



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



GAVIN NEWSOM
GOVERNOR

Date: November 16, 2021

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 21-26
ALL COUNTY WELFARE ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS
ALL COUNTY MEDS LIAISONS

SUBJECT: Medicare Set-Aside Accounts
(References: All County Welfare Directors Letter 90-01, Section 50402;
Title 22, California Code of Regulations, §§ 50507, 50513, and 50515)

The purpose of this All County Welfare Directors Letter (ACWDL) is to inform counties of the treatment of Medicare Set-Aside Accounts (MSA) for Medi-Cal eligibility purposes. MSAs, also called Workers' Compensation Medicare Set-Aside Arrangement Accounts (WCMSA), are not countable as income and property on the basis of their unavailability when determining an individual's eligibility for Medi-Cal.

MSAs are defined by the Centers for Medicare and Medicaid Services (CMS) in the following manner:

An MSA is “a financial agreement that allocates a portion of a workers' compensation settlement to pay for future medical services related to the workers' compensation injury, illness, or disease. These funds must be depleted before Medicare will pay for treatment related to the workers' compensation injury, illness, or disease.”

“The amount of the [MSA] is determined on a case-by-case basis.”¹ (See the CMS.gov [website](#) for additional information.)

¹ *Workers' Compensation Medicare Set Aside Arrangements*, Centers for Medicare and Medicaid Services, accessed July 8, 2019, <<https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Overview.html>>.

Federal policy mandates that the MSA settlement be placed in an interest-bearing account² separate from any other account such as personal savings or checking.

MAGI Eligibility

If an applicant/beneficiary is being determined for Modified Adjusted Gross Income (MAGI) Medi-Cal, the MSA funds are not counted as they are not considered taxable income. However, the interest earned on MSA funds retained in an account is taxable income and would be counted in the MAGI eligibility determination as per the "Interest Income" category in the [MAGI Income and Deduction Types](#) chart.

Non-MAGI Eligibility

Property

MSA funds are considered unavailable property under ACWDL [90-01](#) (January 5, 1990), Section 50402 of that letter.

Income

MSA funds are considered unavailable income. State regulations provide that income that is not available to meet current needs of a person or family shall not be considered in determining Medi-Cal eligibility, including share-of-cost. (Title 22, California Code of Regulations (CCR) § 50515(a)). Unavailable income includes the portion of workers' compensation and other public or private insurance settlements that is designated for medical, legal or other such expenses, or the portion that is not controlled by the applicant or beneficiary or person acting on their behalf. (22 CCR [§ 50515\(a\)\(1\)](#)). Additionally, the interest or dividends generated by the interest-bearing account are unavailable income,³ and not countable when determining an individual's eligibility for Non-MAGI programs.

The funds in a MSA are considered unavailable as income or property whether the MSA is self-administered or administered by a third party. The rationale is that the funds in the account will be used for their intended purpose, annual reports to CMS are required, and the accounts also may be audited by CMS.

² Section 17.2 Interest-Bearing Account, [WCMSA Reference Guide](#).

³ Dividends and interest are defined as gross unearned income under state regulations (22 CCR [§ 50507](#)). Only income that actually is available to meet the needs of the person or family shall be considered in determining that person's or family's share of cost (22 CCR [§ 50513](#)).

If an account is identified to the county as a MSA by the applicant, the county should ask for supporting documentation to demonstrate that the account is a MSA. This documentation can include:

- The court order or letter laying out the terms of the settlement; or
- The account documents; or
- The pairing of the settlement documents with the account documents.
- If an applicant or beneficiary cannot obtain documentation, a written affidavit signed and dated under penalty of perjury.

It is unnecessary for the individual to provide evidence as to the specific medical expenses the account has been established to pay.

The county determination that an account is a MSA is a one-time review. At renewal, counties shall not re-verify that an account is a MSA.

County Responsibilities

County Responsibilities	Not County Responsibilities
<ul style="list-style-type: none"> • Verifying that the account is a MSA account • Documenting initial account information in case record: <ul style="list-style-type: none"> ○ Name of financial institution for the account ○ Account number ○ Account balance ○ Date account was opened/closed ○ Name of person with signature authority ○ Name of account administrator. 	<ul style="list-style-type: none"> • Determining whether an individual is qualified to open a MSA account • Determining what specific medical expenses the account has been established to pay • Reviewing all MSA account transactions • Determining whether distributions are for qualified medical expenses.

If you have any questions or if we can provide further information, please contact Meuy Saeteune by phone at (916) 345-8064 or by email at Meuy.Saeteune@dhcs.ca.gov.

Yingjia Huang
 Assistant Deputy Director
 Health Care Benefits and Eligibility
 Department of Health Care Services