

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Hearing No. 2014211257

In the Matter of Claimant(s):

DECISION

Pursuant to the authority of the Director,
I adopt the attached final decision.

James W. Beall

James W. Beall
Administrative Law Judge

Adopt Date: SEP 29 2014

State Hearing Record

Hearing Date: 9/2/2014

Release Date:

SEP 29 2014

Aid Pending: Yes

Issue Codes:

[266-1]

Agency: Riverside County

Agency Representative: Connie Murphy

Agency:

Agency Representative:

Auth. Rep. Org.:

Authorized Rep:

SSN:

SSN:

AKA:

AKA:

Case Name:

Language:

English

LA District/Case:

Companion Case:

Appeal Rights

You may ask for a rehearing of this decision by mailing a written request to the Rehearing Unit, 744 P Street, MS 9-17-37, Sacramento, CA 95814 within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause. In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.

You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.

This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.

SUMMARY

Riverside County incorrectly terminated claimant's Food Stamp Program benefits effective August 31, 2014 where it is found that the claimant cooperated in providing the County with all required documents and her countable income did not make the household ineligible. [266-1]

FACTS

The claimant's CalFresh household consists of herself, her husband, and two of her three minor children. The third child is a recipient of SSI/SSP and is excluded. The claimant originally applied for CalFresh benefits in Riverside County on February 18, 2014 and the application was approved.

During the initial intake interview the County was informed that the claimant provides IHSS Plus services for her disabled child and is paid \$491.00 twice a month for her caretaker services. The three children received \$357.00 per month in combined child support per month. Claimant's spouse had no income and the household had shelter costs of \$1,250.00 per month plus utilities.

The claimant submitted the June 2014 SAR 7 form to the County on July 30, 2014. The County notified the claimant that it deemed the SAR 7 report to be late/incomplete and requested additional information. The County stipulated that all required verifications and necessary information was provided to the County by August 7, 2014, and this issue was resolved.

At the hearing Riverside County took the position that, from the information provided by claimant on the SAR 7 report, the household's gross countable income exceeded the maximum eligibility limit for a household of four persons. The County argued that the claimant's eligibility should terminate as of August 31, 2012. The County relied on the following reported income:

IHSS – Claimant - \$1,085.60
Child support – 2 children - \$238.00
UIB – husband - \$1,950.30
Wages – Claimant - \$75
Gross Income Total = \$3,273.90
Maximum Gross Income Limit per regulations for a household of four = \$2,552.00

Claimant filed her hearing request on July 30, 2014. She indicated she was disputing the proposed discontinuance of her CalFresh case due to the alleged late/incomplete June SAR 7 report, and she also informed the County that all of her IHSS Plus income was exempt and not countable. Claimant submitted a copy of an All County Welfare Director's Letter 07-02 in support of her contention.

LAW

All regulations referred to herein are set forth in the Manual of Policies and Procedures issued by the Department of Social Services unless otherwise specified.

I

Supplemental Security Income/State Supplemental Program (SSI/SSP) recipients are ineligible to receive CalFresh benefits. (§63-402.226) This is because federal regulations state that the Secretary of Health and Human Services has determined that California's SSI payment includes the value of the CalFresh allotment. (7 Code of Federal Regulations §273.20(a))

Separate household status shall not be granted to an individual living with the household who is a spouse (as defined in §63-102s.) of another household member. (§63-402.143)

Federal regulations define a CalFresh household as a group of individuals who live together and customarily purchase food and [emphasis added] prepare meals together for home consumption. (7 Code of Federal Regulations (CFR) §§273.1(a)(3))

II

Except for categorically eligible households and households with an elderly or disabled household member(s), the counties shall determine eligibility for Food Stamp Program benefits pursuant to the maximum gross income standards as promulgated and updated by the United States Department of Agriculture.

Effective October 2013 to September 2014 the gross income standard for a four person household as set forth in Handbook §63-1101.31 is \$2552. A household with income in excess of the standard is ineligible to receive Food Stamp Program benefits. (§63-409.111)

For purposes of applying the gross income test in determining eligibility, the CWD is required to determine the average monthly income and determining the average monthly income will require using the bi-weekly conversion factor of 2.167 for stable income. All County Information Notice I-10-04 February 25, 2004.

Earned income includes all wages and salaries of an employee. (§63-502.131)

Unearned income includes annuities, pensions, retirement or veteran's or disability benefits; worker's or unemployment compensation; social security benefits; striker's benefits (except compensation for picketing); foster care payments for CalFresh household members; "and any deemed income from a sponsor who has signed an I-864 and/or I-864A paid to a sponsored noncitizen". (§63-502.142, as revised effective February 21, 2002)

In general, support or alimony payments made directly to the household from nonhousehold members are unearned income. (§63-502.144)

Unearned income includes AFDC (now CalWORKs), General Assistance (GA), General Relief (GR), Refuge Cash Assistance, Entrant Cash Assistance, or other assistance program payments which are based on need. (Lump-sum payments from these sources are resources, per §63-501.111.) Such assistance is considered unearned income even if it is a vendor payment, unless that vendor payment is excluded under §63-502.2. (§§63-502.141 and .141(a)) Effective December 1, 1995, GA/GR payments for housing are counted as income unless exempt as unearned income. All other GA/GR vendor payments are excluded income. (§63-502.141(a))

III

Monies received and used for the care and maintenance of a third-party beneficiary who is not a household member is to be excluded. (§63-502.2(h))

Excluded income includes income that is specifically excluded for CalFresh purposes by any other federal statute as specified in §63-507. (§63-502.2(l), effective April 3, 1995)

MPP §63-402.322 provides that foster care children are either boarders and excluded (along with their income) or per §63-402.141(a), are part of the household, in which case their income is counted. (All-County Information Notice I-73-04, question and answer 5, October 13, 2004) Foster Care payments for boarders who are not part of the food stamp household are excluded from countable income. (§63-502(o))

Payments received by an individual care provider under a State Medicaid Home and Community Based Waiver program are excluded as income under Internal Revenue Code §131.

CONCLUSION

It is concluded that the claimant's position is correct. It is concluded that the total amount of income she receives as an IHSS Plus caretaker/provider is excluded and not countable as income in the CalFresh program. The regulations make it perfectly clear that monies received and used for the care and maintenance of a third-party beneficiary who is not a household member is to be excluded. (§63-502.2(h)).

Since the claimant's third child is not a household member because she receives SSI/SSP, and because the IRS treats IHSS caretaker payments the same as foster care payments, it must be concluded that the County's position that the caretaker payments are countable income is incorrect. Since the evidence shows that the remaining countable income is well below the maximum gross income level, the County must apply a net income test to determine the claimant's eligibility and benefit level.

Since the claimant raised this issue in her July 2014 filing and hearing request, the County should recompute claimant's benefits retroactively for any period allowed by law. Generally, the county shall restore to the household benefits which were lost whenever the loss was caused by an administrative error. (§63-802.1)

ORDER

The claim is granted.

Riverside County shall rescind its action to terminate claimant's Food Stamp Program benefits. Riverside County shall recompute the claimant's CalFresh benefits. The county shall provide the claimant with all appropriate retroactive benefits as otherwise eligible to the extent that the claimant has not received such benefits through aid pending this hearing decision.

JB:lh