

## SHD Paraphrased Regulations - Medi-Cal

### 460 Income

#### 461-1

Net income from real property shall be considered in determining the SOC and shall be computed by subtracting from gross income taxes and assessments, interest on encumbrance payments, insurance, utilities, upkeep and repairs. (§50508(a))

#### 461-2

Gross unearned income includes Social Security payments, annuities, pensions, retirement benefits, disability, veteran's benefits, unemployment insurance, gifts or contributions, loans which do not require repayment, inheritance of liquid assets, dividends and interest payments, etc. (§50507(a))

#### 461-2A REVISED 7/10

For all MFBU (MBU) budget determinations undertaken on or after April 1, 1996, as part of an eligibility determination for a "new case", and for continuing cases which have been flagged, treat verified State Disability Insurance (SDI) received by an AFDC-MN or MI beneficiary whose income is counted in the SOC calculation as earned income. Apply the \$90 work expense deduction (§50553.1), the student exemption (§50543), the \$30 or \$30 and one-third deduction (§50553.3) and the dependent care deduction (§50553.5) if applicable. (All-County Welfare Directors Letter (ACWDL) No. 96-09, February 14, 1996, implementing *Tinoco v. Belshé*, U.S. District Court, N.D. Cal., C 94-0947 WHO, January 1996)

Since the AFDC program was replaced by the CalWORKs program effective January 1, 1998, the \$30 or the \$30 + 1/3 deduction is no longer available as of May 1, 1998. (Assembly Bill No. 1542, providing for enactment of the CalWORKs program)

#### 461-2B

Implementation of the *Tinoco* case holding that SDI be treated as earned income requires that SDI be verified as well as the amount of such SDI payments. SDI is paid for disability arising from a nonwork-related injury which renders the recipient unable to work. The SDI benefit is generally paid biweekly for up to a year. (ACWDL No. 96-09, February 14, 1996)

#### 461-2C ADDED

10/15

Aid and Attendance payments from the Veterans Administration received by individuals residing in the home are not counted as income for purposes of determining income eligibility for Medi-Cal. (Medical Eligibility Procedures Manual § 10-JA)

#### 461-3

All student assistance payments provided to students under authority of Title IV of the Higher Education Act of 1965 and Bureau of Indian Affairs education assistance, are exempt for purposes of determining Medi-Cal income eligibility and property eligibility (notwithstanding §50483).

The major student assistance programs exempt under Title IV are: Pell grants (formerly BEOG); Federal Supplemental Educational Opportunity grants (SEOG); Perkins loans; Stafford loans (formerly FISL Program); Cal Grants (A, B, and C); College Work Study; Federal PLUS loans; Federal Direct Loan Demonstration Program; and Federal Supplemental Loans for students. (All-County Welfare Directors Letter No. 94-06, January 12, 1994; Public Law 102-325, §479B; 20 United States Code 1087uu)

461-4

Annuities purchased on or after August 11, 1993 which are not subject to treatment under undue hardship provisions shall be treated as follows:

- Payments from the annuity shall be considered income in accordance with Article 10.
- If payments are deferred at any time, the cash surrender value of the annuity shall be considered available property.

A. PERIOD CERTAIN ANNUITIES

- Once the individual or spouse receives or takes steps to receive periodic payments of principal and interest, the balance of the annuity shall be considered unavailable.
- Payments must be scheduled to exhaust any balance remaining in the annuity, at or before the end of the annuitant's life expectancy, based upon the life expectancy tables compiled by the Actuary of the Social Security Administration and set forth in §9J of the Medi-Cal Eligibility Procedures Manual (MEPM). Use the tables with the age of the annuitant as of the date the annuity was purchased or the date the payment plan was established, whichever is the most recent.
- If the years of expected life for the annuitant, based on the life expectancy tables compiled by the Actuary of the Social Security Administration, is less than the years of scheduled payments under the terms of the annuity, and if the annuity cannot be restructured, then the payments in excess of the annuitant's life expectancy shall be considered a transfer of property for less than fair market value that may be a disqualifying transfer.
- Any predetermined specified amount or number of payments set aside for any other individual (other than for the sole benefit of the spouse) shall be considered a transfer of property that may be a disqualifying transfer.

