JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW

FAQ

Medi-Cal Eligibility When One Spouse Needs Long-Term Services and Supports

APRIL 2022

When do Medi-Cal's protections against spousal impoverishment apply?

Medi-Cal's protections against spousal impoverishment apply when one spouse needs long-term services and supports (LTSS), which includes both nursing home care and home and community-based services (HCBS). California HCBS programs include:

- In-Home Supportive Services (IHSS) (in some cases),
- Multipurpose Senior Services Program (MSSP),
- Community-Based Adult Services (CBAS) program,
- Home and Community-Based Alternative (HCBA) waiver, and
- Other Medi-Cal waiver programs.

Protections against spousal impoverishment apply both to married couples and registered domestic partners.

Do the protections apply to all spouses receiving In-Home Supportive Services (IHSS)?

No, the protections only apply to the almost half of the IHSS recipients who have a "2K" aid code. These are persons who have been determined to need a level of care that is roughly equivalent to the level of care provided in a nursing home. Their IHSS coverage is provided through the Community First Choice Option (CFCO).

How do these protections work?

Long-term services and supports can be extremely expensive – potentially over $100,000 per year. The protections help protect a spouse financially when the other spouse needs LTSS. Specifically, the spouse not needing services (called the "community spouse") is allowed to retain specified amounts of the couple's income and assets, as explained in more detail below.

How are the financial protections calculated?

Depending on the couple's finances, the spouse seeking Medi-Cal coverage for LTSS may be able to assign some income and resources to the community spouse. The income allocation from the spouse seeking coverage can be up to an amount that increases the community spouse's total monthly countable income up to $3,435. Likewise, the resource allocation can be up to an amount that increases the community spouse's total countable resources up to $137,400. (These are the income and resource limits as of April 2022; they are adjusted annually to account for inflation.)

For much more information about how to calculate income and resources, see the Department of Health Care Services All County Welfare Department's Letters (ACWDL) 17-25 and 18-19.

Do the protections require proof of a medical need?

Yes, the person must show a need for HCBS at a level equivalent to nursing home care. This need is established automatically if the person is enrolled in a Medi-Cal waiver program or in the IHSS CFCO program (aid code 2K). Otherwise, the person can submit a completed and signed Doctor's Verification form (MC 604 MDV) so that a doctor can certify a need for the required level of care. The doctor's certification generally is needed for persons on a Medi-Cal waiver program waitlist, since they are not yet enrolled in an HCBS program.

Can you provide an example to illustrate these rules?

Of course. We'll call our sample couple Mr. and Mrs. Fuentes. Each spouse is 72 years old and thus potentially eligible under Medi-Cal's program for aged (at least 65 years old) or disabled adults. Eligibility will require that they also qualify financially, based on resources and income.

Mr. Fuentes' doctor has completed and signed an MC 604 form, certifying that Mr. Fuentes requires a level of care equivalent to care in a nursing home. Mr. Fuentes intends to receive the necessary care at home, through Medi-Cal-funded home and community-based services. As an HCBS recipient, his Medi-Cal eligibility calculations include protections against the impoverishment of Mrs. Fuentes.

Here is the financial information for the couple:

Joint resources:		$50,000
Income:	Mr. Fuentes:	$1,700 per month from Social Security
	Mrs. Fuentes:	$1,000 per month from a teacher's pension

First, we consider countable resources (which does not include the value of a home). Mr. Fuentes can keep $2,000 under Medi-Cal rules, and the remaining $48,000 is less than the $137,400 maximum that can be held by a community spouse. To establish eligibility, the couple must transfer the $48,000 to the sole ownership of Mrs. Fuentes.

Next, we consider income. The relevant income standard is $1,564 for 2022 (138% of the Federal Poverty Limit), which is the income limit for an individual who is either aged (at least age 65) or disabled. To reach this level, Mr. Fuentes must allocate at least $136 of his monthly income to his wife, since this will reduce his countable income from $1,700 to $1,564. This allocation will raise Mrs. Fuentes' monthly income from $1,000 to $1,136, which is well under her limit of $3,435 for a community spouse.

Mr. Fuentes becomes eligible because he is eligible under both countable resources ($2,000 limit currently) and monthly income ($1,564 limit). Mrs. Fuentes, however, is not currently eligible — although her monthly income is only $1,136, her countable resources total to $48,000, which is above the $2,000 limit.

Note that the resource limit for an individual will increase on July 1, 2022, from $2,000 to $130,000 (plus $65,000 for each additional household member), and then the resource limit will be eliminated effective January 1, 2024. As a result, effective July 1, 2022, both Mr. and Mrs. Fuentes would be Medi-Cal eligible, since their joint assets total only $50,000.

In summary, Mr. Fuentes can qualify for Medi-Cal with the help of the protections against spousal impoverishment.

How can individuals receive retroactive spousal impoverishment protections for service and care needs as far back as January 2014?

In the past, California did not properly provide adequate protections against spousal impoverishment. To make up for this failure, and as the result of a court order, the California Medi-Cal program offers retroactive spousal impoverishment protections under certain circumstances. A couple may be eligible for retroactive protections if

1. One member of the couple needed HCBS at a nursing home level of care and applied for Medi-Cal on or after January 1, 2014, AND
2. Either Medi-Cal was denied due to excess resources, or the Medi-Cal was granted but with an obligation to pay a portion of the cost of care.

If someone meets these standards, they might be able to be compensated for the coverage that they should have received, or for the payments that they made towards the cost of care. To apply, they should contact their county welfare department and ask for a retroactive reassessment. It may also help to contact local legal services through the Health Consumer Alliance (888-804-3536); obtaining relief can sometimes be challenging due to the passage of time.

How is eligibility for retroactive IHSS determined?

Individuals who meet the standards discussed above should be evaluated for retroactive IHSS eligibility. If someone submitted an IHSS application in the past, the county can use that date to evaluate eligibility. However, even if a person never submitted an IHSS application, they must be allowed to submit a new application and then they can request a retroactive assessment of IHSS needs back to the date of the Medi-Cal eligibility. The county will determine retroactive eligibility and then the affected individual may request payment for up to 195 hours per month of IHSS wages back to the eligibility date using what is called *Conlan* process.[1] Because this process can sometimes be time consuming and complicated, an applicant may want to contact their local legal services offices, as discussed above.

1 The Conlan process is discussed in All County Welfare Director's Letter (ACWDL) 20-15 (September 11, 2020), available at https://www.dhcs.ca.gov/services/medi-cal/eligibility/letters/Documents/20-15.pdf.