

IHSS Self-Assessment and Fair Hearing Guide

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This guide is to help you prepare for the county IHSS worker's initial intake assessment or the annual review. This guide will also help you represent yourself and others in fair hearings when there is a dispute about the number of In-Home Supportive Services (IHSS) hours you need.

Doing a self-assessment will help you figure out how many hours you need and what to point out to the IHSS worker completing the assessment. This guide does not cover everything about how the IHSS program works. Please see our other IHSS publications or call us if you have questions about other areas this guide does not cover, such as IHSS overtime rules, alternative resources, appeal or hearing problems (for example, a refusal to accept a power of attorney), or issues with Legal Permanent Residents or veterans who need IHSS.

Our other IHSS publications can be found here:

<https://www.disabilityrightsca.org/publications/in-home-supportive-services-ihss>

There are 3 parts to this guide.

1. **Part One** describes IHSS assessments and how to prepare, questions and answers about IHSS, how to ask for and prepare for a hearing, and what to expect at a hearing.
2. **Part Two** is a self-assessment worksheet to figure out how many hours you need.
3. **Part Three** has examples from IHSS recipients explaining why they need more IHSS time.

Part 1: IHSS Assessments and Fair Hearings

What is the IHSS assessment process?

During an IHSS assessment, the county worker will come to your home and determine which services you are eligible for and how many hours you will get per month. You will have a county assessment:

- when you first apply for IHSS,
- normally, once a year, and
- any time you request it. The county should do the assessment within 30 days of your request and provide you with an IHSS Notice of Action (NOA).

Your IHSS NOA will say how much time the county has decided you need for each IHSS task that you need help with. The time in your IHSS NOA is in hours and minutes. Your IHSS NOA will also contain information about your appeal rights.

How does the county measure IHSS need?

- Law and Regulations
 - The standard for measuring individual need for services is set out in Welfare and Institutions Code Section 12300.
 - You must be unable to perform the needed services because of your disability.
 - You need the services to (1) remain safely in your own home or where you choose to live, and/or (2) establish and maintain an independent living arrangement.
 - The time that will be authorized is based on the time it takes your provider to do the tasks authorized.
 - No time will be authorized for services solely for your “comfort.”
 - The maximum number of hours is 283 per month.
- State Hourly Task Guidelines: for details about the Hourly Task Guidelines (HTGs), see All County Information Notice (ACIN) No. I-82-17 (December 5, 2017), available online here: <http://www.cdss.ca.gov/inforesources/2017-All-County-Information-Notices>

The HTGs advise the county IHSS social workers to determine functioning using rankings and then give hours based on the ranking.

Step One: Determine Functioning

IHSS social workers must determine how much help you need for **each IHSS task**. To do this, they use HTGs. The IHSS social worker begins by ranking your functioning in each of the following:

- Domestic Services (Housework);
- Laundry;
- Shopping and Errands;
- Meal Preparation/Meal Cleanup;
- Ambulation (formerly Mobility Inside);
- Bathing, Oral Hygiene and Grooming/Routine Bed Bath (Bathing and Grooming);
- Dressing/Prosthetic Devices (Dressing);
- Bowel and Bladder Care;
- Transfer (Repositioning);
- Eating;
- Respiration;
- Memory;
- Orientation; and
- Judgment.

Rankings can range from 1 to 5. For example, a rank of 1 means you are independent and can complete the IHSS task without help and a rank of 5 means you cannot perform the IHSS task with or without help. The IHSS ranking based on your functioning are as follows:

Rank 1: You are independent - **able to perform IHSS tasks without help**. A recipient who ranks a "1" in any function cannot get time for that service.

Rank 2: You can perform the IHSS tasks with **verbal help**, such as reminding, guidance, or encouragement from an IHSS provider.

Rank 3: You can perform the IHSS tasks with **some help**, including, but not limited to, direct physical help from an IHSS provider.

Rank 4: Can perform the IHSS tasks but only with **substantial help** from an IHSS provider.

Rank 5: You **cannot perform an IHSS task**, with or without help from an IHSS provider.

If your functioning changes throughout the month, the functional rank for each task should reflect your functioning based on your bad days.

Step 2: Use Hourly Task Guidelines to Authorize Time Based on Functioning

The next step is using the HTGs to determine how much time can be authorized for each task. The guidelines are meant help an IHSS social worker determine how much time should be provided for **each IHSS task** you need help with. The guidelines also help IHSS social workers identify when exceptions must be made so an IHSS recipient may get the right amount of help for each IHSS task.

For example, for each IHSS task you need help with, the HTGs provide a range of time (low through high) for each functional index rank. So, if you are ranked a 2 in the task of dressing, there is a range of time you can get. Remember, HTGs may be used only if appropriate for meeting your individual circumstances. This means you can get more or less time than what the HTGs say you can get, as long as the social worker documents why you need more or less time. Part 3 of this guide provides illustrations about when the guidelines are not appropriate because of individual circumstances.

