

## DEPARTMENT OF HEALTH SERVICES

144 P STREET  
SACRAMENTO, CA 95814

September 7, 1984

TO: ALL COUNTY WELFARE DIRECTORS

Letter No. 84-40

GIBBINS VS. RANKBackground

On August 20, 1984 the Superior Court of the State of California issued the final judgement in the above named case. The court found that income which must, by Court order or by agreement with a District Attorney, be used to pay spousal or child support is not available to meet the current needs of aged, blind and disabled medically need (ABD-MN) Medi-Cal applicants and recipients. (This includes ABD-MNs in long term care.)

The court decided that ABD-MN persons should be subject to the general concept of income availability consistent with California family law principles. This All County Welfare Directors letter issues instructions necessary to comply with the court order.

NOTE: Pickle (Title II disregard) eligibles are not medically needy (MN). Therefore, the court order does not apply to them.

Actions Required by the Court Order

- A. Active Cases - In accordance with the court order (Attachment A), county welfare departments are required to:
  - o Effective August 1, 1984, spousal or child support paid pursuant to court order or an agreement with a district attorney is to be deducted on the MC 176 (identify and enter amount in Col. III line 8 or 9 until the MC 176 is revised) from income as reported on the MC 210 for all new and pending ABD-MN applications. The payments are to be verified in accordance with CAC Section 50167.
  - o Mail Attachment B, Important Notice Regarding Your Medi-Cal Benefits, to all active ABD-MN cases with a share of cost (SOC).
  - o Review ABD-MN cases for family support payments and adjust retroactively to August 1, 1984, where appropriate, the SOC for all current ABD-MN cases in accordance with the terms of the order by January 17, 1985.
  - o Issue a notice to the beneficiary of the outcome of this action in accordance with regulatory notice of action requirements.

- B. Terminated cases - The Department is required to notify all ABD-MN individuals terminated since February 1, 1981 of the court decision. By October 19, 1984, Exhibit A of Attachment A will be sent to the last reported address for all ABD-MN cases which have been terminated since February 1, 1981. Those individuals obligated to pay spousal or child support are invited to reapply for Medi-Cal. The application is to be processed in accordance with court order and revised procedure; we are not required to give special consideration or retroactive coverage to these individuals by the court order.

County Reporting Requirement

The terms of the court order require DHS to submit documentation of compliance to the court within six months of the decision. Accordingly, please complete and return Attachment D to Medi-Cal Eligibility, attention: Allan Riley, by February 1, 1985.

Key actions and completion dates are summarized on Attachment C. Should you or your staff require assistance in implementing this court order, please contact me at (916) 324-4950 or Allan Riley at (916) 324-4969.

Sincerely,

Original signed by

Caroline Cabias, Chief  
Medi-Cal Eligibility Branch

Attachments

ENDORSED  
FILE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA

AUG 20 1984

RENEC. DAVIDSON, County Clerk

EDITH GIBBINS, et al., )  
 )  
Plaintiffs/Petitioners, )  
 )  
vs. )  
 )  
PETER RANK, et al., )  
 )  
Defendants/Respondents. )

By *Lillian C. Don*  
Lillian C. Don, Deputy  
NO. H-90110-3  
JUDGMENT GRANTING  
DECLARATORY JUDGMENT  
PERMANENT INJUNCTION,  
AND WRITS OF MANDATE  
(Code of Civ. Proc.  
Sections 1085, 1094.5

Plaintiffs' motion for summary judgment on their claims for declaratory and injunctive relief, and for writs of mandate under Code of Civ. Proc. Section 1085 and 1094.5, came on for hearing on March 2, 1984. All parties were represented by counsel.

The Court having considered the memoranda of points and authorities, the pleadings, declarations and exhibits on file herein, and the arguments of counsel, and having determined that there are no triable issues of fact and that the action can be resolved by way of summary judgment:

DECLARATORY JUDGMENT

1. THE COURT FINDS, AND HEREBY DECLARES, that income which must, by Court order or by agreement with a District Attorney, be used to pay spousal or child support is not available to meet the current needs of aged, blind and disabled medically needy Medi-Cal applicants and recipients;

2. THE COURT FINDS, AND HEREBY DECLARES, that, insofar as 22 Cal. Admin. Code Section 50554 treats income which must, by Court order or by agreement with a District Attorney, be used to pay spousal or child support, as available to meet the current

1 needs of aged, blind and disabled medically needy Medi-Cal  
2 recipients, it violates Welfare and Institutions Code Section  
3 14005.7. The regulation is therefore invalid, and in excess of  
4 defendant Rank's statutory authority under Welfare and Institutions  
5 Code Section 14124.5;

