SUMMARY

The claimant's request for hearing is dismissed, without prejudice, with regards to a $1216 CalWORKs overpayment for November through December 2016, as it was determined that the issue is now moot based on evidence that it has been fully resolved by a final action.

The claimant's request for hearing is dismissed, without prejudice, with regards to a $490 CalFresh overissuance for November through December 2016, as it was determined that the issue is now moot based on evidence that it has been fully resolved by a final action.

San Diego County shall abide by its stipulation to provide remedies to the claimant in the CalWORKs program with regards to a $222 CalWORKs overpayment for November 2017, as set forth below.

The claimant's request for hearing regarding a $856 CalWORKs overpayment for January through February 2017 is dismissed, where it is found that she did not file the hearing request within 90 or 180 days of the mailing of adequate and language compliant notice of adverse action that was received by the claimant, and good cause for late filing does not apply. In addition, there were no allegations or showing of any facts that would support an equitable basis to find state hearing jurisdiction despite the claimant's untimely filing.

[003-2, 202-2, 150-4, 004-2]

FACTS AND FINDINGS

On January 30, 2020, the claimant requested this State hearing. A summary of claimant's hearing request is contained in the administrative record as claimant's exhibit A, and states that she disputes a $1471 CalFresh.

At the hearing, which was conducted on May 27, 2020 via telephone, the assigned San Diego County appeals specialist testified and stood by the county's position, and submitted the Statement of Position (SOP) with attachments into the administrative record as county's exhibit 1.

The county noted that there is no $1471 CalFresh overissuance in claimant's case, but identified the following CalFresh overissuances and CalWORKs overpayments, and the claimant confirmed that these were her issues at hearing:

- $1216 CalWORKs overpayment for November through December 2016;
- $490 CalFresh overissuance for November through December 2016;
- $222 CalWORKs overpayment for November 2017;

- $856 CalWORKs overpayment for January through February 2017.

Claimant testified at the hearing, and also acknowledged receipt of the SOP.

The appeals specialist testified that the county has resolved the $1216 CalWORKs overpayment for November through December 2016, and the $490 CalFresh overissuance for November through December 2016, when it rescinded the respective overpayment and overissuance, and refunded the amount collected on the CalWORKs overpayment, whereas nothing had been collected from the claimant on the CalFresh overissuance.

At the hearing, the parties agreed with regards to the $222 CalWORKs overpayment for November 2017 as stated below in Stipulation and Order.

On June 2, 2017, the county mailed a notice of action informing claimant of a $856 CalWORKs overpayment for January through February 2017.

The county argued lack of jurisdiction on this issue, as the notice of action dated June 2, 2017, had been mailed more than 90 days and more than 180 days prior to the claimant's hearing request of January 30, 2020. The county stated that the notice of action had been mailed to claimant's address of record at that time which continues to be the current mailing address and the notice of action was not returned to the county as undeliverable.
The notice of action is contained in the administrative record, is written in English, indicates the action being taken, the reason for the action, the regulations to support the action and the claimant's hearing rights.

Claimant confirmed receipt of the notice of action. She maintained that she was trying to resolve the issue with the county and argued that the county resolved the other 3 issues which is why she feels this one should also be resolved. When asked if anyone at the county advised her to not request a hearing, she denied that.

LAW

All the regulations cited refer to the Manual of Policies and Procedures (MPP), unless otherwise noted.