- Diary Log
 - A key part of preparing for an assessment or fair hearing is a diary log of what is done each day and how long each task takes. This is because you can get the time you need for the completion of each IHSS task you need help with. People rarely realize all the tasks involved in care and how much time the tasks take.
 - Example: for a bathroom accident, the clean-up time (which is part of bowel and bladder care) is not just the time for cleaning, but also the time to take out the cleaning supplies and put them away again. If bodily fluids or bowel movements are involved, you need to include the extra time to use universal precautions.

Universal precautions include hand-washing and using gloves or mask whenever you touch bodily fluids and waste (urine, feces, blood, vaginal secretions, semen, pus, saliva) or handle laundry, clothing, or other things soiled with bodily fluids.

- The time involved in a task may change each day. For example, it may take twice as long one day to dress a person with spastic quadriplegia cerebral palsy as it does the next day because of differences in limb flexibility. IHSS bases hours on the average time, so it is important to know the range of time a task can take.
- Sometimes IHSS social workers may not always identify when you need more time than the HTGs recommend. Remember, **you are entitled to the time it takes for the completion of each IHSS task you need help with.** This is why it is so important that you and your provider keep track of all of the IHSS services you need help with and how much time you need for the completion of each task. We recommend that you do this for at least 2 weeks before the county worker comes to make an initial assessment or reassessment.
- If the next visit by the county IHSS worker is for a reassessment, review the number of hours currently authorized for particular tasks. If the time authorized is outside the range for any task, be prepared to explain why you need more time (than what the HTGs allow) for the completion of the IHSS task you need help with.

How can I do my own assessment?

Before your in-home assessment or hearing, complete the IHSS worksheet in Part 2. This worksheet will help you keep track of how much time you need for each IHSS task. The worksheet, like the county assessment form, is based on a 1-week period except for the entry for domestic services, which is for 1 month. Once you document how much time you need to complete each IHSS task you need help with during a week, you can compare to the HTGs. If you need more time than what the HTGs recommend, based on your functioning, you can get more time as long as your social worker documents (i.e. writes the reason you need more time in your IHSS case file) why you need the additional time.

In this guide, we use an hours and minutes format described in ACIN No. I-82-17 (December 5, 2017), available online here:

<http://www.cdss.ca.gov/inforesources/2017-All-County-Information-Notices> Your IHSS NOA is also in hours and minutes format.

If you need more IHSS time than the range in the HTGs (see link to ACIN No. I-82-17 above), write the reasons you need more time. To help you, Part 3 of this guide is a listing of “Factors or Reasons Why More IHSS Time Is Needed” that we have seen in individual cases. Some of these reasons may apply in your case.

How can I get ready for the county assessment?

The purpose of the home visit is to find out what you can and cannot do for yourself, what services you need, and the time your provider needs to perform those services. Your job is to help the county IHSS worker understand all your care and special care needs and what they mean in terms of time. It is important to be honest and open. Do not minimize your disability problems and care needs, because you may end up not getting the hours you need. Even though you may feel embarrassed, explain things fully so the county worker understands your situation.

Before the county worker arrives, have the IHSS worksheet in Part 2 ready with the hours you think you need. Remember, the county will authorize only what you really need and will not allow extra time for “comfort” services. An example of a comfort service is extra dusting to make things look nice.

Be prepared to explain your worksheet hours. Make a list so you will not forget anything:

- what tasks you need or your provider does
- how you determined the time each takes (especially important if there are differences between what the county authorized before and what you believe you need now)
- why the state hourly task guidelines are not appropriate for your care needs (may not apply to your situation)
- what special factors need to be considered

How can I document special factors?

Get documentation from your doctor about your special needs. Examples:

- a note that you need a dust-free environment because of allergies or pulmonary/respiratory problems
- a note verifying bowel and bladder problems
- a note about your need to have bed linens changed more than twice a month

What are paramedical services?

Paramedical services are prescribed by a doctor for your health and require some training and judgment to perform. Common services are injections, colostomy irrigation, catheter insertion/care, suctioning, G and NG tube feeding, ventilator and oxygen care, fecal impaction, range of motion to improve function, wound/decubitus ulcer care, and other services requiring sterile procedures. Ask for enough time to complete the entire service, from preparation to clean up. Providers sometimes don't ask for the extra time that may be required for record keeping – such as for diabetes testing and administration of injections.

Paramedical services are important because people who need complex medical care can stay at home instead of going into nursing homes. Only doctors decide what services the county must provide and how many hours it must pay for. The county can't cut the service hours ordered by the doctor. Providers don't need any special license to perform the services.

To be eligible:

- The doctor completes and signs an order for services with hours required: Your doctor decides on eligibility conditions by signing the order prescribing the services and hours. The county may send the form to your doctor. Tell the doctor's office it is coming and you can be involved and help with it.
- You can't perform the service at all: Some mental or physical impairment prevents you from doing it, like giving an injection or changing a catheter.
- The service requires training and judgment to perform: The provider gets training from the doctor or other health professional in what steps to take and how to do each one to complete the service. The steps require the provider to carefully observe you to avoid mistakes.

