IHSS MEDI-CAL SHARE-OF-COST INFORMATION

Redeterminations

Redetermination of eligibility for an income eligible applicant/recipient must be completed by the Medi-Cal worker as well as the IHSS Social Worker at 12-month intervals or whenever changes occur. (30-755.21)

Glossary – Income Eligibility Determinations

Actual Value - To determine in-kind support and maintenance value, the current market value of an item or property is divided by the number of people receiving support and maintenance, minus any payment made using the applicant's/recipient's own funds. If the applicant/recipient makes no payment, the actual value and current market value may be the same amount.

Affidavit - Sworn statement in writing before an officer authorized to administer oaths.

Amortize - To pay off a debt in installments or gradual recovery of an investment.

Assessed Value - Value set by the assessor, placed on property, as a basis for the levy of taxes.

Automobile - Any vehicle used to provide transportation, such as passenger cars, trucks, boats, and special vehicles (e.g., snowmobiles). These include vehicles which are unregistered, inoperable, or are in need of repair.

Burial Funds - Includes irrevocable burial contract, burial trust, other burial arrangements, or any other separately identifiable funds that are clearly designated for burial expenses.

Community Property - Property acquired during marriage (unless acquired as separate property prior to marriage).

Conditional Sales Contract - Purchase of property by terms set forth in a contract, usually on the installment basis. No deed is received by the purchaser until all the paymasters have been paid. This is also known as a land contract.

Current Market Value - The amount for which an item (resource, assets) would sell on the open market. The current market value may be based on factors such as the assessed or appraised value.

Deed - A written instrument which conveys title to real estate.

Deeming - Income or resources available to the applicant/recipient through a spouse, sponsor(s) or parent(s).

Discounted Amount - The current market value of negotiable contracts, notes, or a mortgage in the open market.

Encumbrance - Anything that affects the title to property such as an outstanding loan.
Escrow - The depositing of papers and funds with a third neutral party along with instructions to carry out an agreement, such as the transfer of title to a home.

Equity Value - The assessed actual value or current market value of an item less any legal encumbrances on the item; the value of the owner's interest in the property.

Excludable Equity Value - Equity value that may be excluded from the resource total when determining the IHSS resource limits.

Grant Deed - Most usual instrument/type of document used to convey title to property in California.

Home - Any shelter in which the applicant/recipient has an ownership interest and which is used by the applicant/recipient as their principal place of residence. The home may be real or personal property, fixed or mobile, and located on land or water. The home includes all the land that appertains to it and the building located on such land. The home may be separately or jointly owned, or the ownership may be in the form of a life estate.

Items of Unusual Value - Items that have a significant resale value over an extended period of time. This may include such items as china, silver, glassware, art works, oriental and similarly valued carpets, antiques, heirlooms, musical instruments, hobby collections, and funds. Items having a current market value of over $500 establish that the item is of unusual value. Equity value is used in determining the value of the item.

Joint Tenancy - Equal ownership both individuals have the "right of survivorship".

Lien - An encumbrance against property making it liable for a debt (taxes, trust deeds, special assessments, etc.).

Life Estate and Remainder Interest - A life estate conveys upon an individual certain rights in the real property for their lifetime. Its duration is generally measured by the lifetime of the owner of the life estate (life estate holder). The life estate holder has the right of possession, the right to use the property, the right to obtain profits from the property, and the right to sell their life estate interest. In some cases, the written contract establishing the life estate may limit some of these rights. Upon death, the estate reverts to the titleholder as designated in the contract or will.

Long Term Care Insurance Policy - Any long term care insurance policy or certificate that has been certified by the California Department of Health Services, as meeting the requirements of the Welfare and Institutions Code Section 22005.

Market Value - County's assessed value of real property, or actual value if sold.

Mortgage - An instrument (type of document) which makes property the security for payment of a loan. Borrower has one year to redeem after foreclosure and need not surrender the property until then. Two parties are involved: borrower (mortgagor) and the lender (mortgagee).

