

CALFRESH (CF) PROGRAM

REQUEST FOR POLICY/REGULATION INTERPRETATION

INSTRUCTIONS: Complete items 1 - 10 on the form. Use a separate form for each policy interpretation request. If additional space is needed, please use the second page. Be sure to identify the additional discussion with the appropriate number and heading. Retain a copy of the CF 24 for your records.

- Questions from counties, including county Quality Control, must be submitted by the county CalFresh Coordinator and may be submitted directly to the CalFresh Policy analyst assigned responsibility for the county, with a copy directed to the appropriate CalFresh Policy unit manager.
- Questions from Administrative Law Judges may be submitted directly to the CalFresh Policy analyst assigned responsibility to the county where the hearing took place, with a copy of the form directed to the appropriate CalFresh Bureau unit manager.

1. RESPONSE NEEDED DUE TO:		5. DATE OF REQUEST:	NEED RESPONSE BY:
<input type="checkbox"/> Policy/Regulation Interpretation <input type="checkbox"/> QC <input checked="" type="checkbox"/> Fair Hearing <input type="checkbox"/> Other:		4-17-13	As soon as possible
2. REQUESTOR NAME: James F. Feutz, ALJ - DSS		6. COUNTY/ORGANIZATION: El Dorado	
3. PHONE NO.: 415-845-7395		7. SUBJECT: unearned income	
4. REGULATION CITE(S): §63-502		8. REFERENCES: (Include ACL/ACIN, court cases, etc. in references) NOTE: All requests must have a regulation cite(s) and/or a reference(s). See paragraph 10	
9. QUESTION: (INCLUDE SCENARIO IF NEEDED FOR CLARITY):			

Scenario: As the result of a work related injury, the claimant retained an attorney and obtained a disability award which provided for long term payments of \$1635/month commencing March 2010. Pursuant to her fee agreement, the \$1635 monthly payment was paid by the vendor (worker's comp insurance company) directly to the attorney who deducted his fee (45% of the total award to be paid \$735.75/month for 36 months from 3/10 through 2/13) and paid the \$899.25 balance to the claimant. Unable to work as a result of the injury, the claimant had applied for and was receiving CalFresh benefits as a household of 1 at the time of the award. The claimant fully reported the award, the terms of her attorney's fee agreement and the \$899.25 net monthly payment during her April 2010 annual recertification interview. The county budgeted and paid the claimant's CF benefits for 5/10 through 1/13 based on her net \$899.25 long term disability payments. (text continued on next page)

10. REQUESTOR'S PROPOSED ANSWER:

Answer: The fees claimant was obligated to pay to attorney obtaining her disability are not income under §63-502.

"Income" including "Unearned Income" under CalFresh implicitly means available or accessible income under the state regulations and federal law governing the Food Stamp Program (here, 7 USC 2014 (Eligible Households) and 7 CFR 273.9 (Income and Deductions)). 7 CFR 273.9 (c) "Income Exclusions" explains by way of illustration (7 CFR 273.9 (c)(1) (vii)(C)) that the claimant's attorneys are a vendor payment to a third party payment which is excluded from household income: "However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household." (text continued on next page)

11. STATE POLICY RESPONSE (CFPB USE ONLY):

CDSS concurs with the proposed response. 7 CFR 273.9(c) clearly states that if payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household is excluded from income because they are not otherwise payable to the household.

FOR CDSS USE

DATE RECEIVED:

April 17, 2013

DATE RESPONDED TO COUNTY/ALJ:

April 24, 2013

**CALFRESH (CF) PROGRAM
REQUEST FOR POLICY/REGULATION INTERPRETATION (Continued)**

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(continued text from 9 above)

On 12/31/12, the county sent the claimant a NOA informing her that she had been overissued \$3075 CF benefits for 5/10 – 1/13 due to administrative error because the \$735.75/month paid to her attorney should have been included as disability income. At the 2/14 hearing the claimant established that: (1) she had incurred her attorney's fees in order to obtain her disability award; (2) had been legally obligated to pay them under her fee agreement; and (3) had paid them. The claimant therefore asserted, in essence, that her attorney's fees were not "income" because they were neither received nor available to her and therefore were inaccessible.

Question: Are the attorney's fees paid to claimant's attorney "income" under CalFresh?

(continued text from 10 above)

This interpretation is supported by the one court decision I found: Ledbetter v. McDougald (GA 1993) 434 SE2d 764. In Ledbetter, the court held that the claimant's attorney's fees paid from her workers compensation benefits by court order were not in the form of money payable directly to the claimant and therefore were not "income" for purposes of the food stamp program under 7 USC 2014 (d).

Given the same QR requirements, it would be inconsistent to interpret "income" under CalFresh differently than income definition under CalWORKs which provides: Income is any benefit in cash or in kind which is in fact reasonably anticipated to be available to the individual and is received as a result of current or past labor or services, business activities, interests in real or personal property, or as a contribution from persons, organizations or assistance agencies. To be considered in determining the cash aid payment, income must, in fact, be reasonably anticipated to be available to needy members of the family in meeting their needs during the quarter. (§44-101, revised July 1, 1998, revised again July 1, 2004)