The paramedical form, SOC 321, is online here:

<http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC321.pdf>

Counties use several tactics to deny or change the paramedical services doctors have authorized. There are ways to stop them from working.

- County tells you that some service may not be allowed as a paramedical service. Response: Discuss the service with doctor. Explain that any service billed as skilled nursing under Medi-Cal/Medicare qualifies. Doctors generally know what these are.
- County tries to persuade doctor to change the order for services or hours. Response: Consult with doctor first and get approval of hours based on your log, discuss your conditions and the need to preserve the doctor-patient relationship from outside interference. Explain that the doctor's decision on a signed Form SOC 321 is final and the county must comply.
- County nurse observes one day and bases lower hours on her observations and calls doctor. Response: Log shows that time varies; average time greater than day of observation.
- County says a home health agency will provide, apply there first. Response: Home health agency is not an alternate resource since home health agency provides time-limited services.
- County says range of motion is a personal care service for which county decides eligibility and hours. Response: When the doctor prescribes range of motion to also improve and maintain function at the same time, it is a paramedical service.

For more information about paramedical services and tips on how to get them, please read our paramedical publication, found here:

<https://www.disabilityrightsca.org/publications/the-ihss-program-covers-paramedical-services>

What is protective supervision?

Protective supervision is watching people with severe mental impairments so they don't hurt themselves living at home. An IHSS provider may be paid to watch an IHSS recipient to prevent injuries or accidents, when the person needs 24-hour supervision, and can remain safely at home if it is provided. Protective supervision is important because IHSS recipients can get a large number of

monthly hours - at least 195 for non-severely impaired individuals and 283 for people who are “severely impaired.” IHSS recipients get the maximum (195 or 283) even if the county cuts hours for some other IHSS service.

To be eligible:

- A person must show some severe mental impairment; poor judgment (making bad decisions about health or safety), confusion/disorientation (wandering off, getting lost, mixing up people, days or times) or bad memory (forgetting to start or finish something). Such impairments may occur with intellectual disability, autism, dementias, and psychiatric disabilities.
- A person must be at risk of getting hurt if left home alone (wandering out of the house, letting strangers in, turning gas on a stove, lighting fires, leaving water running, eating wrong foods or inedible things, head banging, self-biting, scratching, using knives or other sharp household objects).
- A person must need to be supervised 24-hours a day (friends or relatives living at home, teachers in school or day program, and drivers of car or bus).

The county may send the treating doctor a form asking for information about the recipient’s mental condition if that person may need protective supervision. Tell the doctor’s office it is coming so you can help the doctor complete the form. You can also download the form yourself and get it completed by the doctor. The form is here: <http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC821.PDF>

How are children assessed for protective supervision?

All County Letter (ACL) 15-25, page 6, says the county must follow a 4-step process in determining eligibility for protective supervision. It must determine:

- 1) Is the minor nonself-directing due to the mental impairment/mental illness?
- 2) If the minor is mentally impaired/mentally ill and nonself-directing, is he/she likely to engage in potentially dangerous activities?
- 3) Does he/she also need “**more supervision**” than a minor of comparable age who is not mentally impaired/mentally ill pursuant to the Garrett v. Anderson court order? “**More supervision**” can be **more time, more intensity, or both.** The additional supervision required must be

significantly more than routine child care, and not only be related to the functional limitations of the child, but also allow the child to remain safely in their own home with this assistance. For example, a non-disabled child will recognize pain and stop harmful behavior. A mentally disabled child may not recognize pain and will continuously harm himself or herself until redirected. More supervision may be needed because there is a constant need for more intense supervision (i.e. watching the child) and constant need for redirection to avoid injury.

- 4) If “more supervision” is needed, is 24 hour-a-day supervision needed in order for the minor to remain at home safely?

You can find ACL 15-25 online at:

<https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-25.pdf>

Other ACLs about protective supervision include:

ACL 98-87 online at:

<https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl98/98-87.PDF> and,

ACL 17-95 online at: <https://www.cdss.ca.gov/Portals/9/ACL/2017/17-95.pdf?ver=2017-09-14-113431-017>.

How do I deal with protective supervision denials?

Counties come up with many common excuses for telling someone they are not eligible. Here is a list and some ways to rebut them.

Is there a severe mental impairment?

- County Excuse: Severe mental impairments not observed on home visit. Response: Your daily log, doctor’s statement, regional center records; home visit too short, observed behavior and didn’t answer guidelines questions; county assessment document shows severe mental impairment.
- County Excuse: Needs protective supervision because of physical impairment, not mental impairment. Response: Because of mental impairment does not understand physical impairments, does not understand or appreciate consequences of actions on physical impairments (tries to get up or walk without assistance when cannot do so without risk of

injury, will eat sweets even though risks injury because of diabetes, will try to remove bandage or tubing or brace because it hurts or is irritating, etc.).

- County Excuse: Physical impairments cause dangerous behavior. Response: Mental impairments also cause it; not required to show mental is only cause.

Is there dangerous behavior at home?

