STATE OF CALIFORNIA–HEALTH AND HUMAN SERVICES AGENCY GRAY DAVIS, Governor

DEPARTMENT OF HEALTH SERVICES
714/744 P Street
P.O. Box 942732
Sacramento, CA 94234-7320
(916) 657-2941

May 28, 1999

TO: All County Welfare Directors
All County Administrative Officers
All County Public Health Directors
All County Medi-Cal Program Specialists/Liaisons
All County RAMOS Coordinators
All County Mental Health Directors

Letter No.: 99-27

FORMER SUPPLEMENTAL SECURITY INCOME/STATE SUPPLEMENTARY PAYMENT (SSI/SSP) DISABLED RECIPIENTS -- NOTICE TYPES 22, 23, AND 26

Ref.: All County Welfare Directors Letter (ACWDL) No. 97-28 and Medi-Cal Eligibility Branch Information Letter No. I-98-13

The purpose of this letter is to inform counties that revisions have been made to the automated Notice Types 22, 23, and 26 (see enclosures) which are mailed to former SSI/SSP no longer disabled recipients. Each of these notices are mailed in a certain succession and timeframe depending on the client's SSI/SSP appeal status. All three of these notices are generated during the monthly RAMOS run. Each county RAMOS coordinator is sent a list of individuals in their county who received one of these notices. If the coordinator does not receive a certain list, it probably means that no client in their county received a particular type of notice.

NOTICE TYPE 26

The Notice Type 26 is the first notice that is mailed whenever an SSI/SSP disabled recipient is terminated from disability cash benefits because he or she is determined no longer disabled and the State Data Exchange (SDX) has transmitted that information to the Medi-Cal Eligibility Data System (MEDS). The Notice Type 26 is an informational notice which informs the client that the Department of Health Services (DHS) was notified that the client's SSI/SSP disability cash benefits have been terminated because he or she was determined to be no longer disabled. The client is also informed that if a timely SSI/SSP appeal is filed because he or she does not agree with Social Security Administration's (SSA) determination, Medi-Cal will continue throughout the SSA appeals process.

Revisions to Notice Type 26 were made in the area under "Other Information." Since the Aid to Families with Dependent Children program no longer exists, reference to that program was changed to California Work Opportunity and Responsibility to Kids. Other parts of this section were paraphrased and eliminated for clarification.

Counties do not need to take any action due to revisions to the Notice Type 26.

NOTICE TYPE 22

The Notice Type 22 is an informational notice which includes redetermination forms and is sent to all former SSI/SSP disabled recipients who were found no longer disabled by SSA and who have a "final" SSI/SSP disability decision. A "final" decision means that, upon receiving an SSA disability determination of no longer disabled, (1) the individual chose not to file an SSI/SSP appeal; (2) the individual filed an SSI/SSP appeal, it was denied again, but the individual did not file at the next level of appeal; or (3) the Appeals Council rendered a decision.

This notice informs the former SSI/SSP recipient that in order for the county to determine whether he or she is eligible for Medi-Cal under another linkage, the completed redetermination forms must be sent back to the county no later than a designated date. If the client submits the forms timely, Medi-Cal eligibility will continue while the county completes the redetermination.

The Health Care Financing Administration informed the states that an SSI/SSP applicant who receives SSI/SSP presumptive disability (PD) cash benefits and is later denied because a formal disability determination found that the applicant is not disabled should also continue to receive Medi-Cal benefits until a "final" SSI/SSP disability determination is rendered. As a result, the Notice Type 22 was revised to include this group. MEDS has a problem identifying this group of SSI/SSP recipients because SSA does not put these recipients into payment status N07 (cessation of disability). SSA considers these individuals as applicants and not as recipients who are later denied disability. MEDS is programmed to identify, track the appeals process, and send the appropriate Notice Types 26, 22 or 23 only on SSI/SSP recipients who are found no longer disabled/blind (payment status N07/N08). As a result, the DHS does not know who these individuals are unless someone reports such a person to DHS.

