Medi-Cal Program Guide Letter #673

March 12, 2009

Subject	**ARTICLE A- COUNTY MEDICAL SERVICES (CMS) MAINTENANCE NEED LEVEL (MNL) FOR THE CASE FAMILY BUDGET UNIT (CFBU) WHEN PERIOD OF INELIGIBILITY IS DETERMINED**
Effective Date	Upon Receipt
Reference	County Policy
Purpose	The purpose of this letter is to inform staff of the CMS MNL to use for determining period of ineligibility when a transfer of non-exempt property occurs.
Background	CMS evaluates all situations where the applicant transferred property without adequate consideration within two (2) years from the application date. When a period of ineligibility occurs because of a property transfer, the application or recertification is denied. The period of ineligibility is determined by dividing the excess net value of the transferred property by the CMS MNL for the CFBU. The result is the number of ineligible months. The worker indicates the period of ineligibility in the CMS IT System comments section. The period of ineligibility begins with the first of the month following the date that transfer occurred.
CMS MNL	The CMS Hardship MNL amount for the CFBU is to be used for determining the period of ineligibility.
Automation Impact	None.
Quality Assurance Impact	Effective with the May 2009 review month, Quality Assurance will cite the appropriate error on any case that does not comply with the requirements outlined in this letter.

Summary of Changes

The table below shows the changes made to the Program Guide.

Article	Changes
Article A, Section 5, Item 3	The CMS Hardship MNL identified as the MNL to use when determining period of ineligibility.

Manager Approval

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A.5.3

Property/Resources

General

Property rules for CMS and CMS Hardship are identical. Property ownership and determination of excluded and included property is the same as Medi-Cal. The worker evaluates the property owned by members of the CFBU to determine the net market value of property included in the property reserve. Notice HHSA: CMS-007/HHSA: CMS-007(SP) provides a general overview of CMS property requirements and CMS spenddown regulations.

A. Property Reserve Limits

See MPG Article A, Section5, Appendix C for the property limits.

B. Verification of Property

Property verification requirements for CMS and Medi-Cal are the same. Bank account balance verification must show that the applicant/ beneficiary is property eligible in the first month of the certification period before certifying CMS. When recertification occurs during the last month of the current certification period, verify bank account balances for the last month of the current certification period. In addition to current account statements and signed correspondence from the institution holding the fund, the following items can verify balances.

1. An automated teller machine (ATM) slip is acceptable verification of bank account balance only in conjunction with the last bank statement received by the beneficiary. The worker must be able to verify that the ATM slip is for the same account as the bank statement.

2. A bank passbook is acceptable verification when current month entries have been stamped, initialed and dated by bank personnel.

C. Property Spenddown

Property spenddown rules for CMS and Medi-Cal are <u>different</u>. Workers must give notice HHSA:CMS-007 to read and sign, and advise every CMS applicant of the CMS property limit for the applicable CFBU size, the method of computing the excess property amount, and the rules for reducing excess property in order to become eligible for CMS coverage.

1) Computation

Workers list the items of property and total their value on the automated HHSA: CMS-39D. The property limit for the CFBU is subtracted from the total value of non-exempt property to arrive at the amount of excess property. This is the amount that must be spent.

2) Allowable Expenses

The applicant may reduce excess property by paying actual CMS medical expenses, current month rent or mortgage, and current month utilities, excluding cable TV.

3) Worker Action

The worker sends an automated Notice of Action (CMS-39D) telling the applicant that CMS has been denied because of excess property and giving the applicant the opportunity to spend the excess. The applicant has 30 days from the date of the notice to pay allowable expenses and to submit receipt(s) to the worker. If the applicant submits receipt(s) within the 30 days, the worker verifies that the property excess has been spent correctly, and is now within the property limit, and rescinds the denial. The certification period begins the month of application as long as all other eligibility factors are met. The worker notes in the comments section of the CMS IT System "spend down medical receipts in the amount of $______ ." The worker completes a CMS-4 and attaches the receipts to the CMS-4 sent via interoffice mail to ASO Spenddown Data Entry Eligibility Supervisor. The receipts enable the ASO to identify the provider(s) that the applicant has paid. If the receipts are not received within 30 days, the denial stands.

**D.
Property Utilization**

Rules for utilization of other real property for CMS and Medi-Cal are different. CMS does not require applicants to utilize other real property and, therefore, CMS does not exempt other real property based upon how it is used. The first $6,000 of the combined net market value of all other real property is exempt. **The net market value in excess of $6,000 shall be counted in the property reserve.**

**E.
Property Transfers**

Rules for transferring property for CMS and Medi-Cal are different. CMS evaluates **all** situations where the applicant transferred property without adequate consideration. A transfer of property means a change in ownership so that a person no longer holds title to, or beneficial interest in, the property. This applies to any type of property. Each transfer must be evaluated individually.

