



LOS ANGELES REGIONAL OFFICE
3580 Wilshire Boulevard, Suite 902
Los Angeles, CA 90010
Tel: (213) 427-8747
TTY: (800) 719-5798
Toll Free: (800) 776-5746
Fax: (213) 427-8767
www.disabilityrightscalifornia.org

California's protection and advocacy system

Guide for Advocates and Consumer Advocates:

Do you get IHSS but your Share of Cost Increased? Ways you may qualify for your IHSS services With no share of cost or a lower share of cost.

What happened? Why did my Medi-Cal Share of Cost go up?

Since 1973, people who qualified for IHSS and had income too high to get SSI/SSP never had to pay a share of cost more than the amount of their income above the amount of SSI/SSP they would receive if they had no income. When the IHSS share of cost people were transferred to Medi-Cal in 1998, the State paid the difference between the Medi-Cal and IHSS share of cost so that people who did not qualify for Medi-Cal under other programs would continue to have the same amount to live on as those who receive SSI/SSP and because IHSS recipients, unlike most of those who qualified for Medi-Cal with a share of cost, have to pay their share of cost each and every month. In 1992 the State promised the disability community that no one would be hurt by the transfer of IHSS recipients to the Medi-Cal personal care services program. But this summer the Governor and the State Legislature eliminated the payment that enabled IHSS recipients to have an amount equal to SSI/SSP to live on. Instead, each and every month individuals must pay everything over \$600 a month and couples must pay everything over \$934 a month.

This Advocate's Guide is broken down into five parts:

- Eligibility under the zero-share-of-cost Aged & Disabled Federal Poverty Level Medi-Cal program including waivers and institutional deeming for married IHSS recipients – pages 2-6
- Medi-Cal eligibility under programs for those with earned income – pages 6-7
- Medi-Cal eligibility for those who now receive Social Security Title II benefits and used to receive SSI – pages 7-8

- About reducing your share of cost – pages 8-11
- About qualifying for Food Stamps and assistance with utility bills under the Home Energy Assistance Program – page 11.

I. Aged & Disabled Federal Poverty Level Program

Some people may qualify for Medi-Cal and IHSS with zero share of cost under the Aged & Disabled Federal Poverty Level (A&D FPL) program if their “countable income” is not more than \$1133 a month for individuals or not more than \$1525 for couples. Countable income above those amounts can be reduced by what you pay for health insurance. No, what you spend for medical expenses does not reduce your countable income under this program. For general information about the A&D FPL program:

<http://healthconsumer.org/cs029AgedDisabled.pdf> In addition, attached are worksheets for determining eligibility under A, B and C below.

What is countable income? For people who only get Social Security or other disability or retirement income – all called “unearned” income – deduct \$20. The balance is your countable income. *Example:* Your Social Security check is \$1200 a month. Your “countable” income is \$1180 a month after deducting the \$20 any-income deduction. Different rules apply for determining countable earned income.¹

A. For people who qualify for Medi-Cal as an individual.

1. If your Medi-Cal countable income is \$1133 a month or less, you will qualify for Medi-Cal without a share of cost under the A&D FPL program. That would include anyone whose Social Security benefits before the part B premium deduction was \$1153 or less: \$1153 less \$20 any-income deduction = \$1133 countable income.

2. If your countable income is more than \$1133, you can reduce your countable income down to \$1133 or below by purchasing health insurance.

¹ Different rules apply when determining countable *earned* income. If you earned \$1200 before any deductions or taxes, your countable earned income would be \$557.50: \$1200 less \$20 any-income deduction less \$65 earned income deduction = \$1115 less 50% or \$557.50 = \$557.50. If you have both earned and unearned income, you can use the \$20 any-income deduction only once.

Health insurance can include paying for a better Part D prescription drug plan, a dental and/or vision insurance, medi-gap insurance, any health plan that will cover incontinence supplies, etc. Available locally are the Department of Aging's Health Insurance Counseling and Advocacy Programs (HICAP). Call 1-800-434-0222 to reach a local HICAP that can help you identify the insurance to reduce your countable income in order to qualify for no-share-of-cost Medi-Cal under the A&D FPL program. If you have an assistance dog that is medically necessary, you can deduct the cost of the dog's vet insurance as well.