6 PERMANENT INJUNCTION

7 3. IT IS HEREBY ORDERED that defendants Rank and Department  
8 of Health Services, together with their agents, employees and  
9 successors in interest, are hereby permanently enjoined from  
10 (a) considering income which aged, blind and disabled medically  
11 needy Medi-Cal applicants or recipients use to pay spousal and/or  
12 child support payments, pursuant to Court order or agreement with  
13 a District Attorney, as available to meet their current needs;  
14 and (b) failing and refusing to disregard income of such persons,  
15 used for the foregoing purposes, when determining their  
16 eligibility for Medi-Cal and when calculating their share of cost

17 4. IT IS FURTHER ORDERED that defendants Rank and Department  
18 of Health Services shall:

19 (a) inform the county welfare departments of the terms of  
20 this judgment not later than fifteen (15) working days from this  
21 date;

22 (b) instruct the county welfare departments to process all  
23 pending and future Medi-Cal applications in accordance with the  
24 terms of this judgment;

25 (c) instruct the county welfare departments to adjust the  
26 share of cost of medically needy persons affected by this Court's  
27 order, in accordance with the order's terms, said adjustments to  
28 be completed no later than one hundred fifty days (150) days from  
this date;

1 (d) send, or instruct the county welfare departments to send  
2 the notice, attached hereto as Exhibit A, to all aged, blind, and  
3 disabled medically needy people whose Medi-Cal benefits were  
4 terminated since February 1, 1981, said notice to be sent to their  
5 last known address no later than sixty (60) days from this date.  
6 In the alternative, if defendants or the county welfare department  
7 are able to determine which of these former recipients were, at  
8 the time their benefits were terminated, under an obligation to  
9 pay spousal and/or child support, this notice may be sent to this  
10 limited group;

11 5. IT IS FURTHER ORDERED that, no later than six months  
12 from the date of this judgment, defendants shall file and serve  
13 a report which shall include the following:

14 (a) a copy of all instructions which they have provided to  
15 the counties pursuant to paragraph 4 of this judgment;

16 (b) a statement of the number of notices sent, by county,  
17 in accordance with paragraph 4 of this judgment;

18 (c) a statement showing what each county has done to comply  
19 with paragraph 4 of this judgment, and the date by which each  
20 county has complied therewith.

21 JUDGMENT FOR PEREMPTORY WRIT OF MANDATE  
22 (Code of Civ. Proc. Section 1085)

23 6. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a  
24 pre-emptory writ of mandate shall issue, directed to defendants  
25 and respondents Peter Rank and Department of Health Services,  
26 and to their agents, employees, and successors in interest,  
27 commanding them:

28 (a) to consider income which aged, blind, and disabled  
medically needy Medi-Cal applicants and recipients use to pay

1 spousal and/or child support payments, pursuant to Court order or  
2 an agreement with a District Attorney, as unavailable to meet  
3 their current needs;

4 (b) to disregard income of such persons used for the  
5 foregoing purpose when determining their eligibility for Medi-Cal  
6 and when calculating their share of cost;

7 (c) to inform the county welfare departments of the terms  
8 of this order not later than fifteen (15) working days from this  
9 date;

10 (d) to instruct the county welfare departments to adjust  
11 the share of cost of medically needy persons affected by this  
12 Court's order, in accordance with the order's terms, said  
13 adjustments to be completed no later than one hundred and fifty  
14 (150) days from this date;

15 (e) to send, or to instruct the county welfare departments  
16 to send the notice, attached hereto as Exhibit A, to all aged,  
17 blind and disabled medically needy people whose Medi-Cal benefits  
18 were terminated since February 1, 1981, said notice to be sent to  
19 their last know address no later than sixty (60) days from this  
20 date. In the alternative, if defendants or the county welfare  
21 departments are able to determine which of these former recipients  
22 were, at the time their benefits were terminated, under an  
23 obligation to pay spousal and/or child support, this notice may  
24 be sent to this limited group;

25 (f) to make and file a return, no later than six months  
26 from the date of this order, showing what they have done to comply  
27 with this writ. Said return shall include:

28 (1) a copy of all instructions which they have provided  
to the counties pursuant to paragraph 6 of this order;

1 (2) a statement of the number of notices sent, by county,  
2 in accordance with paragraph 6(e) of this order;

3 (3) a statement showing what each county has done to  
4 comply with paragraph 6 of this order, and the date by which each  
5 county has complied therewith.

6 JUDGMENT OF WRIT OF MANDATE  
7 (Copy of Civ. Proc. Section 1094.5)

8 7. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a writ  
9 of mandate shall issue, directed to defendant and respondent Rank  
10 commanding him, immediately after receipt of said writ, to set  
11 aside his decisions in the Matter of Susan Reed and in the Matter  
12 of Edith Gibbins and to reconsider those cases pursuant to the  
13 guidelines set forth in this order and the writ of mandate to be  
14 issued contemporaneously with this writ;

15 8. The writ shall further command defendant and respondent  
16 to provide plaintiffs Gibbins and Reed with retroactive benefits  
17 in accordance with the terms of this order if they are otherwise  
18 eligible.

