

State of California—Health and Human Services Agency
Department of Health Services



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Department of
Health Services

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Medi-Cal Eligibility Procedures Manual Letter No.: 294

TO: ALL HOLDERS OF THE MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

SUBJECT: ARTICLE 22C – DETERMINING SUBSTANTIAL GAINFUL ACTIVITY

Enclosed is an update to the Medi-Cal Eligibility Procedures Manual, Article 22C-2 Determining Substantial Gainful Activity (SGA). This update provides information on the 250 Percent Working Disabled (WD) Program as it relates to the SGA process. Individuals applying for Medi-Cal based on disability under this program are exempt from the mandatory SGA Evaluation.

Filing Instruction:

Remove Pages:

Article 22

Pages 22C-2.1 through 22C 2.11

Insert Pages:

Article 22

Pages 22C-2.1 through 22C-2.11

If you have questions regarding the 250 Percent WD Program, please contact Ms. Betty Mosher at (916) 552-9494 or email Bmosher@dhs.ca.gov. Questions regarding Article 22 in the Medi-Cal Eligibility Procedures Manual should be directed to Mr. Terry Durham at (916) 552-9483 or email Tdurham@dhs.ca.gov.

Original signed by

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Enclosures

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

22 C-2 -- DETERMINING SUBSTANTIAL GAINFUL ACTIVITY

1. BACKGROUND

Section 435.540 of the Code of Federal Regulations (42 CFR) requires Medi-Cal to use the Supplemental Security Income (SSI) definition of disability to decide whether a client is eligible for Medi-Cal based on disability.

To be considered disabled, SSI requires that an individual be:

,"unable to engage in Substantial Gainful Activity (SGA), due to a medically determined physical or mental impairment, which is expected to result in death, or which is expected to last for a continuous period of 12 months".

A client who performs SGA is not disabled, even if a severe physical or mental impairment exists.

2. THE CURRENT SGA AMOUNT

Since the SGA amount is now based on the federal average wage index, the dollar amount may be adjusted annually.

- Using the new formula, the SGA amount has increased to \$810 per month effective January 1, 2004.

NOTE: Since the SGA amount may change annually, future revisions to the manual regarding the actual SGA amount will only be reflected in this section. All other references to the SGA amount will only state "Current SGA Amount" and no dollar figure will be noted.

3. WHEN TO USE THESE PROCEDURES

These procedures will be used when a client:

- files for Medi-Cal disability, states on the MC 223 that he or she is working, and has gross earnings of more than the current SGA amount per month, or
- meets the criteria for Presumptive Disability (PD) but earns over the current SGA amount per month, PD should not be approved until an SGA determination is made. (except as indicated in the "notes below).

NOTE: Individuals applying for or enrolled in the 250 Percent Working Disabled (WD) program must meet the SSI federal definition of disability except that they may engage in SGA. When submitting disability packets to State Programs-Disability and Adult Programs Division (SP-DAPD), the MC 221 (Disability Transmittal Form) must indicate that the case is a 250 Percent WD case. For additional information regarding the 250 Percent WD program, see Section 5R of this manual.

NOTE: These procedures do not apply to clients who are blind, or to beneficiaries who return to work after disability has been approved. If an SGA evaluation was not performed because the client alleged blindness and SP-DAPD found that the client was disabled but not blind, an SGA evaluation must be performed before eligibility as a disabled person can be established.

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4. PROCEDURES

A. SGA DETERMINATIONS

The EW shall determine whether a client is performing SGA when a client has earned income over the current SGA amount per month. The EW shall:

1. **Obtain:** Client's gross monthly earnings (if irregular, earnings should be averaged). Earnings derived from In-Home Supportive Services are treated as earned income.
2. **Determine:** Whether there are impairment-related work expenses (IRWEs) or subsidies that can reduce earnings below the SGA amount. (IRWEs and Subsidies are discussed further in this section).
3. **Deny:** Medi-Cal disability application if "net countable earnings" are over the current SGA amount.
4. **Submit:** A full disability packet to SP-DAPD, including an MC 220, MC 221, and MC 223, only if "net countable earnings" do not exceed the current SGA amount.
5. **Alert:** Is sent to SP-DAPD via a DAPD Pending Information Update Form (MC 222) when a disability packet was sent to SP-DAPD and the client is subsequently found to be engaging in SGA. SP-DAPD will stop case development and return case to county of origin.

Work Activity Report Form (MC 273, Exhibit 2) should be provided to client whose earning are over the current SGA amount to help in making SGA determinations.