Stipulation

Department of Social Services Manual of Policies and Procedures (MPP) Section 22-073.37 provides that the county representative shall have authority at the hearing to make binding agreements and stipulations on behalf of the County Welfare Department. (§ 22-073.37)

If the claimant chooses to reject the county's stipulation at the hearing, the judge will review the merits of the case and issue a decision. (MPP, § 22-073.37.) Any prehearing

settlement discussions between the parties discussed at hearing shall not prejudice the claimant in any manner. (Evid. Code § 1152, subd. (a).)
(All County Letter No. 17-102 (September 29, 2017), p. 5)

Jurisdiction - Moot

A state hearing shall be available to a claimant who is dissatisfied with a county action or inaction on a county-administered state aid program. (§22-003.1)

The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either the county or the claimant which they have jointly agreed to discuss. (§22-049.5)

The state hearing decision shall determine only those circumstances and issues existing at the time of the county action in dispute or otherwise agreed to by the parties. (§22-062.4)

A request for hearing or portion thereof shall be dismissed by a written hearing decision when: The Administrative Law Judge determines that the issue is moot based on evidence that it has been fully resolved by a final action. (§22-054.3.38)

Jurisdiction - Timeliness

TIME LIMIT ON REQUEST FOR A STATE HEARING

.1 The request for a state hearing shall be filed within 90 days after the date of the action or inaction with which the claimant is dissatisfied.

.11 Except as provided for in Section 45-306.3 if the claimant received an adequate and language-compliant notice of the county action, the request for hearing shall be filed within 90 days after the notice was mailed or given to the claimant. If adequate notice was required but a notice was not provided, or if the notice is not adequate and/or language-compliant, any hearing request (including an otherwise untimely hearing request) shall be deemed to be a timely hearing request.

.12 In the CalFresh Program, the time limits for state hearing requests are set forth in Sections 63-802.4 and 63-804.5.

.13 Notwithstanding MPP section 22-009.11 and .12 above, the claimant may request a hearing after 90 days, but no more than 180 days (except as provided in 22-009.14), after the notice was mailed or given to the claimant if the claimant has good cause for the delay.

.131 Good cause means a substantial and compelling reason beyond the claimant's control, considering the length of the delay, the diligence of the claimant, and the potential prejudice to the other party.

.132 The claimant's inability to understand the adequate and language-compliant notice, in and of itself, shall not constitute good cause.

.14 Nothing in MPP section 22-009 shall preclude the application of the principles of equity jurisdiction as provided by law.
.2 A recipient shall have the right to request a state hearing to review the current amount of aid. At the claimant's request, such review shall extend back as many as 90 days from the date the request for hearing is filed and shall include review of any benefits issued during the entire first month in the 90-day period.
(§22-009.1 and .2)

ADEQUATE NOTICE

.1 Except as provided in Section 22-071.2, the county shall give the claimant adequate notice as defined in Section 22-001(a)(1) in the following instances:

(a) When aid is granted or increased.
(b) For CalWORKs and CalFresh cases, when aid is denied, decreased, not changed following a recipient mid-period report, cancelled, or discontinued. When aid is not changed due to a voluntary recipient mid-period report, the notice shall be sent as soon as administratively possible, but no later than thirty days from the date the voluntary report is made.
(c) For all cases other than CalWORKs and CalFresh cases, when aid is denied, decreased, suspended, cancelled, discontinued, or terminated.

.1 For purposes of Sections 22-071.1(b) and (c), a decrease shall include an overpayment adjustment and balancing.

(d) When the county demands repayment of an overpayment or a CalFresh overissuance.
(e) When the county takes action after the claimant has conditionally withdrawn a request for a state hearing (see Section 22-054).
(f) When a CalFresh application is pended (see Section 63-504.24).
(g) When the county determines that immediate need does not exist (see Section 40-129).
(h) When the county takes action regarding compliance related issues resulting from state hearing decisions (see Sections 22-001(c)(3) and 22-078).
(i) When the county takes action to change the manner or form of payment to a protective or vendor payment.
(j) When the county makes an adverse home approval decision on an application of a relative or non-relative extended family member for approval to provide foster care as described in Harris v. CDSS or under the Resource Family Approval program.

.2 The adequate notice requirement is not applicable to certain actions involving Social Services (Division 30) and CalFresh (MPP Section 63-504.266).
.3 In all cases, the notice shall be prepared on approved Department forms or a county substitution which has been approved by the Department, including but not limited to a county-developed computer equivalent.

