

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



April 10, 2000

ALL-COUNTY LETTER NO. 00-27

TO: ALL-COUNTY WELFARE DIRECTORS

Reason For This Transmittal

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by one or More Counties
- Initiated by CDSS

SUBJECT: THE FOSTER CARE INDEPENDENCE ACT OF 1999 AND ITS IMPACT ON THE CASH ASSISTANCE PROGRAM FOR IMMIGRANTS (CAPI)

REFERENCE: ACL 98-82

The purpose of this All-County Letter (ACL) is to provide counties with rule changes in certain aspects of Cash Assistance Program for Immigrants eligibility as a result of the enactment of HR 3443, The Foster Care Independence Act of 1999 (P.L. 106-169).

BACKGROUND

The President signed HR 3443 into law on December 14, 1999. Among its provisions were three changes to the Social Security Act that affect eligibility for the Supplemental Security Income/State Supplementary Payment (SSI/SSP) program. Since SSI/SSP law and regulations govern Cash Assistance Program for Immigrants eligibility, these changes also affect the Cash Assistance Program for Immigrants. The three areas of SSI/SSP change affecting Cash Assistance Program for Immigrants eligibility are:

- Ineligibility for certain individuals who dispose of or transfer resources for less than fair market value.
- Assets held in trust may now be counted as a resource.
- A new penalty of SSI suspension for up to 24 months for individuals either found to have made a statement or representation of material fact on an SSI application or redetermination that the individual knew or should have known was false or misleading or found to have omitted a material fact.

Prior to enactment of P.L. 106-169, if an individual transferred or gave away assets, there was no penalty and that asset was no longer counted as a resource

in determining SSI eligibility effective with the month after it was transferred or given away. Previously, a Special Needs or other trust was generally excluded from countable resources, if the individual did not have direct access to the trust. There were no specific eligibility sanctions for making false or misleading statements on an SSI application.

TRANSFER OF RESOURCES

An individual applying for or receiving Cash Assistance Program for Immigrants who disposes of resources for less than fair market value is ineligible for Cash Assistance Program for Immigrants for a period up to 36 months. This provision is effective for resource transfers made on or after December 14, 1999. The provision applies to resource transfers made by the eligible individual (includes applicant), the individual's spouse, or by persons who are co-owners of the resource being transferred.

The look-back period begins with the look-back date, which is the date 36 months before the Cash Assistance Program for Immigrants application date or the date on which the resources were transferred, whichever is later. This means that any resources transferred up to 36 months prior to the Cash Assistance Program for Immigrants application date, or anytime thereafter will be subject to this provision. However, the look-back period cannot begin prior to December 14, 1999.

The period of ineligibility begins on the first day of the month immediately following the month of transfer. For example, if the resource is transferred on February 25th, the period of ineligibility begins on March 1st. The period of ineligibility can last up to, but no more than 36 months.

To determine the number of months of ineligibility, it is first necessary to determine the total, cumulative uncompensated value of any resources disposed of by the individual on or after the look-back date. The uncompensated value is then divided by the maximum Cash Assistance Program for Immigrants benefit amount based on the individual's living arrangement on the applicable date. In the case of any fraction, round to the nearest whole number. The applicable date is the Cash Assistance Program for Immigrants application date or, if later, the date on which the individual (or spouse) disposes of the resources for less than fair market value. The maximum Cash Assistance Program for Immigrants amount is the amount shown on the Cash Assistance Program for Immigrants Payment Standards chart for the appropriate living arrangement on the applicable date. The result is the number of months of ineligibility up to 36 months.

When one member of a couple receives SSI/SSP, divide the uncompensated value by the maximum "one Cash Assistance Program for Immigrants, one SSI/SSP" couple rate based on the Cash Assistance Program for Immigrants applicant's living arrangement on the applicable date.

NOTE: For a Cash Assistance Program for Immigrants application filed in January 2000, the maximum Cash Assistance Program for Immigrants amount used for an applicant living independently would be \$682 for an individual, \$1209 for an eligible couple. For a Cash Assistance Program for Immigrants applicant living with a spouse receiving SSI/SSP, the amount would be \$1219.