B. IMPAIRMENT-RELATED WORK EXPENSES

Impairment-related work expenses (IRWEs) are certain expenses that are incurred and paid by an impaired client to enable him/her to work.

1. SGA Determination

IRWEs can be deducted from gross earnings to arrive at "net countable earnings" If "net countable earnings" are over the current SGA amount, deny the application. For self-employment, IRWEs can be deducted from net income, if not already deducted from gross income as a business expense.

Example: The current SGA amount is \$810. The client earns \$1,100 per month and has \$200 worth of IRWEs for special transportation costs to go to work and for medications needed to control a seizure disorder. In this example the "net countable earnings" are \$900 per month (\$1100-200). As "net countable earnings" (\$900) are more than the current SGA amount, the client is performing SGA and the application is denied.

Do **NOT** apply ABD-MN or AFDC MN/MI earned income deductions when determining SGA.

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2. Allowable IRWE Deductions

Deductions are allowed when the following conditions exist:

- a. Disabled client needs the item/service in order to work. The need must be verified by the prescribing source (e.g., doctor, Vocational Rehabilitation [VR]). The cost must also be verified.
- b. Cost is paid by disabled client and not reimbursed by another source (e.g., Medicare, VR). The cost must be paid in cash, including checks or money orders, and not in kind.
- c. Expense is "reasonable". It represents comparable charges for the item/service in the community. Sources such as a medical supplier or VR may be contacted.

Example: Client states he/she needs an attendant to assist in activities to prepare for work. Client has a family member perform the services and is charged \$15 per hour. If Personal Care Services provided through In-Home Supportive Services allows a payment of \$4.25 per hour, only \$4.25 per hour should be allowed as a deduction.

3. Budgeting of IRWE

Payment must be made after client became disabled in order for cost to be deducted. Payment is computed in the following ways:

- a. Recurring and Non-Recurring IRWEs
 1. Recurring costs, such as monthly payments for a wheelchair: the amount paid monthly is deductible.
 2. Non-recurring down payments, or full purchase price paid for an item: a lump sum payment may be prorated over 12 months.
- b. Cost Incurred Before or After Work
 1. Before work started: Prorate the cost over a 12-month period; deduct only the balance of the 12 months while the client is working.

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Example: Client paid \$600 in January for an item. Work started in April. Prorate the cost over 12 months. IRWE applies to the balance of the 12 months of employment, or \$50 per month for April through December.

2. After work ended: Deduct IRWE from the last month earned income is received.

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4. IRWE Categories

DEDUCTIBLE

Attendant Care Services

- Performed in work setting or in process of assisting in preparations for work, the trip to/from work and after work (e.g., bathing, dressing, cooking, eating).
- Services which incidentally benefit the family (e.g., cooking meal for individual also eaten by family).
- Services performed by a family member for a cash fee where the family member suffers an economic loss by reducing or terminating work to perform such services.
- Requires verification of duties, of amount of time spent, that they were paid for in cash, and that payment is made on a regular basis.

Transportation Costs

- Structural or operational modifications to vehicle, needed to drive to work or be driven to work, even if also used for non-work purposes.
- Driver assistance or taxicabs where such special transportation is not generally required by unimpaired individuals in the community.
- Mileage expense limited to travel related to employment.

NON DEDUCTIBLE

Attendant Care Services

- Performed on non-workdays or involving shopping or general homemaking (e.g., cleaning, laundry).
- Services performed for someone in the family other than the beneficiary (e.g., babysitting).
- Services performed by a family member for a cash fee where the family member suffers no economic loss.

Transportation Costs

- Cost of a vehicle whether modified or not.
- Cost of modification to a vehicle not directly related to the impairment or critical to the operation of the vehicle (e.g., paint or decor preferences).
- Cost of travel related to obtaining medical items or services.

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DEDUCTIBLE

Medical Devices

- Wheelchairs, hemodialysis equipment, pacemakers, respirators, traction equipment, braces (arm, leg, neck, back).

Work-Related Equipment and Assistants

- One-handed typewriters, typing aids (e.g., page-turning devices), electronic visual aids, telecommunications devices for people with hearing impairments and special work tools.
- Expenses for a person who serves as a reader for a visually impaired person, expenses for an interpreter for a deaf person, and expenses for a job coach.

Prosthesis

- Artificial hip and artificial replacement of an arm, leg or other part of the body.

Residential Modifications

- Individual Employed Outside Home: Modifications to exterior of house to allow access to street or transportation (e.g., exterior ramps, exterior railings, pathways, etc.).
- Individual Self-Employed at Home: Modifications made inside home to accommodate impairment (e.g., enlargement of a doorway leading into an office, etc.).