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- After payments to the annuitant begin, if payments are later designed to be made to any other individual (other than for the sole benefit of the individual or spouse), the payments shall be considered a transfer of income that may be a disqualifying transfer in the future.

Note: Whenever an annuity has not been properly annuitized, counties shall advise the individual that he/she must attempt to have the annuity annuitized in accordance with these procedures. When it is necessary to advise an applicant/beneficiary that he/she must annuitize the annuity in accordance with these procedures, provide the applicant/beneficiary with the annuitant's life expectancy by entering the Secretary's tables using the annuitant's current age. The balance of the annuity shall be considered unavailable once steps have been taken to annuitize the annuity in accordance with these procedures until the payment(s) are received. Counties shall also consider whether the undue hardship provisions apply before taking adverse actions. (See MEPM §9 J V - I) When undue hardship is considered and found not to apply, the notice of action shall state that "the undue hardship provisions were considered and found not to apply."

(MEPM §9J-13, 14)

461-5 ADDED 7/10

The American Recovery and Reinvestment Act of 2009, Division B, Title III, Section 2002, which provides an increase to both regular and extended Unemployment Benefits by \$25 a week, has been extended to individuals who have a regular claim filed by May 23, 2010. This payment will be ending the week of December 11, 2010. The \$25 weekly increase must not be considered income for purposes of determining eligibility or share-of-cost for all Medi-Cal programs. (ACWDL 10-10, May 25, 2010)

462-1

Gross earned income includes but is not limited to wages (including meal allowances), salaries, bonuses, and commissions from an employer or business enterprise, tips, and net profits from self-employment, including net income from real or personal property which requires continuous and appreciable effort on the part of the applicant or beneficiary. (§§50503(a)(1), (2), (8), and (11))

462-2

For all MFBU (MBU) budget determinations undertaken on or after April 1, 1996, as part of an eligibility determination for a "new case", and for continuing cases which have been flagged, treat verified State Disability Insurance (SDI) received by an AFDC-MN or MI beneficiary whose income is counted in the SOC calculation as earned income. Apply the \$90 work expense deduction (§50553.1), the student exemption (§50543), and the dependent care deduction (§50553.5) if applicable. (All-County Welfare Directors Letter (ACWDL) No. 96-09, February 14,

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1996, implementing *Tinoco v. Belshé*, U.S. District Court, N.D. Cal., C 94-0947 WHO, January 1996)

#### 462-2A

Implementation of the *Tinoco* case holding that SDI be treated as earned income requires that SDI be verified as well as the amount of such SDI payments. SDI is paid for disability arising from a nonwork-related injury which renders the recipient unable to work. The SDI benefit is generally paid biweekly for up to a year. (ACWDL No. 96-09, February 14, 1996)

#### 462-3

REVISED 7/10

Temporary Workers' Compensation (TWC) benefits are treated as earned income effective January 1, 1996, for persons who are not ABD-linked MN persons, are either AFDC-MN or MI persons or in the same MFBU with an AFDC-linked MN or MI person, and whose income is counted in the Medi-Cal budget. There are four potential deductions from earned income:

1. The \$90 work expense deduction (§50553.1).
2. The student exemptions (§50543).
3. The \$30, or \$30 and one-third deduction (§50553.3).
4. The dependent care deduction (§50553.5).

(All-County Welfare Directors Letter (ACWDL) No. 95-63, October 24, 1995; *Sawyer v. Belshé*, U.S. District Court, N.D. Cal., CIVS-94-0028 GEB JFM)

Since the AFDC program was replaced by the CalWORKs program effective January 1, 1998, the \$30 or the \$30 + 1/3 deduction is no longer available as of May 1, 1998. (Assembly Bill No. 1542, providing for enactment of the CalWORKs program)

#### 463-1

The net profit from self-employment shall be an estimation of the annual net income for the current year based on the federal tax return filed for the previous year. If there is no tax return for the previous year or there is evidence that using the tax return would give an inaccurate estimation of income, the county shall use current business records. In these circumstances, net profit shall be determined by subtracting all business deductions that are directly related to the production of goods or services, and without which the goods and services could not be produced. Personal expenses such as income tax payments, lunches and transportation to and from work are not allowable deductions. The following expenses are not to be allowed even though they may be authorized for federal tax purposes: entertainment costs, depreciation, purchase of capital equipment expenditures and payments on the principal of loans for capital assets or durable goods. (§50505)

463-2

The CDHS has issued the following "GUIDELINES FOR DETERMINING WHETHER AN INDIVIDUAL IS SELF-EMPLOYED".

