

DEPARTMENT OF HEALTH SERVICES

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February 14, 1996

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons

Letter No.: 96-09

TINOCO POLICY AND PROCEDURES: IMPLEMENTATION, PHASE 1

Ref.: All County Welfare Directors Letter (ACWDL) No. 95-79; E-Mail No. 95136, dated December 6, 1995

SECTION I INTRODUCTION

History of the Tinoco Litigation: Since the inception of the Medi-Cal program, the Department of Health Services (DHS) has interpreted federal Medicaid law as requiring State Disability Insurance payments (SDI) to be counted as unearned income. In 1994, the Tinoco lawsuit was filed against DHS to change DHS policy to one of counting SDI payments as earned income for the purpose of lowering the case's share of cost (SOC) through the application of the earned income deductions. The Tinoco court has decreed that the Medi-Cal program shall treat the SDI of Aid to Families with Dependent Children (AFDC)-linked persons as earned income.

SECTION II OVERVIEW

The Tinoco Prospective Remedy: Future Month SOC Adjustment For New And Continuing Cases Beginning April 1, 1996, new cases which meet certain requirements will have their SDI payments counted as earned income. In addition, beginning April 1, 1996, qualified cases which are continuing cases in the month they are rebudgeted under this ACWDL will have their SOC adjusted for subsequent months to reflect that their SDI is earned income. These continuing cases are also subject to the Tinoco Reimbursement Remedy.

The Tinoco Reimbursement Remedy: Qualified ongoing and terminated cases identified under this ACWDL may be eligible for a monetary reimbursement for months in the Tinoco Reimbursement Period in which the case's SOC was lower as a result of treating the case's SDI as earned income. The Tinoco-reimbursement period extends from January 1991 through the month in which the county recalculates the case SOC. Upon notification by the counties, the Medi-Cal program will issue checks to certain persons in these SOC-adjusted cases.

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Two-Part Implementation Of The Tinoco Reimbursement Remedy: This ACWDL implements the Tinoco Prospective Remedy, consisting of a SOC adjustment for future months, in its entirety, and part of the Tinoco Reimbursement Remedy. The portion of the Tinoco Reimbursement Remedy which applies to qualified cases which may not be identified from the list of flagged cases or from the QSR/redetermination process discussed in this ACWDL will be implemented through a later ACWDL. Under this forthcoming ACWDL, the Tinoco Reimbursement Remedy will be applied to qualified cases not reimbursed under this ACWDL which are identified through applications for this Reimbursement Remedy submitted by persons responding to a Tinoco notice posted at certain county locations and sent by DHS to persons with certain aid codes. DHS is not able to implement this part of the Reimbursement Remedy at this time.

SECTION III DEFINITIONS

Qualifying State Disability Insurance Payments: Under the terms of the settlement agreement, SDI qualifies as earned income when verified SDI is received by an eligible or ineligible AFDC MN/MI person in a qualified case.

Qualified Case: A case is a qualified case for any month in which an eligible or ineligible AFDC MN/MI person in the MFBU of an identified case with a SOC received verified SDI. Cases are identified according to the instructions in Section V of this ACWDL.

Tinoco Reimbursement Period: This period extends from January 1, 1991 through the month in which the county performs the case conversion. The exact length of this period may vary by case and depends on when the county performs the SOC recalculation for the case.

Case Conversion And Post-Tinoco SOC: Case conversion means recalculating the qualified case's SOC to reflect that the case's qualifying SDI payment(s) is earned income by applying the applicable Medi-Cal earned income disregards (per the instructions in this ACWDL) to the case's qualifying SDI payments. The recalculated SOC is the case's Post-Tinoco SOC.

New Case: The term "new cases" refers to potential Medi-Cal cases for which the county is in the process of making an eligibility determination on or after April 1, 1996 as a result of a Medi-Cal application submitted to the county. New Medi-Cal applications, Medi-Cal applications submitted after a break in eligibility, and Medi-Cal applications submitted by a person transferring from a cash-assistance program or from a no-SOC continuation program such as Transitional Medi-Cal (TMC) or Edwards, initiate new cases, and such cases remain new cases until the case's budget has been computed and the SOC amount has been entered into the MEDS system.

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Continuing Case: A case is a continuing case as of the month in which the county performs the case conversion under this ACWDL.

Discontinued Case: A case which was discontinued previous to April 1, 1996.

