivors. Appendix I contains detailed materials about special CalWORKs provisions for domestic abuse survivors.

²⁵⁴ MPP §§ 63-501.3(n), 42-213.11(h)(QR).

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d. Real Property Which Is Exempt.

Real Property is land and immovable property attached to the land such as trees, fences and buildings.²⁵⁵

i. A Home Where the CalWORKs Family Lives.

The home in which the CalWORKs family lives is exempt regardless of its value.²⁵⁶ The home is excluded even when temporarily unoccupied for reasons of employment, training for future employment, or illness.²⁵⁷ If the home has more than one unit and the other units are not occupied by the family, the other units will be excluded only if they cannot be sold separately from the home.²⁵⁸ If the home is not occupied by the CalWORKs recipient because of marital separation, it is only exempt for three months unless the recipient can show that it is not available to her.²⁵⁹

ii. Burial Plot.

One burial plot for each member of the AU is exempt.²⁶⁰

iii. Good Faith Effort to Sell Excess Real Property.

CalWORKs regulations specify that real property a family is making a good faith effort to sell is exempt for nine months.²⁶¹ As a condition of receiving aid, the family must allow the

²⁵⁵ MPP § 42-203.1.

²⁵⁶ MPP § 42-213.3. A vehicle used as a home is also excluded. MPP § 42-215.431(d); ACL 97-66, Attach. 2a.

²⁵⁷ MPP § 42-213.31. The food stamp regulations also exclude the value of a home which is not habitable due to fire or natural disaster if the family intends to return. 7 CFR §273.8(e)(1); MPP §§ 42-213.3, 63-501.3(a).

²⁵⁸ MPP § 42-213.32.

²⁵⁹ WIC § 11257(b)(1); MPP §§ 42-213.4, 42-201.1. See also section C.3.a in this chapter on availability.

²⁶⁰ MPP § 42-213.11(k). For cash value of life insurance plans, *see* MPP §63-501.3(b).

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county to place a lien on the property to recover any benefits paid during the nine-month period.²⁶²

iv. Real Property Exempted Under Food Stamp Rules.

The state has taken the position that Welfare and Institutions Code § 11155 imports the food stamp *personal* property rules but not real property rules into CalWORKs.²⁶³ However, the statute arguably allows CalWORKs participants the full range of real property exclusions allowed under Food Stamps in addition to the exclusions under CalWORKs.²⁶⁴ The following are real property exclusions found in the Food Stamps regulations:

- A lot purchased for the purpose of building a permanent home and the value of any partially built home (only if the family does not already own a home);²⁶⁵
- Real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold.²⁶⁶ This is not limited to 9 months and requires no lien as in CalWORKs regulations.²⁶⁷
- Any real property directly related to the maintenance or use of an excluded vehicle(s) (such as a shed necessary for storing the vehicle);²⁶⁸

²⁶¹ MPP § 42-213.12.

²⁶² WIC § 11257.5; MPP § 42-213.12. MPP §§ 42-213.121-.126 discuss the lien requirements and procedures in detail.

²⁶³ MPP §§ 42-203.2, 42-203.21. *See also* ACL 98-47.

²⁶⁴ WIC § 11155 provides that a CalWORKs applicant or recipient “may retain countable resources in an amount equal to the amount permitted under federal law for qualification for Food Stamps.” This language does not limit the application of the Food Stamp real property rules within the CalWORKs program. Contact Western Center if your client has real property that would be exempt under Food Stamps rules, but not CalWORKs rules.

²⁶⁵ 7 CFR § 273.8(e)(1); MPP § 63-501.3(a).

²⁶⁶ MPP § 63-501(i)(4).

²⁶⁷ MPP § 42-213.12.

²⁶⁸ 7 USC § 2014(g)(2)(C); 7 CFR § 273.8(e)(16).

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- Income-producing property including farm land, rental homes and vacation homes;²⁶⁹
- Lands held jointly with a Native American tribe or which cannot be sold without the permission of Bureau of Indian Affairs.²⁷⁰

e. Personal Property Which Is Exempt.

i. Motor Vehicle(s).

All licensed vehicles are subject to the federal Food Stamp limits and methodology.²⁷¹ The rules for excluding licensed motor vehicles also apply to unlicensed vehicles on those Indian reservations which do not require vehicles driven by tribal residents to be licensed²⁷² and licensed vehicles used by ineligible noncitizens or disqualified persons whose resources are considered available to the household.²⁷³ For unlicensed vehicles *not* on Indian reservations, the equity value counts as a resource.²⁷⁴

(1) Excluded Motor Vehicles.

Some motor vehicles will not count at all. There are different rules for licensed and unlicensed vehicles. The rules can be complicated if the family has more than one motor vehicle. For families with one motor vehicle -- the majority of CalWORKs families -- the rule is relatively simple: A motor vehicle will not count, regardless of value, if it is:

²⁶⁹ 7 CFR § 273.8(e)(4); MPP § 63-501.3(e).

²⁷⁰ 7 CFR § 273.8(e)(10); MPP § 63-506(a). The CalWORKs real property regulations exclude land which requires government approval to sell, but not land owned jointly with a tribe. MPP § 42-213.1(g).

²⁷¹ 7 CFR § 273.8(f); WIC § 18901.9; ACL 03-66 at 3. Note that all cars are exempt from resource consideration in the Food Stamp program only. WIC § 18901.9; MPP § 63-501.3(c); ACL 03-66; ACIN I-58-03. CalWORKs follows the old Food Stamp car regulations which have been renumbered as CalWORKs regulations (MPP § 42-215.4). WIC § 11155 (b).

²⁷² 7 CFR § 273.8(e)(3); MPP § 42-215.481.

²⁷³ MPP § 42-215.482.

²⁷⁴ MPP § 42-215.42.

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- a) the family's home;²⁷⁵ or
- b) necessary to transport a household member with a physical disability, including an SSI recipient with a disability;²⁷⁶ or
- c) used to produce income (like a taxi, farming vehicle or fishing boat);²⁷⁷ or
- d) needed for work-related long distance travel, such as a traveling salesperson or migrant worker's car;²⁷⁸
- e) used to carry fuel or water (for example, for clients who live in the desert).²⁷⁹ or
- f) if the equity value (the value of the vehicle minus any loans or debts on it) is \$1501 or less.²⁸⁰

A vehicle is not excluded just because it is used to travel to work, unless long-distance traveling is part of the job.²⁸¹ Any personal property directly related to the maintenance or use of an excluded vehicle (such as tools needed for operation or maintenance of the vehicle) is also excluded.²⁸²

²⁷⁵ 7 CFR § 273.8(e)(3)(D), MPP § 42-215.431(d).

²⁷⁶ 7 USC § 2014(g)(2)(C)(ii); 7 CFR § 273.8(e)(3)(E); MPP § 42-215.431(e); ACL 00-06. One such vehicle per physically disabled household member is excluded. MPP § 42-215.431(e)(3).

²⁷⁷ 7 CFR § 273.8(e)(3)(A)-(B); MPP § 42-215.431(a)-(b).

²⁷⁸ 7 CFR § 273.8(e)(3)(C); MPP § 42-215.431(c).

²⁷⁹ 7 USC § 2014(g)(2)(C)(iii); 7 CFR § 273.8(e)(3)(F); MPP § 42-215.431(g).

²⁸⁰ WIC § 11155 (c)(2)(H); MPP § 42-215.431(h).

²⁸¹ 7 CFR § 273.8(e)(3)(C); MPP § 42-215.431(c), and (f). This exception is when driving is required for the job, not for commuting to work.

²⁸² 7 USC § 2014(g)(2)(C); 7 CFR § 273.8(e)(16); MPP § 63-501.3(q).

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If the family's one vehicle does not meet any of the exceptions listed above, it will be excluded only if it has a blue book value of less than \$4,650.²⁸³ Note that for *licensed* vehicles it is the fair market value, not the equity value, that counts. Thus, if the vehicle has a blue book value over \$4,650, the excess over that amount will be counted against the \$2,000 or \$3,000 resource limit.²⁸⁴

(2) Determining the Value of Motor Vehicles Which Cannot Be Excluded.

a) Unlicensed Vehicles.

Unless exempt, as described above, the equity value (fair market value minus the amount of any loans or encumbrances) of an unlicensed vehicle counts as a resource.²⁸⁵

b) Licensed Vehicles.

i) Families with one licensed vehicle.

The rules for valuing a household's *licensed vehicle(s)* differ from those for other property. A chart at the end of this subsection illustrates the rules discussed here. All countable (not excluded) vehicles must be individually evaluated for their "blue book" *fair market value* (FMV). The amount by which the vehicle's value exceeds the vehicle exclusion limit (\$4650)²⁸⁶ must be counted in full toward the resource limit.²⁸⁷ That is, the blue book value in excess of \$4650 counts.²⁸⁸

²⁸³ 7 USC § 2014(g)(2)(B)(iv); WIC § 11155 (c)(1) and (3); MPP §§ 42-215.44, 63-1101.28.

²⁸⁴ MPP § 42-215.44.

²⁸⁵ WIC § 11155 (d); MPP § 42-215.42.

²⁸⁶ MPP §§ 42-215.44, 63-1101.28.

²⁸⁷ MPP § 42-215.44.

²⁸⁸ 7 USC § 2014(g)(2)(B)(iv); WIC § 11155 (c)(1) and (3); MPP §§ 42-215.44, 63-1101.28.

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EXAMPLE

Nicole is a single parent with two children. She has only one car, an old Chevy valued at \$6,250. The family still owes \$2,000 on the car. Assume none of the reasons to exempt the car applies. The fair market value of the car is over the car limit of \$4,650. [\$6,250 (fair market value) - \$4,650 (vehicle limit) = \$1,600]. The \$1600 "excess value" will count as a resource. The loan on the car is not subtracted from the car's value. The excess value of \$1,600 will count against the family's CalWORKs resource limit. As discussed below, the outcome could be different if the family has more than one car.

If a recipient believes that her car is worth less than the "blue book" value, she must be given an opportunity to submit evidence to show the true value, such as written appraisals, newspaper ads for similar vehicles, estimates from mechanics or dealers, etc.²⁸⁹ If she cannot convince the county to use the lower fair market value, she can request a state administrative hearing.²⁹⁰

ii) Families with more than one licensed vehicle.

Families with *more than one licensed motor vehicle* must go through additional steps to determine how much of each car's value will count.²⁹¹ Each vehicle is valued individually. After the list of the steps, we have provided a chart version of the valuation rules, followed by examples.

First, are any of the vehicles excluded? If yes, the excluded vehicle(s) do(es) not count.²⁹²

Second, determine the excess valuation method (FMV minus the \$4650 vehicle exclusion limit) for one car *per* adult household member²⁹³ and for any car driven by a household member

²⁸⁹ MPP § 42-215.413.

²⁹⁰ See Chapter XIII for information on state hearings.

²⁹¹ WIC § 11155 (c)(3) and (4); MPP § 42-215.44.

²⁹² MPP §§ 42-215.471-.472.

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under 18 to go to work, school, job training, or to look for work.²⁹⁴ The amount by which the vehicle's value exceeds the vehicle exclusion limit (\$4650)²⁹⁵ must be counted in full toward the resource limit.²⁹⁶

Third, determine both the excess valuation (FMV minus the \$4650 vehicle exclusion limit) and the equity value (FMV minus any debts or loans) of any remaining vehicles.²⁹⁷ Compare the excess value to the equity value of each car and use the greater of the two numbers as the countable resource value.²⁹⁸

It is important to go in the precise order set out above. The county should use the most favorable valuation in deciding which of the multiple vehicles is used for the excess value resource test and the equity value test. It is best to use the lowest value car for the excess value test, and use the higher valued cars with encumbrances for the equity test.

²⁹³ WIC § 11155 (c)(3) and (4); MPP §42-215.473.

²⁹⁴ WIC § 11155 (c)(3) and (4); MPP §42-215.73.

²⁹⁵ MPP §§ 42-215.44, 63-1101.28.

²⁹⁶ MPP § 42-215.474.

²⁹⁷ MPP § 42-215.474.

²⁹⁸ MPP §§ 42-215.474 - .475.