NON DEDUCTIBLE

Medical Devices

- Any device not used for a medical purpose.

Work-Related Equipment and Assistants

- Any work-related device not paid for by the person with a disability or, in the case of a self-employed individual, equipment previously deducted as a business expense.

Prosthesis

- Any prosthetic device that is primarily for cosmetic purposes.

Residential Modifications

- Individual Employed Outside Home: Modifications to the house primarily intended to facilitate functioning in the home environment (e.g., enlargement of interior door frames, lowering of kitchen appliances and bathroom facilities, interior railings, stairway chairlift, etc.).

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- Individual Self-Employed at Home: Any modification expenses previously deducted as a business expense in determining SGA.

DEDUCTIBLE

Routine Drugs/Medical Services

- Regularly prescribed medical treatment or therapy that is necessary to control a disabling condition (even if unsuccessful), such as anti-convulsion drugs or blood level monitoring, radiation treatment or chemotherapy, corrective surgery for spinal disorders, anti-depressant medication, etc. The physician's fee relating to these services is deductible.

Diagnostic Procedures

- Objective of procedure must be related to the control, treatment or evaluation of a disabling condition (e.g., electroencephalograms, brain scans, etc.).

Non-Medical Appliances/Devices

- In unusual circumstances, when devices or appliances are essential for the control of disabling condition either at home or in the work setting (e.g., an electric air cleaner for a client with severe respiratory disease); the need is verified by a physician.

Other Items/Services

- Medical supplies of an expendable nature (e.g., incontinence pads, elastic stockings, catheters).

NON DEDUCTIBLE

Routine Drugs/Medical Services

- Drugs and/or medical services used for only minor physical or mental problems (e.g., routine physical exams, allergy treatment, dental exams, optician services, etc.).

Diagnostic Procedures

- Procedures paid for by other sources (e.g., VR, Medicare) or not related to a disabling condition (e.g., allergy testing).

Non-Medical Appliances/Devices

- Devices used at home or at the office which are not ordinarily for medical purposes (e.g., portable room heaters, air conditioners, humidifiers, dehumidifiers, etc.) and the client has no verified medical work-related need.

Other Items/Services

- An exercise bicycle or other device used for physical fitness unless verified as necessary by a physician.

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- The cost of a guide dog, including food, licenses, and veterinary services.

C. SUBSIDIES

An employer may because of a benevolent attitude toward a handicapped individual subsidize the employee's earnings by paying more in wages than the reasonable value of the actual services performed. When this occurs, the excess will be regarded as a subsidy rather than earnings and should be deducted from the gross earnings. Subsidies:

1. May involve: giving the impaired worker the same pay but more supervision or fewer/simpler tasks than other non-impaired workers.
2. May result in: more pay than the actual work is worth. Workers in sheltered workshops or settings are generally subsidized.
3. Are deducted: from gross earnings to arrive at "net countable earnings" for SGA eligibility determinations but are not considered an earned income exemption for budget determinations, once a medical decision is made. They are considered *unearned income*.
4. Should be verified: by an employer contact to confirm a subsidy exists and determine the value of the subsidy.

Example: Employer states that the value of client's work is half the actual earnings. Client earns \$800 per month. As half the work is subsidized, \$400 is considered the real value of work and client is not engaging in SGA. NOTE: \$800 is the non-exempt income for CWD use in computing client's budget.

D. SPECIAL WORK CONSIDERATIONS

If client is forced to stop working after a short time due to an impairment, the work is generally considered an unsuccessful work attempt (UWA) and earnings from that work will not show ability to do SGA.

1. UNSUCCESSFUL WORK ATTEMPT (UWA) REQUIREMENTS

All of the following must be present for work to be considered an UWA:

- there is a break in client's employment of 30 days or more, and
- work lasted less than six months, and
- work stopped due to client's impairments.

2. EVALUATING UNSUCCESSFUL WORK ATTEMPTS

The following are examples of possible situations which might be encountered when evaluating work activity. How the EW analyzes the situation and what action the EW takes are also provided below.

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EXAMPLE A: Client worked from 12/1/92 to 6/30/94. Work stopped due to his impairment. He returned to work on 8/5/94 and stopped again on 9/1/94 due to his impairment. He applied on 9/2/94 with a request for retro back to 7/94.

EW's Analysis

- There is a break in employment of over 30 days between 6/30 and 8/5.
- Work lasted less than six months from 8/5 to 9/1.
- Work stopped due to client's impairment.