EXAMPLES

1. An aged individual living independently transfers a resource for an uncompensated value of \$3,500.
 $\$3,500 \div \$682 = 5.13$; results in 5 months of ineligibility
2. An aged individual with a spouse who receives SSI/SSP transfers a resource for an uncompensated value of \$3,500.
 $\$3,500 \div \$1,219 = 2.87$; results in 3 months of ineligibility.

Fair market value is equal to the current market value of a resource at the time of the transfer. Current market value means the price of an item on the open market. Uncompensated value is the difference between the fair market value of a resource and the amount of compensation received by the individual in exchange for the resource.

Procedure Regarding Transfer of Resources

The transfer of resource question is asked on the Medi-Cal forms used for the Cash Assistance Program for Immigrants application – Question 28 on the MC 210 and Question 34 on the SAWS 2. However, these questions ask if resources have been transferred in the last 30 months. Because of the December 14, 1999 effective date, this question is adequate as worded through May 2002.

Although the question is not on the redetermination form (SOC 804), the same information must be covered during the redetermination process. The SOC 804 will be revised as soon as feasible.

If the question is answered “yes”, the county must determine the period of ineligibility, if any, in accordance with the rules described previously in this letter. If the applicant is found ineligible under these new rules, issue the Notice of Denial (NA 691), or Notice of Change – Discontinuance (NA 692) checking the “Other” box and filling in the blank with “Transfer of resources for less than fair market value.” Indicate the period of ineligibility in the “Comments” section.

Exceptions to the Resource Transfer Penalty (Period of Ineligibility)

1. Transfer of a Home

The new transfer of resource penalty does not apply to transfer of an applicant's or recipient's home if the home was transferred to:

- The spouse of the transferor;
- A child of the transferor who is under age 21, or who is blind or disabled (as defined for SSI purposes);
- The sibling of the transferor who has an equity interest in the home and who was residing in the transferor's home for a period of at least one year immediately before the date the transferor is institutionalized; or
- A son or daughter of the transferor (other than a child under age 21 or who is blind or disabled) who was residing in the transferor's home for a period of at least two years immediately before the transferor is institutionalized, and who provided care to the transferor which permitted the transferor to reside at home rather than in such an institution or facility.

2. Transfers to a Spouse or Child

The new transfer of resource penalty does not apply if the resources were transferred:

- To the transferor's spouse, or to another person for the sole benefit of the transferor's spouse;
- From the transferor's spouse to another person for the sole benefit of the transferor's spouse; or
- To the transferor's child who is blind or disabled or to a trust for the benefit of the transferor's child who is blind or disabled.

3. Resources were transferred to establish a trust solely for the benefit of an individual under age 65 who is disabled (as defined for SSI and Cash Assistance Program for Immigrants purposes).
4. Evidence is provided that establishes that an individual intended to dispose of the resources either at fair market value or for other valuable consideration.
5. Evidence is provided that establishes that the resources were transferred exclusively for a purpose other than to qualify for SSI or Cash Assistance Program for Immigrants.

6. Evidence is provided that establishes that all resources transferred for less than fair market value have been returned to the transferor.
7. The county determines under procedures established for SSI purposes that the denial of eligibility would be an undue hardship as determined on the basis of criteria to be established by the Social Security Administration (SSA). (Hardship would likely include deprivation of food and shelter.)
8. Resources Transferred to a Trust Established After January 1, 2000.

The new transfer of resource penalty does not apply to a resource transferred to a trust, which would a) be a countable resource as part of that trust under the SSI rules for counting trusts, or b) be counted as a resource except for a waiver of the rules for counting trusts based on the hardship exemption. (See exceptions to trust rule below.)

However the penalty does apply to such a trust if:

- Payments are made from the trust that are other than to, or for, the benefit of the individual; or,
- The trust does not permit any payment to the individual under any circumstance.

TRUSTS

A trust established by an individual is counted as a resource for purposes of determining Cash Assistance Program for Immigrants eligibility. An individual is considered to have established a trust if any of the assets of an individual (or the individual's spouse) are transferred to a trust other than by a will. If assets of the individual (or of the individual's spouse) are combined with assets from another person in an irrevocable trust, only the portion attributable to the individual (or spouse) would count as a resource under this provision.