HOW TO DETERMINE THE VALUE OF VEHICLES²⁹⁹

Step One	Step Two	Step Three
<p>Excluded Vehicles</p> <p>Is the vehicle excluded?</p> <ul style="list-style-type: none"> * It is the family's home? * Necessary to transport a disabled household member? * Income producing? * Necessary for employment other than daily commuting? * Needed to carry fuel or water? * Has an equity value of \$1500 or less? <p>If the answer is yes to any question, the vehicle is excluded. Stop here.</p> <p>If the answer to all the questions is no, go to Step Two.</p>	<p>Determine the Fair Market "excess value"</p> <ul style="list-style-type: none"> * use blue book (if not accurate get estimates from mechanics or used car dealers to support lower market value) * subtract the current CalWORKs limit for cars (\$4,650) <p>Use the excess valuation method to determine the value of:</p> <ul style="list-style-type: none"> * one car per adult household member * any car driven by a household member under 18 to go to work, school, job training, or look for work. <p>The excess value of the car(s) is a countable resource.</p> <p>If the family has more cars, go to Step Three. Otherwise, stop here.</p>	<p>Multiple Non-Excluded Vehicles</p> <p>For each of the remaining cars, determine both the "excess value" (FMV minus \$4650) and the "equity value" (FMV minus encumbrances).</p> <p>Compare the equity value to the excess value. Use the higher figure as the countable resource value.</p>

²⁹⁹ MPP § 42-215.47.

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EXAMPLE

Bob has a car worth \$4700, with a \$3,000 loan.

Step One: Is the car excluded? Bob uses his car for his delivery business. This makes it totally exempt (not counted), and Bob is eligible.

EXAMPLE

Now assume that Bob loses his business, and has no other exclusions.

Step One: Is the car excluded? No.

Step Two: Determine the Fair Market Value “excess value”

 \$4700 (blue book value)
 -\$4650
 \$ 50 (excess value)

Assuming that he has \$1950 or less in countable resources, he is eligible

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EXAMPLE

Assume the same facts as above, plus Bob owns a second car free and clear worth \$2000.

Step One: Is either car excluded? No.

Step Two: Determine the Fair Market Value “excess value” of one car.

$$\begin{array}{r} \$2000 \text{ (blue book value)} \\ -\$4650 \\ \hline \$ 0 \text{ (excess value)} \end{array}$$

Step Three: Determine both the excess and equity value of the remaining car, and use the higher of the two values.

$$\begin{array}{r} \$4700 \text{ (blue book value)} \\ -\$4650 \text{ (vehicle resource disregard)} \\ \hline \$ 50 \text{ (excess value)} \end{array}$$
$$\begin{array}{r} \$4700 \text{ (blue book value)} \\ -\$3000 \text{ (loan)} \\ \hline \$1700 \text{ (equity value)} \end{array}$$

Compare the excess value (\$50) to the equity value (\$1700), and use the higher of the two (\$1700) as the countable resource value. Assuming that Bob has \$300 or less in countable resources, he is eligible.

Note: If Bob used the excess value test on the \$4700 car, he would have \$50 counted, plus the \$2000 equity value of his other car would also count. Bob would be over the property limits! This is why you must pick the correct vehicle to value first.

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ii. Basic Household Items and Furnishings.

Basic furnishings such as clothes, tables, TVs, stereos, chairs, beds, appliances, etc are exempt.³⁰⁰

iii. Life Insurance and Burial Insurance.

The cash value of life insurance policies is exempt.³⁰¹ Family burial plots and bona fide funeral agreements up to \$1,500 per agreement (one of each per household member), are exempt.³⁰²

iv. Pension Plans, Retirement Plans, and Educational Plans.³⁰³

The principal and interest in 401(k) plan, 403(b) plan, or 457 plan are exempt from consideration as property for applicants.³⁰⁴ The principal and interest in a 401(k) plan, 403(b) plan, 457 plan, IRA, 529 college savings plan, or Coverdell ESA (educational savings account) are exempt from consideration as property for CalWORKs applicants and recipients.³⁰⁵ Federal Employee Thrift Savings plans and 501(c)(18) plans are also exempt from consideration as property for CalWORKs applicants and recipients.³⁰⁶

³⁰⁰ 7 CFR § 273.8 (e)(2); MPP § 63-501.3(b).

³⁰¹ MPP § 63-501.3(b).

³⁰² 7 USC § 2014(g)(3); 7 CFR § 273.8(e)(2); MPP § 63-501.3(b).

³⁰³ More liberal rules went into effect January 1, 2008. WIC § 11155.6 proclaims an intent of the legislature to educate and empower CalWORKs recipients to save or invest in instruments such as individual development accounts, 401(k) plans, 403(b) plans, IRAS, 457 plans, Coverdell ESA plans, restricted accounts, or 529 plans.

³⁰⁴ WIC § 11155.2(a)(1); ACL 08-11 at 1, ACL 08-37 at 4; ACIN I-55-08 at 2.

³⁰⁵ WIC § 11155.2(a)(2); ACL 08-11 at 1, ACL 08-37 at 4; ACIN I-55-08 at 2.

³⁰⁶ ACL 08-37 at 4; ACIN I-55-08 at 2. Note that Keogh plans that involve a contractual obligation with someone who is not a household member are also excluded. See the United States Department of Agriculture Food and Nutrition Service Administrative Notice 02-26 at <http://www.fns.usda.gov/fsp/rules/Memo/02/pensions.htm>.

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v. Restricted Accounts for Recipients.

Recipient, but *not* applicant, households may have savings and interest kept in a restricted account³⁰⁷ for the purpose(s) of:

- purchasing a home; or
- starting a business; or
- paying for education or job training expenses for a dependent.³⁰⁸

A restricted account must be established by written agreement with the county. The accounts may be used *solely* for the purpose of accumulating funds for one of these "qualifying" purposes. *Any* withdrawal from a restricted account for something other than a "qualifying purpose" will cause a period of ineligibility for the entire AU.³⁰⁹ The length of the penalty (in months) is determined by dividing the balance of the account immediately prior to the withdrawal by the needs standard (MBSAC) for the AU.³¹⁰ The period of ineligibility may be shortened when the MBSAC is increased for cost of living adjustments.³¹¹

Interest on restricted accounts is exempt income, if it is deposited directly into the account.³¹² If interest causes the account to exceed \$5000, the family can withdraw the interest without penalty.³¹³

³⁰⁷ WIC § 11155.2(a); ACL 08-11 at 1. Effective January 1, 2008 there is no maximum amount that current CalWORKs recipients may save in a restricted account. ACL 08-11 at 1. There is no limit on the number of qualifying withdrawals. MPP § 89-130(g).

³⁰⁸ WIC § 11155.2(a); ACL 08-11 at 1. Restricted account funds can be spent on educational expenses of anyone "who is or could be claimed by the account holder as a dependent for federal tax purposes." MPP § 89-130(g)(2). The definition of educational expenses is found at MPP § 89-130(g)(2)(A)(1).

³⁰⁹ WIC § 11155.2(b); MPP § 89-130(i) and (k).

³¹⁰ WIC § 11155.2(b). MPP § 89-130 (k) and (l). The needs standard is set forth in Section B.1.a of this chapter.

³¹¹ WIC § 11155.2(b); MPP § 89-130(n).

³¹² MPP § 89-130(f).

PRACTICE TIP

CalWORKs recipients are very limited in how they may spend any money placed in a restricted account, regardless of other important needs. Therefore, recipients may want to establish such an account only if they are close to exceeding the countable resource limit. If a recipient is forced to spend funds from a restricted account for a non-qualifying purpose such as to pay rent and avoid eviction, it may be better to first go off CalWORKs and thus avoid any penalty. The recipient could reapply once her resources were below the allowable limit. Note: there is no exemption of these accounts for applicants)

State law also allows for the creation of the California Savings and Asset Project (CSAP).³¹⁴ Under CSAP, CalWORKs recipients can accumulate savings of up to \$3000 in matching federal funds plus additional monies contributed by private sources in addition to that allowed by WIC § 11155.2(a) for purchasing a home, starting a business or paying for the education or job training for the account holder or a dependent.³¹⁵

vi. Personal loans.

Bona fide loans, which are excluded as income (see Section B.3.e), are exempt as a resource.³¹⁶ If the loan proceeds are kept in a segregated account, and not commingled with non-

³¹³ MPP § 89-130(p).

³¹⁴ WIC § 11155.2(c); ACL 01-76; ACL 02-05. As of the date of this publication, this program is not operational. According to DSS, there is no projected starting date but when implemented, participants will sign an "Individual Development Account" (IDA) agreement with the county. The principal and interest in an IDA is exempt for CalWORKs purposes. WIC § 11155.4.

³¹⁵ WIC § 11155.2(c); MPP § 89-130(d).

³¹⁶ MPP § 63-501.4; ACL 97-05.

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exempt funds, the proceeds will remain exempt indefinitely.³¹⁷ Otherwise, if the funds are commingled, they remain exempt only for 6 months.³¹⁸

vii. Corrective Payments for CalWORKs Underpayments.

Corrective payments (CalWORKs underpayments) are not considered a resource in the month received or in the month following.³¹⁹

viii. Earned Income Tax Credits Payments.

Earned income tax credits (EITC) are exempt for 12 months following receipt, if the person is on aid at the time she receives the EITC.³²⁰ However, if a family is later discontinued from aid for more than a couple of months, any EITC remaining when they re-apply will not be exempted.³²¹ All EITC payments (state, local and federal) are exempted.³²²

ix. Financial Aid for Education.

Most federal financial aid for students is exempt.³²³ Other forms of financial aid issues such as loans will fall under the bona fide loan resource rule, discussed above.

³¹⁷ MPP § 63-501.41.

³¹⁸ MPP § 63-501.43.

³¹⁹ WIC § 11004(k); MPP § 44-340.6.

³²⁰ MPP § 63-507(a)(9); ACL 99-82.

³²¹ 7 USC § 2014(g)(3); 7 CFR § 273.8(e)(12); MPP §§ 63-501.3(l), 63-507(a)(9).

³²² MPP § 63-501.3(l). *See also* MPP § 63-507(a)(3) and (9) (exempting certain earned income tax credits). Note that the CalWORKs regulations continue to exempt these payments from *income* determinations. MPP § 44-111.3(l).

³²³ MPP § 63-507(a)(6) (programs funded in whole or part through Title IV of the Higher Education Act (P.L. 102-325); Bureau of Indian Affairs student assistance programs (P.L. 102-325); Title XIII, Indian Higher Education Programs, Tribal Development Student Assistance Revolving Loan Program (Tribal Development Student Assistance Act); or, to the extent specified in § 63-502.2(e), the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990 (20 USC § 2301-2466(d)).

Most scholarships, educational grants, fellowships, deferred payment loans for education are excluded as resources. The full list is found at MPP § 63-507(a)(6). *See also* MPP §§ 63-

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As with all excluded resources, student aid funds which are kept in a separate account and not commingled with non-excluded funds remain an excluded resource for an unlimited period of time.³²⁴ Once commingled, however, the funds are excluded only for the period of time over which they have been prorated as income, or for six months if the funds were not prorated.³²⁵

x. Annualized Self-Employment Income Should Be Treated As Prorated Income, Rather Than as a Resource.

Self-employment income which represents a CalWORKs household's annual income is annualized over a 12 month period and not counted as a resource for a particular month even if it is received within only a short period of time.³²⁶ For example, a farm family which sells its crops for \$3600 in September has a monthly income of only \$300 (\$3600 divided by 12) and not a \$3600 resource.

xi. Property Which Is Essential for Employment.

Employment-related property such as necessary tools, machinery or money needed to produce the income is exempt.³²⁷ Even if the family stops farming, all essential personal property (equipment, vehicles, etc.) is exempt for an additional 12 months.³²⁸

502.2(l), 63-502.2(e) (financial aid exclusions).

For the limited circumstances in which the financial aid is not exempt income, it should be prorated as unearned income, rather than all treated as income or a resource in the quarter received. MPP § 63-501.3(j); MPP § 63-503.212 (b)(2). Although CalWORKs law and regulations do not specifically address this issue, Food Stamp rules require this income proration. Prorating means that the income is divided by the period of time it is meant to cover. For example, a non-exempt financial aid award of \$1,000 meant to cover a four-month semester is divided by four and totals \$250 per month.

³²⁴ MPP § 63-501.41. This is true for all excluded resources, not just for student income.

³²⁵ MPP §§ 63-501.42-.43.

³²⁶ WIC § 11250.6; 7 CFR § 273.11(a)(1); MPP § 63-501.3(j).

³²⁷ 7 CFR § 273.8(e)(5); MPP § 63-501.3(f).