**INDICATORS OF SELF-EMPLOYMENT**

- > The individual defines for himself the scope and nature of his work and daily work activities, including work-duration; and such activities are not supervised or determined by another (except pursuant to a limited term, contractual arrangement).
- > If the person is "selling" services (as opposed to selling goods), and: (1) The relationship between the parties is contractual, and changes in the definition or extent of the services provided by the contractor require changes in the contractual agreement; (2) The contractor exercises a pattern of entering into contractual arrangements with others, simultaneously, or in succession, and of providing bargained-for, contractually defined services pursuant to an explicit (oral or written) agreement.
- > Others assume limited or no liability for the individual's work and for the individual during the course of his or her work (unless it is part of an indemnity agreement or other contractual arrangement).
- > The individual does not work at another's facility nor makes substantial use of another's capital (unless under a limited term contract).
- > The individual's employment requires that he or she own substantial equipment, which is subject to depreciation, and the individual "bargains-for", and receives, compensation which reflects the cost of such depreciation.
- > The person files an income tax return attesting that he/she is a self-employed person (e.g., files a Schedule C).
- > The person or entity providing compensation to the individual for his or her services does not (and will not) deduct Social Security taxes or federal taxes from the compensation payment.

Consideration is given to each of the above indicators in conjunction with any other factors that may be pertinent to an individual's job situation. In the case of conflicting measurements, the indicators above are arranged in a hierarchy of perceived importance.

(Medi-Cal Eligibility Procedures Manual §10M-1, 2, effective April 17, 2001)

463-3

The CDHS considers certain self-employment expenses as deductible, and others nondeductible.

**Allowable Expenses:** Expenses which are directly related to the production of goods and services, and which are subtracted from business revenue to compute net business income include the following:

1. Material and supply costs.
2. Wages and other benefits paid to employees.
3. Payment for rental of space or equipment.
4. Payment of interest on loans for capital assets or durable goods.
5. Transportation costs to call upon customers or deliver goods.
6. Maintenance and repair costs.
7. Other necessary costs of doing business (e.g., advertising, business dues and publications, and insurance).

**Expenses Not Allowable:** Certain expenses, although connected to business activities, are not considered to be directly related to the production of goods or services, and cannot be subtracted from business revenue for purposes of determining net business income. These non-allowable expenses include:

1. Entertainment costs.
2. Depreciation.
3. Expenditures to purchase capital equipment.
4. Payments on the principal of loans used to acquire capital assets or durable goods.
5. Meals and transportation to and from work.

(Medi-Cal Eligibility Procedures Manual §10M-2, effective April 17, 2001 referencing §50505)

464-1

Fluctuating income, except for self-employment income, is to be determined by estimating the amount which is to be received during the month. Actual income shall be used if it is known at the time the SOC determination is being made. (§50518)

464-2

Income shall be converted to monthly income by multiplying weekly income by 4.33 or biweekly income by 2.167 if the beneficiary wishes to receive Medi-Cal for more than two months, and if the beneficiary is to receive the income for a full month. (§50517)

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#### 465-1

The responsibility of a relative to contribute to the cost of health care services of a Medi-Cal applicant or beneficiary shall be limited to spouse for spouse and parent for child. Relative responsibility shall be spouse for spouse when the spouses are living together in the home. (§50351(a))

#### 465-2

Parents who are living with a child are responsible relatives and their income and resources are to be used in determining the child's Medi-Cal eligibility. In addition, a parent living away from the home is to be considered a responsible relative if (a) the child is 18 years of age or older but under 21 and (b) the parent claims the child as a dependent for income tax purposes. (§50351)

#### 466-1

Income which is not available to meet the needs of a person or family shall not be considered in determining that persons or family's share of cost (SOC). (§50515(a))

Only income which is actually available to meet the needs of the person or family shall be considered in determining that person's or family's SOC (§50513(a))

#### 466-2

Counties were instructed to deem as unavailable income, under §§50513 and 50515, amounts which were deducted for purposes of collecting overpayments from public or private benefit payments. Examples of benefit payments which are subject to this exclusion are entitlement payments, payments made due to a beneficiary's impairment, DIB, UIB, and retirement, pension or annuity benefits. (All-County Welfare Directors Letter (ACWDL) No. 92-39, June 15, 1992)