1) Transfer Not Resulting in Ineligibility

a) Transfers of property occurring more than two years before the date of application are not evaluated, regardless of the circumstances surrounding the transfer. This applies even if there is substantial evidence that the transfer was made soley for the purpose of qualifying for CMS.

b) Transfer of property that was exempt at the time of the transfer. Property, which is determined to be exempt based on specific conditions, loses exempt status once the conditions are no longer met.

c) Transfer of property whose net market value when included in the property reserve does not cause ineligibility. The value of the transferred property at the time of the transfer will no longer be counted in the property reserve.

d) Transfer of property which received adequate consideration. Adequate consideration means that cash or property that was of equal value to that of the transferred property was received, and was legal at the time and place the transfer occurred. Adequate consideration also includes:

   1) Satisfying a legal debt, and

   2) Reimbursing someone, other than a responsible relative, for care or benefits provided. There must be a prior written agreement or understanding specifying the type of care to be given, the rate of pay, and that reimbursement would be made. Applicants must provide evidence to establish that the value of the care or benefits provided was equivalent to the value of the transferred property.

e) Transfer of property when foreclosure or repossession of the property was imminent at the time of transfer and there is no evidence of collusion.

f) Transfer of property when the applicant received an enforceable life care contract that does not include complete medical care. In this case, each full item of need provided under the life care contract is considered income in kind.

g) Transfer of property made without receipt of adequate consideration, but the applicant provides convincing evidence to the worker that shows that the transfer was not made to qualify for CMS.

h) Transfer of property when there is a written transmutation of a married couple’s nonexempt community property into equal shares of separate property through an inter-spousal agreement.

i) Transfer of property if denial of CMS would cause undue hardship as described in MPG Article 9, Section 7, Item E4.

2) Transfers Resulting in Ineligibility

a) Applicant receives an enforceable life care contract that includes complete medical care.

b) Transfer of property without adequate consideration within two years from the application date. See previous section 1d regarding adequate consideration.

c) Adequate consideration was not received for the transfer of non-exempt property. It is presumed that transfers of non-exempt property without adequate consideration are made to become eligible to CMS. The applicant may overcome this presumption by providing convincing evidence, including a written subjective statement that shows the sole purpose of the transfer was for reasons other than to become eligible to CMS. This may include, but is not limited to, evidence that the transfer was made to avoid probate and/or the applicant had no knowledge of CMS or its benefits at the time of transfer.

3) Documentation of Transfers

The worker documents the decision about the effect of the transfer on eligibility, including the reasons for the decisions in the case narrative. When a period of ineligibility occurs because of a property transfer, the application or recertification is denied. The worker indicates the period of ineligibility in the CMS IT System comments section.

4) Period of Ineligibility

a) Beginning Date

The period of ineligibility begins with the first of the month following the date that transfer occurred. There may be consecutive periods of ineligibility from consecutive transfers of property without adequate consideration. If consecutive transfers occurred, evaluate each separate month when a transfer occurred using the computation below.

b) Ending Date

The period of ineligibility ends when any of the following situations occurs:

1) The property that was transferred and caused ineligibility is conveyed back to the applicant, or
2) The applicant receives adequate consideration for the property, or
3) The excess net market value has been reduced to zero(the months of ineligibility have been reduced to zero).

c) Computation

This computation is done on the back of form MC 176P.

1) Determine the net market value of the property at the time of transfer less any consideration received. The result is the net value of the transferred property.

2) Subtract the unused portion of the property reserve limit that was in effect at the time of the transfer. The result is the excess net value of the transferred property and is used to determine the period of ineligibility.

3) The period of ineligibility is determined by dividing the excess net value of the transferred property by the CMS Hardship MNL for the CFBU. The result is the number of ineligible months. Use the CMS Hardship MNL in effect during each individual month since the date of the transfer. Income received by the CFBU after the transfer does not effect this computation.

4) Deducting verified actual medical expenses, the cost of out-of-home care that exceed the CMS Hardship MNL, and cost of major home repairs needed to put the home into a livable condition may reduce the period of ineligibility. When consecutive transfers without adequate consideration are made, individual actual costs items can only be used one time to reduce property.

5) Transfer of Property with Retention of Life Estate

Property transferred by the applicant with retention of a life estate is treated like any other transfer to determine whether the transfer causes ineligibility (MPG Article 9, Section 9).

6) Property used as to Purchase a Principal Residence

Applicants who do not own a principal residence can use the proceeds of real property to buy a principal residence. Applicants may also sell their current principal residence to purchase a new principal residence. In these situations, the proceeds from the sale of the real property are exempt with the following conditions.

a) The applicant must intend to use the proceeds to purchase a principal residence, and

b) The proceeds may also be used to pay for moving costs, necessary furnishings, and repairs or alterations to the new principal residence, and

c) The proceeds are exempt for a period of up to six months from the date of receipt. If a part of the proceeds is used for some other purpose, the remainder is still exempt as long as the remainder is being kept to apply to the purchase of a principal residence.

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F. Pension Funds

CMS does not follow MPG Article 9, Section 6, Item 5 B1). For CMS, pension funds held in the name of the applicant's spouse, community spouse, parent or parent's spouse **are not** automatically exempt if that person is not eligible to or does not choose to receive Medi-Cal or CMS. Item 5 B2) applies to Long Term Care. CMS does follow items 5 B3) and B4).