- County Excuse: Formal diagnosis of mental condition doesn't prove need. Response: Doctor's statement of typical behavior for person with that diagnosis.
- County Excuse: No injuries recently. Response: Recipient was well supervised.
- County Excuse: No evidence of dangerous behavior on county worker's home visit. Response: Frequency not hourly; missed day before and after; can't generalize from 1 hour to 24 hours in a day.
- County Excuse: "Complete" physical paralysis prevents recipient from doing anything dangerous. Response: Any purposeful action that is dangerous, pulling out catheter, G-tube, etc.
- County Excuse: Aggressive and antisocial if hits someone or destroys property. Response: In adults: self-injurious acts like biting oneself, head banging, destroying property causes self-injury, are common for psychiatric or mental condition. In children: normal behavior is often aggressive and anti-social.

Is 24-hour supervision needed and received?

- County Excuse: Doesn't need 24-hour supervision because unsupervised at times - like on the bus, in a car. Response: Always supervised, bus/car are controlled settings with adult driver.
- County Excuse: Recipient is sometimes left alone so not supervised 24 hours. Response: Can't afford it, someone looking in, lucky no accidents, recipient's condition has worsened.

- County Excuse: Needs physical redirection, not just watching or verbal command. Response: Supervision includes redirection, some intervention.
- County Excuse: Family discourages independence and is overprotective of person with mild intellectual disability. Response: More independence caused injuries or near-accidents in the past; others (regional center doctor) recommend 24-hour supervision.
- County Excuse: Change environment to remove risks: knobs off stove, lock up tools; brace wheelchair, strap person in wheelchair; knobs off hot water; higher bed rails against night wandering; bolt down furniture. Response: Can't make all changes; others turn home into a nursing home or jail cell; the older the recipient, the less change possible without losing distinctive features of home.
- County Excuse: Child plays outside with no adult supervision. Response: Fenced in yard; can't climb out; no hazards in yard
- County Excuse: Children always need to be supervised by an adult. Response: Parents not always physically within sight of children without mental disability; child needs much more supervision than child of same age. The younger the child, the more severe the behavior must be. Most difficult for children under 2.
- County Excuse: Go to a behavior parenting class. Response: Won't solve underlying behavior, have gone and unsuccessful, will go but need it until proven.

Is the recipient no longer eligible?

County Excuse: County improperly granted protective supervision; reassessment shows no eligibility termination notice. Response: No change in SOC 293, Line H, on mental function rankings; no change in recipient's home or physical condition, appeal immediately to keep IHSS until decision. This form is contained in your IHSS file. You can ask the county to provide you with a copy of this form.

For more information about protective supervision and tips on how to get it, please read our Protective Supervision publication, found here:

<https://www.disabilityrightsca.org/publications/in-home-supportive-services-protective-supervision>

Can people with psychiatric disabilities get IHSS?

Yes. IHSS is not just for people with physical or developmental disabilities. If you have a psychiatric disability, you may qualify if you need help to live in your own home or someone else's home. "Home" may include an apartment you share with other people or a hotel room. You are not eligible for IHSS or personal care services if you live in a board and care or residential facility. However, these services may help you move from a board and care to your own apartment or hotel room.

Here are some reasons you may need IHSS in order to live in your own home or in the home of a relative or friend:

- You need "prompts" to get up in the morning and go through tasks such as bathing, grooming, dressing, taking medication, eating. Prompts and assistance in sequencing are terms to describe the help people need in starting a task and in going from one step to another. Because of your disability or the side effects of medication, you may not be able to do that without someone present to step you through the process.
- Similarly, you need "prompts" to help you go through the tasks leading to going to bed at night.
- Preparation of meals which a person may not be able to do consistently and safely alone.
- Reminders to eat and drink water.
- Shopping, cleaning, laundry, and menu planning.
- Need for monitoring and intervention as "protective supervision" because you may see a harmless, benign situation as one which is personally threatening and one which you believe requires a response which could cause self-injury. In such a case, you may need your attention diverted or redirected, help to see there is no threat, or action to prevent injury.

Workers from the county who process applications for IHSS work mostly with people with physical disabilities (who use a wheelchair or can't do things because of severe arthritis) or cognitive disabilities (who have intellectual disability or dementia). They are not used to applications from people with psychiatric disabilities. That means the county worker will need more help from you and the people helping you to understand why you need attendant care help in your home. You will need a letter from your psychiatrist, psychologist, social worker at the clinic you go to, or your case manager (or anyone else who helps you and knows your needs). The letter should explain:

- The things you need help with and the kind of help you need.
- Why you need that help because of your disability. For example, they can explain that your medications plus your disability make it hard for you to get up on time and go through the other morning steps without help.
- How not getting the help you need could mean you cannot continue living on your own in your own home or hotel room or apartment.
- How not getting the help you need could make your condition worse. For example, without help getting up every day and keeping your apartment in order, your day-to-day life could feel chaotic and lead you into a crisis. Without help in providing structure and order in your life, you are at risk of a crisis which could even mean a visit to the emergency room.