#### 466-3

Prior to April 1, 2000, it was the CDHS position that when a medically needy person resides in a licensed board and care facility, that portion of the individual's monthly income which is (A) paid to the facility for residential care and support, and (B) in excess of the maintenance need level for the individual, is considered unavailable income. (§50515(a)(3))

In the *Pettit v. Bontá* lawsuit, the court found the Medi-Cal program was required to allow persons in licensed board and care residential facilities the ability to apply incurred expenses for personal care services to their share of cost (SOC).

Effective April 1, 2000, individuals in licensed board and care residential facilities are to be allowed a standard \$315 personal care services income deduction in lieu of the excess maintenance need deduction for residential care and support indicated in 22 California Code of

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Regulations §50515(a)(3). If the excess maintenance need deduction allows for a lower SOC than the standard \$315, then the excess maintenance need deduction is to be used instead.

For those individuals determined to have a lower SOC for any prior month(s), the "SOC Case Make-up Inquiry Request" (SOCR) screen of the "Medi-Cal Eligibility Data System" (MEDS) needs to be checked to determine whether or not any of the SOC was met.

- For those months where none of the SOC was met, change the SOC to the new amount and advise the beneficiary to bill for services as appropriate.
- For those months where part or of the SOC was met, follow instruction described in Article 12C of the Medi-Cal Procedures Manual for "Processing Cases When SOC has Been Reduced Retroactively".

(All-County Welfare Directors Letter No. 00-56, November 15, 2000)

### 466-3A

If the medically needy person is in a licensed board and care facility, that person receives the income exclusion set forth in §50515(a)(3), regardless of whether the facility characterizes the individual as receiving assisted living services. (All-County Welfare Directors Letter No. 99-31, June 28, 1999)

### 466-4

Generally, the "name on the check" determines the owner of income from the check. However, sometimes agencies, such as the Social Security Administration, issue benefits for more than one person in a check made out to that person, or to another person who is not the check's owner. Thus, counties must verify the beneficial owner of the income so that they can properly allocate income to the actual owner of the income. (Medi-Cal Eligibility Procedures Manual §8F-10)

### 466-7 Added 6/11

Federal courts have upheld a federal regulation which authorize garnished amounts to be included as income for Supplemental Security Income purposes. See *Cervantez v. Sullivan* 963 F.2d 229 (9th Cir. 1990). In reaching this conclusion, the court determined that income does not have to be physically received in order to be considered available. See also *Martin v. Sullivan*, 932 F.2d 1273 (9th Cir.1990).

### 466-8 ADDED

1/13

In *Mulder v. South Dakota Department of Social Services*, 675N.W.2d 212 (2004), the South Dakota Supreme Court determined that counting alimony which was involuntarily withheld as part of available income was not reasonable. However, other Courts have reached opposite conclusions when determining whether involuntary deductions should be considered available income under the Medicaid statute. These include *Peura by and through Herman v. Mala*, 977



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F.2d 484 (9th Cir.1992), *Emerson v. Steffen*, 959 F.2d 119 (8th Cir.992) and *Himes v. Sullivan*, 806 F. Supp. 413 (W.D.N.Y.1992)

#### 467-1

Income in kind is any support or maintenance received in kind from a person other than a responsible relative for:

- (1) Housing.
- (2) Utilities.
- (3) Food.
- (4) Clothing.

(§50509)

Income in kind shall be considered as income only if the entire item of need is provided.

(§50509(b))

#### 467-1A ADDED 3/10

Beginning March 9, 2005, "clothing" was eliminated from the definition of In-Kind Support and Maintenance for the Supplemental Security Income (SSI) program. Therefore, to remain no more restrictive than the SSI program, In-Kind amounts for clothing must be eliminated from the Medically Needy rules and from the rule for programs following the SSI rules. The Income-In-Kind for clothing for the Section 1931(b) program remains the same. (ACWDL 09-64)

#### 468-1

There is a \$90 deduction from earned income for mandatory deductions and work-related expenses for an AFDC-MN (now CalWORKs) or MI person. (§50553.1)

