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

California Department of Health Services

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April 14, 2006

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 06-12
ALL COUNTY ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS

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

The Deficit Reduction Act of 2005 (S. 1932), signed into law by President Bush on February 8, 2006, amended, among other things, Section 1924(d) of the Social Security Act (42 U.S.C.1396r-5), which sets forth the methodology administrative law judges use in determining the amount of a substituted Community Spouse Resource Allowance through the fair hearing process.

The California Department of Social Services' Administrative Adjudications Division's Training Bureau distributed the attached guidelines to their Administrative Law Judges on March 7, 2006, and has given the California Department of Health Services permission to release this information through the attached communication.

If you have any questions on this issue, please feel free to contact Mr. Robert Laederich at (916) 552-9486.

Original Signed By

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Attachment

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NOTES FROM THE TRAINING BUREAU

State Hearings Division
California Department of Social Services
Item 06-3-2
March 7, 2006

ITEM 06-3-2: NEW RULES REGARDING COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA)

The rules regarding increasing the CSRA have changed due to passage of the Deficit Reduction Act of 2005.

In Notes from the Training Bureau 99-4-1, the issue concerning the CSRA was discussed. That *Notes* began as follows:

> 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.

Notes from the Training Bureau 99-4-1 was then published as Department of Health Services All County Welfare Director's Letter 99-29 that was titled: "Guidelines Used by Administrative Law Judges when an Increase in the Community Spouse Resource Allowance (CSRA) has been Requested through a Fair Hearing".

Notes from the Training Bureau 00-8-2(c) was titled: Increasing the CSRA Without Considering the Income of the Institutionalized Spouse. That *Notes* said the following:

> When an institutionalized spouse or a community spouse requests a state hearing to increase the CSRA, should the ALJ allocate the income of the institutionalized spouse in determining whether to increase the CSRA for the community spouse?
>
> Under federal law, states may choose to require an institutionalized spouse to allocate income to the community spouse before an ALJ may increase the CSRA. The applicable statute is Welfare and Institutions Code (W&IC) §14006(c). That statute says, "A community spouse may retain nonexempt resources to the maximum extent permitted under Title XIX of the federal Social Security Act".
>
> By implementing this statute, California has not chosen to be an "income first" state. This means that California has never required an institutionalized spouse to allocate income to a community spouse before either spouse requests a hearing to increase the CSRA for the community spouse. As a result, an ALJ should not allocate the income of the community spouse when the community spouse requests a hearing seeking to increase the CSRA.

The following example illustrates the issue:

The community spouse has $600 in Social Security benefits as her only source of income. She and the institutional spouse have $200,000 in bank accounts. They have no other property.

The county has denied Medi-Cal for the community spouse because the $200,000 exceeds the $84,120 CSRA. The community spouse requests a hearing to increase the CSRA.

At the hearing, the community spouse contends that at current interest rates for a six-month certificate of deposit, she could retain $275,000 in property. She maintains that it would take $275,000 to generate $1503 in monthly income which combined with her $600 Social Security income would equal the $2103 Minimum Monthly Maintenance Need Allowance (MMMNA) for 2000.

Assuming the community spouse has correctly established the current certificate of deposit rates, the ALJ should grant the claim and increase the CSRA to $275,000. The ALJ should not allocate any income of the institutionalized spouse to the community spouse in determining whether to increase the CSRA. Thus even if the institutionalized spouse had $2500 in income, none of this income could be allocated to the community spouse before Medi-Cal eligibility is established.

Once the CSRA is increased and Medi-Cal eligibility is established for the institutionalized spouse, the county would have to compute a share of cost for the institutionalized spouse. At this time, the institutionalized spouse could choose to allocate some of his income to the community spouse in order to reduce his share of cost.