.4 The notice shall be prepared in clear, nontechnical language.
.5 If a claimant submits a request for a state hearing on the back of the notice, a duplicate copy of the notice shall be provided to the claimant on request.
.6 When appropriate, the notice shall also inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid.
(§ 22-071)

Adequate Notice - A written notice informing the claimant of the action the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested, and for the California Work Opportunity and Responsibility to Kids (CalWORKs) Program, if the county action is upheld, that the aid pending must be repaid. In the CalFresh Program, see Section 63-504.2. The written notice must meet applicable requirements of Section 22-071.
(§ 22-001 (a)(1))

A request for hearing shall be dismissed if the request for hearing is filed beyond the time limit set forth in §22-009. (§22-054.32)

A letter correctly addressed and properly mailed is presumed received in the normal course of the mail. (7 Code of Federal Regulations (CFR) §273.13; Evidence Code §641)
If the adverse party denies receipt of letter properly mailed, statutory presumption of receipt is gone from the case, but the trier-of-fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received. (*Bear Creek Master Ass'n v. Edwards* (2005, 4th Dist.) 130 Cal.App.4th 1470, 1485-1486.)

Equitable Estoppel/Equitable Jurisdiction
(a) A person is not entitled to a hearing pursuant to this chapter unless he or she files his or her request for the same within 90 days after the order or action complained of.

(b)(1) Notwithstanding subdivision (a), a person shall be entitled to a hearing pursuant to this chapter if he or she files the request more than 90 days after the order or action complained of and there is good cause for filing the request beyond the 90-day period. The director may determine whether good cause exists.

(2) For purposes of this subdivision “good cause” means a substantial and compelling reason beyond the party's control, considering the length of the delay, the diligence of the party making the request, and the potential prejudice to the other party. The inability of a person to understand an adequate and language-compliant notice, in and of itself, shall not constitute good cause. The department shall not grant a request for a hearing for good cause if the request is filed more than 180 days after the order or action complained of.

(3) This section shall not preclude the application of the principles of equity jurisdiction as otherwise provided by law.
(W&IC §10951(b)(3))
The Director of the Department of Social Services was precluded by the doctrine of equitable estoppel from denying retroactive benefits to a recipient of Aid to the Totally Disabled for payment of Social Security on behalf of her provider of attendant care. That request for relief would otherwise have been barred by the statute of limitations. (*Canfield v. Prod* (1977) 67 Cal.App.3d 722, 137 Cal. Rptr. 27.)

The California Supreme Court, in citing *Canfield v. Prod* with approval, has held that, under appropriate circumstances, a recipient of welfare benefits may raise the defense of equitable estoppel in state administrative hearings. (*Lentz* v. *McMahon* (1989), 49 Cal.3d 393, 400-401; 261 Cal.Rptr. 310, 313-314.)

In the case *Canfield v. Prod*, the Court of Appeal discussed the doctrine of equitable estoppel and its application to government agencies. The decision notes first that four basic elements must be present in order to apply the doctrine of equitable estoppel:

(1) The party to be estopped must be apprised of the facts;
(2) The party must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;
(3) The other party must be ignorant of the true state of facts; and
(4) The other party must rely on the conduct to his injury.

Additionally, in regard to the estoppel of government agencies, the case held that application of estoppel will be applied when justice and right require it but that an estoppel will not be applied when to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. Further, in determining whether estoppel is applicable to a government agency, the more culpable or negligent the agency or its representatives have been, and the more serious the effect of the advice on the claimant, the more likely the doctrine is to be applied. Also of importance in assessing an estoppel claim against a public agency, the Courts have looked to "the seriousness of the impact or effect of such conduct or advice on the claimant." (*Canfield v. Prod, supra, 67 Cal.App.3d at pp. 732-734*; see also *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462.)