EXAMPLE

Resources owned by a family which lives on and earns at least part of its income from a farm are exempt. These include:

- the home and surrounding property³²⁹
- all personal property (machinery, tools, etc.) necessary to farm the land³³⁰
- any vehicles (trucks, autos, tractors, etc.) used for farming³³¹
- money earned from sale of crops which is essential to continued operation (such as for buying supplies, paying wages, etc.)³³²
- property pledged as collateral for a loan³³³

xii. Payments to Replace Lost, Stolen or Destroyed Property.

Payments to replace property that has been lost, stolen or destroyed are exempt resources, and not income.³³⁴ The only time payments to replace property would count as income is if any portion of the payment exceeds the value of the property lost, stolen or damaged.³³⁵

³²⁸ MPP §§ 63-501.3(f)(3), 42-215.431.

³²⁹ MPP § 63-501.3(a).

³³⁰ 7 USC § 2014(g)(4); MPP § 63-501.3(f)(1).

³³¹ MPP § 42-215.431.

³³² MPP § 63-501.3(f)(2). The exclusion continues even if the money is commingled with non-excluded funds. MPP § 63-501.3(f)(2).

³³³ MPP § 63-501.3(i) and (o); 7 CFR § 273.8(e)(15).

³³⁴ MPP § 44-105.31.

³³⁵ MPP § 44-105.32.

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xiii. Relocation Assistance Payments.

Money received from a public agency because a person is being forced to move due to redevelopment, highway construction or any other public development, is excluded income.³³⁶

xiv. Governmental Payments Designated to Restore a Home Damaged in a Disaster.

Governmental payments (including but not limited to those made by the Department of Housing and Urban Development or FEMA) designated for the restoration of a home damaged in a disaster are excluded.³³⁷

xv. Energy Assistance Payments From the Federal Government.

Energy assistance payments or allowances including those from the Low Income Home Energy Assistance Act (LIHEAA), or from Housing and Urban Development (HUD) or Farmers Home Administration (FmHA) programs are exempt.³³⁸

xvi. Payments to Indian Tribal Members, Japanese-Americans for Relocation During WWII, Radiation and Agent Orange Victims and Nazi Persecution Victims.

Federal payments to certain Indian tribal members,³³⁹ Japanese-Americans who were relocated during WWII,³⁴⁰ victims of radiation exposure³⁴¹ and Agent Orange,³⁴² and victims of Nazi persecution³⁴³ are excluded property.

³³⁶ 42 USC § 4636; 49 CFR § 24.209; WIC § 11008.6; Gov. Code § 7269(b); MPP §§ 44-111.3(a), 63-507(a)(2).

³³⁷ 7 CFR § 273.8(e)(7); MPP §§ 63-501.3(h), 63-507(a)(10), 42-213.515; ACIN 1-20-99.

³³⁸ 7 CFR § 273.8(e)(14); MPP § 63-507(a)(5).

³³⁹ 7 CFR § 273.8(e)(11); MPP §§ 63-506(b), 42-213.511- .512, 63-507(a).

³⁴⁰ MPP §§ 42-213.514, 63-507(a)(7).

³⁴¹ MPP §§ 42-213.517, 63-507(a)(11).

³⁴² MPP §§ 63-507(a)(8), 42-213.516.

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xvii. Payments From Government Food Programs Including School Breakfast and WIC.

Payments in cash or in-kind under government food programs such as the special food program for women, infants and children (WIC) or school breakfast or lunch programs are exempt.³⁴⁴

xviii. WIA³⁴⁵ Earnings.

Earnings under the Workforce Investment Act (WIA) are exempt.³⁴⁶

5. How is Property Valued?

• **Equity Value.**

It is necessary to determine the value of all property which is not excluded. As a general rule, the property's equity value must be counted.³⁴⁷ The major exception to this rule is the method by which motor vehicles are valued, discussed above.³⁴⁸ The equity value of an item is the fair market value (FMV) less encumbrances or legal debts.³⁴⁹

³⁴³ WIC § 11008.20; MPP §§ 63-507(a)(18), 42-213.519.

³⁴⁴ MPP § 63-507(a)(1).

³⁴⁵ As July 1, 2000, the JTPA program was replaced with the Workforce Investment Act of 1998. <http://www.doleta.gov/programs/factsht/wialaw.cfm>.

³⁴⁶ MPP § 63-507(a)(4). This includes allowances and payments made related to WIA programs, but not on-the-job training wages from WIA programs.

³⁴⁷ 7 CFR § 273.8(c)(2); MPP §§ 42-215.3, 63-501.5.

³⁴⁸ MPP § 42-215.3.

³⁴⁹ 7 CFR § 273.8(c)(2); MPP § 63-501.5.

EXAMPLE

Susan applies for aid for herself and her two teenage daughters. She owns a piece of nonexempt land which is valued at \$5000 but which has an outstanding mortgage of \$4000. Thus, the land has an equity or countable resource value of \$1000 toward Susan's \$2000 CalWORKs resource limit.

6. Transferring or Giving Away Resources.

There is no CalWORKs penalty for having transferred or given away property *prior to applying for aid or while off aid*.³⁵⁰ However, a CalWORKs recipient who transfers or gives away any nonexempt or property *for less than fair market value* will be disqualified from CalWORKs eligibility for a period of time if the resource would have affected the family's eligibility.³⁵¹

The period of ineligibility is based on either (a) the amount by which the person's total countable resources (including the transferred item and all other countable resources) exceeded the property limit or (b) the difference between the fair market value and the amount received in the transfer.³⁵² The period of ineligibility is based on the lesser of the two amounts.³⁵³ To determine the period of ineligibility, the lesser of the two calculated amounts is divided by the

³⁵⁰ WIC § 11157.5; MPP § 42-221.7(QR). The opposite is true for Food Stamps, where it is an issue for an applicant to knowingly transfer non-exempt property with the intent to qualify for benefits three months prior to application. MPP § 63-501.61.

³⁵¹ WIC § 11157.5; MPP § 42-221.1(QR).

³⁵² MPP § 42-221.21.

³⁵³ MPP §§ 42-221.216, 42-221.3.

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needs standard (MBSAC) for the family's size.³⁵⁴ The result is rounded down to the nearest whole number.³⁵⁵

EXAMPLE

Marisela receives aid for herself and her two children. Marisela's uncle dies and leaves her his 2003 Honda Accord. Marisela sells the car for \$5000 to her brother who needs it for his job. She has no countable resources other than the proceeds from the sale. When she reports the \$5000 on her QR-7 or other form, the worker tells her the blue book value of the car is \$11,000. Marisela has already spent \$3500 of the \$5000 to pay off credit cards and other debts.

Calculation 1: Marisela's total resources minus property limit: $\$5000 - \$2000 = \$3000$.

Calculation 2: Fair market value minus amount received: $\$11,000 - \$5000 = \$6000$.

The lesser of the two amounts (\$3000) is divided by the needs standard for Marisela's family of three (\$1026 in Region 1).

Marisela's family is ineligible for CalWORKs for 2.92 months, rounded down to 2 months.

Note that a recipient who transfers exempt property (property which doesn't count against the resource limit) will not be penalized regardless of how much the property is worth.³⁵⁶ For example: While receiving aid, Jake sends \$4,000 he received in excluded federal student aid to his mother who lives in Mexico and needs an operation. Since the student aid is exempt from

³⁵⁴ WIC § 11157.5; MPP § 42-221.216. The needs standard in effect as of July 2008 is found in Section B.1 of this chapter and in Attach. 1 to ACL 08-27.

³⁵⁵ WIC § 11157.5; MPP § 42-221.217.

³⁵⁶ WIC § 11157.5; MPP § 42-221.1(QR).

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being counted as a resource from CalWORKs,³⁵⁷ there should be no penalty (although he may have problems with the financial aid office).

³⁵⁷ See Section C.4.e.viii in this chapter.

Chapter IV: Benefits for CalWORKs Families

This chapter describes the different types of benefits for which CalWORKs families may be eligible.

A. Monthly CalWORKs Grant.

The principal benefit that most families receive through CalWORKs is a monthly check to feed, shelter and care for themselves and their children. The amount of the grant depends on which county the family lives in, how many people are in the family and how many are receiving aid, whether anyone in the household is disabled, and what other income (such as earnings, disability benefits, Social Security, etc.) the family has. Chapter V (“How to Calculate a CalWORKs Grant”) goes into detail on each of these points and provides examples of grant calculations. Appendix B contains flyers in English and Spanish on how to apply for aid.

1. California’s Two Regions.

As discussed in Chapter V, the state is broken into two regions for welfare purposes. Region 1 includes most of the large and urban counties and is the supposed higher-cost region based on housing costs as reported in the 1990 census.¹ Therefore, both the CalWORKs maximum aid payments and the CalWORKs need standard² are higher in Region 1³ than in Region 2.

Counties in Region 1: Alameda, Contra Costa, Los Angeles, Marin, Monterey, Napa, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, and Ventura counties.⁴

¹ WIC § 11452.018.

² See Chapter III for information on the need standard and for a chart of need standard levels in each region. A chart containing both need standards and grant levels is in Appendix D.

³ WIC § 11452.018(b).

⁴ WIC § 11452.018(b)(1); MPP § 44-315.321.

Counties in Region 2: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Nevada, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba counties.⁵

2. Exempt and Nonexempt Grant Levels.

Within each region, there are two possible maximum aid levels. Some families are “exempt” from certain welfare reductions from the early 1990s that were intended as a work incentive, because it is presumed that they are likely unable to work.⁶ Thus, these exempt families receive higher grants. Exempt grants are currently approximately 10% to 12% higher than non-exempt grants.⁷

Families are exempt from the work-incentive reductions and receive the higher grant only if:

- *all* parents or caretaker relatives living in the home are disabled and receiving benefits under the SSI/SSP,⁸ In-Home Supportive Services,⁹ State Disability Insurance, or Worker’s Compensation Temporary Disability programs;¹⁰ or
- they are a “child-only assistance unit” (an assistance unit headed by a caretaker relative who is not the child’s parent and who does not get aid for herself, such as a grandmother who receives a grant for one person to cover her grandchild).¹¹

⁵ WIC § 11452.018(b)(2); MPP § 44-315.321.

⁶ *See Beno v. Shalala*, 30 F.3d 1057, 1060–61 (9th Cir. 1994) for background on California’s “work incentive” grant reductions.

⁷ See the grant level chart in this section, or the flyers in Appendix D. For examples of exempt and non-exempt family situations, *see* MPP § 89-110.3(QR).

⁸ WIC §§ 11450.019(a), 12200; MPP § 89-110.221.

⁹ WIC §§ 11450.019(a), 12300; MPP § 89-110.222.

¹⁰ WIC § 11450.019(c); MPP §§ 89-110.223 - .224.

¹¹ WIC § 11450.019(b); MPP § 89-110.23.

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Child-only assistance units where the children live with undocumented parents on timed out adults do not get the exempt grant.

Example: Sophia and Jack have one child, George. Jack is disabled and receives SSI benefits. Sophia is not disabled, but was laid off from her job. The family does not qualify for the “exempt” grant amount because one of the parents in the home is not disabled. If George lived only with Jack, they would get the exempt amount because all parents in the home would be receiving disability benefits.

Families who believe they are entitled to the higher exempt grant level should ask their worker and file for a fair hearing if the request is denied.¹²

3. “Maximum Family Grant”: No Increase in CalWORKs Benefits For Certain Children Born to Parents Receiving Aid.

Although CalWORKs benefits are generally determined by family size, with larger families receiving more aid, some families do not get a larger grant if they have another child. Under California’s “maximum family grant,” or “MFG” policy, CalWORKs grants do not increase with the birth of a child if the family has received aid continuously for ten months prior to the birth of the child.¹³ The statute clarifies that aid is considered “continuous” unless there was a break in aid of two *consecutive* months or more.¹⁴ MFG applies when the family into which the child is born receives aid, even if the parent does not (because of a sanction, or

¹² See Chapter XIII on how to request a fair hearing.

¹³ WIC § 11450.04(a); MPP § 44-314.2. Although prior AFDC law had prohibited these “family cap” policies, the 1996 federal welfare reform law allows states to implement them. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

¹⁴ WIC § 11450.04(a); MPP § 44-314.32. “Zero basic grant” months are months in which the family receives no aid because its income is such that the grant would be less than \$10. MPP § 44-315.5. As of September 1, 2000, zero basic grant months are considered as months off aid and must be counted towards the two month break in aid. ACL 01-82 at 2, ACL 00-78 at 3.