Whenever counties become aware of someone who is in the above group of individuals, counties must report such individuals to DHS. A county might become aware of an individual in this group as a result of an inquiry made by the individual's authorized representative. In addition, if a county is reviewing MEDS information and notices an individual identified with specific information on MEDS as specified in the next paragraph, the county should contact DHS since the beneficiary is likely to be an SSI/SSP PD recipient.

Counties should be aware of certain information in the following MEDS' fields to potentially be able to recognize an SSI/SSP PD recipient. The recipient would have been in Aid Code 60; government responsibility code of 2; an eligibility status code of 001 for only a few months (SSA can only allow PD for a maximum of six months); and is suddenly discontinued with an SSI/SSP disability denial code (not a discontinuance code). If the county inquires, DHS will confirm such findings, reinstate zero share-of-cost (SOC) Medi-Cal, and manually track the individual throughout the SSI/SSP appeals process.

Since these individuals cannot automatically be identified as soon as their SSI/SSP PD benefits are terminated, they will not receive a Notice Type 26. Only upon identification of such a case to DHS will DHS issue an informational notice informing the individual that zero SOC Medi-Cal was restored and Medi-Cal eligibility will be continued while the individual is in the SSA appeals process. When a "final" disability decision is rendered by SSA, the individual will receive an automated Notice Type 22 and redetermination forms. If the individual completes and timely submits the redetermination forms to the county, the county must determine if the individual is eligible for Medi-Cal under some other linkage.

PLEASE NOTE: Please remember that immediately upon receipt of timely redeterminations forms, the county must enter the receipt of the redetermination forms to MEDS or the system will inadvertently discontinue the case and send an inappropriate notice of action.

In addition to including language about continued Medi-Cal benefits for SSI/SSP PD recipients who are in the SSA appeal process, some language toward the end of the Notice Type 22 was eliminated.

NOTICE TYPE 23

The Notice Type 23 is an automated ten-day discontinuance notice of action (NOA) with State appeal rights that is issued to former SSI/SSP recipients who have not timely returned completed redetermination forms to the county. This NOA is sent because the county did not timely report receipt of the completed redetermination forms to MEDS.

The only revisions to the Notice Type 23 were to change the name of the Governor from Pete Wilson to Gray Davis and to update the name of our State agency from the Health and Welfare Agency to the Health and Human Services Agency. These changes were also made on Notice Type 22 and 26.

If you have any questions regarding this letter, please contact Ms. Marie Taketa of my staff at (916) 657-1250.

Sincerely,

ORIGINAL SIGNED BY

ANGELINE MRVA, Chief
Medi-Cal Eligibility Branch

Enclosures

State of California-Health and Human Services Agency Gray Davis, Governor

Department of Health Services
Medi-Cal Program

Notice Type 26
January 31, 1998

Social Security Number: 262-62-6262
Beneficiary ID Number: 26-26-2626262626

JOHN SMITH
CEPS FOR
1000 MAIN ST
SACRAMENTO CA 95841

FORMER SSI/SSP
"NO LONGER DISABLED/BLIND"

IMPORTANT INFORMATION ABOUT YOUR MEDI-CAL

The Social Security Administration (SSA) told us that you are no longer eligible to receive Supplemental Security Income/State Supplementary Payment (SSI/SSP) disability cash benefits. This is because SSA found that you are no longer disabled or blind.

IF YOU FILE A TIMELY SSI/SSP DISABILITY APPEAL BECAUSE YOU DO NOT AGREE WITH SSA'S DECISION THAT YOU ARE NO LONGER DISABLED, MEDI-CAL WILL CONTINUE THROUGHOUT YOUR SSI/SSP APPEALS PROCESS.

If you have an SSI appeal pending, be sure to report any address changes to the Social Security office. This is because Medi-Cal sends all of its notices about your Medi-Cal benefits to the address that the Social Security office has for you. If Social Security has an old or incorrect address for you, Medi-Cal has no way of contacting you. Be sure to tell Social Security that you have an SSI appeal pending.

If SSA tells you that you are eligible to get SSI/SSP cash benefits again, this notice does not apply to you. You will automatically get Medi-Cal through SSI/SSP.

If you do not have an SSI appeal pending or the SSI appeal is over, you will get another notice with additional instructions. YOU DO NOT NEED TO DO ANYTHING NOW BECAUSE YOUR MEDI-CAL WILL CONTINUE.

