



Questions and Answers about CalWORKs Child Care APPEALS AND HEARINGS

1. What is Subsidized Child Care?

Subsidized child care is help paying for child care. Usually, the money is paid directly to the child care provider. California has many different subsidized child care programs, but many of them have long waiting lists. It is a good idea to get on the waiting list.

2. What is CalWORKs Child Care?

CalWORKs (welfare) is cash aid for qualified low-income families. It replaced AFDC in 1998. CalWORKs child care is subsidized child care for families who now get CalWORKs cash aid or who used to get CalWORKs. There is no waiting list as of August 2002. You can choose the type of child care provider that you think is best for your child.

3. How Can I Get CalWORKs Child Care?

If you work or participate in welfare-to-work activities while getting CalWORKs cash aid, you are eligible for CalWORKs child care. You can also get CalWORKs child care if you no longer get CalWORKs cash aid and you are working or in training.

4. What are the Stages of CalWORKs Child Care?

There are three Stages of CalWORKs child care. Dividing child care into stages is supposed to help the state run the program, not affect people who get CalWORKs child care. You should be able to move smoothly from one stage to another. If you have problems, call Legal Aid (see resource box). It is very important for you to know which Stage you are in because the rules for each stage are different.

Tip: Counties have a lot of discretion about which stage to put a family in. Check what your

county is doing by calling your county welfare department or your Resource and Referral agency.

5. What is Stage 1?

You can get Stage 1 child care if you are in a welfare-to-work activity that is not stable.¹ Counties define stability, so each county is different. Stage 1 is also available for up to two years after you stop getting CalWORKs cash aid if child care in stages 2 and 3 is unavailable.² The state Department of Social Services (DSS) is responsible for Stage 1.³ Stage 1 is run by either the county welfare department or an Alternative Payment Program that contracts with the County Welfare Department.⁴

6. What are Stages 2 and 3?

The California Department of Education (CDE) is responsible for these Stages. Alternative Payment Programs run stages 2 and 3 in most counties, but in some counties they are run by county welfare departments.⁵

Stage 2: Families who are in stable welfare-to-work activities and families who used to receive CalWORKs cash aid two years ago or less may be eligible for Stage 2, which has a two-year time limit.

Stage 3: Families who have used up their two years of post-CalWORKs child care eligibility for stage 2 may be eligible for Stage 3, which has no time limit.⁶

7. What Is an Alternative Payment Program (APP)?

An APP is an agency that administers child care subsidies. See below for the appeals and hearing process if you have trouble with your child care.

8. Is There an Income Limit For Child Care Eligibility?

Yes. There is an income limit of 75% of the State Median Income for families who no longer get CalWORKs cash aid. In May 2002, the limit is \$2925 per month for a family of 3. There is an income limit for families to be eligible for CalWORKs cash aid, but there is no separate child care income limit for these families.

9. What is a Notice of Action?

A Notice of Action is a piece of paper that says whether or not you have been approved for child care, or tells you if changes will be made to your child care. You may like some changes, like increases in your hours of child care; you may disagree with others, like reductions in hours of child care or stopping your child care subsidy.

Note: The agency that pays for your child care must give you a Notice of Action; your private child care provider does not.

10. Do I Have a Right to a Notice of Action Regarding Stage 1 Child Care?

Yes. If you get any CalWORKs benefits, including Stage 1 child care, the County must give you advance written notice before reducing or stopping your child care. The Notice of Action must tell you the regulations the county is applying and must be mailed to you at least 10 days before the change is supposed to happen.⁷ You have a right to get a Notice of Action and other information in a language that you understand.⁸

11. Do I Have a Right to a Notice of Action in Stages 2 and 3?

Yes. You have a right to a written Notice of Action if your request for child care services is denied, if you stop being eligible for child care, and if a change is made regarding your child care.⁹ The Notice of Action must include the type of action being taken, the date the action will go into effect, the date the notice is given or mailed to you, a description of the action and the reasons it will be taken, and instructions on how to ask for a hearing if you think the action is wrong.¹⁰ You have a right to 14 days of notice before the action takes place.¹¹ You have a right to get information in a language you understand.¹²

12. Can I Challenge a Decision About My Child Care if I Think it is Wrong?

Yes. The most important thing is to meet the deadlines. You can usually keep getting child care while you appeal.

Tip: The appeals process and deadlines are different for the different Stages, so be careful! See the questions below for more information.

Note: The appeals process described here applies only to decisions made by the agency that pays for your child care, not your private child care provider.