Principal Place of Residence – The place where an applicant/recipient has established his/her home; the dwelling that the applicant/recipient considers his/her fixed and established, (or principal home) and to which, whenever absent, he/she plans to return.

Real Property - Land and improvements, mines, oil, mineral, or timber rights.

Resources - Those assets including real and personal property which an applicant/recipient or a couple owns. Resources include all liquid assets that are held singly or jointly which can be accessed by the applicant/recipient (e.g., checking and savings account) and all non-liquid assets that are real or personal property (e.g., home, automobile, land, equipment, etc.). An item becomes a resource if retained after the month of receipt. In order to be considered a resource, property or an interest in real or personal property must have a cash value that is available to the applicant/recipient upon sale or transfer of the property. The applicant/recipient with legal title to the property must have the right to control and dispose of it. If the property cannot be disposed of, it is not considered a resource.

Separate Property - Acquired by husband or wife prior to marriage, or, funds from a civil action for personal injuries.

Tenants in Common - Shared ownership, no "rights of survivorship".

Trust Deed - A conveyance of title to a trustee to be held until a loan secured by a note is paid, at which time the title is re-conveyed. There are three (3) parties involved—the lender, the holder (trustee), and the borrower (trustor).

Resource Reference Guide

Resources

Resources mean cash, other liquid assets or any real or personal property that an individual or a couple (or spouse or parent[s]) owns and could convert to cash to be used for their support and maintenance. If the individual has the right, authority or power to liquidate the property, or their share of the property, it is considered a resource. If the property cannot be liquidated (converted to cash), it is not considered a resource.

Liquid Resources

Liquid resources are cash or other property that can be converted to cash within 20 days, excluding Saturday, Sunday, and federal holidays. Examples of resources ordinarily considered liquid are:

- Cash on hand
- Cash in savings or checking accounts (including IRA's and CD's)
- Stocks, bonds, mutual funds
- Promissory notes

- Mortgages
- Trust deeds
- Cash value of life insurance
- Non-exempt burial items

Reference : 20 CFR 416.1201(b)

Non-Liquid Resources

Non-liquid resources are property which is not cash and which cannot be converted to cash within 20 days, excluding Saturday, Sunday, and federal holidays. Non-liquid resources include all other properties, including real and personal. These resources are evaluated according to their equity value: the price that an item can reasonably be expected to sell for on the open market minus any encumbrances. Examples of resources ordinarily non-liquid are:

- Home
- Household goods
- Automobiles
- Trucks
- Tractors
- Boats
- Machinery
- Livestock
- Buildings
- Land

Reference: 20 CFR 416.1201(c)

Resource Limitations

In order to receive In-Home Supportive Services, an individual or couple must satisfy certain eligibility requirements. One of those requirements is a limitation on the value of countable resources an individual or couple can retain. (Countable resources are those which are not specifically excluded by the Social Security Act or by another law.) The Act prescribes the specific limitations on countable resources. The following limitations are applicable to the IHSS Program:

Exclusion of Resources

There are certain types of property that are excluded from being considered resources. Under the SSI/SSP program, the Social Security Act excludes the following resources from counting toward the statutory limit.

- A home used as the individual's principal place of residence, including the land appertaining to the residence.
- Household goods and personal effects are excluded if their total equity value is $2,000.00 or less. If the total equity value of household and personal effects is in excess of $2,000.00, the excess is counted against the resource limitation.
    - <u>Household goods</u> - include household furniture, furnishings, and equipment commonly found in or about a house.
    - <u>Personal effects -</u> are defined as including clothing, jewelry, and items of personal care, books, musical instruments, hobby equipment and supplies.