OTHER INFORMATION:

1) If you live with members of your immediate family who get cash assistance from California Work Opportunity and Responsibility to Kids(CalWORKs), tell the county worker right away that you are no longer getting SSI/SSP disability benefits.

2) If you want to see if you get CalWORKs or other cash assistance, contact your local county welfare office.

3) Be sure to keep this notice. If you have a problem with your Medi-Cal eligibility, show this notice to your local county welfare office. If your Medi-Cal stops while your SSI appeal is pending, contact your local county welfare department right away.

DO NOT THROW AWAY YOUR MEDI-CAL BENEFITS IDENTIFICATION CARD (BIC).

(Reverso para Español)

INFORMACION IMPORTANTE ACERCA DE SU MEDI-CAL
ANTERIORMENTE SSI/SSP "YA NO SIGUE INCAPACITADO(A)/CIEGO(A)"

La Administración del Seguro Social (SSA) nos informó que usted ya no es elegible para recibir pagos basados sobre incapacidad de Seguridad de Ingreso Suplemental/Programa Suplemental del Estado (SSI/SSP). Esto es por que SSA decidió que usted ya no está incapacitado(a) o ciego(a).

SI USTED PRESENTA A TIEMPO UNA APELACIÓN DE SSI/SSP BASADO EN INCAPACIDAD PORQUE NO ESTÁ DE ACUERDO CON LA DECISIÓN QUE YA NO SIGUE INCAPACITADO(A), SUS BENEFICIOS DE MEDI-CAL CONTINUARÁN DURANTE EL PROCESO DE SU APELACIÓN DE SSI.

Si usted tiene una apelación de SSI pendiente, esté seguro(a) de reportar cualquier cambio de su dirección a la oficina del Seguro Social. Esto es por que Medi-Cal manda todas las notificaciónes acerca de sus beneficios de Medi-Cal a la dirección que tiene la oficina de Seguro Social. Si SSA tiene una dirección vieja o incorrecta, Medi-Cal no tiene ninguna manera de communicarse con usted. Asegúrese de informarle a la oficina del Seguro Social que tiene una apelación pendiente con SSI.

Si SSA luego le dice que usted es elegible para recibir beneficios de dinero de SSI/SSP otra vez, esta notificación no tiene que ver con usted. Usted recibirá Medi-Cal automaticamente a través de SSI/SSP.

Si no tiene una apelación de SSI pendiente o si ya terminó su apelación, usted recibirá otra notificación con mas instrucciones. NO TIENE QUE HACER NADA AHORA MISMO PARA QUE SU MEDI-CAL CONTINÚE.

MAS INFORMACIÓN:

1) Si usted vive con miembros de su familia que reciben pagos bajo del Programa de California de Oportunidades de Trabajo y Responsabilidad hacia los Niños (CalWORKs/California Work Opportunity Responsibility to Kids [Program]), póngase en contacto con el/la trabajador(a) de CalWORKs y dígale que usted ya no está recibiendo beneficios por incapacidad de SSI/SSP.

2) Si usted quiere averigüar si califica para CalWORKs o cualquier otro programa de pagos, póngase en contacto con la oficina local de bienestar.

3) Esté seguro(a) de quedarse con esta notificación. Si tiene cualquier problema con su elegibilidad de Medi-Cal, vaya a la oficina de bienestar y enseñeles está notificación. Si sus beneficios de Medi-Cal paran mientras su apelacón de SSI esta pendiente, llame e informe a la oficina local de bienestar en seguido.

NO TIRE SU TARJETA DE IDENTIFICACIÓN DE BENEFICIÓS DE MEDI-CAL (BIC). Usted continuará usando la misma tarjeta.