The Deficit Reduction Act of 2005 (S. 1932, Section 6013) signed into law by President Bush on February 8, 2006 changed the above procedures. In relevant portion it says:

(a) In General – Section 1924(d) of the Social Security Act (42 U.S.C.1396r-5)) is amended by adding at the end the following new subparagraph:

'(6) APPLICATION OF 'INCOME FIRST' RULE TO REVISION OF COMMUNITY SPOUSE RESOURCE ALLOWANCE – For purposes of this subsection and subsections (c) and (e), a State must consider that all income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance under this subsection, has been made available before the State allocates to the community spouse an amount of resources adequate to provide the difference between the minimum monthly maintenance needs allowance and all income available to the community spouse.'.

(b) Effective Date – The amendment made by subsection (a) shall apply to transfers and allocations made on or after the date of the enactment of this Act by individuals who become institutionalized spouses on or after such date."

Under this bill, California and all other states now must be income first states. Since the bill was signed February 8, 2006, it affects those individuals who become institutionalized on or after that date. In Medi-Cal, a person is eligible for an entire month if he/she is eligible on any day in the month. Therefore, regarding new applications for prospective Medi-Cal, the reference "apply to transfers and allocations made on or after the date of the enactment of this Act by individuals who become institutionalized spouses on or after such date", means that the new law applies to Medi-Cal applications effective March 1, 2006 and ongoing.

Since the CSRA applies only for the initial determination of eligibility, if someone applied on

February 2, 2006, they would have their CSRA determined under the old rules. If someone was institutionalized on February 12, 2006, but didn't apply for Medi-Cal until March 2, 2006, they would have their CSRA determined under the new rules, unless they requested retroactive coverage.

If the person entered a medical institution or facility on March 9, 2006 (i.e., after S.1932, section 6013 was enacted) and requested retroactive coverage for February 2006, because he/she had previously been in LTC from November 15, 2005, through February 2, 2006, returned home on February 2, 2006, and then again entered LTC on March 9, 2006, the CSRA would be determined under the old rules because the continuous period of institutionalization (as it is defined in ACWDL 90-01) has never ended (the continuous period ends when the individual is no longer institutionalized for a full calendar month) and the CSRA applies to the month of the initial determination.

The following example sets out how the new law would work:

The CSRA for 2006 is $99,540 and the MMMNA for 2006 is $2489. Assume the couple has $350, 000 in property and is seeking to increase the CSRA to $350,000 in order for the LTC spouse to qualify for Medi-Cal. Also assume that the community spouse receives a monthly $1000 social security check and the LTC spouse receives a $1535 monthly social security check.

Under the old rules before enactment of S. 1932, Section 6013, the judge would consider all the property to determine if investing the $350,000 in a six-month CD would generate $1489 or less ($2489 MMMNA-$1000 social security income of the community spouse). Under S.1932, section 6013, the judge must consider the LTC spouse's income. That combined income is $1000 (community spouse) + $1500 for the LTC spouse (allowing for a $35 LTC maintenance need) =$2500. Since $2500 is greater than $2489, the judge would not be able to increase the CSRA above $99,540. If the couple's property exceeded $99,540, the LTC spouse would be ineligible for Medi-Cal.

If the LTC spouse has $1400 in net-nonexempt income instead of $1500 (i.e., allowing for the $35 LTC maintenance need and assuming no other deductions), the combined countable income would be $1000 + $1400 = $2400. If an applicant sought to increase the CSRA to $350,000, he/she would have to establish that investing $350,000 would generate $89 or less since the MMMNA is $2489 and the combined non-investment income of the LTC spouse and community spouse is $2400. Absent convincing reasoning why the plan to generate income based upon a CSRA of $350,000 should be granted, the Administrative Law Judge would find that at 4.5% (applying current six-month CD rates) the client would receive a CSRA of only $23,735 to generate the additional $89 per month. Because this amount is less than the standard amount, the claimant's request would be denied.

In the above example, if the applicant applies on March 2, 2006, but seeks retroactive Medi-Cal for February 2006, the old rules would apply. If such applicant sought to increase the CSRA to $350,000, he/she would have to establish that investing $350,000 would generate $1489 or less since the MMMNA is $2489 and the non-investment income of the community spouse is $1000. At a current six-month CD rate of 4.5%, the claimant could retain $397,068 in order to generate $1489 monthly. The Administrative Law Judge would therefore approve the request to increase the CSRA to include the entire $350,000.