- A wedding ring, an engagement ring, prosthetic devices, dialysis machines, hospital beds, wheelchairs, and similar equipment required because of a medical/physical condition.
- One automobile is excluded if it is necessary for employment or medical transportation; or, if it is modified for use by a disabled individual; or, if it is necessary to perform daily activities due to climate, terrain, distance.
- Property of a trade or business which is essential for self support, if the individual's equity in the property does not exceed $6,000.00 and the property is used to produce goods or services necessary for the applicant/recipient's daily activities. This includes real property, such as land, which is used to produce vegetables or livestock only for personal consumption by the household.
- Personal property required for work is not counted regardless of its value while the individual is employed. Examples of this type of personal property include tools, safety equipment, uniforms, and similar equipment.
- Resources of a blind or disabled individual which are necessary to fulfill an approved Plan for Achieving Self Support (PASS).
  - A plan to achieve self support must be approved, in writing, by the Social Security Administration. PASS plans are designed for a specific period of not more than 18 months at a time, and may be extended for a total of 48 months.
  - Resources excluded under PASS are no longer excluded once the individual abandons the plan, fails to follow the conditions of the plan, completes the time schedule outlined in the plan, or reaches the goal outlined in the plan.
- Stock in regional or village corporations held by natives of Alaska pursuant to the Alaska Native Claims Settlement.
- SSI/SSP and Social Security retroactive payments for six full calendar months.
- Jointly owned real property that cannot be sold without undue hardship (due to loss of housing) to the owner(s).
- German reparation payments made to W.W.II holocaust survivors.*
- Japanese-American restitution payments to certain W.W. II internees.*
- Agent Orange settlement payments to qualifying veterans and survivors.*
- Cash, (including accrued interest) and in-kind replacement received from any source at any time to replace or repair lost, damaged, or stolen excluded resources (for nine months).
- Federal disaster assistance received as a result of a Presidential declaration of major disaster, including interest accumulated thereon.
- Death benefits, including gifts and inheritances, that are expected to be – and are – used to pay for the unpaid last illness and burial expenses of the deceased are excluded for one calendar month following the month of receipt.
- Radiation Exposure Compensation Trust Fund Payments.
- Earned Income Tax Credits – for one month following month of receipt.
- Life insurance owned by an individual (and spouse and parents) to the extent the total face value of all insurance policies on any person does not exceed $1,500.00. In determining the face value of life insurance on the individual (and spouse and parents), term insurance and burial insurance are not taken into account. If the combined face value of all policies for any individual is more than $1,500.00, the net cash surrender value (CSV) of all the policies is included in the property reserve.

*There is no limit on the length of time these resources can be excluded; however, any interest paid on these excluded resources is countable unearned income.

- Burial spaces for the individual, the individual's spouse, or any member of the immediate family are excluded from resources. Burial spaces include burial plots, grave sites, crypts, mausoleums, urns, niches, and other customary repositories, provided the spaces are owned by the individual or are held for their use.
- Term life insurance, accidental death and dismemberment insurance, and group life insurance are excluded because there is no cash value on these types of policies.
- Life Estates:
  - If an applicant/recipient currently does not reside in the life estate property but *intends to return* in the future, the life estate is an exempt resource.
  - If an applicant/recipient does not reside in the life estate property and *does not intend to return* to live on the property, the life estate becomes a countable resource.
- Long Term Care Policies:
  - Otherwise countable resources are exempt up to the amount of benefits paid on behalf of the applicant/recipient for long term care services under a State certified long-term care insurance policy or certificate, certified by the State to provide such exemption.
    - Any income generated by such exempt property is countable as income in the month received (see Section 30-775).
    - An example of income generated by such exempt property would be rental income generated by an exempt resource.
    - The burden shall be presumed to have been met if the applicant/recipient presents a "Service Summary", signed by a representative of the insurance company, verifying that the applicant/recipient is a holder of an insurance policy or certificate certified by the State to provide the exemption, and specifying the total amount of qualifying benefits paid out under the policy to date.*
    - The amount of the qualifying benefits in the "Service Summary" shall be the amount of the exemption to which the applicant/recipient is entitled.
    - If the Medi-Cal Worker cannot determine whether the applicant/recipient is covered by a qualifying policy or the amount of the benefits paid out on behalf of the beneficiary, the Medi-Cal Worker Technician will deny the exemption and refer the applicant/recipient to the California Department of Health Services for assistance. The Medi-Cal Worker will also notify the California Department of Health Services of the reasons for the denial.