Can children get IHSS?

Yes. Children can get:

- Personal care services (bathing, toileting, dressing, feeding, assistance with ambulation, etc.).
- Related services (meal preparation, planning and cleanup, laundry, food shopping).
- Paramedical services (if prescribed by a doctor - injections, catheters, tube feeding, suctioning).
- Protective Supervision (24-hour monitoring and supervision to prevent injury)
 - Not routine child care or supervision
 - Must show difference between disabled child and other children of same age.
- Children cannot get Domestic Services

Can my parent be my provider?

Yes. If you are an adult, you can have a parent provider without restrictions.

Can a parent of a minor child be the child's IHSS provider?

If you have a minor child that receives IHSS, you can be a parent provider if:

- You quit your job or you can't get a job because you must care for your child, and

- no other suitable care provider is available (willing and able), and
- your child is at risk of out-of-home placement or inadequate care.

If both parents live in the home, one parent may get paid when the other parent is working, in school, sleeping, or disabled. Your child can also get 8 hours per week of respite (from a non-parent provider) when you are shopping, doing errands, or doing other things for the family.

For more information, see “Clarification of Regulations Regarding Minor Recipients Living With Parent(s),” ACL 19-02 (January 9, 2019) here: <http://www.cdss.ca.gov/inforesources/2019-All-County-Letters>

You may also want to review ACL 15-45 which has “Questions and Answers about Minor Recipients Living With Parent(s)” at: <http://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acl/2015/15-45.pdf>.

How do I deal with IHSS parent provider denials?

Is the parent eligible as a provider (able and available)?

County Excuse: Parent can work full-time (40 hours per week) by putting child in after school daycare. Response: No suitable day care, can't hire babysitter for minimum wage, child needs special stimulation from parent.

County Excuse: Parent works less than 40 hours but can work full-time. Response: Frequent trips to doctor, other emergencies, or stress prevent full-time work, lost prior full-time jobs.

Will a parent’s IHSS earnings affect a minor child’s SSI benefits?

IHSS earnings to a parent of the minor child they are providing IHSS to will not affect that child’s SSI payment amount. However, other income the parent receives may affect the child’s SSI payment amount.

Can I get IHSS and still get respite from the regional center?

Yes. Respite services from the regional center are different from IHSS. You should be able to receive IHSS, including protective supervision, without losing any respite hours. Call Disability Rights California if the regional center tries to cut your respite because you receive IHSS.

Can my spouse be my provider?

Yes. For non-medical personal services (see category 4 on the worksheet form) and paramedical services, your spouse or anyone else may be the paid IHSS provider. For protective supervision, your spouse can be your provider if:

- your spouse leaves full-time employment; or
- is prevented from obtaining full-time employment because no other suitable provider is available; and
- as a result, there is a risk of inappropriate, out-of-home placement or inadequate care.

If your spouse is not able or available, these and the other IHSS services may be provided by others. “Not available” includes time when the spouse is out of the home because of work or for other necessary reasons, or when the spouse is sleeping or meeting the needs of other family members.

How can I get the 283 IHSS monthly maximum number of hours?

You would have to be “severely impaired” and get protective supervision or, you must need at least 283 hours per month of IHSS services (not including protective supervision). To determine whether you qualify as a “severely impaired” recipient, add up the “essential” service categories labeled on the worksheet, in Part 2, with an asterisk (*). If they total 20 hours or more a week, you qualify as severely impaired.

If you are eligible for protective supervision, you will receive 283 hours if you are “severely impaired.” If you are not eligible for protective supervision, you will receive 283 hours if your care needs total this amount each month.

If you are eligible for protective supervision, your hours will be at least 195 per month if you are non-severely impaired. The total number of hours you receive will depend on the county assessment and which IHSS program you are in. If you have questions about which IHSS program you are in, first talk with your county worker. If you have concerns or questions after talking with your county worker, you may call DRC’s intake line at 1-800-776-5746.

If you disagree with the IHSS hours, you should appeal and ask for a fair hearing.

When do I ask for a hearing?

If the county reduces your hours or ends your IHSS, you must request a fair hearing before the reduction in your IHSS NOA goes into effect. If you ask for a hearing before the change in your IHSS NOA is supposed to happen, you will continue receiving all your hours until the hearing is over. The first page of your IHSS NOA will tell you when the IHSS NOA will take effect. If you do not get an IHSS NOA or your NOA takes effect in less than 10 days from the time you get it, you should ask for a hearing and aid paid pending your hearing right away. When you ask for a hearing, you will need to explain that you did not receive an IHSS NOA or that you received a late IHSS NOA. If the county has denied your IHSS application or request for more hours, you must appeal within 90 days.

How do I ask for a hearing?

You can request a hearing online, by phone, by mail, or by fax.

