

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



May 19, 2000

ALL-COUNTY LETTER NO. 00-35

TO: ALL COUNTY WELFARE DIRECTORS
ALL IHSS PROGRAM MANAGERSReason 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 IN-HOME SUPPORTIVE SERVICES (IHSS)
PROGRAM**

REFERENCE: ACL 98-82

The purpose of this All-County Letter (ACL) is to provide counties with rule changes in certain aspects of IHSS income-eligibility as a result of 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 two 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 IHSS income eligibility, these changes also affect IHSS. The two areas of SSI/SSP change affecting IHSS 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.

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.

TRANSFER OF RESOURCES

An individual applying for or receiving IHSS who disposes of resources for less than fair market value is ineligible for IHSS 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, and 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 IHSS 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 IHSS 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 in or immediately following the month of transfer. For example, if the resource is transferred on February 25th, the period of ineligibility begins on February 1st or March 1st. The period of ineligibility can last up to, but no more than 36 months. (Note: Although this rule appears to be internally inconsistent, it is reflective of the federal law. Until the Social Security Administration resolves the issue, counties should use the date most favorable to the applicant or recipient

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 SSI/SSP 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 IHSS 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 SSI/SSP amount is the amount shown on the SSI/SSP 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.

NOTE: For an IHSS application filed in January 2000, the maximum SSI/SSP amount used for an applicant living independently would be \$692 for an individual, \$1229 for an eligible couple.

EXAMPLES

1. An aged individual living independently transfers a resource for an uncompensated value of \$3,500.
 $\$3,500 \div \$692 = 5.06$; results in 5 months of ineligibility
2. An aged eligible couple living independently transfers a resource for an uncompensated value of \$3,500.

$\$3,500 \div \$1,229 = 2.85$, 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 found in item 12 of the Statement of Facts for In-Home Supportive Services form (SOC 310). However, this question asks if resources have been transferred in the last 24 months. Until the SOC 310 can be revised and distributed, counties must change the question to ask if resources have been disposed of in the last 36 months.

The question must also be asked during the annual reassessment process for income-eligible cases.

If the question is answered “yes”, and the transfer occurred on or after December 14, 1999, 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, the county must deny a new application or terminate IHSS received currently. When denying or terminating IHSS eligibility, use the following Notice of Action Message:

583 “MPP 30-755.113 You have disposed of resources for less than fair market value. This makes you ineligible for IHSS for the period _____ through _____.”

An IHSS overpayment exists for cases where the individual received IHSS during a period for which he or she was ineligible based on the new resource transfer rules described above.

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 the 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 becomes 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 becomes 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. The new transfer of resources penalty does not apply where:

- a) Resources were transferred to establish a trust solely for the benefit of an individual under age 65 who is disabled (as defined for SSI purposes).
- b) It is demonstrated in accordance with regulations established for SSI purposes, that the individual intended to dispose of the resources either at fair market value or for other valuable consideration.
- c) It is demonstrated in accordance with regulations established for SSI purposes, that the resources were transferred exclusively for a purpose other than to qualify for SSI or IHSS.
- d) It is demonstrated in accordance with regulations established for SSI purposes, that all resources transferred for less than fair market value have been returned to the transferor.
- e) 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 SSA. (Hardship would likely include deprivation of food and shelter.)

4. 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 exception. (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 IHSS 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 SSA. (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 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 30-775.4);
 - Resources that would otherwise be excluded under SSI rules (see MPP 30-773.6);
 - 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 spouse;
 - A person or entity (including a court) acting at the discretion of, or on the request of, the individual or spouse.
- Income** Unearned income, as described in MPP Section 30-775.33, 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 an IHSS income-eligible application or reassessment 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.

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 Document Signed By
Donna L. Mandelstam on 5/19/00***

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division