3. If you have Medicare and your countable income before any deductions for your usually \$96.40 Part B premium is not more than \$1229 a month – or your countable income after deducting for health insurance you purchase is not more than \$1229 not counting deductions for Part B - then you also will qualify for Medi-Cal and IHSS with no share of cost under the A&D FPL program. Keeping your coverage will be a hassle, however.²

B. For people who qualify for Medi-Cal as individuals but have an ineligible spouse and/or kids.

1. If your Medi-Cal countable income is \$1133 a month or less, you will qualify for Medi-Cal without a share of cost under the A&D FPL program. Medi-Cal follows Medically Needy rules when determining

² Welf. & Inst. Code § 14005.11(f) was amended in 2008 so that the Medi-Cal program will only pay the Part B premium for persons whose Medically Needy share of cost is \$500 or less a month. That only covers people with countable income of \$1100, which is below the A&D FPL ceiling. Before the amendment the Medi-Cal program paid the Part B premium of all those who qualified under the Aged-Blind-Disabled Medically Needy ABD MN program. Medi-Cal pays the Part B premium of persons who meet their share of cost or otherwise qualify for Medi-Cal without a share of cost. If your Social Security monthly payment were \$1249 and then reduced to \$ 1153 after the withholding of your Part B premium, your countable income would be \$1133 and you would be eligible for the A&D FPL program in month "one." In month "two" you would not be eligible because Medi-Cal would pay your Part B premium. However you would be covered by Medi-Cal in month "two" for purposes of redetermining Medi-Cal eligibility. Welf. & Inst. Code § 14005.37(d). You would again be eligible for the A&D FPL program in month "three" because you would have paid your own Part B premium that month.

eligibility.³ That means you combine you and your spouse's countable income even if your spouse has none. You get to use the \$20 any-income deduction only once. The earned income deductions are made after you combine you and your's spouse's earned income. If only a spouse and no kids, you deduct \$600 and any insurance payments from the combined countable income as the spouse's Maintenance Need Level. If there are only children or a spouse and children, the maintenance need level deduction is based on the number in your family not counting you.⁴ The balance is your countable income for purposes of determining eligibility under the A&D FPL program.

2. If your countable income is more than \$1133 a month, there are ways you may be able to bring your countable income down to \$1133 or below: (a) Purchase health insurance coverage for anyone in the family including you. That includes paying for any health care coverage or upgraded coverage available to the family through your spouse's work. (b) If your spouse is working and has a cafeteria plan available to him or her, increasing the contribution for health care coverage or child care costs will reduce the spouse's income.⁵

3. If your countable income is not more than \$1229 including after deductions for health insurance, you would qualify for the A&D FPL program as explained in A-3 above.

4 If your disability is severe enough to qualify for services in a medical facility – i.e., nursing facility or hospital – you may be eligible for a

³ DHCS ACWDL No. 08-42, <http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/c08-42.pdf>; DHCS ACWDL No. 01-18 Q&A 2, <http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/c01-18.pdf>

⁴ The maintenance Need Income Level or MNIL: 1 person \$600, couple \$934, 2 people \$750, 3 people \$934, 4 people \$1100, 5 people \$1259, 6 people \$1417, 7 people \$1550, 8 people \$1692.

⁵ Cafeteria plan contributions are not included in your gross income for SSI or Medi-Cal purposes because Social Security and Medicare taxes are not withheld from the contributions as they are for contributions to a retirement account. SSA POMS SI 00820.102, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500820102!opendocument>.

home and community based services (HCBS) waiver with an “institutional deeming” feature. Under “institutional deeming” the rules that ensure there is income allocated for the spouse living in the community when the other spouse goes into a nursing facility also apply when the spouse who qualifies for medical facility care remains in the community. Under institutional deeming, the IHSS recipient and spouse would together be able to retain more income than under the ABD MN program.