[Click here to request a hearing online](#)

Request a hearing by phone:

Call the State Hearings Division toll-free
(800) 743-8525 or (855) 795-0634

Public Inquiry and Response toll-free
(800) 952-5253 or TDD (800) 952-8349

Request a hearing in writing:

Submit your request to the county welfare department at the address on the notice of action or by mail to:

California Department of Social Services
State Hearings Division
P.O. Box 944243, Mail Station 9-17-37
Sacramento, California 94244-2430

Fax hearing request to (833) 281-0905

If you need an interpreter or if you need an interpreter for someone who will be testifying (such as your IHSS provider), include that in your request. For more

information about the hearing process, click here to visit the [State Hearings Division website](#).

How can I get information for my hearing?

Gather information about how the county IHSS worker determined the hours you were authorized.

- Make an appointment to go into your IHSS office to review your IHSS case file.
- Ask your worker for a copy of the latest “needs assessment” forms. These county forms will include notes about why hours were or were not given. Also ask for a copy of the most recent SOC 293 form. The SOC 293 forms include information on the functional ranking about what you can and cannot do. If you are challenging a reduction, ask for copies of both your new and your old county assessment forms and your new and old SOC 293 forms.
- Ask for a copy of the sheets in your file where notes were made about contacts and visits with you over the last year.
- Ask for a copy of the County’s hourly task guidelines.
- Ask for copies of any doctor or medical reports in your file and for copies of any paramedical forms.
- If IHSS reduced your hours, ask your worker for copies of the regulations listed on your reduction notice.

What if the county worker will not give me copies from my file?

Tell the worker you have a right to inspect your file, which may also mean the county provides you with copies of documents. You can give the worker a copy of [ACL 18-52](#), called “Release Of In-Home Supportive Services (IHSS) Case Records To Applicant/Recipient Or Authorized Representative” (May 9, 2018). This letter contains the laws and regulations about your file and instructions to the counties.

Where can I find the laws about IHSS?

The IHSS regulations are in the Department of Social Services' Manual of Policy and Procedures, Division 30. [Click here for the IHSS regulations](#). There are 4 entries for the Division 30 regulations. Skip the first entry. The IHSS regulations start about 5 pages into the 2nd entry, continues through the 3rd entry, and finishes in the 4th entry.

All-county letters are directives the state Department of Social Services sends to the counties. The letters cover a lot of programs. Only a few will be about IHSS. [Click here for the All-County Letters](#).

All-county information notices are announcements the state Department of Social Services sends to the counties. The notices cover a lot of programs. Only a few will be about IHSS. [Click here for the All-County Information Notices](#).

What happens after I file for hearing?

After you file an appeal, the state will send you information about your hearing rights. The information will include the name and contact information of the county appeals worker. The county appeals worker is the person who will represent the county at the hearing. Your IHSS file may be in that office. Many appeals workers try to resolve a dispute without a hearing. The appeals workers are often more experienced and knowledgeable than the people you've dealt with in the IHSS office.

The appeals worker may call you about a "conditional withdrawal" so a new assessment can be done. If you agree to a conditional withdrawal of your hearing request (appeal), you will not need to go to your hearing. The county will have to do something (for example, complete a new assessment), which is the condition of your withdrawing from the hearing. The county will do this by giving you a document called a conditional withdrawal form. You must make sure you have received, reviewed, understand, and agree with your conditional withdrawal form before you sign (agree) to withdraw your request for a hearing. Most counties will agree to provide your conditional withdrawal document by email if you ask. You can have the hearing scheduled again if you disagree with the new assessment or the county does not authorize retroactive benefits.

Can I get a copy of the county's evidence before hearing?

Yes. You are entitled to the county's statement of position at least 2 business days before the hearing. For example, if your hearing is on Friday, you are entitled to the position statement Wednesday morning. There is nothing in the rules that prevent the county from giving it to you earlier if it is available. You may also look at your file at any time whether or not you have a hearing pending, as noted above. The county's statement of position will help you identify other evidence and witnesses you need. If you do not get a copy until just before the hearing, you can ask to "have the record left open" to submit additional evidence (such as letters or statements) to respond to anything in the county's position statement. Even if you get the county's position statement in time, you can still ask to have the hearing record left open so you can submit more evidence.

What happens at the hearing?

The county goes first and says why your hours were cut or why you should not have the additional hours you believe you need. If the county reduced your hours or eliminated a service (such as protective supervision), the county has the burden of showing how you have improved or how changed living circumstances mean you need fewer hours.

You and the county can present evidence (testimony by witnesses, letters, diary log, medical reports) about your needs in each service category area where you and the county disagree. Your evidence should explain:

- what services you need
- how long it takes to provide the services
- the reason you need more time than that set out in the assessment or the guidelines, and
- what risks you may be exposed to if you do not get that level of services.

IHSS fair hearings are informal. You are seated at a table and not in a courtroom. The important thing is to explain why more time is needed. The best evidence is from the people who provide your care and have a diary record of the time it takes. Witnesses may include you, past and present IHSS providers, regional center counselor, friends, family, and anyone else with information the judge needs. For each witness, list the points you want that witness to make and cross off each point as it is made.

How can I get help for my hearing?