In assessing an estoppel claim against a government agency, the Courts look to whether and to what extent the agency is certain of the knowledge or information it dispenses, and whether it purports to advise and direct or merely to inform and respond to inquiries (*Tyra* v. *Board of Police etc. Commrs*. (1948) 32 Cal.2d 666, 670; *Phillis* v. *City of Santa Barbara* (1967) 229 Cal.App.2d 45, 60.)

In balancing the burdens between the individual seeking estoppel and the government, the California Supreme Court noted that a 'burden on the individual' can be identified by the fact that welfare benefits are intended to provide a basic means of subsistence, and

that county eligibility workers "who purport to advise and direct recipients, clearly stand in a confidential relation to them." (*Lentz* v. *McMahon, supra,* 49 Cal.3d at pp. 400-401; citing Welf. & Inst. Code, §11000 [legislative intent underlying CalWORKs].)

"Estoppel against a county's assertion of purely procedural preconditions and limitations on benefits, when the county itself is responsible for the procedural default, will not defeat the underlying statutory policy of safeguarding accurate and orderly administration of the welfare system. The policy considerations may well be different, however, when substantive preconditions of benefits are in issue." (*Lentz* v. *McMahon, supra,* 49 Cal.3d at p. 401; see also *Lentz* v. *McMahon, supra,* 49 Cal.3d at pp. 401-402 [estoppel appropriate when government agent negligently or intentionally caused recipient to fail compliance with a procedural precondition to eligibility].)

The doctrine of equitable estoppel may be applied against the government where justice and right require it. However, it is a well established proposition that an estoppel will not be applied against the government if to do so would effectively nullify 'a strong rule of public policy, adopted for the benefit of the public' (*City of Long Beach v. Mansell,* supra, 3 Cal 3d at p. 493). And, estoppel cannot expand a public agency's powers and cannot be invoked to contravene statutes and constitutional provisions that define that agency's powers. (*Fleice v. Chualar Union Elem. Sch. Dist.* (1988) 206 Cal.App.3d 886.)

When negligence is the basis of the estoppel, the injured party must show that such negligence was the proximate cause of the deceit. (*Gajanich v. Gregory* (1931, 1st Dist.) 116 Cal.App. 622.)

"The doctrine of unclean hands does not deny relief to a plaintiff guilty of any past misconduct; only misconduct directly related to the matter in which he seeks relief triggers the defense." (*Kendall–Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 974; cited by *Garcia v. World Savings, FSB* (2nd Dist., 2010) 183 Cal.App.4th 1031, 1044.)
"The misconduct that brings the unclean hands doctrine into play must relate directly to the transaction concerning which the complaint is made. It must infect the cause of action involved and affect the equitable relations between the litigants." (*Kendall–Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 984; cited by *Garcia v. World Savings, FSB* (2nd Dist., 2010) 183 Cal.App.4th 1031, 1044.)

"The unconscionable conduct must be of such a nature that it would, if permitted to go unnoticed, result in prejudice to the other party. Here, respondents failed to prove that either damage or prejudice would result to them if the option were specifically enforced. It is said, in 18 Cal.Jur.2d, Equity, section 29, page 185: 'In applying the maxim that he who comes into equity must do so with clean hands, * * * the misconduct must be intimately connected with the matter in which he seeks equitable assistance, and of such a prejudicial nature to the rights of another that it would be inequitable to grant him that assistance.'" (*Jeong Soon v. Beckman* (5th Dist., 1965) 234 Cal.App.2d 33, 36.)