(a) One waiver for persons aged 65 and older is the Multipurpose Senior Services Program (MSSP) waiver administered by the Department of Aging. This waiver is available only in specific geographic areas and there may be a waiting list. To find out about the availability of the MSSP waiver in your area, call 1-800-510-2020. For more information including more information on how to apply: <http://www.disabilityrightsca.org/pubs/539501.htm>

(b) The other waiver is the Nursing Facility/Acute Hospital (NF/AH) waiver administered by In-Home Operations within the Department of Health Care Services. While there is no waiting list for people who would require care in a hospital (very few) or subacute nursing facility – primarily persons using ventilators and other technology – there is a waiting list for those who would qualify for regular nursing facilities. For information and to get on the waiting list, call either (916) 552-9105 in Sacramento or (213) 897-6774 in Los Angeles. For more information: <http://www.disabilityrightsca.org/pubs/547701.htm> Available under this waiver are supplementary personal care services (IHSS) in addition to the IHSS services authorized by the County.

Note: There is no waiting list for people who need waiver services in order to get out of a nursing facility. If the increase in share of cost means you have to go into a nursing facility, the NF/AH waiver means you will be able to go home to your spouse right away.

C. For people who qualify for Medi-Cal as an eligible couple:

1. If your combined Medi-Cal countable income is \$1525 a month or less, you both will qualify for Medi-Cal without a share of cost under the A&D FPL program as an eligible couple.

2. A couple with income above the A&D FPL ceiling may purchase health insurance to bring countable income down to \$1525 or below. See A-2 above.

3. The Medi-Cal program pays for the Part B Premium of both spouses covered under the Aged-Blind-Disabled Medically Needy ABD MN share of cost program for those with income up to \$1934.⁶ So the A-3 option listed above for individuals is not available to couples.

4. Couples with countable income of \$1733 or less may elect one member of the couple to qualify for Medi-Cal without a share of cost.⁷ The other spouse would continue qualifying for Medi-Cal with a share of cost under the ABD MN program.

5. If one member of the couple would qualify for nursing facility services, that spouse may qualify for services under a waiver as explained above under C.4.a and b.

6. The couple could elect to get a dissolution (divorce) if that would enable them to qualify as two individuals. There may be unintended consequences of doing that, particularly if you own your home together, so consult a family law or other attorney before doing so.

II. If You Are Someone With EARNED Income

A. Eligibility under the 250% Working Disabled program. This program allows persons with disabilities with earned income to purchase Medi-Cal benefits by paying a premium that starts at \$20 a month for individuals and \$30 a month for couples. Any private or public pension or any public or private disability benefits you receive are not counted under

⁶ See footnote 2 above. Under Welf. & Inst. Code § 14005.11(f), the Medi-Cal program pays the Part B premiums of individuals with a share of cost of \$500 or less. For a couple that translates to \$1000 for a couple: \$934 MNL plus \$1000 = \$1934.

⁷ Question & Answer 7 to DHCS ACWDL No. 02-38:
<http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/c02-38.pdf>, \$1753 - \$20 any-income deduction = \$1733 countable income. \$1733 less \$600 (the Maintenance Need Income Allowance for the spouse) = \$1133 countable income for the spouse applying for the A&D FPL program.

this program. To qualify you have to show that you would be eligible for SSI benefits if you did not count exempted disability income and earned income. This means that those receiving retirement benefits above the SSI/SSP level are probably out of luck. For more information <http://healthconsumer.org/cs032WorkingDisabled.pdf>

B. Eligibility under the 1619(b) program. If you used to receive SSI cash benefits and you do not now receive cash benefits because of the amount of your earnings including the amount of your earnings and other unearned income such as Social Security benefits, you may be eligible to be treated as an SSI recipient for purposes of Medi-Cal. That means no share of cost. If you think you should qualify for the 1619(b) program but Social Security did not identify you as eligible for 1619(b), contact Disability Rights California. The 1619(b) program is not one you apply for but one to which you are automatically transferred when your earned income is too high to receive SSI cash benefits. Your eligibility does not end unless Social Security affirmatively determined you were not eligible because you did not need Medi-Cal *and* sends you a notice to that effect. That means people have been able to go back years later and establish their current and back eligibility for this program. For more information including information about general and individual income caps: <http://www.socialsecurity.gov/disabilityresearch/wi/1619b.htm>

III. People Treated As If They Are Still Receiving SSI For Purposes Of Medi-Cal But Who Now Only Receive Title II Disability, Retirement Or Dependent Benefits.⁸

A. Pickle⁹ zero share of cost Medi-Cal for people who used to receive SSI and Social Security Title II disability, retirement or dependent benefits and who are not now eligible for SSI because of increases in Title II COLA (cost of living allowances). To qualify for this program you do not have to show that you lost Title II because of a COLA. You just have to show that some time in the past you were eligible for both but you are not now eligible because the Title II benefits went up faster than the SSI benefits. Covered as “Pickles” are people who got SSI during the

⁸ See this CMS publication:
<http://www.tnjustice.org/pdfs/Special%20Medicaid%20-%20CMS%20Paper.pdf>

⁹ The Pickle program is named after Texas Congressman J. J. Pickle who more than 30 years ago introduced the amendment that became the “Pickle Amendment.”

month before the first month in which they received SSDI benefits and then were not eligible for SSI once their SSDI began. This includes persons who were received SSI in back benefits before SSDI started. If this is you, call Disability Rights California for help establishing your Pickle eligibility. For more information: <http://healthconsumer.org/cs020Pickle.pdf>

B. Medicaid DACs are persons who used to receive SSI/SSP but lost it when they qualified for Disabled Adult Child or Child Disability Benefits based on the earnings record of a retired, disabled or deceased parent or other caretaker or because they received an increase in those benefits. Unlike Pickles, to qualify for this program you have to show that you lost SSI/SSP because you initially received these benefits or an increase in these benefits. You know you are receiving DAC benefits if your notices include both your social security number and the social security number of a parent. Disability Rights California's experience is that the State and county Medi-Cal offices fail to identify persons who should qualify for Medi-Cal without a share of cost as a Medicaid DAC and instead qualify them for Medi-Cal with a share of cost if their income is over the A&D FPL ceiling. For more information: page 28 in <http://healthconsumer.org/Medi-CalOverview2008Ch7.pdf>.

C. Disabled Widows and Widowers and surviving divorced spouses who lose eligibility for SSI/SSP because of qualifying for widow/widower benefits at age 50 or later based on the earnings record of the deceased spouse provided they became disabled within seven years of the spouse's death – plus those who qualify at age 60 or later without having to show disability. Medi-Cal eligibility based on widow status continues until the person qualifies for Part A Medicare. That would be after two years of Disabled Widow's benefits and at age 65 for those qualifying for early retirement widow's benefits at age 60 or later. For more information: <http://healthconsumer.org/Medi-CalOverview2008Ch7.pdf> - at page 29.

IV. Reducing Your Share of Cost

For general information about how share of cost works, see pages 6-13 of Chapter 5 of the National Health Law Program's excellent Medi-Cal Overview Manual: <http://www.healthconsumer.org/Medi-CalOverview2008Ch5.pdf> See, also, the Health Care Alliance's Share of Cost report: <http://healthconsumer.org/ShareofCostRpt.pdf> Depending on

the facts in your case, there are ways of reducing your share of cost in addition to paying your provider or paying for other services Medi-Cal will cover:

A. You can deduct the cost of over-the-counter supplies including disposable gloves used by your IHSS provider, antiseptics, incontinence creams and supplies, bandages, cotton pads or balls, pain and cough medicine, etc. Ask your doctor to write out what you need on a prescription slip. Take the supplies and prescription pad to the pharmacy and ask the clerk to swipe your Beneficiary Identification Card (BIC) so what you spend will reduce your share of cost. Or take the receipts – and ideally the prescription – to your county Medi-Cal eligibility worker so he or she can reduce your share of cost there. If the receipt does not print out what you purchase, write down what the supplies were and ask the clerk to sign the receipt including his or her title and telephone number. Do this early in the month so that your share of cost will be reduced when the State is cutting the check to pay your provider. For more information: pages 8-10 in Chapter 5 of the Medi-Cal Overview Manual: <http://www.healthconsumer.org/Medi-CalOverview2008Ch5.pdf>

B. You can use old, unpaid medical bills – or pay an old bill – to meet your share of cost. But you cannot use the same bill twice. The bill must be one that you are obligated to pay even if you never pay it. If the unpaid bill is large, you can carry over any excess amount to the next month or months. If you pay a bill in a month, you can only deduct that payment against the share of cost in that month.