*If the statement by the insurance company is found to be erroneous, the Medi-Cal worker will promptly notify the California Department of Health Services.

Resource Determinations

Resource determinations are made to determine if the resources of the individuals or couple, applying for or being recertified for IHSS, fall within the dollar limits allowed.

- Resource determinations are made effective the first moment of the month. The resource determination is based on the value of the assets the individual has as of the first moment of the month.
- If an individual acquires an additional resource, or a resource value is increased during a month, the increase is not counted until the first moment of the next month.
- If an individual reduces or decreases resource values, the decrease in value of resources is counted as of the first moment of the next month.
- Items received in cash or in-kind during a month are evaluated first under income counting rules, and when retained into the following month, shift over to and are counted as resources.
- If a resource is sold, exchanged, or replaced the receipts are not income but remain as a resource.
- Funds held in a financial institution account (including checking, savings, Certificates of Deposit) are an individual's resource if the individual owns the account and can access the funds to meet their needs. The way the account is titled reflects the individual's ownership.
- If the individual is the sole owner, all of the funds, regardless of their source, are presumed to belong to the individual.
- If the account is jointly held, but only one individual is an IHSS applicant/recipient, it is presumed that all of the funds in the account are available and therefore belong to the IHSS applicant/recipient.
- If there is more than one IHSS applicant/recipient listed on the account, it is presumed that all funds belong to each of the individuals in equal shares.

Transfer of Resources Provision

A transfer of property means a change of ownership so that a person no longer holds title to, or beneficial interest in, the property. This applies to any type of resource.

The President signed HR 3443 into law on December 14, 1999. Among its provisions were two changes to the Social Security Act that affect eligibility for the Supplemental Security Income/State Supplementary Payment (SSI/SSP) program. Since SSI/SSP law and regulations govern IHSS income eligibility, these changes also affect IHSS. The two areas of SSI/SSP change affecting IHSS eligibility are:

- Ineligibility for certain individuals who dispose of or transfer resources for less than fair market value.
- Assets held in trust may now be counted as a resource.

Prior to enactment of P.L. 106-169, if an individual transferred or gave away assets, there was no penalty and that asset was no longer counted as a resource in determining SSI eligibility effective with the month after it was transferred or given away. Previously, a Special Needs or other trust was generally excluded from countable resources, if the individual did not have direct access to the trust.

Transfer of Resources

An individual applying for or receiving IHSS who disposes of resources for less than fair market value is ineligible for IHSS for a period up to 36 months. This provision is effective for resource transfers made on or after December 14, 1999. The provision applies to resource transfers made by:

- the eligible individual (includes applicant/recipient),
- the individual's spouse,
- and by persons who are co-owners of the resource being transferred.

The look-back period begins with the look-back date, which is the date 36 months before the IHSS application date or the date on which the resources were transferred, whichever is later. This means that any resources transferred up to 36 months prior to the IHSS application date, or anytime thereafter will be subject to this provision.

Period of Ineligibility

The period of ineligibility begins on the first day of the month in or immediately following the month of transfer. For example, If the resource is transferred on February 25th, the period of ineligibility begins on February 1st or March 1st. The period of ineligibility can last up to, but no longer than 36 months.

Note:
Although this rule appears to be internally inconsistent, it is reflective of the federal law. Until the Social Security Administration resolves the issue, the date most favorable to the applicant/recipient should be used.

To determine the number of months of ineligibility, it is first necessary to determine the total, cumulative uncompensated value of any resources disposed of by the individual on or after the look-back date. The uncompensated value is then divided by the maximum SSI/SSP amount based on the individual's living arrangement on the applicable date. In the case of any fraction, round to the nearest whole number. The applicable date is the IHSS application date or, if later, the date on which the individual (or spouse) disposes of the resources for less than fair market value. The maximum SSI/SSP amount is the amount shown on the SSI/SSP Payment Standards chart for the appropriate living arrangement on the applicable date. The result is the number of months of ineligibility up to 36 months.