State of California-Health and Human Services Agency

Gray Davis, Governor

Department of Health Services
Medi-Cal Program

Notice Type 22
January 31, 1998

Social Security Number: 222-22-2222
Beneficiary ID Number: 22-22-2222222222

WOODY HAYES
LIFE FOR WOODY HAYES
1111 OHIO ST APT 11
SACRAMENTO CA 95814

NO LONGER DISABLED/BLIND ON SSI/SSP
(BENEFICIOS POR INCAPACIDAD DE SSI/SSP CESARON)
OR / O YA
NO LONGER PRESUMPTIVELY DISABLED/BLIND
NO SIGUE INCAPACITADO(A) O CIEGO(A) PRESUNTAMENTE

IMPORTANT INFORMATION ABOUT YOUR MEDI-CAL
(INFORMACION IMPORTANTE ACERCA DE SU MEDI-CAL)

If you need a Spanish translation, please see enclosed Spanish notice.
(Si necesita una traducción en español, por favor mire la notificacion en español adjunta.)

You lost your Supplemental Security Income/State Supplementary Payment (SSI/SSP) benefits because the Social Security Administration (SSA) says you are no longer disabled/blind, OR SSA gave you presumptive disability benefits but later said you could not continue to get those benefits. You may, however, get Medi-Cal while the county decides if you meet Medi-Cal eligibility rules in another way.

If you want the county to see if you are still eligible for Medi-Cal and for your Medi-Cal to continue while you are being redetermined, you MUST complete the enclosed forms and mail them to the address below by 01/20/1998.

(The following is the Spanish translation of this paragraph.)
(Si usted quiere que el condado determine si todavia es elegible para Medi-Cal y si quiere que su Medi-Cal continue mientras se haga una nueva determinación, usted TIENE que llenar los formularios adjuntos y regresarlos por correo antes de la fecha indicada arriba, a la dirección abajo.)

Sacramento County
ATTN: A950 Supervisor
(916) 732-9590
P.O. Box 2488
Sacramento, CA 95812-09866

A MEDI-CAL NOTICE WILL BE SENT TO YOU TELLING YOU THAT YOUR MEDI-CAL BENEFITS WILL STOP, IF YOU DO NOT FILL OUT AND RETURN THE ENCLOSED FORMS BY 01/20/1998.

IF YOU NEED HELP WITH THE MEDI-CAL FORMS OR YOU HAVE QUESTIONS ABOUT MEDI-CAL, call the telephone number of the county welfare office shown directly above.

IMPORTANT INFORMATION: READ THIS SECTION IF YOU FILED AN SSI/SSP DISABILITY APPEAL OR ARE STILL WAITING FOR A DECISION ON THE SSI/SSP APPEAL.

PLEASE READ THE BACK OF THIS NOTICE

State of California-Health and Human Services Agency

Gray Davis, Governor

Department of Health Services
Medi-Cal Program

Notice Type 23
January 31, 1998

MEDI-CAL
NOTICE OF ACTION

Social Security Number: 232-32-3232
Beneficiary ID Number: 23-23-2323232323

TAYLOR BAILEY
LIFE FOR TAYLOR BAILEY
1111 POLAR BEAR LN
SACRAMENTO CA 95814

DISCONTINUANCE OF SSI/SSP MEDI-CAL
MEDI-CAL FORMS NOT RETURNED

The Social Security Administration (SSA) told us that you are no longer eligible to receive Supplemental Security Income/State Supplementary Payment (SSI/SSP) program check.

You were recently sent a Medi-Cal notice telling you that:

* You may be eligible for Medi-Cal in another way.
* You had to complete the forms that were sent with that notice in order to decide if you are eligible for Medi-Cal in another way.
* You had to mail the completed forms to the county welfare office whose address was shown on the notice.
* Failure to return those forms by the date shown on that notice would result in another Medi-Cal notice telling you that your Medi-Cal benefits would stop.

OUR RECORDS SHOW THAT YOU DID NOT COMPLETE AND MAIL THE FORMS TO THE COUNTY WELFARE OFFICE BY THE DATE SHOWN ON THE PAST MEDI-CAL NOTICE. THIS MEANS YOUR SSI-BASED MEDI-CAL BENEFITS WILL STOP AS OF 12/31/1997.

The regulations which require this action are California Code of Regulations, Title 22, Sections 50147, 50183, and 50185.

DO NOT THROW AWAY YOUR BENEFITS IDENTIFICATION CARD (BIC). If you become eligible for Medi-Cal, you can use it again.