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because the parent is undocumented, or because the parent is on SSI for example.).¹⁵ However, an otherwise eligible pregnant woman still gets the pregnancy supplement or “pregnant woman only” grant even if the child will be subject to MFG when born.¹⁶

Although the family’s grant does not increase when an MFG child is born, the child is considered a CalWORKs recipient for all other purposes, including Medi-Cal coverage, special needs, food stamps, child care, and any other welfare-related benefit.¹⁷ The need standard for the family size including the MFG child is used to calculate eligibility for aid.¹⁸

MFG does *not* apply to any child:

- Born less than 10 months after the family went on aid;¹⁹
- Whose family was off aid for at least 2 months in a row in the 10 months before the birth;²⁰
- Conceived as a result of failed IUD, Norplant, or sterilization;²¹
- Born before September 1, 1997;²²
- Conceived while either parent was a non-needy caretaker relative;²³

¹⁵ MPP § 44-314.2; ACL 97-29, Attach.1, #12. Advocates, however, have argued that children born to parents who get SSI based on mental disability should not be subject to the MFG rule. Contact Western Center for more information.

¹⁶ ACL 97-29, Attach.1, #15.

¹⁷ MPP § 44-314.6; ACL 97-29, Attach.1, #4, #5, #6.

¹⁸ MPP § 44-314.61.

¹⁹ WIC § 11450.04(a); MPP § 44-314.2. Thus, if a woman is already pregnant when she goes on aid, or gets pregnant shortly thereafter, her child will not be subject to MFG.

²⁰ WIC § 11450.04(a); MPP § 44-314.32. A month counts if the family received *any* aid, even if their beginning date of aid was the last day of the month. ACL 97-29, Attach.1, #2. Months also count as months of receipt of aid if the parent was off the grant as a result of a sanction or time limit. MPP § 44-314.151.

²¹ WIC § 11450.04(b)(3); MPP § 44-314.53. The regulation requires medical verification of the IUD, Norplant, or sterilization failure. MPP § 44-314.53.

²² ACL 97-42.

²³ WIC § 11450.04(d)(2); MPP § 44-314.54.

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- Conceived as a result of rape or incest that was reported either before or within three months after the birth;²⁴
- Conceived as a result of domestic abuse;²⁵
- Who is not living with either parent;²⁶ or
- Whose family did not receive written notice of the MFG policy at least 10 months before the birth.²⁷

In addition, MFG will no longer apply to a child once the family has been off aid for 24 consecutive months during which the child lived with the family.²⁸

a. Special Note on MFG Advance Notice Requirement and Notices of Action.

The MFG rules regarding notice changed in 2000 because of the *Nickols v. Saenz* lawsuit. The changes are set forth in All-County Letter 00-78, which also contains helpful examples and copies of the new forms discussed below.²⁹ Note that no child born after November 1, 2001,

²⁴ WIC § 11450.04(b)(1)–(2); MPP §§ 44-314.51 (rape), § 44-314.52 (incest). The rape or incest does not have to be reported to the police. It can be reported to a law enforcement agency, a medical or mental health professional, or a rape or incest counseling organization. WIC § 11450.04(b)(1) - (2); MPP §§ 44-314.51 - .52. The parent need not provide an actual copy of a report made to law enforcement or another agency, but must provide written verification that such a report was made, and the date it was made. ACL 97-29, Attach.1, # 3.

²⁵ ACIN I-02-06 at 3–4. The individual must request a domestic abuse waiver of the MFG rule, pursuant to MPP § 44-314.3-.4. The conception may be the result of forced sex, refusal to allow the use of birth control, or threats to the recipient that prevented her from terminating the pregnancy, for example.

²⁶ WIC § 11450.04(d)(3); MPP § 44-314.55. For example, if an MFG child goes to live with grandparents, the grandparents can get aid for her (and for themselves if eligible). *See* ACL 97-29, Attach.1, # 7.

²⁷ WIC § 11450.04(f); MPP § 44-314.31. Many MFG determinations have been reversed because the county cannot prove it notified the recipient at least 10 months before the birth. If the client believes she did not get notice, request a state hearing. Advocates should contact Western Center for hearing decisions reversing MFG for lack of advance notice.

²⁸ WIC § 11450.04(d)(1); MPP § 44-314.4.

²⁹ For more information on *Nickols*, contact Western Center.

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will be subject to MFG unless the family received a new MFG notice (called the CW 2102 or 2101A) at least 10 months before the birth.³⁰ After November 1, 2002, MFG applies only if the family also received and signed a new MFG notice (CW 2102 or 2102A) at application and annual redetermination (if redetermination happened at least 10 months before the birth).³¹

Because the state's notices of action (NOAs) regarding MFG before 2000 did not specify that a ground for exemption exists when advance notice of the rule was not received, many families did not know they had a basis to challenge the rule and did not seek hearings when their baby was denied aid. Note that while the family may have missed the 90-day timeline to request a hearing on the initial denial (and get retroactive aid back to the baby's birth), it is never too late to seek a hearing on whether an exemption should apply, so long as the baby continues to be excluded.³² If the family wins, they may not receive aid all the way back to the baby's birth, but the baby will be added to the grant.

Also, some counties apparently do not provide NOAs denying aid to an MFG baby. Instead, they simply do not add the baby to the grant. In such cases (as in any case where written notice of any adverse action was not provided), the 90-day time limit to request a hearing on the denial of aid to the baby has not run,³³ and the family can seek to challenge the application of the MFG rule all the way back to the baby's birth.

b. Special Note Regarding Teen Parents and MFG.

The application of the MFG rule to teen parents changed in 2000 after the *Nickols* lawsuit. The changes are discussed in detail in All-County Letter 00-78 along with helpful examples. The current rule is that MFG does not apply to any teen parent's child born before

³⁰ ACL 00-78 at 2.

³¹ ACL 00-78 at 2–3; ACIN I-29-07 at 1.

³² Also, even a family that did receive a NOA can argue that the NOA was defective because it failed to inform them that lack of advance notice of the MFG rule was a basis for exemption.

³³ See Chapter XIII (describing timely hearing requests); *Morales v. McMahan*, 223 Cal.App. 3d 184 (1990).

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July 1, 2001, if the teen parent was receiving aid on a parent's case (sometimes called "nested teens") at the time the MFG notice was given to the family.³⁴

After July 1, 2001, MFG applies to a baby of a teen receiving aid on a parent's case only if the new MFG notice (CW 2102 or CW 2102A) was provided to the head of the assistance unit at least 10 months before the baby's birth.³⁵ *But MFG will only apply to the baby until the teen becomes head of her own assistance unit.*³⁶

Example: Jen, age 17, has been on aid with her mother and sister for two years. In May 2001, Jen has a baby. MFG does not apply to her baby because MFG does not apply to babies born before July 1, 2001, to "nested teens" receiving aid on a parent's case.³⁷

If Jen's baby were born in July 2001 and the family had received notice of the MFG rule at least 10 months before the birth, MFG would apply to the baby for as long as Jen receives aid on her mother's case. Once Jen establishes her own case, the baby is aided.³⁸

A minor teen parent of an MFG child is still eligible for Cal-Learn if otherwise eligible.³⁹

c. Child Support Collected on Behalf of an MFG Family Goes To The Family, Not The County.

Normally, a family on CalWORKs must assign all child support rights to the county to reimburse the county for the family's cash aid.⁴⁰ However, any child support collected (by the

³⁴ ACL 00-78 at 1–2. Teens with MFG babies born before July 2001 can get retroactive aid back to September 2000. ACL 00-78 at 1–2. Contact Western Center for more information.

³⁵ ACL 00-78 at 2.

³⁶ MPP § 44-314.56; ACL 00-78 at 2.

³⁷ ACL 00-78 at 1.

³⁸ ACL 00-78 at 2.

³⁹ ACL 97-29, Attach. 1, #11. See Chapter VIII for more information on the Cal-Learn program.

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District Attorney or the family itself) on behalf of an MFG child is paid directly to the family and does not count as income for calculating their CalWORKs grant.⁴¹ Effective April 1, 2001, pursuant to the *Kehrer v. Saenz* court order, Title II social security benefits received by an MFG child because of an absent parent's retirement or disability are also considered child support and not income to the family.⁴² All other income to the MFG child, including Title II death benefits, *does* count as income to the CalWORKs family.⁴³

4. Grant-Level Charts.

The following charts show the CalWORKs maximum aid levels in each region for exempt and nonexempt families. These amounts are intended to cover the monthly costs of housing, clothing, food, utilities, household items, personal needs, education, recreation, insurance, and dental and medical care not covered by Medi-Cal.⁴⁴ The current statute provides for an annual Cost of Living Adjustment (COLA) unless it is suspended by the legislature.⁴⁵

The amounts on the chart on the next page are valid as of July 1, 2008.⁴⁶

⁴⁰ 42 USC § 608(a)(3)(A); WIC § 11477(a)(1); MPP § 82-506.1. See also Chapter X (discussing child support).

⁴¹ WIC § 11450.04(e); MPP § 44-314.62; ACL 97-29, Attach. 1, # 13. If the child support is placed in a savings account, it does count against the AU's property limit. ACL 97-29, Attach. 1, # 13.

⁴² ACL 01-16 at 1.

⁴³ ACL 01-16; ACL 97-29, Attach. 1, at #14. Note that ACL 97-29 was partially superceded in 2001 by ACL 01-16 as to disability and retirement benefits, as discussed in the text above.

⁴⁴ WIC §§ 11452-53; MPP §§ 44-207, 44-212.1.

⁴⁵ WIC §§ 11015, 11017.1, 11453. See Chapter V for a complete discussion of how grants are calculated.

⁴⁶ ACL 08-27, ACL 07-34, ACL 07-34E.

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<u>REGION 1 GRANT LEVELS (AS OF JULY 1, 2008)</u>		
<u>Family Size</u>	<u>Maximum Exempt Grant</u>	<u>Maximum Nonexempt Grant</u>
1	\$ 398	\$ 359
2	\$ 653	\$ 584
3	\$ 808	\$ 723
4	\$ 961	\$ 862
5	\$1094	\$ 980
6	\$1229	\$1101
7	\$1350	\$1210
8	\$1473	\$1318
9	\$1591	\$1424

<u>REGION 2 GRANT LEVELS (AS OF JULY 1, 2008)</u>		
<u>Family Size</u>	<u>Maximum Exempt Grant</u>	<u>Maximum Nonexempt Grant</u>
1	\$ 378	\$ 340
2	\$ 623	\$ 555
3	\$ 771	\$ 689
4	\$ 916	\$ 821
5	\$ 1045	\$ 934
6	\$1172	\$ 1049
7	\$1288	\$1150
8	\$1403	\$1255
9	\$1518	\$1356

ACL 07-34 contains charts showing these grant amounts.

B. Lump Sum Diversion.⁴⁷

“Diversion” is a new aspect of welfare in California. It is intended to aid families for whom a lump sum payment would avoid the need for a monthly welfare grant. Diversion

⁴⁷ WIC § 11266.5; MPP § 81-215.

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payments are a good alternative for families that may only need a lump sum payment to help them avoid the need to receive a monthly CalWORKs grant. If the county, “in its sole discretion,” determines a diversion payment will allow the family to avoid the need for extended CalWORKs assistance, certain applicant families may receive a “lump sum diversion” payment, instead of being processed for CalWORKs.⁴⁸

Each county must have a “diversion payment” program and must notify applicants of its availability prior to approval of their CalWORKs applications.⁴⁹ A family can get either a diversion payment or come on aid, but it cannot do both. State law sets no limit on the maximum amount of diversion payments or services or the maximum number of times a county can provide this benefit to a family; counties set these limits in their sole discretion.⁵⁰ Examples of some expenses that counties have included in their diversion policies include: car insurance or car repair, work license renewals, union dues, child care needs, medical tests required as a condition of employment, back rent or back utilities, home appliances (such as a stove or refrigerator) that will help create a stable home situation, or care for a temporarily ill person in the home.

An applicants must be “apparently eligible” for CalWORKs to be potentially eligible for a diversion payment.⁵¹ In determining eligibility for diversion, the county has the discretion to consider the applicant’s employment history; the likelihood of full-time employment; the need for cash assistance for housing or other unforeseen expenses; and the adequacy of child care arrangements.⁵²

⁴⁸ WIC § 11266.5; MPP § 81-215.12 (defining of “diversion”), MPP § 82-215.32 (providing the county discretion to offer diversion); ACL 97-68 at 1 (same).