For more information: pages 8-10 in Chapter 5 of the Medi-Cal Overview Manual: <http://www.healthconsumer.org/Medi-CalOverview2008Ch5.pdf> and particularly Section R (pdf pages 69-95) of Article 10 of the Medi-Cal Eligibility Procedures Manual, <http://www.dhcs.ca.gov/services/medi-cal/eligibility/Documents/Article10-Income.pdf>

C. If you have and require a live-in provider and your live-in provider is not related to you, then the pro-rata cost of housing (rent and utilities) and food can be deducted to reduce your share of cost because it is a necessary medical or remedial expense recognized under State law. This is a medical or remedial expense recognized under State law because it is an expense covered by the Home and Community Based Services (HCBS) Waiver for persons with developmental disabilities and eligible for regional center services and paid for by Medi-Cal. Under

the waiver Medi-Cal pays for the housing and food (room and board) costs of an unrelated live-in provider: pages 6-7, G-14 and G-15 (pdf pages 18-19 and 195-196) of <http://www.dhcs.ca.gov/services/med-cal/Documents/DDRenewalApp2006TO2011.pdf> Call Disability Rights California if you think you would qualify for this share-of-cost deduction.

D. If you have an assistance dog or other animal that has been specifically trained to provide help that you need, the costs of caring for the assistance animal – i.e., food, vet bills, license, etc. – can be deducted as a medical or remedial expense recognized under State law. This is a medical or remedial expense recognized under State law because it is an expense paid for by Medi-Cal under the HCBS waiver for persons with developmental disabilities. The waiver covers the cost of caring for and acquiring an assistance animal as part of a supported living program: Pages B-20 – B-21(pdf pages 63-64), <http://www.dhcs.ca.gov/services/med-cal/Documents/DDRenewalApp2006TO2011.pdf>. Call Disability Rights California if you think you would qualify for this share-of-cost deduction.

E. State and local governmental funded services and assistance you receive without cost to you can reduce your share of cost. Since 1990, federal law has required State Medicaid programs to deduct the cost of State and local government funded medical and remedial services from your Medi-Cal medically needy share of cost so that you pay less or no share of cost. The federal law is found at 42 U.S.C. § 1396a(a)(17)(D) and included in the CMS State Medicaid Manual at Section 3628.1. The State has not yet put in place procedures for doing so. Examples of services funded by state and local funds and not including federal funds include following:

1. Regional center case management services and other services funded by the regional center. Services provided or authorized that are not coverable by Medi-Cal and services that can be covered but are provided before the share of cost is met for the month should be counted to reduce or eliminate the share of cost.

2. Certain services received through county mental health programs including Proposition 63 services and other services funded with state and county funds and without federal funds. If you qualify for the UMDAP, any UMDAP payments you receive reduce your share of cost. In addition, for

services funded with state and county funds and without federal funds like Proposition 63 services, the cost of those services beyond your UMDAP payment - or all of the cost of those services where the UMDAP payments would go first to services covered under Medi-Cal - reduce your share of cost.

3. If you receive the \$50 a month Assistance Dog Special Needs Allowance, that allowance would reduce your monthly share of cost by \$50 because the dog has been specially trained to assist you.

There may be other programs whose services would reduce the amount of the share of cost you spend each month. If you think your share of cost should be reduced because of services you receive that are state and county funded without federal funds, contact Disability Rights California.

V. Food Stamps and Assistance with Utility Bills

A. Food Stamps – Many individuals and couples may be eligible for food stamps because of the reduced income they have to live on. Food stamps up to \$168 a month may be available to individuals. You apply through your County Welfare Department. For applicants with disabilities who cannot easily get to the county office, applications will be taken over the telephone or an eligibility worker will come to the home. Ask your Medi-Cal eligibility worker or your IHSS worker about who to call. For persons with disabilities and seniors, there are extra deductions and income allowances including deductions for housing and utility costs.

B. Help with Utility Bills under Home Energy Assistance or HEAP Program. Call 1-866-6623 for information about how to get help with utility bills in your area.

Options for IHSS Recipients with Increased Share of Cost
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