PLEASE NOTE: Should SSA tell you that you will once again receive an SSI/SSP check, SSA will also tell the Department of Health Services to put you back on Medi-Cal, this may take several weeks. If you have a medical emergency and need Medi-Cal before the system can put you back on, contact your local SSA office who will give you the form which you will need.

IF YOU WANT A FAIR HEARING
SEE ENCLOSED "YOUR RIGHT TO APPEAL THIS ACTION"

(Reverso para Español)

N23FRT

MEDI-CAL - NOTIFICACION DE ACCION

DESCONTINUACION DE SSI/SSP MEDI-CAL
FORMULARIOS PARA MEDI-CAL NO FUERON DEVUELTOS

La Administración del Seguro Social (SSA) nos informó que usted ya no es elegible para recibir el pago del programa de Seguridad de Ingreso Suplemental/Programa Suplementario del Estado (SSI/SSP).

Usted fue recientemente notificado(a) por carta de Medi-Cal informandole que:

- Pueda que sea elegible para recibir Medi-Cal por otra forma.
- Ténia que llenar los formularios que fueron mandados con la notificación para decidir si usted es elegible para recibir Medi-Cal por otra forma.
- Ténia que mandar los formularios completados por correo a la oficina del condado de bienestar a la dirección que estaba escrita en la notificación.
- Falla en devolver los formularios antes o en la fecha que le pedia en la notificación iba a resultar en que otra notificación de Medi-Cal se le mandaría informandole que sus beneficios de Medi-Cal cesarán.

NUESTROS ARCHIVOS NOS INFORMAN QUE USTED NO LLENO NI MANDÓ POR CORREO LOS FORMULARIOS A LA OFICINA DEL CONDADO DE BIENESTAR ANTES DE LA FECHA QUE ESTÁBA ESCRITA EN LA NOTIFICACIÓN PASADA DE MEDI-CAL. ESTO QUIERE DECIR QUE SUS BENEFICIOS BASADOS SOBRE SU SSI VAN A CESÁR, VEA LA FECHA DE LA NOTIFICACIÓN DE ACCIÓN EN INGLES.

La regulación que requiere esta acción es el Código de Ordenamientos de California, Titulo 22, Secciónes 50147, 50183, y 50185.

NO TIRE SU TARJETA DE IDENTIFICACIÓN DE BENEFICIOS (BIC). Si usted llega a ser elegible para Medi-Cal, puede usarla otra vez.

POR FAVOR ANOTE: Si la SSA le dice que usted va a recibir pagos de SSI/SSP otra vez, SSA tambien le informará al Departamento de Servicios de Salud que le den Medi-Cal, esto pueda que se tarde unas semanas. Si usted tiene una emergencia medica y necesita Medi-Cal ántes de que su nombre este puesto en el sistema, pongase en contacto con la oficina de SSA local quien le dará los formularios que nesecita.

SI USTED QUIERE UNA AUDIENCIA CON EL ESTADO
VEA EL ADJUNTO "SU DERECHO PARA APPELAR ESTA ACCION"

DEPARTMENT OF HEALTH SERVICES
714/744 P Street
P.O. Box 942732
Sacramento, CA 94234-7320
(916) 657-2941

June 10, 1999

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons
All County Public Health directors
All County Mental Health Directors

Letter No.: 99- 29

GUIDELINES USED BY ADMINISTRATIVE LAW JUDGES WHEN AN INCREASE IN THE COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA) HAS BEEN REQUESTED THROUGH A FAIR HEARING

A number of counties have requested information on how Administrative Law Judges determine whether to increase the CSRA and, if so, how the amount of the new CSRA is established. The Administrative Adjudications Division's Training Bureau has recently published those guidelines in their newsletter and has given permission to release this information.

If you have any questions on this issue, please feel free to contact Sharyl Shanen-Raya of my staff at (916) 657-2942.

