STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

PETE WILSON, *Governor*

DEPARTMENT OF HEALTH SERVICES
714/744 P STREET
). BOX 942732
CRAMENTO, CA 94234-7320
(916) 657-2941

September 8, 1995

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialist/Liaisons

Letter No.: 95-55

NEED FOR REPRESENTATION AT FAIR HEARINGS OF LIMITATIONS TO THE SPECIAL BOARD AND CARE EXCLUSION PROVIDED AT TITLE 22, CALIFORNIA CODE OF REGULATIONS (CCR), SECTION 50515(a)(3): THAT THIS INCOME EXCLUSION IS LIMITED TO COMPENSATION PAID TO THE FACILITY AND DOES NOT INCLUDE "PAYMENTS" FOR PERSONAL AND INCIDENTAL EXPENSES

The purpose of this All County Welfare Directors Letter (ACWDL) is to alert counties to the need for careful development and delineation at fair hearings of the distinction between mandatory, compensatory payments made by a Medi-Cal beneficiary to a board and care facility to cover the facility charge for the room, board and care-services provided by the facility, and non-compensatory transfers from the beneficiary to the facility of money which are held by the facility, which acts as the beneficiary's representative in purchasing items and services desired by the beneficiary.

For these latter payments, the facility acts as a conduit for the money, spending it on the beneficiary's behalf. Such payments are not paid as compensation to the board and care facility for its room, board and care services. Beneficiaries can retain, and many beneficiaries do retain, this income and spend it themselves, and Medi-Cal makes no distinction between these two groups of beneficiaries, treating that portion of the income of the beneficiary who elects to have the facility spend that income on personal items for themselves no differently then it would treat the income of a board and care beneficiary who elected to retain that income and spend that money themselves.

The purpose of 22 CCR Section 50515(a)(3) is to augment the Medi-Cal Maintenance Need Level (MNL) sufficiently to allow the beneficiary to retain enough money to pay the monthly fee demanded by the facility as compensation for its provision of room, board and care to the beneficiary. Thus the income exclusion provided at 22 CCR Section 50515(a)(3) is restricted to compensatory payments paid to board and care facilities. County fair hearing representatives should inform the administrative law judge (ALJ) that any other kind of payment to the board and care facility, including payments for "personal and incidental" expenses, are not compensatory payments to the facility and are not covered by Section 50515.

County fair-hearing representatives should further inform the ALJ that these non-compensatory "payments" of the beneficiary's income to the board and care facility 1) are made by the beneficiary or by their agent/representative as an elective transfer of money to the facility, 2) are still owned by the beneficiary and are frequently returned to the beneficiary (the transferred money "paid" to the facility is frequently deposited by the board and care facility into the private account of the beneficiary), 3) even when not returned to the beneficiary are held and spent on the beneficiary's behalf, the facility acting as a representative for the beneficiary, 4) are used by the beneficiary to purchase the items he/she elects, whether directly by the beneficiary or at the direction of the beneficiary through the facility or other agent, and 5) are not required by the board and care facility as a condition of the beneficiary's continued residence in the facility. Each of these reasons provides a sufficient basis for excluding these payments from the coverage of Section 50515.

The Department of Health Services (DHS) is engaged in litigation regarding a particular Medi-Cal case over the issue whether the $108 paid by a beneficiary residing in a board and care facility to that facility, which is used to purchase personal and incidental items for the beneficiary, is allowed as an income exclusion under 22 CCR Section 50515 in addition to the $660 paid by the beneficiary to the facility in compensation for the facility's services. Based on the misrepresentations of the claimant's representative at the fair hearing, that both the $660 and the $108 payments were part of the facility charge, the ALJ adopted, as a finding-of-fact, that both the $660 and the $108 were facility charges and therefore the Section 50515 exclusion applied to both the $660 and the $108. DHS reversed this decision, holding that only the $660 compensatory facility charge was covered by 50515(a)(3), and the beneficiary appealed to a California superior court under a special motion, called a Writ of Mandamus, which prevents DHS from introducing any evidence to demonstrate that the ALJ's finding-of-fact, that the $108 was part of the facility charge, was erroneous. DHS is now in a position of defending its policy that Section 50515 does not protect the personal and incidental expenses money given to the facility without being able to explain to the court that this money is not a facility charge.

Based on the nature of this case, DHS expects that counties will experience an increasing number of these cases brought to fair hearing. In the interest of promoting accurate fair-hearing conclusions, especially those relating to the ALJ's findings-of-fact which cannot be contested by DHS when appealed to superior court, DHS requests counties to thoroughly explain to the ALJ presiding over these cases the distinction between the beneficiary's compensation payment to the facility for room, board, and care on one hand, and non-compensatory "payments" which may be turned over to the facility and used to purchase personal and incidental items on the other as discussed above.

Please direct questions to Dave Rappolee of my staff at (916) 675-0163. Thank you for your assistance on this matter.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch