

AMENDED IN ASSEMBLY JULY 3, 2012
AMENDED IN ASSEMBLY JUNE 12, 2012
AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE MARCH 29, 2011

SENATE BILL

No. 320

Introduced by Senator Wright

February 14, 2011

An act to add Sections 10968, 10969, and 10970 to the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

SB 320, as amended, Wright. Public social services: hearings.

Existing law authorizes an applicant for, or recipient of, public social services who is dissatisfied with certain actions of the county welfare department to request a hearing from the State Department of Social Services. Existing law requires the hearing to be conducted by an administrative law judge, with an exception, and authorizes the administrative law judge, under certain circumstances, to render and adopt final decisions, which decision the county director is required to comply *with* and execute.

This bill would require the county appeals representative to review all evidence in the county's possession prior to the hearing and, if the representative finds prescribed occurrences, to offer the claimant a conditional withdrawal or notice of action, as specified. This bill would require the conditional withdrawal to specify the actions that the applicant or recipient and the county is required to complete within 30 days of the conditional withdrawal being signed by the claimant and received by the county representative, except as provided, and *would*

require the county to issue to the claimant a notice of action describing its compliance with the ~~final~~ decision. This bill would authorize a claimant to file for and reopen a state hearing under certain circumstances, at which the administrative law judge may render a ~~final~~ decision and order the county to comply with the ~~final~~ *that* decision.

This bill would provide a claimant with the right to an in-person hearing, as defined, and authorize a claimant to request a hearing conducted by telephone, or other electronic means, or at his or her home. This bill would require the notice informing the claimant of the hearing to contain prescribed information. This bill would require the department to determine the format of the hearing if the county and the claimant disagree on its format.

Existing law requires, if regulations require an agency to write a position statement concerning the issues in question in a fair hearing or if the agency chooses to develop such a statement, that not less than 2 working days prior to the date of the hearing the agency make available to the applicant for, or recipient of, public social services a copy of the agency's position statement, with an exception.

This bill would require the county representative to prepare and transmit to a claimant who is scheduled for specified types of hearings and his or her representative the position statement so that it is received at least 2 working days prior to the hearing. This bill would require the administrative law judge to determine whether the county has met its burden of proof of establishing a prima facie case, with exceptions. This bill would require the administrative law judge to grant the claim if the judge finds that the county has not met its burden.

By imposing a higher level of service on county appeals representatives, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10968 is added to the Welfare and
2 Institutions Code, to read:

3 10968. (a) Prior to the hearing, the county appeals
4 representative shall review all evidence in the county's possession
5 relevant to the state hearing claim.

6 (1) If the hearing concerns a claimant's eligibility for a benefit
7 or service and the county representative finds that certain acts or
8 evidence would establish the claimant's eligibility for that benefit
9 or service or concludes that the county erred, the county
10 representative shall offer the claimant a conditional withdrawal
11 agreeing that the county shall issue the benefits or provide the
12 services for which the claimant is eligible after the claimant meets
13 conditions, if any, of the conditional withdrawal. If the county has
14 rescinded the proposed adverse action, the county shall issue a
15 notice of action informing the claimant of the county's action and
16 contact the client to advise the claimant the action was rescinded
17 and determine whether there were any other issues for the hearing.

18 (2) If the hearing concerns the validity of a CalWORKs
19 overpayment or CalFresh benefit overissuance allegation and the
20 county representative does not find evidence adequate to support
21 the validity of the overpayment or overissuance allegation then
22 the county representative shall offer the claimant a conditional
23 withdrawal agreeing both to cancel permanently the overpayment
24 or overissuance allegation and to refund to the claimant any money
25 already collected toward repayment of the alleged overpayment
26 or overissuance.

27 (b) (1) A conditional withdrawal pursuant to this section shall
28 specify the actions that both parties shall complete within 30 days
29 from the date the county appeals representative receives the
30 conditional withdrawal form signed by the claimant. The county's
31 30-day conditional withdrawal compliance period may be extended
32 by an additional 15 days from the date the claimant completes his
33 or her action required by the conditional withdrawal.

34 (2) The county shall comply with the terms set forth in the
35 conditional withdrawal, and issue a notice of action to the claimant
36 describing its compliance with the terms of the conditional
37 withdrawal. The notice of action shall be sent by the county within
38 the timeframe set forth in paragraph (1).