Sincerely,

ORIGINAL SIGNED BY

ANGELINE MRVA, Chief
Medi-Cal Eligibility Branch

Enclosure

NOTES FROM THE TRAINING BUREAU

State Hearings Division
California Department of Social Services
Item 99-4-1
April 29, 1999

ITEM 99-4-1: Community Spouse Resource Allowance

Issue

In state hearings, a common issue involves a county denial of a Medi-Cal application for an institutionalized spouse due to excess property. The institutionalized spouse has an at-home spouse (herein community spouse). The couple has countable community and separate resources in excess of the Community Spouse Resource Allowance (CSRA) and wishes to raise the CSRA at the state hearing so that Medi-Cal eligibility can be established for the institutionalized spouse.

Note: During the initial month for which Medi-Cal is being requested, the property held in the name of either or both of the institutionalized spouse and the community spouse is considered available to the institutionalized spouse in determining his/her eligibility. Once Medi-Cal eligibility is established, the couple has a time period (approximately 90 days from the date the Notice of Action approving Medi-Cal is sent) to transfer the property into the name of the community spouse. At the state hearing, the Judge is evaluating the property for the initial month Medi-Cal is being requested. The property at issue at the hearing may therefore be held in the name of either or both spouses.

Authority

Under federal law, if either spouse establishes that the CSRA, in relation to the amount of income generated by such an allowance, is inadequate to raise the community spouse's income to the Minimum Monthly Maintenance Needs Allowance (MMMNA), there shall be substituted for the CSRA under Subsection (f)(2) an amount adequate to provide such an MMMNA. (42 U.S.C.§§1396r-5(e)(2) and (f)(2))

The CSRA, as defined in Subsection (f)(2) is the greatest of four calculations. In California, the second option, $60,000 plus an indexed figure, is used. This figure was $81,960 in 1999. (42 United States Code (U.S.C.) §1396r-5(f)(1), All County Welfare Directors Letter (ACWDL) No. 98-49)

The MMMNA as set forth in 42 USC §1396r-5(d)(3)(C) shall not exceed $1,500, subject to adjustment under Subsections (e) and (g).

Subsection (g) provides for an indexing of the $1,500. (In California, this basic MMMNA is thus raised to $2,049 effective January 1, 1999 per ACWDL No. 98-49.)

Questions and Answers

For questions 1 through 9 below, assume that the community spouse has $500 in Social Security benefits, but no other income. Assume further based on the prevailing Certificate of Deposit (C.D.) rates, the community spouse is allowed to retain $250,000 in

In This Issue

Community Spouse Resource Allowance

property in order to generate $1549 in income which together with the $500 in Social Security meets the $2049 MMMNA. The current CSRA is $81,960.

1. Must the $81,960 standard CSRA generate income before the CSRA may be raised at a hearing?

   ANSWER: No. There is no requirement that the standard CSRA generate income nor is there any requirement for there to be any "plan" for the standard CSRA to generate any income. There must, however, be a "plan" to generate income if the couple has resources in excess of the standard CSRA.

2. What do you mean by a "plan"?

   ANSWER: A "plan" is information submitted that theoretically establishes what amount of resources the community spouse may retain to generate income to provide for the MMMNA. As long as the CSRA has an "adequate amount" of resources based on a reasonable standard, it is not essential that the CSRA actually generate the income pursuant to the "plan".

3. Must either spouse testify at the hearing that he/she intends to invest the income so as to generate the $2049 for the community spouse as suggested by his/her "plan"?

   ANSWER: No. 42 U.S.C.§1396r-5(e)(2)(C) states that if either the community or institutionalized spouse "establishes that the CSRA (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the MMMNA, there shall be substituted for the CSRA an amount adequate to provide for the MMMNA." This section <u>does not</u> say that the CSRA must actually generate such income.

4. If the couple has $200,000 in a non-interest bearing checking account or a 1% interest bearing account, can the institutionalized spouse be eligible for Medi-Cal?

   ANSWER: Yes. There is no requirement that the standard CSRA actually generate income and the couple's $200,000 in property is less than the $250,000 that has been established is necessary to raise the community spouse's income to the MMMNA. There is also no requirement that any property in excess of the CSRA generate any income in the initial month for which Medi-Cal is requested as long as either spouse submits a "plan" to show how the additional resources <u>could</u> generate income. When the claimant presents satisfactory evidence that the community spouse could retain up to $250,000 in a C.D. at prevailing rates, he/she has met the burden of 42 U.S.C.1396r-5 (e)(2)(C) by showing that such amount would be needed to raise the community spouse's income to the MMMNA.