EW's Actions

- In Item 10 of MC 221, indicate "work after 6/94 is an UWA".
- In Item 6 of MC 221, list retro months of 7/94 and 8/94.

EXAMPLE B: Client worked sporadically from 10/93 to 12/93, 3/94 to 4/94 and 6/94 to 7/94 because of his mental illness. He applies on 7/10/94, asking for retro back to 4/94.

EW's Analysis

- There is a break in employment of over 30 days between each work period.
- Work lasted less than six months for each employment period.
- Work stopped due to client's impairment.

EW's Actions

- In Item 10 of MC 221, indicate "work prior to application is an UWA".
- In Item 6 of MC 221, list retro months 4/94, 5/94 and 6/94.

EXAMPLE C: Client worked until 5/30/94 and applied on 7/7/94, requesting retro onset to 4/94. CWD determined that client was engaging in SGA in 4/94 and 5/94. In Item 6 of MC 221 that was sent to SP-DAPD, EW Indicated "6/94", and indicated in Item 10 "client engaged in SGA in 4/94 and 5/94". On 8/31/94, client reports a return to work for 8/94 only, but stopped because of her impairment.

EW's Analysis

- There is a break in employment over 30 days from 5/30 and 8/1.
- Work in 8/94 lasted less than six months.
- Work stopped due to client's impairment.

EW's Actions

- Complete and send MC 222, DAPD Pending Information Update form to SP-DAPD.
- Indicate in Item 9 that client's return to work in 8/94 was an UWA, and that client is no longer working.

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E. In-Kind Income as Earned Income "For SGA Determinations"

Earned income may be in cash or in kind. In kind income may include value of food, clothing, or shelter, or other items provided instead of cash. If food and/or shelter are not a condition of employment, the current market value of the food, clothing, and/shelter counts as wages (earned income) and would be considered in an SGA determination.

EXAMPLE: Mrs. B. manages an apartment complex. In addition to her salary of \$500 per month, she receives free use of an apartment where she lives. It is verified by the owner of the complex that he furnishes the apartment to Mrs. B. so that she will be available for emergencies. The owner would also expect Mrs. B. to respond to emergencies during her off-duty hours. The owner states that Mrs. B. is not required to live in the apartment provided, but would not have hired someone who lived more than two to three miles away.

Since the shelter is not a condition of employment, the current market value of the shelter is considered as earned income. In this example, the MC 272 (SGA Worksheet) would need to be completed with \$500 used as payment in kind under number one. Therefore, \$500 would be inserted as a monthly earning plus another \$500 as payment in kind. If the total of these two incomes, less any IRWEs, is more than the current SGA amount, the individual is considered to be engaging in SGA.

F. NOTIFICATION

1. Notifying SP-DAPD

If the CWD performs an SGA evaluation and determines that the individual is not performing SGA, the CWD must annotate in Item 10 (County Worker Comment) of the MC 221 that there is "no SGA issue." The CWD must include a copy of the SGA Worksheet (MC 272) in the disability packet.

If CWD has already sent the disability packet to SP-DAPD, and an SGA issue has been clarified, SP-DAPD should be informed on the evaluation of client's work activity via an MC 222, DAPD Pending Information Update form along with a copy of the MC 272.

If SP-DAPD returns a disability packet to the county as a Z56 for an SGA determination, the CWD must complete an SGA determination. Should the CWD determine that the client is not performing SGA, a new MC 221 MUST be completed and resubmitted with a copy of the MC 272.

2. Notifying Client

If client's application is denied due to performance of SGA, client should be sent a Notice of Action (NOA) informing him/her of the reason for the denial. The NOA may contain the following sample statement:

"The reason why you are not entitled to Medi-Cal based on disability is because your earnings of \$——are over the current SGA monthly amount. This means that your net countable earnings are over the current SGA monthly amount of —— which is the earnings limit if you are working and applying for Medi-Cal as a disabled person "

NOTE: The Title 22 reference section is: 50224

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G. FORMS

1. SGA Worksheet, Form MC 272 (Exhibit 1):

May be used to compute client's earnings and IRWE/Subsidy deductions.

- a. **Net earnings of current SGA amount or less:** process application in the usual manner.
- b. **Net earnings more than the current SGA amount per month:** deny claim, as client is engaging in SGA.

2. Work Activity Report, Form 273 (Exhibit 2):

Should be used to determine what client's earnings are and whether the client's gross earnings can be reduced by the amount of any applicable IRWE or subsidy.

3. DAPD Pending Information Update, Form MC 222:

Must be sent if a disability packet is pending at SP-DAPD, and client is subsequently found to be engaging in SGA. The MC 272 must also be included.