⁴⁹ WIC § 11266.5; MPP § 81-215.2; ACL 97-68 at 1.

⁵⁰ WIC § 11266.5; MPP § 81-215.32. For example, Los Angeles County’s diversion program has an annual cap of \$4,000, unless a “compelling need” exists, with a lifetime cap of \$10,000. See Los Angeles County CalWORKs Policy at http://dpss.co.la.ca.us/dpss/calworks/cw_policy.pdf. For more information on specific counties’ diversion plans, contact Western Center.

⁵¹ WIC § 11266.5(b); MPP § 81-215.31; ACL 97-68, at 1.

⁵² WIC § 11266.5(b); MPP § 81-215.32; ACL 97-68 at 1–2.

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If eligible, it is the applicant's choice to decide whether to accept a diversion payment rather than monthly CalWORKs cash aid.⁵³ If the applicant chooses diversion, the county will deny the CalWORKs application.⁵⁴ If the family later returns to reapply for CalWORKs within the "diversion period," the county must recoup the value of the lump sum diversion payment.⁵⁵ The diversion period is the number of months of CalWORKs aid the lump sum diversion would have covered for that family, that is, the value of the diversion payment divided by the appropriate maximum aid payment for the assistance unit.⁵⁶ If diversion was in the form of noncash services, the county must "determine the fair market value of the services [when] calculating the diversion period."⁵⁷ The applicant can choose the method of recoupment: either reduction of the family's grant (over a period determined by the county) or having the diversion period counted against the 60-month time limit.⁵⁸ If recoupment is limited to 10%, it will rarely be in the family's interest *not* to choose recoupment, since otherwise many months of the parent's total 60 months of eligibility will be lost.⁵⁹ If the family returns to reapply for

⁵³ WIC § 11266.5(d); MPP § 81-215.331; ACL 97-68 at 2.

⁵⁴ MPP § 81-215.332; ACL 97-68 at 2.

⁵⁵ WIC § 11266.5(f); MPP § 81-215.51; ACL 97-68 at 2.

⁵⁶ The "diversion period" is defined at MPP § 81-215.11, and its calculation is explained at MPP § 81-215.4. For example, if an apparently eligible family of 5 in Region 1 receives a lump sum diversion payment of \$2000, and its monthly maximum aid payment is \$980, its diversion period equals 2 months. (\$2000 divided by maximum aid payment for nonexempt family of five (\$980) = 2 months (fractions of months are not counted)). See Section A in this chapter for a more thorough discussion of maximum aid payments.

⁵⁷ MPP § 81-215.43; ACL 97-68 at 2.

⁵⁸ MPP § 81-215.51.

⁵⁹ See WIC §§ 11266.5(f), 11454.5(c). If the applicant allows the county to recoup the diversion payment by a grant reduction, the county has discretion to determine the time period for recoupment. WIC § 11266.5(f). Arguably, the county can reduce the family's grant by a maximum of 10%. See WIC § 11004(c); MPP §§ 81-215.51- .52. Los Angeles County, for example, provides that if a family chooses the recoupment option, recoupment will take place at a rate of 10%. See Los Angeles County CalWORKs Policy at http://dpss.co.la.ca.us/dpss/calworks/cw_policy.pdf. See Chapter II for more information on time limits and Chapter XI for more on recoupment of overpayments.

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CalWORKs after the diversion period, the county *cannot* recoup the diversion payment and can only apply it as one month against the 60-month time limit.⁶⁰

Applicants choosing diversion payments are eligible for Medi-Cal and child care if they meet the eligibility requirements of those programs.⁶¹

C. Voucher/Vendor Payments.

As discussed in detail in Chapter IX, in certain circumstances, families will receive a vendor or voucher payment. It is a check made out to a specific person other than the caretaker relative that can only be used for a limited purpose, and is issued instead of a regular CalWORKs check (which can be cashed and used however the family decides). Typically, these “restricted payments” are made out to landlords. If the grant is not enough to cover rent and utilities (or anything else that the county issues a voucher/vendor payment for), then the family must pay the difference through some other means.

For families containing persons who are ineligible convicted drug felons, the county must issue a voucher/vendor payment “for at least rent and utility payments.”⁶² The county must also issue a voucher/vendor payment for at least rent and utility payments where the parent or

⁶⁰ MPP § 81-215.52; ACL 97-68 at 2.

⁶¹ WIC § 11266.5(i); MPP § 81-215.7. State law provides that, “[t]o the extent permitted by federal law,” receipt of lump sum diversion payments shall not be considered income for purposes of determining Food Stamp eligibility. WIC § 11266.5(g). In a letter to the Chief of the Food Stamp Bureau of the DSS, the Food and Nutrition Service indicated its position that diversion payments for work- or training-related expenses, child care, or medical expenses may be excluded in accordance with 7 CFR 273.9(c)(5) to the extent the payments do not exceed actual expenses and do not represent a gain or benefit to the household. Letter from Dennis Stewart, Regional Dir., Food Stamp Program, to F. Patrick Sutherland, Chief, Food Stamp Bur., California Department of Soc. Serv. (Feb. 8, 1999) (on file with the Western Center). Exclusions based on the nonrecurring lump-sum payment rule found in 7 CFR § 273.8(c)(1), however, must be assessed on a case-by-case basis to see if the payment meets the lump-sum exclusion criteria. WIC § 11266.5(i); MPP § 81-215.7.

⁶² WIC §§ 11251.3(b), 17012.5; MPP §§ 44-303.33, 44-307.11; ACL 97-65 at 5. See Chapter II for the drug felon rules. The county may also choose to provide vouchers in lieu of cash to children who remain on aid after a parent reaches the 60-month time limit. MPP § 44-307.52.

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caretaker is sanctioned for at least three consecutive months.⁶³ The voucher/vendor payment “shall continue until the parent or caretaker relative is no longer subject to [the] sanction.”⁶⁴ Even while receiving voucher/vendor payments for rent, recipients are still entitled to exercise their rights as tenants.⁶⁵

D. Additional Special Payments for CalWORKs Families.

Other types of payments are available for some special needs that are not common to all recipients and that arise out of the need for certain goods and services, or because of the family’s severe deprivation. There are two non-emergency programs: Recurring Special Needs⁶⁶ and Pregnancy Supplements.⁶⁷

There are also three emergency programs: Immediate Need,⁶⁸ Homeless Aid Payment (HAP),⁶⁹ and Non-Recurring Special Needs.⁷⁰

1. Payments for Recurring Special Needs.

Recurring special needs arise as a result of an unusual circumstance in the recipient family that results in added cost and is expected to occur during two or more months in a given year.⁷¹ The total monthly recurring special needs allowance is available for the actual cost of the

⁶³ WIC §§ 11327.4 - .5, 11453.2; MPP § 44-303.34; ACL 97-66 at 3. See Chapter VI for discussion of sanctions and work requirements.

⁶⁴ MPP § 44-307.12.

⁶⁵ WIC § 11274(c); MPP § 44-307.3-4. See Chapter IX for a discussion of recipients’ rights to withhold rent or deduct rent to make repairs while receiving voucher/vendor payments for rent.

⁶⁶ WIC § 11450(e); MPP § 44-211.2.

⁶⁷ WIC § 11450(b)–(c); MPP § 44-211.6.

⁶⁸ WIC § 11266; MPP § 40-129.21.

⁶⁹ WIC § 11450(f)(2); MPP § 44-211.51.

⁷⁰ WIC § 11450(f)(1); MPP § 44-211.3.

⁷¹ WIC § 11266; MPP § 44-211.2(QR).

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expense up to \$10 per person in the AU, unless otherwise specified in the CalWORKs regulations.⁷²

Examples of recurring special needs include: therapeutic diets (\$15/month for high calorie diabetic, high calorie, high protein or breast-feeding diet and \$9/month for low calorie diabetic, bland, low fat or low salt diet);⁷³ special transportation when the recipient must journey an unusual distance or travel daily to receive required medical treatment;⁷⁴ special laundry services when linens must be changed more than usual for medical reasons;⁷⁵ housecleaning services when the housecleaning cannot be done without charge by anyone in the household;⁷⁶ special telephone services or equipment (such as special telephones for the hearing impaired);⁷⁷ and excessive utility costs.⁷⁸

2. Pregnancy Special Needs Grants of \$47.

A pregnant woman who is already receiving CalWORKs is entitled to receive an additional \$47 per month pregnancy special needs payment.⁷⁹ The pregnancy supplement payments will begin from the time of verification of the pregnancy and continue for the duration of the pregnancy.⁸⁰

⁷² WIC § 11450(e); MPP § 44-211.2(QR).

⁷³ WIC § 11450(e); MPP § 44-211.21.

⁷⁴ WIC §§ 11005, 11450(e); MPP § 44-211.221.

⁷⁵ WIC § 11450(e); MPP § 44-211.222.

⁷⁶ WIC § 11450(e); MPP § 44-211.223.

⁷⁷ WIC § 11450(e); MPP § 44-211.224.

⁷⁸ WIC § 11450(e); MPP § 44-211.225. Excessive utility costs are defined as those the county verifies are “required for a reason not common to a majority of [households] and [that are] essential for [the family’s] support.” MPP § 44-211.225. This might occur when a family includes someone on a ventilator, for example. Excessive use of utilities means that the unit’s share of the “actual cost of utilities is in excess of the in-kind income values for utilities for that size [assistance unit]. MPP § 44-211.225. See Chapter III for the in-kind value of utilities.

⁷⁹ WIC § 11450(c); MPP § 44-211.65.

⁸⁰ MPP § 44-211.64(QR); ACL 00-45.

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Pregnant women receiving CalWORKs get the pregnancy supplement even though, under the Maximum Family Grant (MFG) rule, the CalWORKs grants do not increase once the child is born if the family received aid continuously for the ten months prior to the birth of the child and no MFG exception applies.⁸¹

Pregnant women with no other children are entitled to a CalWORKs grant for one person and the \$47 per month pregnancy special needs payment for the month of delivery and the three months immediately prior to the delivery month.⁸² Also note that breast-feeding mothers are entitled to a \$15 per month recurring special need payment.⁸³

- **Special Rules for Teens.**

Pregnant women who have no other children and are eligible for Cal-Learn⁸⁴ (under the age of 19 and have “not obtained a high school diploma or its equivalent”)⁸⁵ are entitled to receive the one-person CalWORKs grant and the pregnancy special needs payment from the date of verification of pregnancy.⁸⁶ Remember that any teen parent under 18, who has never been married and who is pregnant or has a dependent child in his or her care may only receive aid if

⁸¹ WIC § 11450.04. See discussion of MFG earlier in this chapter at Section A.3.

⁸² All pregnancies must be medically verified prior to the receipt of benefits. MPP § 44-211.62. The pregnant woman can only receive the benefits if she and the child, if born, would be eligible for CalWORKs. WIC § 11450(b); MPP § 82-836.13. See also Chapter II for a discussion of eligible children.

⁸³ WIC § 11450(e); MPP § 44-211.212. See Section D.1 of this chapter.

⁸⁴ See Chapter VIII for Cal-Learn’s eligibility requirements.

⁸⁵ MPP § 44-211.632(QR) narrows the scope of Cal-Learn eligibility to teens who are under the age of 19. However, pursuant to WIC § 11331.5(d)(2) and WIC § 11332.7, if the teenager was participating in Cal-Learn prior to turning 19, she is still eligible for Cal-Learn services after the age of 19 until she earns a high school diploma or its equivalent. Thus, she would also be eligible for these special pregnancy benefits.

⁸⁶ A Cal-Learn participant who obtains a high school diploma or its equivalent prior to her third trimester of pregnancy (if she is not already a parent) will become ineligible for Cal-Learn and therefore also ineligible for the special pregnancy needs payment and the one person CalWORKs grant until she reaches her third trimester of pregnancy. WIC § 11450(c); MPP §§ 42-763.11, 44-211.6, 82-836.13; ACL 96-38; ACIN 1-09-97.

