STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY GEORGE DEUKMEJIAN, Governor

DEPARTMENT OF HEALTH SERVICES
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TO: All County Welfare Directors
All County Administrative Officers

AUGUST 11, 1989
Letter No: 89-67

SUBJECT: QUESTIONS AND ANSWERS ON INCAPACITY

Reference: All County Welfare Directors Letter 89-06

This is to provide clarification on determining the incapacity of a parent as discussed in All County Welfare Directors Letter 89-06 (ACWDL). ACWDL 89-06 was a reminder that verification of incapacity as defined in Title 22, California Code of Regulations (CCR) Section 50167(a)(2) is not conclusive proof of incapacity and the parent must also meet the criteria defined in Section 50211. Although it was not our intent to change the policies on determining incapacity, many counties found the letter to be confusing. The most often asked questions and our answers are provided below:

Question #1

A parent has an acceptable verification of incapacity as required in Section 50167(a)(2), but has been unable to work for several or many years due to the same or different injury or health condition. Since the work history is not recent, is the parent's ability to support or care for the child reduced or eliminated?

Answer #1

Yes. If a parent has been unable to work for several or many years due to a disability, i.e., injury, health condition, he/she may be determined to be incapacitated. The ACWDL was referring to parents who do not have a recent (within the last year) work history or no work history for reasons unrelated to incapacity such as a homemaker, but not those who have been unable to work for health reasons.

Question #2

If a parent is a homemaker and has no work history and claims incapacity based on a reduced ability to care for his/her teenage children who are fairly self sufficient, how does the EW decide if the health condition actually reduces or eliminate the parent's ability to care for the children?

Answer #2

Since the regulations do not specifically define "substantially reduced", the EW should ask the parent how his/her condition reduces or eliminates his/her ability to care for the children. The answer should be written in the case.

Unless the parent is unable to give an example, he/she should be considered incapacitated if the verification meets the criteria in Section 50167(a)(2). Although it is possible that the parent's condition does not reduce or eliminate his/her ability to work or care for his/her children or cause one of the following situations described in Section 50211(b)(2), it is unlikely that the parent will not be able to give a reason.

If a parent is determined not to be incapacitated and requests a fair hearing, the county should be able to justify the reason for the denial.

Question #3

If a parent has a permanent disability or a condition which is expected to result in death and receives Title II Social Security disability benefits or Title XVI (SSI/SSP) benefits as specified in Section 50223, would he/she be also incapacitated?

Answer #3

Yes. These benefits are acceptable verifications of incapacity and Section 50211 (b)(2)(D) also states that a blind or disabled parent who meets the conditions of Section 50223 is incapacitated. A determination from the Disability Evaluation Division (DED) is also acceptable since they use the same criteria as the Social Security Administration. However, a referral to DED for the sole purpose of establishing incapacity is not appropriate.

Question #4

If a parent is incapacitated, should the EW also make a referral to DED or vice versa?

Answer #4

If an incapacitated parent has a condition which will last more than 12 months and/or is expected to result in death, the EW should make a referral to DED because an aged, blind or disabled person receives certain income deductions as described in Section 50549. Also aged, blind, and disabled persons are treated differently if in long term care for MFBU purposes (Section 50377).

A parent who is determined to be disabled should be evaluated for incapacity if he/she has a minor child and spouse in the home and the spouse requests Medi-Cal benefits since the spouse or second parent of the child can be linked to a child of an incapacitated parent.

Question #5

A pregnant woman can be incapacitated if her physician states that she is unable or has a reduced capacity to work (CA 61); however, if the woman has no work history and the only child is unborn, can she use the argument that her condition reduces her ability to care for the child?

Answer #5

If a pregnant woman has verification from her physician that she has a condition which affects her pregnancy (unborn) such as diabetes, high blood pressure, drug addiction, she should be considered incapacitated. If her condition did not affect her pregnancy, i.e., broken arm, she could be aided as a Medically Indigent pregnant woman, however her husband or father of the unborn could not be linked.

If you have any questions, please contact Margie Buzdas as (916) 324-4972.

Sincerely,

Original signed by

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

cc: Medi-Cal Liaison
Medi-Cal Program Consultants

Expiration Date: August 11, 1990