Our publication called Prepare for Hearing: IHSS Terminations or Reductions in Hours ([click here](#)) has more advocacy information about hearings. It also has 2 forms you may need to use:

1. Form to get medical documentation of functioning levels from your doctor
2. Form to explain why you need more than the HTGs allow based on your functioning

For more help, call the regional center (if you are a regional center client), an independent living center, a legal aid program, senior advocacy program, the Disability Rights California toll free number (800) 776-5746, or the Disability Rights Legal Center at (213) 736-1031. To find out the telephone number of the senior advocacy program in your area, call your county office on aging or the State Department of Aging at (800) 510-2020.

Part 2: Self-Assessment Worksheet

(NOTE: The following section is not fully accessible. Please contact us if you need a different format for those worksheets at 1-800-776-5746.)

In-Home Supportive Services Self-Assessment Worksheet

Domestic Services: For adults only. Children are not eligible to receive domestic service hours.

Domestic services are usually limited to 6 hours per month per household and divided by the number of people in the household. If you need more than 6 hours of domestic services per month because of the recipient's disability (e.g., more frequent bathroom cleaning due to incontinence, frequent dusting due to asthma, etc.), then mark the time needed in the columns below.

IHSS DOMESTIC SERVICES TABLE TO BE PRINTED AND FILL IN THE BLANKS

DOMESTIC SERVICES	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Sun.	TOTAL
a. Sweeping and vacuuming								
b. Washing kitchen counters								
c. Cleaning oven and stove								
d. Cleaning and defrosting refrigerator								

DOMESTIC SERVICES	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Sun.	TOTAL
e. Storing food and supplies								
f. Taking out garbage								
g. Dusting and picking up								
h. Bringing in fuel for heating or cooking purposes from a fuel bin in yard, miscellaneous								
i. Changing bed linens								
j. Miscellaneous								
TOTAL DOMESTIC SERVICES								

Related services: meal preparation, meal clean up, routine laundry, shopping, and other errands. (Monday through Sunday.)

IHSS RELATED SERVICES TABLE TO BE PRINTED AND FILL IN THE BLANKS

RELATED SERVICES	Mon.			Tue.			Wed.			Thurs.			Fri.			Sat.			Sun.			TOTAL			
Breakfast=B, Lunch=L, Dinner=D	B	L	D	B	L	D	B	L	D	B	L	D	B	L	D	B	L	D	B	L	D	B	L	D	
a. Preparing meals, serving meals, cutting up food*																									
b. Meal clean up and menu planning**																									
c. Laundry, mending, ironing, sorting, folding and putting away clothes (Usually, 60 minutes per week in-home, 90 minutes per week out-of-home)***																									
d. Other Shopping / Errands (Usually, 30 minutes per week maximum)***																									

RELATED SERVICES	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Sun.	TOTAL
TOTAL RELATED SERVICES								

IHSS NON-MEDICAL PERSONAL SERVICES TABLE TO BE PRINTED AND FILL IN THE BLANKS

NON-MEDICAL PERSONAL SERVICES	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Sun.	TOTAL
<u>HEAVY CLEANING</u>								
<u>NONMEDICAL PERSONAL SERVICES</u>								
a. Respiration*								
b. Bowel/bladder care (including help on/off commode)*								
c. Feeding and drinking*								
d. Bed baths*								
e. Dressing*								
f. Menstrual care*								
g. Ambulation*								
h. Moving into and out of bed*								
d. Grooming, bathing, hair care, teeth and fingernails								
j. Rubbing skin to aid circulation, turning in bed, repositioning in wheelchair, help in and out of vehicles*								

NON-MEDICAL PERSONAL SERVICES	Mon.	Tue.	Wed.	Thurs.	Fri.	Sat.	Sun.	TOTAL
k. Care and help with prosthesis*								
TOTAL PERSONAL CARE SERVICES								

IHSS TRANSPORTATION SERVICES TABLE TO BE PRINTED AND FILL IN THE BLANKS

TRANSPORTATION SERVICES		Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.	TOTAL
Medical Transportation									
a. To medical appointments***									
b. To alternative resources									
YARD HAZARD ABATEMENT									
PROTECTIVE SUPERVISION									
<u>PARAMEDICAL SERVICES</u> (i.e., catheterization, injections, range of motion exercises, etc., specify)									
TOTAL WEEKLY SERVICES (Everything except Domestic Services)									
Multiply by 4.33 to get monthly total									

Plus Domestic Services (6 hours per month maximum unless more needed hours can be shown on page 1 above)									
TOTAL MONTHLY SERVICES									

* If asterisked hours equal 20 or more hours a week, recipient qualifies as “severely impaired.”

** Meal clean-up hours are included in determining whether severely impaired if IHSS assistance with meal preparation and consumption are necessary.

*** IHSS will pay for transportation time to get you to and from medical appointments, as well as wait time. To be paid for waiting at a medical appointment, the provider has to show that while they are at a recipient’s medical appointment, they cannot leave because they cannot predict how long the recipient’s appointment will take. For more information about transportation to and from medical appointments, and provider wait times at those appointments, see our IHSS Provider Wait and Travel Times publication, available online. [DRC Pub # 5607.01](#).