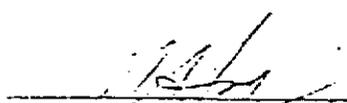
19 9. The writ shall further command defendant to file return  
20 within sixty (60) days from issuance of the writ, stating what  
21 he has done to comply therewith.

22 ATTORNEYS' FEES

23 10. The Court reserves jurisdiction to award attorneys' fees  
24 upon a properly noticed motion therefor.

25 SO ORDERED.

26 DATED: August 17, 1984

  
27 JUDGE OF THE SUPERIOR COURT

28 Judgment entered on \_\_\_\_\_, 1984, in Judgment  
Book, Vol. No. \_\_\_\_\_, Page \_\_\_\_\_.

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Clerk

EXHIBIT A

IMPORTANT NOTICE REGARDING YOUR ELIGIBILITY FOR MEDI-CAL BENEFITS

Our records show that you used to receive Medi-Cal benefits, and that your benefits were discontinued at some time after February 1981.

You may be affected by a recent court order in the case of Gibbins v. <sup>FRANK</sup> Superior Court, Alameda County Superior Court No. H-90110-3. That case concerns the share of cost for aged and disabled Medi-Cal recipients who make family support payments. The court ruled that money used to pay alimony and child support cannot be counted when the counties determine the amount of a Medi-Cal recipient's share of cost. The court's order applies to family support payments paid under a court order or an agreement with a district attorney.

If you are required to pay alimony or child support payments, and if you still wish to receive Medi-Cal benefits, the amount which you pay to your ex-spouse or children will be deducted from your income. Your share of cost may be lower than it was when you previously received Medi-Cal benefits, or you may be entitled to Medi-Cal without a share of cost.

NOTE: THIS NOTICE ONLY CONCERNS YOUR MEDI-CAL ELIGIBILITY. IT DOES NOT AFFECT OR CHANGE YOUR OBLIGATION TO CONTINUE PAYING ALIMONY OR CHILD SUPPORT.

If you wish to reapply for Medi-Cal, or if you want additional information, you should contact your local county welfare department. For further information, you may also contact plaintiffs' attorney:

Evelyn R. Frank  
Legal Aid Society of Alameda County  
2357 San Pablo Avenue  
Oakland, California 94612

Attachment B

IMPORTANT NOTICE REGARDING YOUR MEDI-CAL BENEFITS

You may be affected by a recent court order in the case of Gibbins vs. Rank, Alameda County Superior Court Number H-9011. That case concerns the share of cost for aged, blind and disabled Medi-Cal recipients who make family support payments. The court ruled that money used to pay alimony and child support cannot be counted when counties determine the amount of a Medi-Cal recipient's share of cost. The court's order applies only to family support payments paid under a court order or an agreement with a district attorney.

If you are required to pay alimony or child support payments, the amount which you pay your ex-spouse or children will be deducted from your income. As a result, your share of cost may be lower than it is now or you may be entitled to Medi-Cal without a share of cost.

If you make family support payments under a court order or agreement with a district attorney, this court decision affects your Medi-Cal. Contact the county welfare department for an interview. You will be required to supply proof of the requirement to pay and the actual payments made. After your interview you will be notified of the outcome and any changes to your share of cost.

GIBBINS VS. RANK

Summary of Court-Ordered Actions

<u>Action</u>	<u>Completion Date</u>
DHS: Issuance Of All County Welfare Directors Letter.	September 7, 1984
DHS: Mail Notice To All ABD-MN Cases Terminated Since February 1, 1981.	October 20, 1984
County: Mail Notice (Attachment B) To ABD-MNs With SOC. Recompute SOC On Cases With Spousal or Child Support.	January 17, 1985
County: Submit Report Of Compliance To DHS (Attachment D).	February 1, 1985

Gibbins vs. Rank

Statement of Compliance

State Department of Health Services  
Eligibility Branch  
714 P Street, Room 1692  
Sacramento, CA 95814  
ATTN: Allan Riley

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County  
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Applications Received  
as a result of the  
DHS Notice (Attachment A) \_\_\_\_\_

\_\_\_\_\_  
Date of Count

Number of above applications  
determined eligible \_\_\_\_\_

Methodology used to identify active  
ABD-MN cases with spousal or  
Child Support (Describe)

Number of Notices Mailed to  
Active Cases (Attachment B)

\_\_\_\_\_  
Number of Cases

SOC Changes - Current Cases

\_\_\_\_\_  
Date adjustments completed

ABD-MN/SOC/with Family Support Payments LTC: \_\_\_\_\_/non-LTC: \_\_\_\_\_  
Number of Cases

SOC Decrease \_\_\_\_\_  
Number of Cases

\_\_\_\_\_  
County Representative Phone