   Note: Initial eligibility is the only time when the law allows the state to consider the community spouse's resources as available to the institutionalized spouse. After eligibility is established in the initial month, the CSRA and any newly acquired property of the community spouse may not be considered available to the institutionalized spouse. Counties may therefore not look beyond the initial month in which eligibility is established in evaluating the community spouse's resources, nor require the "plan" be carried out.

5. What if the couple has $300,000 invested in a 1% interest bearing checking account which together with the Social Security income generates less than the $2049 MMMNA?

   ANSWER: If the "plan" presented is that $250,000 deposited into C.D.s will generate the MMMNA, there is excess property. The Judge could approve an expanded CSRA (i.e. in excess of the standard

$81,960) for $250,000 and give the couple an opportunity to establish Medi-Cal eligibility for the institutionalized spouse by spending down the remaining $50,000.

Note: Spendddown may be retroactive to the month of application if the excess resources are spent on medical expenses per Principe v. Belshe. (see CDHS All County Welfare Director's Letter (ACWDL) No. 97-41, October 24, 1997).

Depositing money in a safe investment such as a C.D. is a reasonable method for investing assets. Thus while a community spouse is not required to actually invest in such an account he/she should be allowed to retain assets up to the amount established by prevailing C.D. rates (in this case $250,000).

The community spouse is initially entitled to an $81,960 CSRA. While there is no requirement that the standard $81,960 CSRA generate any income, when either spouse seeks to raise the CSRA, he/she may only do so pursuant to 42 U.S.C. §§1396r-5(e)(2) which provides that the expanded CSRA "shall be substituted for" the CSRA. Thus when either spouse establishes that $250,000 is needed to generate the MMMNA for the community spouse, this amount replaces the $81,960 CSRA. The $81,960 is not added to the $250,000.

On its face, investing $300,000 in a 1% interest checking account is not a reasonable method for requesting additional resources to generate income up to the MMMNA. However, if either spouse presented some other "plan", the Judge could evaluate such "plan" to consider increasing the CSRA up to the entire $300,000. Such plan would have to be reasonable. (see also question and answer #9).

6. If the community spouse had $500 in Social Security plus a $1600 pension for a total of $2100 in income, and the couple also had $150,000 in property, could the couple have the $81,960 CSRA raised in a state hearing?

ANSWER: No. There is only authority in federal or state law to increase the CSRA through a state hearing when the community spouse's income is less than the MMMNA. Since the community spouse has $2100 in income which is in excess of the $2049 MMMNA, the $81,960 CSRA cannot be raised. The couple's $150,000 is thus in excess of the allowable $83,960 (i.e. the $81,960 CSRA plus the $2000 property limit for the institutionalized spouse). The couple could spend down to $83,960 per Principe (see question and answer 5 above).

7. If the couple has property that is generating income in excess of the prevailing C.D. rate, but such income (including noninvestment income and investment income) is less than the $2049 MMMNA, can the community spouse have an expanded CSRA based on the prevailing C.D. rate?

ANSWER: Yes. Generally speaking, it would be prudent for individuals near retirement age to invest assets in low risk accounts. The state would have no authority to penalize an individual for converting assets from higher interest bearing, higher risk investments into lower risk investments. When the community spouse comes to a hearing, the ALJ is limited to looking at the "plan" submitted by the spouse which establishes that investment in a C.D. at prevailing C.D. rates generates income sufficient for the community spouse to meet the MMMNA.

8. Assume the claimant owns a second home, which is not or will not be rented or placed on the market for sale. Can the second home be part of an expanded CSRA or must the second home be excluded from the expanded CSRA and evaluated under the standard property limits?