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the individual and the child live with the teen's parent or guardian, with another adult relative, or in an adult-supervised living arrangement, unless she meets an exception.⁸⁷

Teens are excused from the above living requirement if they have no living parent, legal guardian, or adult relative who is living or whose whereabouts are unknown, no parent or guardian allows the teen to stay in their home, a child protective services social worker determines that living with the parent or legal guardian would jeopardize the emotional or physical safety of the teen, the teen lived apart from her parent or legal guardian for one year prior to applying for aid, or good cause determined in accordance with federal regulations.⁸⁸

3. Immediate Need Cash Assistance.⁸⁹

The county has 45 calendar days to process a CalWORKs application.⁹⁰ However, California provides immediate assistance to CalWORKs applicants (not ongoing recipients) who have emergency needs.⁹¹ Applicants who receive this assistance can receive an advance on their CalWORKs monthly benefits within a few days of applying and have their eligibility determined on a "fast track"—in 15 working days instead of the normal 45 calendar days.⁹²

Even if the welfare office is closed (some offices close regularly on Fridays, and for extended periods over holidays), counties must accept applications for Food Stamps, CalWORKs, Medi-Cal, and homeless assistance every weekday except legal holidays.⁹³ Many county offices provide a drop box for this purpose. Counties must also meet the expedited

⁸⁷ WIC § 11254; MPP § 89-201.2.

⁸⁸ WIC § 11254(b); MPP § 89-201.2. For further discussion of teen parent eligibility requirements, see Chapter VIII (Cal-Learn) and Chapter II (Categorical Eligibility).

⁸⁹ See Appendix E for a flyer on this program for use by clients. A CalWORKs application is also included.

⁹⁰ MPP § 40-126.1.

⁹¹ WIC § 11266; MPP § 40-129.21; ACL 90-103.

⁹² MPP § 40-129.9.

⁹³ *Blanco v. Anderson*, 39 F.3d 969 (9th Cir. 1994); MPP §§ 11-601, 63-300.

processing deadlines for emergency benefit programs regardless of their closed days (except legal holidays).⁹⁴

a. Who is Eligible For Immediate Need?

The immediate need program is limited to applicant families:⁹⁵

- **With Emergency Needs.** The family must have basic emergency⁹⁶ unmet needs such as shelter, medical care, transportation, diapers, or an eviction or utility shut off notice while the application is being processed.⁹⁷
- **Apparently Eligible for CalWORKs.** This requirement means that the family seems to be eligible from the information on the application form.⁹⁸ No documentation is required, except proof of immigration status for non-citizens, and, if applicable, proof of pregnancy.⁹⁹
- **With Negligible Income or Resources.** The family cannot have more than \$100 cash or liquid resources.¹⁰⁰ If it has more, it can spend down to \$100 and re-apply. If an eviction is imminent, liquid resources plus income need only be less than the rent.¹⁰¹
- **Whose Needs Cannot Be Met by Community Agencies.** In lieu of the immediate need assistance, the welfare office can refer the family to a charity to meet one emergency need, although not for shelter and food.¹⁰² If the family has

⁹⁴ MPP §§ 11-601 (all programs), 63-300 (food stamps).

⁹⁵ WIC § 11266; MPP § 40-129.12.

⁹⁶ WIC § 11266(a); MPP § 40-129.212.

⁹⁷ WIC § 11266(a)(1); MPP § 40-129.13 - .137.

⁹⁸ WIC § 11266(a)(2); MPP §§ 40-129.11, 40-129.211.

⁹⁹ WIC § 11266(a)(2); MPP § 40-129.211(a)–(b).

¹⁰⁰ WIC § 11266(a)(1); MPP §§ 40-129.223, 40-129.213.

¹⁰¹ MPP § 40-129.222.

¹⁰² WIC § 11266(d)(1); MPP §§ 40-129.212, 40-129.6. If the need is for shelter or food, the family must be given cash. *See* MPP § 40-129.61 (noting that a county has the option

more than one need (e.g., if it needs diapers as well as clothing), the welfare department cannot refer the family.¹⁰³ The referral must be in writing and confirmed.¹⁰⁴

PRACTICE TIP

Many families who apply for CalWORKs meet the requirements of the immediate need program. Agency workers may be reluctant to acknowledge immediate need cases because the fast-track processing increases their workload. Be persistent and go up the chain of command in the welfare office if the worker is reluctant. Request an expedited hearing to challenge the denial of immediate need.¹⁰⁵

b. What Are Immediate Need Benefits?

Families determined eligible for immediate needs assistance may receive:

- **A \$200 Advance On Their First Month's Grant.** Within two working days, families can receive an advance of up to \$200 cash from their grant to deal with emergency needs.¹⁰⁶ Note that the advance can only be up to the amount of the month's grant.¹⁰⁷ If a family applies for aid at the end of the month, the pro-rated grant for that month will be very small. In such cases, applicants can choose to file an application for aid and return anytime before a check is issued to request immediate need.

to refer an applicant to another public program or private resource to meet an emergency situation other than the need for shelter or food).

¹⁰³ WIC § 11266(d)(1)(A); MPP § 40-129.611.

¹⁰⁴ WIC § 11266(d)(1); MPP § 40-129.63.

¹⁰⁵ See Chapter XIII for more on expedited hearings.

¹⁰⁶ WIC § 11266(b); MPP §§ 40-129.23, 40-129.81.

¹⁰⁷ WIC § 11266(b); MPP § 40-129.23.

EXAMPLE

A non-exempt family of 3 in Region 1 will get a maximum aid payment of \$723 (see Section A of this chapter). If family members apply on September 25th, their aid for the 6 remaining days of September will be \$144. Thus, their immediate need payment cannot exceed \$144. The family should apply for aid on September 25th, but (if they can) should wait 5 days to apply for the immediate need payment on October 1. If they apply on October 1, their immediate need payment will be up to \$200.

- **Fast-Track Consideration of Eligibility.** The agency must process the application in **15 working days** rather than the normal 45 calendar days.¹⁰⁸ Clients should get their full check (less the advance) within this period. Note that when the emergency situation is a pending eviction, liquid resources together with income must be less than the outstanding rent (the \$100 resource limit does not apply).¹⁰⁹
- **A Full CalWORKs Grant Within Three Days.** If families have an eviction notice, they are entitled to their full CalWORKs grant within 3 days if they can obtain verification of documents such as birth certificates or requests for them, bank records, and Social Security numbers to qualify for CalWORKs.¹¹⁰ This is called an expedited eligibility determination.¹¹¹

c. What Are The Procedural Requirements for Immediate Need?

- **Individuals only need to express a need for help.**

There is a box to check on the application form.¹¹² A copy of the application is in Appendix E.

¹⁰⁸ WIC § 11266(b); MPP § 40-129.91.

¹⁰⁹ WIC § 11266(c); MPP § 40-129.222.

¹¹⁰ WIC § 11266(c); MPP § 40-129.7.

¹¹¹ WIC § 11266(c); MPP § 40-129.7. If the family cannot get all the documents in time, it should still get an advance up to \$200. WIC § 11266(c); MPP § 40-129.7.

¹¹² MPP §§ 40-129.31 - .32.

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- **Families Must Try to Meet Certain Eligibility Requirements.** The family must meet requests that can reasonably be completed within a working day (e.g., register for work, apply for Social Security numbers, assign child support rights).¹¹³

PRACTICE TIP

Once clients have been determined eligible for immediate need, they also should be considered for any special needs or emergency assistance programs available such as Homeless Aid or Non-Recurring Special Needs.¹¹⁴

4. The Homeless Assistance Program (HAP).¹¹⁵

CalWORKs Homeless Assistance is a “special needs program” available to both CalWORKs recipients and “apparently eligible” CalWORKs applicants.¹¹⁶ There are two types of aid under the CalWORKs Homeless Assistance Program: Temporary Shelter Assistance (TSA) to pay for motels or other temporary arrangements, and Permanent Housing Assistance (PHA) to pay move-in costs for permanent housing or to prevent eviction.¹¹⁷ Unless the family

¹¹³ MPP § 40-129.214. Arguably, this requirement violates the immediate need statute, WIC § 11266(a)(2), which requires only that the applicant be “apparently eligible” based on information on the application and “otherwise available to the county.”

¹¹⁴ See Sections D.4 and D.5 of this chapter.

¹¹⁵ Expedited hearings are available for emergency benefits. See Chapter XIII on appeals and administrative hearings.

¹¹⁶ WIC § 11450(f)(2); MPP § 44-211.521.

¹¹⁷ WIC § 11450(f)(2); MPP § 44-211.5; ACL 06-58 at 1, ACL 06-25 at 1.

meets an exception, HAP is a once-in-a-lifetime benefit.¹¹⁸ Temporary assistance is limited to one period of 16 consecutive days.¹¹⁹ Permanent assistance is limited to one payment.¹²⁰

a. Who is Eligible for CalWORKs HAP?

- **Families Who Are Homeless or Doubled Up.** Families must be homeless to get aid.¹²¹ Families who are living on the streets, in their cars, parks, or motels are homeless.¹²² Families staying in shelters or on a temporary basis with friends or relatives are also eligible.¹²³ The family must use the homeless aid money to rent from a commercial landlord.¹²⁴ This means that they cannot use HAP payments to pay rent to a friend or relative unless that person is a commercial landlord.
- **Families Facing Eviction Are Homeless When They Receive Notice To Pay Rent or Quit.**¹²⁵ Eviction must be a result of a verified financial hardship.¹²⁶ DSS defines financial hardship as the AU's inability to pay rent due to expenses that were beyond their control, such as high hospital bills not paid by Medi-Cal, car repairs, funeral expenses, costs required to visit an ill relative, repair of household appliances, high utility bills resulting from unforeseen circumstances,

¹¹⁸ WIC § 11450(f)(2)(E); MPP §§ 44-211.513, 44-211.52 - .53; ACL 08-56 at 2.

¹¹⁹ WIC § 11450(f)(2)(E); MPP §§ 44-211.513 - .514. Any break in the consecutive use of the temporary assistance constitutes permanent exhaustion of the aid. WIC § 11450(f)(2)(E)(i).

¹²⁰ WIC § 11450(f)(2); MPP §§ 44-211.514, 44-211.53.

¹²¹ WIC § 11450(f)(2); MPP § 44-211.511.

¹²² MPP § 44-211.511; ACL 08-56 at 2-4.

¹²³ MPP § 44-211.511(d)(1)-(2).

¹²⁴ WIC § 11450(f)(2)(I); MPP §§ 44-211.526, 44-211.532 (c); ACL 08-56 at 2-3.

¹²⁵ WIC § 11450(f)(2); ACL 06-58 at 1, ACL 06-25 at 1. Where the family has not received a notice to pay or quit, however, the family does not have to produce eviction papers even though the workers often ask for them. The county will have to verify the family's homelessness in the first 3 days or ask the applicant to sign a sworn statement. MPP § 44-211.524(e).

¹²⁶ WIC § 11450(f)(2); ACL 06-58 at 4, ACL 06-25 at 2.

and loss of wages due to illness.¹²⁷ However, the loss of income due to the purchase of non-essential household goods, failure to budget appropriately, and paying off regular credit card debts are not considered financial hardship.¹²⁸ The eviction cannot be the result of a lease or rent violation.¹²⁹

- **Families With Less Than \$100 on Hand.** Families that have more than \$100 in liquid resources are not eligible for CalWORKs HAP.¹³⁰ In this context, liquid resources include only resources that are immediately available, such as money in a bank account, and checks and cash on hand.¹³¹ Current month's income is not considered liquid resources.¹³² The \$100 liquid resource test is applied only once for each spell of homelessness, at the time of application for CalWORKs HAP benefits.¹³³ If a family is over the \$100 limit, it can spend down and reapply.
- **Families Who Are Apparently Eligible For or On CalWORKs.** Applicants must either be already receiving CalWORKs or be "apparently eligible" for CalWORKs.¹³⁴ For temporary HAP, apparent eligibility for CalWORKs is enough.¹³⁵ For permanent HAP, the person must be a recipient.¹³⁶
- **Families Who Have Not Used the HAP Program Before (With Limited Exceptions).** Families are only entitled to CalWORKs HAP for one spell of

¹²⁷ ACL 06-58 at 4, #5.

¹²⁸ ACL 06-58 at 4, #5.

¹²⁹ WIC § 11450(f)(2); ACL 06-58 at 6, #14.

¹³⁰ WIC § 11450(f); MPP §§ 44-211.32 - .33.

¹³¹ See Chapter III for discussion of what counts as resources in CalWORKs.

¹³² See Chapter III for discussion of what counts as income in CalWORKs.

¹³³ MPP § 44-211.321(b).

¹³⁴ WIC § 11450(f)(2); MPP §§ 44-211.521, 44-211.53.

¹³⁵ MPP § 44-211.521.