13. How Do I Appeal in Stage 1?

The back of your Notice of Action tells you how to ask for a hearing. Call the telephone number listed for the state hearings office or fill it out to make a written hearing request.¹³ It is a good idea to make all hearing requests in writing and to keep a copy. The deadline for asking for a hearing is 90 days; this date runs from the date of the postmark.¹⁴ To keep getting child care during the appeals process, file your request before the change is scheduled to take place and check the box saying that you want your aid to continue. When you explain why you are appealing, keep your explanation simple and short.

14. How Do I Appeal in Stages 2 and 3?

The back of your Notice of Action tells you how to ask for an appeal. There are two steps in a Stage 2 or 3 appeal: the APP hearing and the CDE written appeal. For the APP hearing, you must file a request with the APP within 14 days of the date you get the Notice of Action.¹⁵ If you appeal, you have a right to continue to get child care while you are waiting for a decision. Within 10 days after it receives your request, the APP must tell you the time and place of the hearing.¹⁶ The time and place should be convenient for you. Then, if you disagree with the decision in the APP hearing, you have another 14 days to send a written appeal to the California Department of Education (CDE).¹⁷ CDE then has 30 days to conduct an investigation and give you a decision. The APP must obey the CDE decision immediately.¹⁸

15. Can I Keep Getting Child Care During the Appeals Process?

Yes. You can keep getting child care if you appeal in time. This continuation of child care is called “aid paid pending” the hearing

Note: You can only continue to get child care if you are getting child care already when you appeal, *not* if you are applying for child care.

16. How Can I Keep Getting Child Care While Waiting for a Stage 1 Hearing?

If you are already getting Stage 1 child care and you ask for a hearing, you are entitled to keep your child care in the same amount or form until you get a hearing decision.¹⁹ Check the box saying that you want your aid to continue. You can keep your child care only if you ask for a hearing before the day the change in your child care is going to take place.²⁰ If you miss that day, but you ask for a hearing within 90 days, you will still get a hearing; however, the county will go ahead with the change in your child care until a decision is made in your appeal.²¹

Example: You get a Notice of Action on April 15 saying that your child care will end on April 30. If you appeal before April 30, your child care will continue while you are waiting for a decision on your appeal.

Note: Aid paid pending is not available in Stage 1 to pay for child care provided by license-exempt providers who have been convicted of certain serious crimes.²²

Note: In some cases, if you get aid paid pending and you lose your hearing, you may have to pay back the child care you received, so be careful.

17. How Can I Keep Getting Child Care While Waiting for a Stage 2 or Stage 3 Hearing?

You have a right to keep getting your child care without change during the appeals process. The deadlines are the same as the deadlines for asking for a hearing.

Note: Just to be sure your child care continues, mention in your appeal that you want aid paid pending.

18. Can Someone Help Me Appeal?

Yes. You may be represented by an “Authorized Representative in all Stages.”²³ You do not have to be represented, and most CalWORKs families are

not represented. Your representative does not have to be an attorney or a paralegal, but it is very important for this person to understand your case and want to help you. Some Legal Aid agencies represent CalWORKs families for free. You do not have a right to have a representative who is paid for by the government. Going to a hearing is not like going to court. The hearing will be informal, and the person in charge is supposed to help make sure that all the relevant information is presented. Do not be afraid.

Stage 1: A relative, friend or other spokesperson may represent you. The person who represents you is your Authorized Representative and does not have to be an attorney or a paralegal.

Stages 2 & 3: You may also have an Authorized Representative in stages 2 and 3. Only people directly affected by the hearing are allowed to attend.

19. Who Is In Charge of Hearings?

Stage 1: DSS is in charge and its rules apply.²⁴ An Administrative Law Judge (ALJ) who works for DSS runs the hearing.²⁵ DSS may overturn an ALJ’s decision but rarely does so.²⁶

Stages 2 & 3: CDE rules apply, and the hearings are less formal than DSS hearings.²⁷ Sometimes the rules are not very clear. The hearing is held before someone who works for the APP that handles your child care. This person must not have made the original decision. This person is called a “hearing officer”²⁸ and must be at a staff level higher in authority than the staff person who made the decision that you are protesting.²⁹

20. Do Family Child Care Providers Have Any Appeals and Hearing Rights?

As of May 2002, child care providers do not have a right to file appeals with DSS, CDE, or APPs about child care subsidy decisions that hurt them, such as late payment, termination of a child care subsidy, or an incorrect payment amount. They do have a right to file grievances with APPs through a process that APPs are required to develop.³⁰

Note: Child care providers do have a right to appeal decisions made by the DSS Community Care Licensing division about licensing issues, such as termination of a license or a negative finding after a complaint by a parent.