ANSWER: If the total net market value of the second home plus all other property was under the expanded CSRA (in the example used $250,000), then the home still would not need to generate income as the community spouse would be able to retain $250,000 without generating income. (see the answer to question 4)

If the total value of all property including the second home exceeded $250,000, the second home would have to be listed for sale and meet the requirements of draft regulations Title 22, CCR Sections 50402 or 50416. Section 50402 specifies that if there is excess property and the applicant or beneficiary provides evidence that he/she is making a good faith and bona fide effort to liquidate property, the property is considered unavailable. A bona fide effort includes listing the property for sale with a licensed real estate broker for fair market value among other requirements.

9. Is the "plan" to generate income by investing in prevailing C.D. rates the only "plan" that the CDHS finds to be reasonable?

ANSWER: At present, no other "plan" has come to the attention of the CDHS. Each "plan" must be evaluated on a case by case basis. When considering whether a "plan" is reasonable, Judges should consider whether the community spouse could have needs that may outlast his/her resources when either spouse seeks an amount of property that is greater than that generated by prevailing C.D. rates.

For example, a 40 year old wife with three children has a husband who will be permanently institutionalized. She needs money to care for her children and also to care for her own needs for the rest of her life. If the wife who has property in excess of that amount generated by prevailing C.D. rates, submits a "plan" to invest in non-income producing investments such as growth stocks, the Judge could consider raising the CSRA above that which would be indicated based on prevailing C.D. rates.

The burden would be on the claimant to establish why assets are needed to generate income at a rate below the prevailing C.D. rates.

There are no specific criteria to determine what is a reasonable plan, although the CDHS has determined that presently, investing assets in accounts at prevailing C.D. rates is a reasonable plan. It is not the role of the Judge to act as an investment counselor, but simply to determine whether the "plan" to generate income adequate to provide for the MMMNA is reasonable.

10. Can either spouse seek to increase the MMMNA for the community spouse at the same time he/she is seeking to increase the CSRA?

ANSWER: No. A spouse may only seek to increase the MMMNA for the community spouse when the county is computing the share of cost for the institutionalized spouse. It is never proper to increase the MMMNA when determining if the institutionalized spouse is property eligible. (42 U.S.C. §1396r-5(b)(2) refers to attribution of institutionalized or community spouse's income <u>post eligibility</u>.)

Once the Judge authorizes an expanded CSRA for the community spouse, the institutionalized spouse meets Medi-Cal property limits. When the institutionalized spouse is determined eligible for Medi-

Cal, the county will compute a share of cost.

The institutionalized spouse may allocate income to the community spouse. The reason the institutionalized spouse would allocate income to the community spouse to supplement the community spouse's income is to reduce his/her income and thus reduce the share of cost.

The amount of income that the institutionalized spouse may allocate to the community spouse is that amount which when added to the community spouse's nonexempt income adds up to the MMMNA. If either spouse establishes that the community spouse needs income above the MMMNA due to exceptional circumstances resulting in significant financial duress, there shall be substituted an amount adequate to provide such additional income (see 42 U.S.C.§1396r-5(e)(2)(B)).

If either spouse establishes that the community spouse has exceptional circumstances resulting in financial duress, and the community spouse is allowed to retain income above the MMMNA, the institutionalized spouse allocates income to supplement the community spouse's income up to the substituted amount. By so doing, the institutionalized spouse further reduces his/her share of cost.

(QUESTION AND ANSWER 11 APPLIES TO ALL PROPERTY, NOT JUST THE CSRA)

11. In which of the following situations are the assets considered unavailable?

a) Family members or others, take the applicant's assets without the applicant's knowledge or permission.
b) The applicant is suffering from dementia or is comatose and the person filing the Medi-Cal application is unable to locate any assets. These assets are later discovered by the county via Social Security number match.
c) The applicant owns property in joint tenancy and the joint tenant refuses to sell his/her share of the property.

ANSWER: In all the above examples, the property may be unavailable under draft regulation Title 22, CCR §50402. CDHS ACWDL No. 97-41 specifically states that an individual's property is unavailable when that individual is unconscious, comatose or incompetent at any time during the month, since that person would not have the legal capacity to liquidate the property.

Whether the property is unavailable in a specific case depends on the facts of that case.

See also Medi-Cal Eligibility Procedures Manual §9H-3 regarding legal obstacles to the sale of other real property that render such property unavailable under draft regulation Title 22, CCR § 50402.