¹³⁶ WIC § 11450(f)(2); MPP § 44-211.53.

homelessness in a lifetime, with exceptions where a family is homeless because of:¹³⁷

1. a state or federally declared natural disaster;
2. verified domestic abuse;¹³⁸
3. medically verified physical or mental illness; or
4. “sudden and unusual” health or safety problems not caused by the AU that make the housing uninhabitable.¹³⁹

- **Families Renting From a “Commercial Landlord.”** HAP payments can only be made to commercial establishments, shelters, publicly funded transitional housing, or to persons in the “business of renting properties who ha[ve] a history of renting properties.”¹⁴⁰ This provision rules out the possibility of using HAP motel money to stay with most friends, but a family staying with friends temporarily would still be eligible for temporary assistance if they move to a hotel and for *permanent* HAP when they find a permanent place.

¹³⁷ WIC § 11450(f)(2)(E); MPP §§ 44.211.513, 44-211.541; ACL 96-30, ACL 95-62. See Appendix E for a flyer on these guidelines for use by clients. A family that is homeless a second time and does not qualify for the exceptions may qualify for the more restrictive Non-Recurring Special Needs program. MPP § 44-211.44. See Section D.6 in this chapter for more information on this program.

¹³⁸ The domestic abuse must be verified by a third-party government or private health and human services agency. WIC § 11450(f)(2)(E)(iii). However, the domestic abuse survivor may self-verify up to two times. WIC § 11450(f)(2)(E)(iii); ACL 08-42.

¹³⁹ The physical or mental illness cannot be drug or alcohol related. WIC § 11450(f)(2)(E)(iii).

¹⁴⁰ WIC § 11450(f)(2)(I); MPP §§ 44-211.526, 44-211.532.

b. What Are Homeless Assistance Benefits?

i. Temporary Shelter Assistance.

- **The Temporary Shelter Assistance (TSA) benefit is \$65 per night, for up to 16 nights.**¹⁴¹ Families with more than four members get an additional \$15 per night for each additional person up to a maximum of \$125 per night.¹⁴² This money is in addition to the monthly CalWORKs grant.¹⁴³
- **Payments For Immediate Help / Same-Day Processing Deadline.** If a family has no place to sleep that night, the county must either find shelter for the family *or* issue a \$65 payment.¹⁴⁴ If the family has a place to stay that night, then the county must issue the \$65 before the close of the following work day.¹⁴⁵

ii. Permanent Housing Assistance Benefits.

The Permanent Housing Assistance benefit is payment for move-in costs of the last month's rent, security and other rental deposits, and rental fees.¹⁴⁶ The family, however, remains responsible for paying the first month's rent, and the last month's rent cannot exceed 80% of the family's total monthly household income.¹⁴⁷ Utility deposits are also covered,¹⁴⁸ but neither

¹⁴¹ WIC § 11450(f)(2)(A)(i); ACL 06-58 at 1, ACL 06-25 at 1.

¹⁴² WIC § 11450(f)(2)(A)(i); MPP § 44-211.525(b); ACL 06-58 at 1, ACL 06-25, at 1.

¹⁴³ WIC § 11450(f)(2); MPP § 44-211.52.

¹⁴⁴ WIC § 11450(f)(2)(A)(ii); MPP § 44-211.523.

¹⁴⁵ WIC § 11450(f)(2)(A); MPP § 44-211.523(a).

¹⁴⁶ WIC § 11450(f)(2)(B) - (C); MPP § 44-211.532. While WIC § 11450(f)(2)(B) limits the last month's rent payment to 80% of the total monthly household income for the family, there is no limitation on the amount of the security deposit, other than the fact that it must be a "reasonable condition" of securing the residence. In contrast, MPP § 44-211.532 limits the security deposit payment to two months of an AU's rent. This is apparently in conflict with the statute. Contact Western Center if the county is trying to limit the amount of the security deposit.

¹⁴⁷ WIC § 11450(f)(2)(B). The total monthly household income includes the "earned and unearned income of all AU members and of any other persons whose income is currently

telephone deposits nor payments for *overdue* utility bills that must be paid before utility services can be established are covered.¹⁴⁹

Permanent Housing Assistance may also be used to help prevent eviction for up to 2 months of rent arrearages.¹⁵⁰ Each month of rent arrearage payment cannot exceed 80% of the total monthly household income.¹⁵¹

c. What Procedural Requirements Must A Family Meet to Get Homeless Assistance?

i. Temporary Homeless Assistance.

- **Consecutive-Day Requirement.** Families must use temporary benefits in 16 consecutive days.¹⁵² In other words, families cannot use four days of THA in January, and the other twelve in March.
- **Families Must Verify that HAP Payments Are Spent on Shelter and Must Be Looking For a Permanent Place.** The family must provide verification of their temporary housing costs.¹⁵³ Families that do not provide the verification are still

used in calculating an AU's grant, including sanctioned and penalized household members and persons who are excluded by law for their undocumented non-citizen, drug felon, or timed-out status." ACL 06-58 at 5, #9. The CalWORKs cash grant is also included. ACL 06-58 at 5-6, #9, #11A. The MFG child's support income is also included in the total monthly household income, even though it is exempt for purposes of calculating an AU's grant. ACL 06-58, #4.

¹⁴⁸ MPP § 44-211.533.

¹⁴⁹ MPP § 44-211.533.

¹⁵⁰ WIC § 11450(f)(2)(B); ACL 06-25 at 1, ACL 06-58 at 1. HAP "rent arrearage payments are to be paid for rent only unless utilities are [also] included as part of the rent." ACL 06-58 at 8, #24. If the landlord provides the AU with a pay rent or quit notice and requires payment of one months of arrears and the current month's rent to avoid eviction, the [county] can issue [permanent housing assistance] to prevent eviction." ACL 06-58 at 8, #25.

¹⁵¹ WIC § 11450(f)(2)(B); ACL 06-25 at 1, ACL 06-58 at 1.

¹⁵² MPP § 44-211.524(b).

¹⁵³ MPP § 44-211.524(c).

eligible for TSA.¹⁵⁴ The only difference is their benefits will be paid directly to the hotel or other temporary housing provider, rather than to the family.¹⁵⁵ This is called a vendor payment.¹⁵⁶ Families also have to keep a housing search log showing that they are seeking permanent housing.¹⁵⁷ Families can be excused from the search requirement for good cause.¹⁵⁸

ii. Permanent Homeless Assistance.

- **Families Must be CalWORKs Recipients (Not Applicants).** Unlike temporary shelter, to get money for permanent housing a family must already *be on CalWORKs* or be actually eligible.¹⁵⁹
- **Families Must Find A Place With Rental Cost Beneath the 80% Rent Ceiling.** If the permanent housing assistance is to help the family secure a permanent residence, the family must locate an apartment or house that rents for less than 80% of the total monthly household income.¹⁶⁰ If moving into shared housing, the family's share of the rent cannot exceed the 80% ceiling.¹⁶¹ CalWORKs families that include an SSI recipient are considered to be in a shared housing situation for the purposes of the 80% ceiling.¹⁶²

¹⁵⁴ WIC § 143.2; MPP §§ 44-211.517, 44-211.524(d); ACL 88-55.

¹⁵⁵ WIC § 143.2; MPP § 44-211.517.

¹⁵⁶ ACL 88-55. Families are entitled to a notice of action when the county decides to issue a voucher instead of cash. ACL 88-55.

¹⁵⁷ MPP § 44-211.524(f)(3).

¹⁵⁸ WIC § 11450(f)(2)(A)(iii); MPP § 44-211.524(f)(3)(B).

¹⁵⁹ If a family presents all the evidence necessary to establish eligibility, it can get an expedited eligibility determination. MPP §§ 44-211.53, 44-211.534(b); ACL 90-96.

¹⁶⁰ WIC § 11450(f)(2)(B); MPP § 44-211.531; *see also* ACL 06-58 at 1, ACL 06-25 at 1.

¹⁶¹ WIC § 11450(f)(2)(B); MPP § 44-211.531(a).

¹⁶² MPP § 44-211.531(b)(2).

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If the permanent housing assistance is to help the family prevent an eviction, each month of the rent arrearage payment cannot exceed 80% of the total monthly household income.¹⁶³

- **Families Cannot Return to the Same Residence.** Homeless Assistance money cannot be used to return the family to the family's most recent former residence (i.e., the same unit or house), unless family members left because of unusual circumstances beyond their control, such as a fire.¹⁶⁴ A different unit in the same apartment building is not considered the same residence.¹⁶⁵

Note, however, that families can stay in the same residence if they are applying for and receive permanent housing assistance to *prevent* eviction.¹⁶⁶

- **Families Must Provide Rental Agreements or Other Verification.** Before payment will be issued, the county will need to verify by means of a written rental agreement or lease that indicates the monthly rent, by having the County Welfare Department directly contact the landlord (if the recipient gives written permission for the County Welfare Department to do so), or by the applicant's sworn statement.¹⁶⁷
- **For Housing Emergencies Within the 12-Month Period a Family Can Transfer Its Deposit.** If the CalWORKs family must move within 12 months of their last homelessness period due to an emergency, the family can transfer its (refundable) deposits to a new residence.¹⁶⁸ An emergency cannot be caused by an intentional act by the CalWORKs recipients.¹⁶⁹ If the transfer within the 12-

¹⁶³ ACL 06-25 at 1, ACL 06-58 at 1.

¹⁶⁴ MPP § 44-211.536.

¹⁶⁵ MPP § 44-211.536(a).

¹⁶⁶ WIC § 11450(f)(2)(B); ACL 06-25 at 1; ACL 06-58 at 1.

¹⁶⁷ MPP § 44-211.534(a); ACL 06-25.

¹⁶⁸ WIC § 11450(f)(2)(F). Note that this section was amended in 1999 to reduce the time period from 24 months to 12 months. ACL 99-69 at 1.

¹⁶⁹ MPP § 44-211.535(a).

month period was not due to an emergency, any refunded deposits are treated as liquid resources.¹⁷⁰

- **Next-day processing deadline.**

For CalWORKs recipients, the county must issue a check by the end of the work day following the day the family gives the county a copy of the lease agreement, or other evidence of the possible tenancy.¹⁷¹

For CalWORKs applicants, if the CalWORKs application is still pending when the family requests permanent housing assistance, the county must finish processing the regular CalWORKs application immediately.¹⁷²

5. Payments for Non-Recurring Special Needs (NRSN).¹⁷³

These are special payments to CalWORKs recipients who have lost their homes or household belongings due to “sudden and unusual circumstances beyond the control of the needy family.”¹⁷⁴ The payments are limited to \$600 for all needs arising from each sudden and unusual incident.¹⁷⁵ There is no limit on the frequency of these payments.

a. What Are CalWORKs-NRSN Payments?

Non-Recurring Special Needs payment are money (up to \$600) for the following reasons:

¹⁷⁰ MPP § 44-211.535(b).

¹⁷¹ WIC § 11450(f)(2)(D); MPP § 44-211.534; ACL 06-58 at 7, #18. Even if the welfare office is closed (some offices close regularly on Fridays, or for extended periods over holidays), counties must accept applications for homeless assistance every weekday except legal holidays, and must also meet the expedited processing deadlines for emergency benefit programs regardless of their closed days (except legal holidays). MPP § 11-601.

¹⁷² WIC § 11450(f)(2)(D); MPP § 44-211.534.

¹⁷³ In this manual, we provide only a brief outline of this and the other emergency programs. Expedited hearings are available for emergency benefits. See Chapter XIII on appeals and administrative hearings.

¹⁷⁴ WIC § 11450(f)(1); MPP § 44-211.311.

¹⁷⁵ WIC § 11450(f)(1); MPP § 44-211.413.

i. The Purchase of Interim Shelter.

When a CalWORKs family's "home has been destroyed, made uninhabitable or inaccessible," payments are available for temporary housing.¹⁷⁶

ii. Replacement Or Repair of Clothing or Household Items.

Payments are for the actual cost of the item up to the maximum for that item as follows:

- Clothing, up to \$25/person;
- Double bed with mattress, up to \$143;
- Refrigerator, up to \$190;
- Stove, up to \$142;
- Dishes, kitchen utensils and bedding, up to \$12/person;
- Space heater, up to \$73; and
- "Other essential furniture," up to \$50.¹⁷⁷

iii. Essential Repairs to a Damaged Home Owned by A CalWORKs Family.

The costs of labor and materials for housing repairs needed as a result of the sudden and unusual circumstance are covered.¹⁷⁸

iv. Moving And Storage Costs.