EXAMPLES:

- An aged individual living independently transfers a resource for an uncompensated value of $3,500.
- $3,500 ÷ $836.00 (2006 SSI/SSP benefit level for individuals) = 4.19; results in 4 months of ineligibility.

- An aged eligible couple living independently transfers a resource for an uncompensated value of $3,500.

- $3,500 ÷ $1,472 (2006 SSI/SSP benefit level for couples) = 2.38, results in 2 months of ineligibility.

Fair Market Value is equal to the current market value of a resource at the time of the transfer.

Current Market Value means the price of an item on the open market.

Uncompensated Value is the difference between the fair market value of a resource and the amount of compensation received by the individual in exchange for the resource.

Procedure Regarding Transfer of Resources

At application the Social Worker and/or the Medi-Cal worker must ask if resources have been disposed of in the last 36 months. The question must also be asked by the Medi-Cal worker during the annual reassessment process for income eligible cases. If the question is answered "yes", the worker must determine the period of ineligibility, if any, in accordance with the rules described previously. If the applicant/recipient is found ineligible under these rules, the worker must deny a new application or terminate ongoing IHSS services. When denying or terminating IHSS eligibility, use the following Notice of Action message:

NOA 583 "MPP 30-755.113 You have disposed of resources for less than fair market value. This makes you ineligible for IHSS for the period _________through ______."

An IHSS overpayment exists for cases where the individual received IHSS during a period for which he or she was ineligible based on the new resource transfer rules described above.

Exceptions to the Resource Transfer Penalty

Transfer of a Home

The transfer of resource penalty does not apply to transfer of the applicant's/recipient's home if the home was transferred to:

- The spouse of the transferor;
- A child of the transferor who is under age 21, or who is blind or disabled (as defined for SSI purposes);
- The sibling of the transferor who has an equity interest in the home and who was residing in the transferor's home for a period of at least *one year* immediately before the date the transferor becomes institutionalized;
- A son or daughter of the transferor (other than a child under age 21 or who is blind or disabled) who was residing in the transferor's home for a period of at least *two years* immediately before the transferor becomes institutionalized, and who provided care to the transferor which permitted the transferor to reside at home rather than in an institution or facility.

Transfers to a Spouse or Child

The new transfer of resource penalty does not apply if the resources were transferred:

- To the transferor's spouse, or to another person for the sole benefit of the transferor's spouse;

- From the transferor's spouse to another person for the sole benefit of the transferor's spouse;
- To the transferor's child who is blind or disabled;
- To a trust for the benefit of the transferor's child who is blind or disabled.

The new transfer of resources penalty does not apply where:

- Resources were transferred to establish a trust solely for the benefit of an individual under age 65 who is disabled (as defined for SSI purposes)
- It is demonstrated in accordance with regulations established for SSI purposes that the individual intended to dispose of the resources either at fair market value or for other valuable consideration
- It is demonstrated in accordance with regulations established for SSI purposes, that the resources were transferred exclusively for a purpose other than to qualify for SSI or IHSS
- It is demonstrated in accordance with regulations established for SSI purposes that all resources transferred for less than fair market value have been returned to the transferor
- The county determines under procedures established for SSI purposes that the denial of eligibility would be an undue hardship as determined on the basis of criteria to be established by SSA. (Hardship would likely include deprivation of food and shelter.)

Resources Transferred To Trust Established After January 1, 2000.

- The transfer of resource penalty does not apply to a resource transferred to a trust, which would:
    - Be a countable resource as part of that trust under the SSI rules for counting trusts;
    - Be counted as a resource except for the hardship exception. (See exceptions to trust rule below.)
- The penalty does apply to such a trust if:
    - Payments are made from the trust that are other than, to or for the benefit of the individual;
    - The trust does not permit any payment to the individual under any circumstance.