1 (3) (A) Upon receiving a timely notice of action from the
2 county, the claimant shall have 90 days, subject to the good cause
3 provisions of Section 10951, to file for a state hearing if the
4 claimant is dissatisfied with the county's actions specified in the
5 notice of action. This notice shall be treated like any other notice
6 of action.

7 (B) If the notice of action relates to the agreed upon terms of
8 the conditional withdrawal pursuant to paragraph (2), the
9 administrative law judge at the hearing ~~shall have complete~~
10 ~~discretion to~~ *may determine if that* there is sufficient evidence in
11 the record to render a ~~final~~ decision resolving the dispute on the
12 merits and to order the county ~~to~~ comply with the terms of the ~~final~~
13 decision.

14 (4) If the county does not issue a notice of action as required in
15 paragraph (2), the claimant may reopen the state hearing to enforce
16 the terms of the conditional withdrawal. A reopened hearing
17 pursuant to this paragraph shall address whether the county has
18 complied with the terms of the conditional withdrawal, and if the
19 administrative law judge finds noncompliance with the terms of
20 the conditional withdrawal, the judge ~~shall have complete~~
21 ~~discretion to~~ *may determine if that* there is sufficient evidence in
22 the record to render a ~~final~~ decision resolving the dispute on the
23 merits and to order the county ~~to~~ comply with the decision.

24 (c) (1) If a written conditional withdrawal is not provided to
25 the claimant in person at the time the county and the claimant agree
26 upon the conditional withdrawal, the county shall mail the
27 conditional withdrawal to the claimant.

28 (2) (A) Notwithstanding paragraph (1), the county shall, upon
29 request of the claimant and with the claimant's written permission,
30 electronically transmit a copy of the conditional withdrawal to the
31 claimant.

32 (B) This paragraph shall become operative only after the director
33 of the department certifies to the Legislature that the department
34 has the technology to implement this paragraph in compliance
35 with privacy laws. Until this certification is made to the Legislature,
36 the department shall report annually to the budget committees of
37 the Legislature on the status of the technology available to
38 implement this paragraph.

39 SEC. 2. Section 10969 is added to the Welfare and Institutions
40 Code, to read:

1 10969. (a) The Legislature finds and declares that *claimants*
2 *have a right to have administrative hearings conducted in person.*
3 *However,* the financial cost of attending an administrative hearing,
4 and the limitations on the ability to attend imposed by work,
5 training, education, living in areas lacking public transportation,
6 lack of child care coverage, illness or disability, and inclement
7 weather, *may* prevent a claimant from accessing a hearing and
8 exercising his or her full right to due process of law. A hearing
9 conducted by telephone, or other electronic means, would enable
10 the claimant to access the fair hearing process when he or she is
11 unable to attend the hearing in person.

12 (b) For purposes of this section, “in-person hearing” and
13 “hearing conducted in person” means a hearing conducted in person
14 with face-to-face interaction between the parties.

15 (c) The department shall schedule a claimant’s initial hearing
16 pursuant to this chapter as the department deems appropriate and
17 within its resource limitations. However, a claimant shall have the
18 right to request and receive an in-person hearing.

19 (d) The notice acknowledging the receipt of the hearing request
20 shall provide information regarding the different formats of how
21 a hearing may be conducted, including in-person, by telephone,
22 or other electronic means, or at the claimant’s home, the right to
23 an in-person hearing, and how to request a specific type of hearing
24 before the hearing is scheduled.

25 (1) If the notice informing the claimant of the scheduled hearing
26 indicates the hearing shall be conducted by telephone, or other
27 electronic means, the notice shall also inform the claimant of his
28 or her right to have the hearing conducted in person or at the
29 claimant’s home pursuant to subdivision (g), and how to request
30 a change in the format of the hearing, including information on
31 the timeframe within which to make the request without extending
32 the time in which to issue the decision.