The costs of moving and storage when the family's home has been damaged, forcing the family to move, are covered.¹⁷⁹

¹⁷⁶ MPP § 44-211.44. If the family can qualify for the CalWORKs Homeless Assistance Program (HAP), then it cannot get these NRSN interim shelter payments. MPP § 44-211.442. Homeless families that have already received their once-in-a-lifetime CalWORKs HAP payment may qualify for NRSN depending on the circumstances leading to the loss of their housing. MPP § 44-211.442(a).

¹⁷⁷ MPP §§ 44-211.421 - .422.

¹⁷⁸ MPP § 44-211.432(b). The classic example is damage caused by an earthquake or flood.

¹⁷⁹ MPP § 44-211.432(a).

v. Other Necessary Items, Such As Security Deposits Or Utility Hook-Up Fees.

Other possibly necessary items, such as security deposits or utility hook-up fees, are not listed in the state regulations, but should arguably be covered if the need for them arises out of a sudden and unusual circumstance beyond the family's control. If NRSN payments for these (or any) items are denied, the family should contact legal aid and request a state hearing.¹⁸⁰

b. Who is Eligible For Non-Recurring Special Needs?

i. Families With No More Than \$100 on Hand.

Families that have more than \$100 in liquid resources are not eligible for Non-Recurring Special Needs.¹⁸¹ In this context, liquid resources should include only resources that are *immediately available* such as money in a bank account, and checks or cash on hand.¹⁸² Current month's income is not considered a liquid resource. A family that has more than \$100 in resources can spend down and reapply.

ii. Families in an Emergency Due to Sudden and Unusual Circumstances.

The regulations neither define nor give examples of the types of circumstances that are considered sudden, unusual, and beyond the family's control.¹⁸³ In addition to fires, floods, etc., the following situations might be covered: building condemnations; evictions with 30 days notice and no stated cause; eviction for non-payment of rent when the CalWORKs check was stolen and not promptly replaced by the county; lead paint forcing a move; dramatic rent increases; leaving the home or belongings because of domestic abuse or other dangerous situations; or a child's return from foster care.

¹⁸⁰ Expedited hearings are available for emergency benefits. See Chapter XIII on appeals and administrative hearings.

¹⁸¹ WIC § 11450(f); MPP §§ 44-211.32, 44-211.33.

¹⁸² See MPP § 42-211.21 for the definition of liquid resources and MPP § 40-129.21 for the definition of immediate availability.

¹⁸³ MPP §§ 44-211.311, 44-211.411.

All of these situations could be considered sudden, unusual, and beyond the family's control. A thorough review of the facts and careful presentation to the county, stressing the family's lack of control and the sudden nature of the incident, is always necessary.

c. What Are the Procedural Requirements and Deadlines for Payments?

There are no specific deadlines for the county to process CalWORKs nonrecurring special needs payments, although the welfare office is required to act "promptly."¹⁸⁴

- **A Plan.** The family must have a plan that sets out the total cost of the need, how it will be paid for and how much other household members who are not part of the CalWORKs grant will pay toward the need.¹⁸⁵ The family members can write one out or tell the worker how they will work this out.
- **Despite the County's Duty to Inform CalWORKs Recipients of This Program, the Client Should Bring a Flyer to the Welfare Office.** The county is required to "notify all applicants and recipients of aid . . . that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently."¹⁸⁶ However, this rarely happens. To ensure that an application is taken, advocates should give clients the flyer explaining CalWORKs Non-Recurring Special Needs.¹⁸⁷

6. Foster Care Benefits for Abused and Neglected Children.¹⁸⁸

Foster care benefits are payments for the care of children living in homes other than their parents' because they have been abused or neglected by their natural parents or other

¹⁸⁴ WIC §§ 11052, 11055, 11056.

¹⁸⁵ MPP § 44-211.13.

¹⁸⁶ WIC § 11450(h).

¹⁸⁷ See Appendix E.

¹⁸⁸ 42 USC § 670; 45 CFR § 1355.10-.57; WIC §§ 300, 11400-10, § 11460-67; MPP §§ 45-100 - 45-808.

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caretakers.¹⁸⁹ Children living with a non-relative legal guardian are also eligible for foster care benefits. The benefits are for the child and do not include money for the foster parent.¹⁹⁰ Foster care payments are significantly larger than CalWORKs grants.¹⁹¹ The basic rates vary according to the age of the child and are paid on an individual basis.¹⁹² Some counties provide foster children with an annual clothing allowance.¹⁹³ Further, in most counties, children with special needs are eligible for larger payments called specialized care rates.¹⁹⁴ Children with developmental disabilities can receive another rate if they are Regional Center consumers.

In California, there are actually two foster care programs: federal foster care¹⁹⁵ and state-only foster care.¹⁹⁶ The benefit levels for both are the same, though eligibility requirements differ. To be eligible for federal foster care, the child must have been removed due to a court order or a voluntary agreement between the parents and the child welfare services that makes the

¹⁸⁹ This area of law can be very complicated. The intent here is to provide a very simple overview and highlight the connection between CalWORKs and foster care. For more on foster care benefits, see *The Foster Care Manual: A Guide to Benefits and Services for Children in Foster Care*, available at www.wclp.org.

¹⁹⁰ Needy foster parents who are related to the foster child can receive CalWORKs for themselves. HHS Action Transmittal HHS-ACF-AT-94-5 (February 28, 1994) is available from Western Center. See Chapter II.

¹⁹¹ For example, depending on the age of the child, the basic foster care rates range from \$384 to \$540 a month per child. WIC § 11461(a); MPP § 11-401.141. Many counties supplement those rates with their own funds.

¹⁹² WIC § 11461(a); MPP § 11-401.141.

¹⁹³ WIC § 11461(f); MPP § 11-420.1.

¹⁹⁴ WIC § 11461(e); MPP §§ 11-400(s)(8), 11-401.2.

¹⁹⁵ WIC § 11401(f); MPP § 45-202.

¹⁹⁶ WIC § 11401(f); MPP § 45-203. Some counties also have their own foster care programs paid with county-only funds for children not eligible for federal or state funds. For example, Los Angeles County provides foster care benefits to undocumented foster children not eligible for the federal or state program. Los Angeles County Administrative Code § 2.102.220; Los Angeles General Relief Handbook § 40-119.

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placement and care of the child the responsibility of the county.¹⁹⁷ Secondly, the child must have been eligible for AFDC, the former welfare program, in the month the court petition is filed or within six (6) months prior to that time.¹⁹⁸ This requirement is called “AFDC linkage.” Third, the child must be placed by DSS in an approved or licensed home or facility.¹⁹⁹

Children cannot qualify for federal foster care benefit if they cannot meet the federal AFDC linkage requirement. A child placed with a relative in this situation can receive CalWORKs. Otherwise, low-income foster children are eligible for state foster care benefits if they are placed with a non-relative or living with a non-related legal guardian,²⁰⁰ or for the new Kin-GAP program described below.

PRACTICE TIP

If advocates encounter a child who is living with a grandparent or a person other than their parent because of their parent’s abuse, drug problem, or neglect, explore foster care benefits for them.

¹⁹⁷ 42 USC § 672 (a)(2); WIC § 11401(b); MPP § 45-202.4. Most children with legal guardians do not meet this requirement because guardianships almost always make the legal guardian, *not the county*, responsible for the placement and care of the child. *See* 42 USC § 672.

¹⁹⁸ 42 USC § 672(a)(4); 45 CFR § 1356.21(l)(2); MPP § 45-202.331(b).

¹⁹⁹ 42 USC § 672(b)–(c); WIC § 11402; MPP § 45-202.5. Often the county fails to file a petition for removal or otherwise makes a mistake that leads to a delay in the foster care, or even defeats it. In some cases, advocates have used the doctrine of equitable estoppel to establish an earlier beginning date of aid for foster care. Contact Western Center for these hearing decisions.

²⁰⁰ WIC § 11401. Low-income children living with related legal guardians are only eligible for CalWORKs benefits, not foster care benefits. It is very important that relatives not become legal guardians of foster children without fully understanding the payment implications.

7. Kin-GAP for Dependents of the Court Living with Relative Legal Guardians.²⁰¹

Kin-GAP is a cash aid program for children who are dependents of the court and placed with relatives who become their legal guardians.²⁰² Kin-GAP benefits are paid at the same rate as the foster care rate for which the child is eligible. The Kin-GAP program is also known as “Enhanced Kin-GAP” due to enhancements to program benefits on October 2006.²⁰³

The Kin-GAP program serves those children exiting the foster care system to enter a guardianship with a relative.²⁰⁴ The children may have been receiving foster care benefits or CalWORKs prior to entering Kin-GAP. To be eligible for Kin-GAP benefits, the child must have lived with a relative for at least 12 months, the relative guardianship must be established by the juvenile court pursuant to WIC § 366.26, and juvenile court dependency must be dismissed pursuant to WIC § 366.3 after January 1, 2000.²⁰⁵ Termination of the guardianship with a relative caregiver also terminates eligibility for Kin-GAP, although if a successor relative guardian is appointed, the successor guardian shall be entitled to receive Kin-GAP on behalf of the child.²⁰⁶

The remaining eligibility requirements for Kin-GAP are based on CalWORKs eligibility regulations, with a few minor differences.²⁰⁷ For the most part, Kin-GAP children will be subject to the rules for CalWORKs child-only cases, except for the following:²⁰⁸

²⁰¹ For a more detailed explanation of the Kin-GAP program see Chapter VIII of the *Foster Care Manual: A Guide to Benefits and Services for Children in Foster Care*, available at www.wclp.org.

²⁰² WIC §§ 11360–76.

²⁰³ WIC § 11380.1(b); ACL 07-13.

²⁰⁴ WIC §§ 11360–76.

²⁰⁵ WIC § 11363(a); MPP § 90-105; ACL 00-09, ACL 99-97, ACL 99-92.

²⁰⁶ WIC § 11363(b).

²⁰⁷ WIC § 11372; ACL 99-92.

²⁰⁸ MPP § 90-100; ACL 99-97.

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- The county that had the dependency case of child at the time the guardianship was established pays the Kin-GAP benefits;²⁰⁹
- Each Kin-GAP child will have his or her own assistance unit, even if a sibling also receives KinGAP;²¹⁰
- Income reports will only be required for Kin-GAP children in months where there is actually income to the child;²¹¹
- The payment rate for Kin-GAP are identical to the foster care basic or specialized care rate the child receives the month prior to entering Kin-GAP;²¹²
- When transferring to the program, Kin-GAP kids will be treated as recipients, not applicants, and therefore will be entitled to the higher income and property limits of foster care;²¹³
- Relative caregivers of Kin-GAP children are exempt from the face-to-face interview requirements.²¹⁴

Needy caretaker relatives of Kin-GAP children may still be eligible for CalWORKs benefits. The Kin-GAP child is considered an otherwise eligible dependent child for purposes of establishing CalWORKs eligibility for the needy caretaker relative who is the legal guardian.²¹⁵ Kin-GAP aid and the Kin-GAP child's income do not count as income against the relative's CalWORKs case.²¹⁶

²⁰⁹ MPP § 90-105.21.

²¹⁰ MPP § 90-105.31.

²¹¹ ACL 99-97.

²¹² MPP § 90-110.1(h).

²¹³ MPP § 90-110.1(c)(1).

²¹⁴ ACL 99-97.

²¹⁵ WIC § 11450.16; ACL 99-92.

²¹⁶ WIC § 11371; ACL 99-92.

8. Child Care and Other Supportive Services For CalWORKs Recipients.

CalWORKs participants who are employed or who are required to participate in “welfare-to-work activities”²¹⁷ are entitled to assistance with child care, transportation, and ancillary expense costs.²¹⁸ Welfare-to-work participants are also entitled to mental health and substance abuse treatment where necessary. These supportive services are discussed in Chapter VI. Child Care is discussed in detail in Chapter VII.

9. Medi-Cal.

Generally, CalWORKs recipients may also qualify for and receive Medicaid (called Medi-Cal in California), the state and federally funded program that pays for medically necessary treatment, services, and medicines.²¹⁹ Medi-Cal was previously covered in the CalWORKs manual.²²⁰

²¹⁷ See Chapter VI for a discussion of work requirements.

²¹⁸ WIC § 11323.2; MPP § 42-750.11.

²¹⁹ 42 USC § 11396a *et seq.*; WIC § 14000 *et seq.*

²²⁰ For a complete discussion of this program and common issues, see Western Center’s Med-Cal guide, *Medi-Cal Eligibility Guide: How to Get and Keep Low-Income Health Coverage*.