

DATE: October 3, 2023

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 23-18
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: VERIFICATION OF SPOUSAL INCOME ALLOCATION FOR NON-MODIFIED ADJUSTED GROSS INCOME (MAGI) SPOUSAL IMPOVERISHMENT CASES

RE: ACWDLs [90-01](#), [90-03](#), [90-89](#), [17-25](#), and [18-19](#)

PURPOSE:

The purpose of this letter is to clarify the policy regarding verification of the spousal impoverishment (SI) spousal income allocation at application, reported changes in circumstance, and annual renewal.

BACKGROUND:

The spousal income allocation is made by the institutionalized or Home and Community-Based Services (HCBS) spouse to the community spouse. The spousal income allocation applies only to Non-MAGI eligibility determinations. The SI provisions apply in accordance with the All County Welfare Directors Letters (ACWDLs) listed above and with [42 U.S.C, Section 1396r-5\(d\)\(1\)\(B\)](#).

Description of Spousal Income Allocation:

Spousal income allocations are made on a monthly basis and used as a deduction from the institutionalized spouse's income calculation. The spousal income allocation is added to the community spouse's income calculation whenever the community spouse applies for Medi-Cal. A couple may decide to discontinue or reduce the spousal allocation if the community spouse also needs to apply for Medi-Cal. The amount of the spousal income allocation may be adjusted at any time by contacting the CEW. Income is never deemed from the community spouse to the institutionalized spouse.

The spousal income allocation shall be calculated so that the community spouse's income plus the spousal income allocation is as close as possible (based upon the availability of income from the institutionalized spouse) to the Minimum Monthly Maintenance Need Allowance (MMMNA) without going over. The MMMNA is published

annually by the Department. The spousal income allocation can be different than the one calculated with the MMMNA if:

- A lower spousal income allocation is agreed upon by the couple for the purposes of retaining the best arrangement of eligibility for each spouse.
- A higher spousal income allocation is established by an administrative law judge through a fair hearing due to exceptional circumstances resulting in financial duress.
- A higher spousal income allocation is established by a court order for the support of the community spouse.
- The community spouse's income is more than the MMMNA, then the community spouse retains that income.

DHCS issued [ACWDL 90-03](#) and [ACWDL 90-89](#) to outline the verification requirement at application, reported changes in circumstance, and annual renewal for the spousal income allocation amount. [ACWDL 90-03](#), question and answer number 12, requires that the amount of the spousal income allocation be verified before the share of cost is calculated at intake and for prior months. [ACWDL 90-89](#) clarifies that verification is not necessary in the case of couples with joint checking accounts.

POLICY:

Effective with the release of this ACWDL, when verification is required that the spousal income allocation will be or has been given to the community spouse and paper documentation to verify the information is unavailable, the institutionalized spouse or authorized representative (AR) may provide an affidavit, including telephonic, to verify the spousal income allocation amount or agreed upon amount at application, reported changes in circumstance, and annual renewal. This policy applies to both the long-term care (LTC) and HCBS Waivers and Programs and applies to any retroactive request. Counties should use the guidance in [ACWDL 21-12](#), "TELEPHONIC SIGNATURES FOR AFFIDAVITS SIGNED UNDER PENALTY OF PERJURY" when completing the affidavit telephonically.

As a reminder, the county eligibility worker (CEW) must inform the couple or AR, upon request for LTC or HCBS:

- About the spousal income allocation, including the description listed above (Background section),
- Relative to the months LTC or HCBS are requested,
- How the amount is calculated, and
- The relevant verification requirements discussed in this letter.

Verifying Spousal Income Allocation At Intake

CEWs shall:

- Obtain copies of documents verifying amounts already paid to the community spouse, if any. If amounts were paid, but verification is not available, obtain a signed affidavit.
- Obtain copies of court orders or fair hearing orders that establish a higher spousal income allocation, if any. These copies are sufficient verification. No additional verification of the spousal income allocation is required. (If the couple or AR state that they intend to obtain a court order for the support of the community spouse, the CEW must pend the case taking into consideration, the length of time necessary to obtain such a court order.)
- If no court order or fair hearing amount applies, obtain a signed affidavit that the institutionalized spouse, HCBS spouse, or AR agree to make the monthly transfer of the calculated amount or, if the community spouse is also applying, a smaller agreed upon amount. A signed affidavit, which may be signed telephonically, is sufficient verification and shall be used in completing the eligibility determination. No additional verification of the spousal income allocation is required at this time.

In the case of retroactive months:

- If a court order or fair hearing decision or other paper verification is available of income transferred to the community spouse, then the CEW shall accept the amount verified.
- If the couple, or AR, had no knowledge of the spousal income allocation, or if verification is not available, then the CEW shall proceed with a signed affidavit, which may be signed telephonically, stating the income amount that will be transferred representing each retroactive month and ongoing as sufficient verification. That amount shall be used to complete the eligibility determination for each retroactive month and ongoing.

Verifying Spousal Income Allocation at Annual Renewal and Change Circumstances

In cases that involve a court ordered amount or an amount established by fair hearing, the CEW shall include the court ordered amount or the amount established by fair hearing as the amount for on-going eligibility. No additional verification is required.

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In cases where:

- 1) the spousal income allocation is the calculated amount, or
- 2) the community spouse is also a Medi-Cal member,

CEWs shall:

- contact the couple or AR using their preferred contact method,
- review the spousal income allocation requirements,
- discuss the amount of the spousal income allocation and whether it needs to change, and if so, to what amount,
- request verification that the spousal income allocation has been provided in the review month or the month preceding the month of review, or a copy of any new court order or fair hearing if it is not already in the case file,
- if verification is not available, or if a new agreed upon amount is to be used, accept the institutionalized or HCBS spouse's, community spouse's, or AR's affidavit.

Remember to follow guidance to obtain missing information from applicants (ACWDL [22-12](#)) and members (ACWDL [22-33](#)).

As indicated above, if the couple uses a joint account, then verification is not required. If couples have separate or additional personal accounts and the individual states that the spousal income allocation is deposited into one of these accounts, counties should request paper documentation to verify. Acceptable forms of verification include, but are not limited to:

- Copy of the account statement showing the deposit or transfer,
- Copy of a check written to the community spouse
- Statement from the bank on the bank's letterhead that the transaction occurred,
- ATM receipt or a receipt from a bank (teller) that shows the transaction occurred or a corresponding withdrawal of cash occurred,
- If the verification is not available, or the transfer of the spousal income allocation is made in cash and is not verifiable, then a signed affidavit is required.
- Any verification received shall be relied upon until the next annual redetermination or a change in circumstances requires that a new amount be verified.

If you have any questions, or if we can provide further information, please contact Andrey Bodrov, by phone at (916) 345-8675 or by email at Andrey.Bodrov@dhcs.ca.gov.

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Sincerely,

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