SECTION IV ADJUSTING SOC FOR NEW MEDI-CAL CASES

For all MFBU (MBU) budget determinations (or posting of SOC) undertaken on, or after, April 1, 1996, as part of an eligibility-determination for a new case, regardless of the application date for the case, treat the verified SDI payments received by an AFDC MN or MI beneficiary whose income is counted in the SOC calculation as earned income and apply the four earned-income deductions (see below) to these SDI payments, to the extent applicable given the facts of the case. See Section IX for instructions regarding the verification of SDI.

SECTION V IDENTIFYING DISCONTINUED AND CONTINUING CASES FOR THE TINOCO REIMBURSEMENT AND PROSPECTIVE REMEDY

Per the instructions in ACWDL 95-79 counties have been flagging cases with SDI. Counties will continue to identify such cases through March 31, 1996. Through the April 1, 1996 to June 30, 1996 period counties will also identify cases for which an inspection of QSRs and redetermination documents submitted during this period show reported SDI.

The cases identified from inspection of QSRs for reported SDI will be cases flagged per ACWDL 95-79. To avoid duplicative identification of cases and wasted effort in identifying cases, and to provide counties with flexibility in their implementation plan, counties may elect to utilize either the list of flagged cases as the primary means of identification, or may elect to utilize QSR/redetermination documents as the primary means of identifying cases. The flagging election is available only to counties whose flagging process has been complete. The QSR/redetermination election is available to all counties. Counties making this latter election must take steps to ensure that cases which were flagged, but which were discontinued previous to the county receiving a QSR/redetermination document during the April 1 to June 31, 1996 period, are inspected to determine whether they are qualified cases.

In the next several months an additional method for identifying cases will be implemented. DHS will mail notices describing Tinoco qualification and benefits to certain continuing and discontinued cases. Many of the applications counties will receive from persons responding to this notice will correspond to cases which have already been identified as a flagged cases, or

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identified through the QSR process, and which have had their budgets converted and the head-of-the-household reimbursed under this ACWDL. Maintaining a log of cases identified under this ACWDL should facilitate screening future Tinoco applications and prevent revisiting those cases identified via the future Tinoco applications which have already been identified and evaluated under this ACWDL.

SECTION VI CONVERTING THE CASE BUDGET FOR QUALIFYING CONTINUING CASES AND TERMINATED CASES; ADJUSTING SOC

Converting The Continuing Case Budget And Adjusting SOC: Beginning April 1, 1996, after (i) identifying that a continuing case has verified SDI from the QSR or redetermination document, or from the list of flagged cases, (ii) determining that the case is a qualified case, (iii) and obtaining the necessary verification (see Section IX) the county will recalculate and adjust the case's SOC on MEDS for the next month (assuming that SDI will be received in the next month). The county will also convert the case budget for all past months in the Tinoco Reimbursement Period for which the case is a qualified case. It is not necessary to convert the case budget for any periods for which there are no verified medical expenses. Counties will continue to convert the case budget and adjust SOC of continuing qualified cases which are identified from QSR/redetermination documents submitted by June 30, 1996.

Beneficiaries have 30 days to provide verification requested by the county. In addition, beneficiaries have another 15 days to provide this verification if there is good cause for the beneficiary being unable to provide the verification within 30 days. The items requiring verification are discussed in Section IX. If beneficiaries do not provide this *verification* within 45 days the county must commence recalculation of the case's SOC.

Converting The Discontinued Case Budget: Beginning April 1, 1996, counties will convert the budgets for those months during the Tinoco Reimbursement Period, up until the cases were discontinued, for which the flagged discontinued cases were qualified cases and for which the necessary verification has been obtained. It is not necessary to convert case budget for any periods for which there are no verified medical expenses.

Conversion Note: Although the conversion of the case budget under Tinoco means treating the qualified case's SDI as earned income and applying the four earned income deductions as appropriate to that SDI, if a qualified case has already received all available deductions based on other earned income, the conversion of the case budget under Tinoco may not have any impact on the case's SOC. Some of the earned income deductions, for example the \$90 work deduction,

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allow only a limited amount to be disregarded and this limited deduction may have already been fully applied to other earned income of the individual receiving the SDI payments. Other earned income deductions may not apply.

SECTION VII DETERMINING THE REIMBURSEMENT FOR QUALIFYING CONTINUING AND DISCONTINUED CASES

Calculating The Reimbursement: After converting the budget of the qualified continuing or terminated case, counties will calculate the case's total reimbursement by totaling the monthly reimbursement amounts for the months within the Tinoco Reimbursement Period for which the case is a qualified case. The monthly reimbursement amounts are the amount by which the case's verified medical expenses (see Section IX on "Verification") exceed the case's post-Tinoco SOC. Counties will enter the total of these monthly reimbursement amounts on the "Tinoco Reimbursement Request" form (see Exhibit A), and then send this completed form to DHS.