33 (2) If the notice informing the claimant of the scheduled hearing
34 indicates the hearing shall be conducted in person, the notice shall
35 also inform the claimant of the opportunity to have the hearing
36 conducted by telephone, or other electronic means, or at the
37 claimant’s home pursuant to subdivision (g), and how to request
38 a change in the format of the hearing, including information on
39 the timeframe within which to make the request without extending
40 the time in which to issue the decision. The notice shall specify

1 good cause reasons to change the method of the hearing, which
2 shall include, but not be limited to, lack of transportation or child
3 care, inclement weather conditions, conflicts with work or
4 education schedules, or other good cause reasons as determined
5 by the department.

6 (3) The department shall implement this subdivision in a manner
7 that provides sufficient notice to a claimant regarding his or her
8 ability to request a change in the format of the hearing, and shall
9 provide on the hearing acknowledgment notice and scheduling
10 notice a “yes” or “no” box that the claimant may check to request
11 a change in the format of the hearing.

12 (e) The claimant shall inform the department of his or her
13 request to change the format of the hearing within five days of
14 receipt of the notice of scheduled hearing. The claimant’s failure
15 to meet the five-day requirement may result in a postponement of
16 the scheduled hearing. If the request to change the format of the
17 hearing occurs after this five-day period and the claimant’s request
18 for a hearing conducted by telephone, or other electronic means,
19 is granted by the department, the claimant’s original filing date
20 shall be adjusted to the date the request was granted.

21 (f) (1) If the county seeks to request an in-person hearing, the
22 hearing may be rescheduled to an in-person hearing with the
23 concurrence of the claimant. If the claimant disagrees, the
24 department shall decide the format of the hearing. The department
25 may deny a county’s request for an in-person hearing for good
26 cause, as defined in paragraph (2) of subdivision (b) of Section
27 10951.

28 (2) Upon its decision to change the format of a hearing that was
29 already set, the department shall reset the hearing and give both
30 the claimant and the county 10 days advance notice of the time,
31 place, and format of the new hearing.

32 (g) The notice informing the claimant of the scheduled hearing
33 shall also inform the claimant of the right to request a hearing in
34 the claimant’s home. The department may require from the claimant
35 seeking a hearing at his or her home medical verification
36 demonstrating that the claimant’s condition prevents the claimant
37 from traveling to the hearing location. If the claimant is unable to
38 travel to a state hearing office and would prefer to attend the
39 hearing by telephone, or other electronic means, the claimant may

1 request that the hearing be conducted by telephone, or other
2 electronic means.

3 (h) The notice informing the claimant of the time and place of
4 the hearing shall also inform the claimant how to submit evidence
5 and other documents if the claimant or administrative law judge
6 will be appearing by telephone, or other electronic means.

7 (i) Notwithstanding Section 10952.5, for applicants or recipients
8 who are scheduled for hearings to be conducted by telephone, or
9 other electronic means, or at the claimant's home, the county
10 responsible for the hearing shall prepare and transmit the position
11 statement to the claimant and his or her designated representative
12 so that the position statement will be received at least two working
13 days prior to the hearing. The position statement may be
14 transmitted to the claimant electronically, if the claimant has an
15 email address and is able to receive email communications.

16 SEC. 3. Section 10970 is added to the Welfare and Institutions
17 Code, to read:

18 10970. (a) The county representative shall present the case
19 with appropriate evidence necessary to meet the county's burden
20 of proof of establishing a prima facie case. At the end of the county
21 presentation, the administrative law judge may determine on the
22 record whether or not the county has met its burden of proof. If
23 the administrative law judge determines that the county has failed
24 to meet its burden of proof, the claim shall be granted without any
25 further hearing.

26 (b) When determining whether the county has met its burden
27 of proof, the administrative law judge may take the matter under
28 submission and continue the hearing if he or she determines that
29 the issue is too complex to make a burden of proof determination
30 immediately following presentation of the county's case.

31 (c) Issues and claims not subject to a burden of proof
32 determination by the administrative law judge, include, but are not
33 limited to, jurisdiction, abandonment claims, and claims where
34 the claimant has failed to specify an issue and the county has been
35 unable to independently determine an issue in dispute.

36 SEC. 4. If the Commission on State Mandates determines that
37 this act contains costs mandated by the state, reimbursement to
38 local agencies and school districts for those costs shall be made
39 pursuant to Part 7 (commencing with Section 17500) of Division
40 4 of Title 2 of the Government Code.

- 1
- 2 **CORRECTIONS:**
- 3 **Text—Page 4.**
- 4

O