Tip: Check what your APP's grievance policy is. Child care providers who have trouble getting paid can tell the families they care for to ask for

hearings. Families have an interest in making sure that their child care provider gets paid correctly and on time.

This document is intended to provide general information about the topic covered and is made available with the understanding that it does not render legal or other professional advice. We believe it is accurate as of May 2002, but the law changes often. If you need legal advice, seek help from a competent attorney.

Useful Resources

- Call **Legal Aid** if you are a low-income CalWORKs participant who needs free help with a problem. Look in the telephone book or call the Coalition of California Welfare Rights Organizations at (916) 736-0616 to find out about the Legal Aid office near you.
- Call your **County Bar Association Referral** service to find a private attorney or Legal Aid. Look in the telephone book or visit the California Bar Association website at www.calbar.org to find the telephone number.
- Call a **Resource and Referral** agency if you are a CalWORKs participant who wants help finding child care, if you are a child care provider who wants CalWORKs participants with child care subsidies to be referred to you, or if you want to find out where to apply for CalWORKs child care. Call the California Resource and Referral Network at (415) 882-0234 or visit their website at www.rrnetwork.org to get information about your local Resource and Referral agency. If you are a parent looking for child care, you can call 1-800-543-7793.
- Call the **Child Care Law Center at (415) 394-7144** for information about child care issues. We are a national and California child care support center for legal services programs, and we:
 - Provide information and referral over the telephone on Mondays, Tuesdays, and Thursdays from 12 to 3.
 - Write useful publications, including the following *Questions and Answers on CalWORKs Child Care: Introduction, Appeals and Hearings, and Diversion* (Visit our website at www.childcarelaw.org).
 - Conduct trainings for CalWORKs recipient groups, community agencies, and others.
 - Provide legal representation only in cases that have an impact on many people.
- Visit the website of the Legal Services of Northern California, www.lsn.net for information about California laws.
- Visit the website of the Western Center on Law and Poverty, www.wclp.org, to read their superb CalWORKs manual.

Endnotes

These endnotes are legal citations for the information above. To look up the laws that apply to you, visit your local law library. Here is a brief explanation of the sources cited. Don't be scared to look up the law to understand your rights.

- Welf & Inst. Code is the California Welfare & Institutions Code. It covers CalWORKs cash grant and work requirements.
- MPP is the California Department of Social Services (DSS) Manual of Policies and Procedures, the regulations issued by DSS.
- An ACL is a DSS All County Letter. It gives more detailed information than the MPP.
- 5 CA Code of Regs. (CCR) is the California Code of Regulations, issued by CDE.

¹ Educ. Code § 8351.

² Educ. Code § 8351~~(b)~~(c); MPP § 47-301.41.- .42

³ Educ. Code § 8351(a).

⁴ Educ. Code § 8351(e).

⁵ Educ. Code § 8354, 5 CCR § 18400 *et seq.*

⁶ Educ. Code § 8354.

⁷ MPP § 22-001(t)(1).

⁸ 45 C.F.R. §§ 80.1 *et seq.*; 260.35(a)(4).

⁹ 5 CCR §§ 18118, 18119, 18419, 18434.

¹⁰ 5 CCR § 18095.

¹¹ 5 CCR § 18419, 18434.

¹² 5 CCR § 18222(b).

¹³ MPP §§ 22-004.2-.3, 22-105.

¹⁴ MPP § 22-001(f)(1)(A)(1).

¹⁵ 5 CCR §§ 18120(a), 18419, 18434.

¹⁶ 5 CCR § 18120(c).

¹⁷ 5 CCR § 18121(a).

¹⁸ 5 CCR § 18122(a).

¹⁹ MPP § 47-420.32.

²⁰ MPP §§ 22-072.5, 22-001f.(1).

²¹ MPP §§ 22-002, 22-001(h)(1); Gov. Code § 6700 *et seq.*

²² MPP § 47-420.4.

²³ MPP § 22-001a.(5)(A), 5 CCR § 18120(f).

²⁴ MPP § 22.004.2

²⁵ MPP § 22-000.1.

²⁶ Welf. & Inst. Code § 10959; MPP § 22-062.1.

²⁷ 5 CCR § 18118 *et seq.*

²⁸ 5 CCR § 18121(a).

²⁹ 5 CCR 18120(d).

³⁰ 5 CCR § 18223(c).