This policy of counting a trust as a resource applies only to trusts established on or after January 1, 2000 and without regard to:

- The purpose for which the trust was established;
- Whether the trustees have or exercise any discretion under the trust;
- Any restrictions on whether distributions may be made from the trust; or
- Any restrictions on the use of distributions from the trust.

In the case of a revocable trust established by an individual, the corpus of the trust will be considered a resource of the individual. In the case of an irrevocable trust, the portion of the trust from which payment to or for the benefit of the individual or the individual's spouse could be made (under any circumstances) is a resource to the individual.

Exceptions

1. The county determines that application of this provision would cause the individual undue hardship under criteria to be established by Social Security Administration. (Hardship would likely include deprivation of food and shelter.)
2. The new provision does not apply to any trust described in sections 1917(d)(4)(A) and (C) of the Social Security Act. Section 1917(d)(4)(A) trusts, known as “Medi-Cal pay-back trusts” provide that, upon the individual’s death, the state will be reimbursed from the trust for Medi-Cal (Medicaid) expenditures made on behalf of the individual. Section 1917(d)(4)(C) trusts, known as “Medi-Cal pooled trusts” are administered by a nonprofit association and may contain the assets of a large number of individuals, and also require reimbursement to the state, upon the individual’s death, for Medi-Cal expenditures made on behalf of the individual.

Definitions

Corpus The corpus of a trust is all property and other interests held by the trust, including accumulated earnings and any other addition to the trust after its establishment. It does not include earnings or additions that are not counted as a resource in the month they are credited or transferred to the trust.

Asset For purposes of this trust-counting rule, an asset is any income or resource of the individual or individual’s spouse, including:

- Income that would otherwise be excluded under SSI rules (see MPP 49-035.4 and .53);
- Resources that would otherwise be excluded under SSI/SSP rules (see MPP 49-040.3);
- Any other payment or property to which the individual or individual’s spouse is entitled, but does not receive or have access to because of action by:
 - The individual or individual’s spouse;
 - A person or entity (including a court) with legal authority to act in place of, or on behalf of, the individual or individual’s spouse;
 - A person or entity (including a court) acting at the discretion of, or on the request of, the individual or individual’s spouse.

Income Unearned income, as described in MPP Section 49-035.5, now includes any earnings of, and additions to, the corpus of a trust established by an individual to which these new trust provisions apply.

Procedure Regarding Trusts

These rules and guidelines for counting trusts must be followed while processing a Cash Assistance Program for Immigrants application or redetermination where the individual (or spouse) has a trust that was established on or after January 1, 2000. Use existing notices and language for excess income or resources when denying eligibility or discontinuing benefits based on the new rules for counting trusts.

PENALTIES FOR FALSE OR MISLEADING STATEMENTS

Any person who, for use in determining any initial or continuing right to or the amount of Cash Assistance Program for Immigrants benefits:

- Makes, or causes to be made, a statement or representation of a material fact that the person knows or should know is false or misleading;
- Omits a fact that the person knows or should know is material; or,
- Makes such a statement with knowing disregard for the truth is, in addition to any other penalties that may be prescribed by law, ineligible for Cash Assistance Program for Immigrants for the appropriate period described below.

Period of ineligibility

When the county determines the applicant/recipient has made a false statement or is guilty of other conduct described in the preceding paragraph, that person is ineligible for Cash Assistance Program for Immigrants for a period of:

- 6 consecutive months for the first such determination for that person;
- 12 consecutive months for the second such determination for that person;
- 24 consecutive months for the third or subsequent such determination for that person.

Procedure

P.L. 106-169 allows Social Security Administration 6 months to develop regulations that will prescribe the process for making the determination that an individual is subject to a penalty under the conditions described above, including when the applicable penalty must begin. Counties must flag cases for which they believe the recipient meets the penalty conditions until Social Security Administration establishes its procedures and the Department issues additional instructions to the counties.

Effective Date

The penalties reflected in this subsection apply to statements and representations made on or after December 14, 1999.

If you have any questions about this letter, please contact your policy analyst in the Adult Programs Management Bureau at (916) 229-4000.

Sincerely,

Original Signed by
DONNA L. MANDELSTAM on April 10, 2000
DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division