Part 3: Factors or Reasons Why More IHSS Hours are Needed

Domestic Services

State regulations generally allow only 6 hours per month per household for domestic services. When the regulations were issued, the state explained that the 6 hours per month was based on receiving domestic services twice per month.

If 4 people live in the home, the total IHSS hours allowed for the recipient will be 1.5 hours per month. If a recipient's roommate lives there only as a live-in attendant, domestic services should not be pro-rated.

The county should pro-rate hours only for common areas of the home - your own room or bathroom should be authorized separately. If you need more time for domestic services to remain safely at home, the county should allow an exception to the 6 hours per month guideline. For example:

- Allergy or pulmonary respiration problem indicates a need for a dust-free environment and a need for frequent dusting and vacuuming.
- Trash needs to be removed daily, or more frequently than twice a month, because of roach or other vermin problems.
- If you spill things, frequent cleaning is required, particularly if there are roach or vermin problems.
- Incontinence results in a need to spot clean floor, furniture, etc., frequently.
- Trash bin is located through two double locked doors at the rear of the building and it takes 10 minutes to get there and back.
- If you eat in bed, bed must be vacuumed and remade 3 times a day to remove crumbs. Bed linens must be changed more frequently because of spills.
- If you have incontinence/accidents, bed linens must be changed more often than twice a month (daily, three times a week, once a week, etc.)
- Because of skin fragility and risk of bed sores or decubiti, sheets need to be kept smooth to prevent the development of hot spots; need to ensure that nothing in the bedding rubs or irritates the skin.
- Because you drop things, more picking up is required.
- Since seal on refrigerator is worn out, more time is needed for cleaning and defrosting refrigerator.

- Because you spend most of your time in bed or because of sweating, sheets need to be changed more frequently than twice a month.
- Building-wide roach spraying requires, on a one-time basis, that everything be removed from kitchen and shelves washed and, after spraying, returned. (Time for this is justifiable not only for health and safety reasons, but also for establishing and maintaining an independent living situation since failure to comply may put you at risk of eviction.)

Personal Care Services

Personal care services must be assessed individually. Be sure to count the time for the entire task, from beginning to end. If you need more time for personal care services to remain safely at home, the county should allow an exception to the guidelines. For example:

- Bathroom is inaccessible to a wheelchair. This means additional time is required in bathing and other personal care/grooming activities.
- Accidents in bathroom require extra clean-up in bowel and bladder care.
- You are sensitive to pain - even combing hair is very painful. Personal care services have to be performed slowly and carefully.
- You eat and chew slowly and have to be coaxed or your jaw manually manipulated. Each meal may take up to 45 minutes for feeding.
- Although you can feed yourself, you need attendant available to help lift things and because of choking problems.
- You need to be bathed more than twice per week because of spilling, incontinence, skin problems.
- You have fragile skin and are vulnerable to hot spots which can become bedsores or decubiti; need to ensure that nothing is rubbing or irritating skin such as clothing or how you are placed in your wheelchair, etc.
- Your hair needs to be shampooed more than once a week due to dandruff or getting food in hair.
- Need for extra time for communication with IHSS provider (as for a person with cerebral palsy, who must use word and alphabet board).
- Susceptible to respiratory infections so hair must be dried after shampoo.

Related Services

Extra time is needed in meal preparation and/or menu planning because:

- You need a special diet such as a diet excluding salt and sugar or requiring fresh foods
- You need to have food cut up or pureed
- You need between-meal liquids and snacks
- Your diet and eating patterns differ from the rest of the family so meals are prepared separately

You need 2-3 times as much food because of cerebral palsy with spasticity and therefore need more time for meal preparation, menu planning and clean-up, shopping, and feeding.

Extra time is needed in meal clean-up to clean table, wheelchair, and floor due to spilling.

Extra time is needed for laundry because:

- Extra bed linen and clothing changes are necessary due to incontinence, spilling, and the need to rinse before washing.
- Extra time needed to comply with universal precautions when bodily fluids involved (urine, feces, blood, saliva, mucous, vomit) such as rinsing, separating from other laundry, and washing separately.
- Need to stay with laundry during wash and dry because of theft.
- Need to put clothing through an extra rinse cycle because of skin sensitivity.

Extra time is needed for shopping, errands, because of:

- Distance to primary market.
- Need to go to market more frequently or to go to more than one place because of special diet, need for fresh food.
- Frequent need to get medication because of Medi-Cal limitations on prescription size, because all medication needs cannot be met at one place.
- Living in a low-income area, markets are fewer and more crowded meaning a longer wait in line.
- Need to use public transportation and taxis.

We want to hear from you! Please complete the following survey about our publications and let us know how we are doing! [\[Take the Survey\]](#)

For legal assistance call 800-776-5746 or complete a [request for assistance form](#). For all other purposes call 916-504-5800 (Northern CA); 213-213-8000 (Southern CA).

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>