SECTION VIII COMPLETING AND TRANSMITTING THE TINOCO REIMBURSEMENT REQUESTS

The "Tinoco Reimbursement Request" (see Exhibit A) is the vehicle which DHS will use to issue Tinoco reimbursement checks. Counties will complete a "Tinoco Reimbursement Request" form for each case which the county has determined will receive a Tinoco reimbursement. For cases which the county determines will receive a reimbursement, counties must transmit the completed Reimbursement Requests to DHS within 30 days of converting the case's budget.

Mail the Tinoco Reimbursement Requests to:

Steven Bogart
Medi-Cal Eligibility Branch Clerical Unit
Attention: Tinoco Reimbursement
Department of Health Services
714 P Street, Room 1719
Sacramento, CA 95814

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SECTION IX VERIFICATION

SDI VERIFICATION: Before converting the case budget or adjusting SOC under Tinoco, counties must verify 1) that the payments in question are qualifying SDI payments, and 2) the months and monthly amount(s) of such SDI payments. SDI is paid for disability arising from a non-work-related injury which renders the recipient unable to work. It is paid at 55 percent of wages received during a certain base period, up to a certain ceiling. The SDI benefit is generally paid biweekly for up to a year.

For cases identified per the instructions in Section V of this ACWDL which have a SOC, counties will determine whether an AFDC MN or MI person in the case received SDI during the Tinoco Reimbursement Period, and if so, the amounts of this SDI. Counties will make this SDI verification by reviewing the case file.

APPLICABLE EARNED INCOME DEDUCTION VERIFICATION: The \$90 Work Expense Deduction (Title 22, California Code of Regulations, Section 50553.1) is always applicable to SDI, to the extent it has not been applied to other earned income of the SDI recipient. The other three earned income deductions (Dependent Care Deduction, Sec. 50553.5, Student Exemption, Sec. 50543, and the Thirty Dollars Plus One-Third deduction, Sec 50553.3) are not applicable unless the requirements of each have been satisfied. If the county is not able to ascertain the applicability of these three deductions from information in its case file when converting the case's budget for any month in which it is a qualified case, the county must issue a written request to the qualified case at its last known address requesting the submission of the appropriate verification for any of these three deductions which the beneficiary alleges is applicable. The timelines for the beneficiary's submission of requested verification are set forth in Section VI.

Normally, a person receiving SDI is not working and is therefore available to care for the children. The Dependent Care Deduction is not applicable to SDI unless either the SDI recipient is still working, or he/she is so incapacitated from his/her illness or injury that he/she is unable to care for the children, and there is no one else in the family who is able to care for the children. The other requirements of this deduction still apply.

MEDICAL EXPENSE VERIFICATION: In order to obtain a Tinoco reimbursement for any month, the qualified case's verified medical expenses must exceed the case's post-Tinoco SOC. For purposes of this ACWDL, incurred medical expenses for identified qualified cases will be verified as follows:

1. Counties in which the Benefits Identification Card (BIC) have replaced the paper card (called BIC counties) will verify medical expenses incurred by a case by inspecting the MEDS screens or "SOCR" screens. If MEDS shows that the case has been certified as meeting its (pre-Tinoco) SOC, the case's incurred medical expenses equal this SOC. If MEDS does not show the case as certified, the case's medical expenses, if any, will be the case's SOC less the remaining SOC balance shown on the "SOCR" screen.
2. For all counties, for months in which the MC 177 "Record of Health Care Costs" was in use, this form may be used to ascertain what the case's medical expenses were for a month. The case's medical expenses are equal to the total of the medical expenses incurred by the case as shown on the MC 177.
3. For all counties, for months previous to the 15 month limit applicable to the MEDS or SOCR screens continuing back through January 1, 1991, the Data Systems Branch (DSB) of DHS will provide SOC-certification data. The case's medical expenses will be equal to the case's SOC. Counties will use their TAO systems to transmit the identity of cases for which they want SOC-certification data to DSB. Counties may request this list on a "flow or batch basis." DSB will make available a TAO screen which counties will use to submit requests. DSB will transmit the SOC-certification data for the case requested to the location which originated the request. DSB is preparing the system that counties will use. It is expected that it will be several months before this system is in place. Counties will be advised of developments.
4. For months for which the medical expenses incurred by the case cannot be determined through the methods described in numbered-paragraphs 1-3 above, the county must issue a written request to the case at its last known address for the household to verify medical expenses provided by a health care provider which were incurred by the household. The case's verified medical expenses for such a month are the documented medical expenses, but not exceeding the case's pre-Tinoco SOC. The timelines for the beneficiary's submission of requested verification are set forth in Section VI. Acceptable verification will consist of medical bills or statements from medical providers which identify the following:
 - a) the nature of the medical service,
 - b) the date the medical service was provided,
 - c) the recipient of the medical service,