Trusts

A trust established by an individual is counted as a resource for purposes of determining IHSS eligibility. An individual is considered to have established a trust if any of the assets of an individual (or the individual's spouse) are transferred to a trust other than by a will. If assets of the individual (or of the individual's spouse) are combined with assets from another person in an irrevocable trust, only the portion attributable to the individual (or spouse) would count as a resource under this provision. This policy of counting a trust as a resource applies only to trusts established on or after January 1, 2000 and without regard to:

- The purpose for which the trust was established;
- Whether the trustees have or exercise any discretion under the trust
- Any restrictions on whether distributions may be made from the trust; or
- Any restrictions on the use of distributions from the trust.

In the case of a revocable trust established by an individual, the corpus of the trust will be considered a resource of the individual. In the case of an irrevocable trust, the portion of the trust from which payment to or for the benefit of the individual or the individual's spouse could be made (under any circumstances) is a resource to the individual.

EXCEPTIONS:

- The county determines that application of this provision would cause the individual undue hardship under criteria to be established by SSA. (Hardship would likely include deprivation of food and shelter.)
- The new provision does not apply to any trust described in sections 1917(d) (4) (A) and (C) of the Social Security Act. Section 1917(d)(4)(A) trusts, known as "Medi-Cal pay-back trusts" provide that, upon the individual's death, the State will be reimbursed from the trust for Medi-Cal (Medicaid) expenditures made on behalf of the individual. Section 1917(d)(4)(C) trusts, known as "Medi-Cal pooled trusts" are administered by a nonprofit association and may contain the assets of a large number of individuals, and also require reimbursement to the state, upon the individual's death, for Medi-Cal expenditures made on behalf of the individual.

Definitions

Corpus - The corpus of a trust is all property and other interests held by the trust, including accumulated earnings and any other addition to the trust after its establishment. It does not include earnings or additions in the month they are credited or transferred to the trust.

Asset - For purposes of this trust-counting rule, an asset is any income or resource of the individual or individual's spouse, including:

- Income that would otherwise be excluded under SSI rules (see 30-775.4);
- Resources that would otherwise be excluded under SSI rules (see MPP30-773.6);
- Any other payment or property to which the individual or individual's spouse is entitled, but does not receive or have access to because of action by:
    - The individual or individual's spouse;
    - A person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or spouse;
    - A person or entity (including a court) acting at the discretion of, or on the request of, the individual or spouse.

Income - Unearned income, as described in MPP Section 30-775.33, now includes any earnings of, and additions to, the corpus of a trust established by an individual to which these new trust provisions apply.

Procedure Regarding Trusts

These rules and guidelines for counting trusts must be followed while processing an IHSS income-eligible application or reassessment where the individual (or spouse) has a trust that was established on or after January 1, 2000. Use existing notices and language for excess income or resources when denying eligibility or discontinuing benefits based on the new rules for counting trusts.

Disposition of Excess Resources

Although an individual's resources, including those of a spouse, exceed the limits, he/she will be eligible for IHSS during the period of disposition of such excess resources provided that he/she meets other eligibility criteria, including those specified in this section.

During the period that the excess property is held and is being liquidated, in accordance with the individual's agreement to dispose of the property, any IHSS payments made will be considered to be overpayments. The net proceeds from the disposition of the excess property will be considered to be available for liquidation of overpayments occurring during the disposition period in accordance with Division 30-768.3. All of the following apply:

- The disposition of the excess property shall be accomplished within a six-month period in the case of real property and within three months in the case of personal property.
- The time period shall begin on the date the agreement is signed by the individual.
- In the case of a disabled individual, the time period shall begin on the date of the disability determination.
- Time limits may be extended another three months where it is found that the individual had "good cause" for failing to dispose of the property within the original time period.
    - Good cause exists if, despite reasonable and diligent effort on their part, they were prevented by circumstances beyond their control from disposing of the property.

Fair market value

- After deducting the maximum allowed, the net proceeds are considered as available to meet the needs of the individual.
- The net proceeds will normally be the sales price less any encumbrances and the expenses of the sale.
- Documentation of spend down of proceeds (in excess of the resource limit) is required to establish/re-establish eligibility.