General Legal Principles:

The county has the burden of going forward in the state hearing to support its determination.
(Man. Pol. & Pro. § 22-073.36)

In administrative tribunals, the party asserting the affirmative of the issue generally has the burden of proof.
(*Cornell* v. *Reilly* (1954) 127 Cal.App.2d 178; and California Administrative Agency Practice, California Continuing Education of the Bar (1970) p.183)

The burden of producing evidence is the obligation of a party to produce evidence sufficient to avoid a ruling against him on the issue. (Evidence Code § 110) The burden of producing evidence as to a particular fact is initially on the party with the burden of proof as to that fact.
(Evid. Code §550)

The burden of proof is the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.
(Evid. Code § 115)

A “preponderance of the evidence” means “more likely than not.”
(*Tellabs, Inc. v. Makor Issues & Rights, Ltd.* (2007) 551 U.S. 308, 310)

The Evidence Code deals with general rules as to the determination of credibility of witnesses. The rule provides as follows: "Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

(a) His demeanor while testifying and the manner in which he testifies.
(b) The character of his testimony.
(c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies.
(d) The extent of his opportunity to perceive any matter about which he testifies.
(e) His character for honesty or veracity or their opposites.
(f) The existence or nonexistence of a bias, interest, or other motive.
(g) A statement previously made by him that is consistent with his testimony at the hearing.
(h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
(i) The existence or nonexistence of any fact testified to by him.
(j) His attitude toward the action in which he testifies or toward the giving of testimony.

(k) His admission of untruthfulness.
(Evid. Code §780)

In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating to those facts.
(Evid. Code §413)
An inference is a deduction of fact that may logically and reasonably be drawn from another fact, or group of facts found or otherwise established in the action. (Evidence Code §600(b)) An inference does not follow from the nonexistence of a fact. It cannot be based on speculation, supposition, conjecture or guesswork. (See, e.g., *Traxler* v. *Thompson* (1970), 4 Cal. App. 3d 278, 84 Cal.Rptr. 211)

In determining whether Claimant testimony is credible, the administrative law judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing. (Evid. Code § 780.)

CONCLUSION

As stated above, the appeals specialist for San Diego County testified that the county has resolved the $1216 CalWORKs overpayment for November through December 2016, and the $490 CalFresh overissuance for November through December 2016, when it rescinded the respective overpayment and overissuance, and refunded the amount collected on the CalWORKs overpayment, whereas nothing had been collected from the claimant on the CalFresh overissuance. The claimant confirmed at the hearing that she had no dispute with regards to the resolution of these two issues. Therefore, the claimant's request for hearing must be dismissed on the issues of the $1216 CalWORKs overpayment for November through December 2016, and the $490 CalFresh overissuance for November through December 2016, for lack of jurisdiction because it is determined that the issue is moot based on evidence that it has been fully resolved by a final action.

The parties agreed with regards to the $222 CalWORKs overpayment for November 2017 as stated below.

With regards to the $856 CalWORKs overpayment for January through February 2017, claimant confirmed receipt of the notice of action dated June 2, 2017.

The notice is adequate because it meets all the requirements set out in Section 22-001(a)(1) and Section 63-504.2 above, and is language compliant according to §22-001(l)(1) as it is in English, claimant’s primary language.

Claimant requested the hearing on January 30, 2020, which is more than 90 days and more than 180 days after the notice of action was mailed to the claimant, and as such the hearing request is untimely under Section 22-009.

Here, the claimant did not request a hearing within 180 days, and as such a good cause determination under Welfare and Institutions Code 10951(b) does not apply.

In considering Equity Jurisdiction, the delay in filing a hearing in this case is neither due to an unconscionable action of the agency reasonably relied upon by claimant, nor due to promises or assurances on which claimant reasonably relied on to not file or delay filing, or erroneous advice as to the procedure to follow to secure rights. Hence, equity jurisdiction does not apply in this case.

After careful review of the regulations and the statement of facts above, it is held that there is no jurisdiction to hear the merits of the $856 CalWORKs overpayment for January through February 2017.

Therefore, the claimant's request for hearing must be dismissed with regards to the $856 CalWORKs overpayment for January through February 2017, as the State Hearing process lacks jurisdiction to hear the claim.

STIPULATION AND ORDER

The claim is granted in part and dismissed in part.

Based on the stipulation of the parties, it is hereby ordered that San Diego County shall rescind and cancel the $222 CalWORKs overpayment for November 2017.

In all other respects the claim is dismissed.