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- d) the bill's or statement's issuance date,
- e) the cost of the medical service,
- f) the name, address and provider number of the medical provider for a medical bill (a receipt for a pharmaceutical purchased at a pharmacy need not contain the address of the provider).
- g) Applicable only to provider's statements (and not to medical bills), the provider's signature and phone number.

The prescription label from a pharmaceutical container may be submitted by the beneficiary to meet the requirements listed in a), b), and c) above. A provider's statement or medical bill providing the rest of the necessary information must be submitted in conjunction with this prescription label. In such a case, the bill or provider statement must correspond to the pharmacy label.

SECTION X MEDICAL EXPENSES FROM TINOCO-REIMBURSED CASES NOT APPLICABLE TO SOC UNDER HUNT

Medical expenses incurred in any month for which the Medi-Cal case was reimbursed under a Tinoco remedy may not be applied toward SOC in any later month under the Hunt v. Kizer old medical bill remedy because such bills either have already been reimbursed under the Tinoco remedy or, were used to certify SOC for purposes of providing such reimbursement.

SECTION XI REVIEW OF THE EARNED INCOME DISREGARDS POTENTIALLY APPLICABLE TO SDI PAYMENTS

The four AFDC MN/MI earned-income deductions, and instructions for their application, are summarized below. Instructions regarding which of these deductions may be applied to a qualified case are provided elsewhere in this ACWDL.

1. **\$90 Work Expense Deduction (Title 22, CCR, Section 50553.1).** This deduction may be applied to qualifying SDI payments only to the extent not previously applied to the other earned income of the SDI recipient.
2. **Student Exemption (Title 22, CCR, Section 50543).** Apply to qualifying SDI only when warranted by the facts in the case record or provided to the county.
3. **\$30 and 1/3 deduction.** Apply to qualifying SDI payments only to the extent warranted by the information in the case record or provided to the county.
4. **The Dependent Care Deduction at Title 22, CCR, Section 50543** will generally not be applicable, (because the SDI recipient will generally be available to care for the children) except when there is no other family member able to care for the dependent children and the SDI recipient is so disabled as to be unable to care for the children. Apply to qualifying SDI payments only to the extent warranted by the information in the case record or provided to the county.

SECTION XII IDENTIFICATION OF THE TINOCO REIMBURSEMENT RECIPIENT

The Tinoco reimbursee is the person in the case MFBU who during the Tinoco reimbursement period is, or was, an eligible or ineligible member of the MFBU and the head-of-the-household within that MFBU. The reimbursee's address will be the mailing address for the case unless the county is aware of a different address. When completing the "Tinoco Reimbursement Request," counties will include the name and address of the reimbursee. DHS will issue the Tinoco reimbursement in the name of the reimbursee to the case address. Occasionally DHS may issue the reimbursement to another person in the MFBU, if appropriate. DHS reimbursement to any person in the case MFBU fulfills DHS' liability for Tinoco reimbursement for the case.

SECTION XIII MAINTAINING RECORDS OF CASES WHICH QUALIFIED FOR TINOCO REIMBURSEMENT

For the purpose of settling potential disputes regarding Tinoco benefits, counties must maintain records of the calculations used to determine the post-Tinoco SOC and reimbursement for all cases which qualified for Tinoco reimbursement checks. Counties must keep copies of all Tinoco

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related documents issued to, or received from, the beneficiary. Counties must also compile and maintain a log of cases which will receive a Tinoco Reimbursement, that is, cases included in the "Tinoco Reimbursement Request" sent to DHS. A sample log form is provided in Exhibit B.

SECTION XIV PROVISION OF NOTICE REGARDING APPROVAL/DENIAL

Counties will issue Tinoco NOA's (enclosed as Exhibit C) to continuing or discontinued cases which had their budgets converted pursuant to this ACWDL. These NOAs will be issued within 30 days of converting the case budget. The Tinoco NOA1 will be issued to cases which will not receive any reimbursement. The Tinoco NOA2 will be issued to cases which will receive a reimbursement. These NOAs will not be available on SAWS. This ACWDL does not alter the standard NOA notification issued to new cases.

SECTION XV MODIFICATION OF THE FLAGGING REQUIREMENT

ACWDL 95-79 required counties to flag existing and new Medi-Cal cases with SDI in any month from November 1995 onwards. This flagging requirement expires April 1, 1996, the date for which counties will begin to treat qualifying SDI of new cases as earned income. Although as of this date counties will no longer flag new cases, counties must maintain their lists of previously flagged cases.

If you have questions regarding the subject matter of this ACWDL, please contact Dave Rappolee of my staff at (916) 657-0163.

Sincerely,

ORIGINAL SIGNED BY
TOM WELCH for

FRANK S. MARTUCCI, CHIEF
Medi-Cal Eligibility Branch

Enclosures

EXHIBIT A

DHS Address: Attn: Tinoco Retro Reimbursement
Steven Bogart
Department of Health Services
Medi-Cal Eligibility Branch
714 P Street, Room 1650
Sacramento, CA 95814

Issuing County (Address)

TINOCO REIMBURSEMENT REQUEST

To: Pat Kinney
Medi-Cal Accounting Section
8/1143

From: Medi-Cal Eligibility Branch
8/1650

This is to advise you that the following individual qualifies for a reimbursement under the Tinoco v. Belshé, et. al. court order, U.S. District Court, Northern District of California, case #C 94 0947 WHO. Please prepare and issue a reimbursement check for the amount shown below to the address provided.

TO BE COMPLETED BY THE COUNTY - PLEASE PRINT

Reimbursee (MFBU/Household Head) Name: _____ SSN _____

Address: _____

SDI Recipient's Name and SSN _____

(Name)

(SSN)

Reimbursement Total: _____

Number of Months In Which Case's Verified
Medical Expenses Exceed The Post-Tinoco SOC _____ ;

Reimbursement Months, From _____ To _____ ; Other reimbursement months _____

Case ID Number _____

Signature of County Preparer: _____ Ident. No. _____ Date: _____

Phone Number: _____ Title: _____

FOR STATE USE ONLY

Certified by: _____ Date: _____
Authorized M.E.B reviewer

Phone Number: _____

EXHIBIT B

EXHIBIT C

The following NOAs are sample NOAs for training purposes. A couple of minor changes will be made and final versions transmitted to counties in the next few weeks. The language "squib" on these NOAs is being translated into several languages. A Spanish version of each NOA is being prepared. Copies will be made available at the DHS warehouse at a later date which counties may order. More information will be forthcoming.

NOTICE OF ACTION

COUNTY OF: _____

County Name and _____
Address Block

State of California
Health And Welfare Agency
Department of Social Services

Addressee:

Notice Date:
Case Name:
Case Number:
Worker Name:
Telephone:
Address:

Questions? Ask your Worker

If you do not understand English, ask your worker

You do not qualify for a reimbursement under Tinoco. This is because:

1. Your case did not have enough medical expenses to meet your case's recalculated SOC (see below.)
2. The \$90 deduction was fully applied to your other earned income and you qualified for no other AFDC MN/MI deduction.
3. Other; explanation: _____

State Hearing: If you think this action is wrong you can ask for a hearing. The back of this page tells how.

To be completed by the county if #1 above is checked:

Your SOC has been changed to \$ _____ from \$ _____ for _____

Your new SOC was determined as follows:

Gross income:	\$ _____
Net nonexempt income:	\$ _____
Maintenance need:	\$ _____
Excess income:	\$ _____
Share of Cost:	\$ _____

Rules: These rules apply; you may review them at your welfare office: 50781, 50782, 50783.

Tinoco:NOA1 (12/95)

NOTICE OF ACTION

COUNTY OF:

Health And Welfare Agency
Department of Social Services

County Name and
Address Block

Notice Date:

Case Name:

Case Number:

Worker Name:

Telephone:

Address:

Addressee:

Questions? Ask your worker.

If you do not understand English, ask your worker

The county has determined that your share of cost has decreased as a result of the fact that Medi-Cal now counts your case's state disability insurance (SDI) as earned income.

Your share of cost has been changed to \$ _____
from \$ _____ for _____

State Hearing: If you think this action is wrong you can ask for a hearing. The back of this page tells how.

Your new SOC was determined as follows:

Gross income: \$ _____
Net nonexempt income: \$ _____
Maintenance need: \$ _____
Excess income: \$ _____
Share of Cost: \$ _____

You will receive a reimbursement
of \$ _____

Rules: These rules apply; you may review them at your welfare office: 50653.5(B), 50781, 50782, 50783.

Tinoco:NOA2 (12/95)