#### 468-2

A deduction from earned income for dependent care expenses shall be allowed an AFDC-MN (now CalWORKs) or MI person if the person has reasonable and necessary costs of obtaining care for a child or incapacitated person in the MFBU and the county determines that adequate care cannot be provided by another member of the MFBU. The maximum amount of deduction is \$200 for a child under two years of age, and up to \$175 for all others. (§50553.5)

#### 468-3

Court ordered alimony or child support or child support paid pursuant to an agreement with a District Attorney (DA) shall be deducted from the income of an AFDC-MN (now CalWORKs) or MI beneficiary when it is actually paid by the beneficiary. The amount deducted is the lesser of the amount actually paid, and that specified in the court order or DA agreement. (§50554)

## 468-4 REVISED 7/10

There is a \$30 plus one-third of the remainder deduction from nonexempt earned income of certain AFDC- MN and MI individuals. The individual must have been eligible for and receiving a cash grant (or eligible for such grant except for an overpayment adjustment) in one of the four months immediately prior to the month in which the deduction will be applied; and the individual must not have received the \$30 plus one-third deduction in AFDC cash payments for four consecutive months, unless there was an intervening 12-month period when the individual was not an AFDC recipient. There is a \$30 deduction for a period of eight months following the end of the four consecutive month period. (§50553.3)

Since the AFDC program was replaced by the CalWORKs program effective January 1, 1998, these potential deductions were no longer available as of May 1, 1998. (Assembly Bill No. 1542, providing for enactment of the CalWORKs program)

## 468-5

When a State has elected to participate in the MN program, it must determine income for individuals under age 21 and caretaker relatives by deducting those amounts which would be deducted in determining eligibility under the State's AFDC plan. (42 Code of Federal Regulations §435.831(b)(2))

## 468-6 REVISED 7/10

For all MFBU (MBU) budget determinations undertaken on or after April 1, 1996, as part of an eligibility determination for a "new case", and for continuing cases which have been flagged, treat verified State Disability Insurance (SDI) received by an AFDC-MN (now CalWORKs) or MI beneficiary whose income is counted in the SOC calculation as earned income. Apply the \$90 work expense deduction (§50553.1), the student exemption (§50543), the \$30 or \$30 and one-third deduction (§50553.3) and the dependent care deduction (§50553.5) if applicable. (All-County Welfare Directors Letter (ACWDL) No. 96-09, February 14, 1996, implementing *Tinoco v. Belshé*, U.S. District Court, N.D. Cal., C 94-0947 WHO, January 1996)

Since the AFDC program was replaced by the CalWORKs program effective January 1, 1998, the \$30 or the \$30 + 1/3 deduction is no longer available as of May 1, 1998. (Assembly Bill No. 1542, providing for enactment of the CalWORKs program)

## 468-7 REVISED 7/10

Temporary Workers' Compensation (TWC) benefits are treated as earned income effective January 1, 1996, for persons who are not ABD-linked MN persons, are either AFDC-MN (now CalWORKs) or MI persons or in the same MFBU with an AFDC-linked MN or MI person, and whose income is counted in the Medi-Cal budget. There are four potential deductions from earned income:

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1. The \$90 work expense deduction (§50553.1).
2. The student exemptions (§50543).
3. The \$30, or \$30 and one-third deduction (§50553.3).
4. The dependent care deduction (§50553.5).

(All-County Welfare Directors Letter (ACWDL) No. 95-63, October 24, 1995; *Sawyer v. Belshé*, U.S. District Court, N.D. Cal., CIVS-94-0028 GEB JFM)

Since the AFDC program was replaced by the CalWORKs program effective January 1, 1998, the \$30 or the \$30 + 1/3 deduction is no longer available as of May 1, 1998. (Assembly Bill No. 1542, providing for enactment of the CalWORKs program)

#### 468-8 ADDED 12/08

All earned income of an AFDC-MN ( now CalWORKs) or MI child, including earnings from JTPA after the six months' exemption pursuant to Section 50539 has expired, shall be exempt if the child is either of the following:

- (1) A full-time student.
  - (2) A part-time student with a school schedule that is equal to at least one-half of a full-time curriculum, and the child is not employed full-time
- (§50543)

#### 469-1

There shall be a deduction of \$20 from the combined nonexempt unearned income of all aged, blind, or disabled (ABD) MN persons and the spouse or parents of these persons. (§50549.2(a)) Any unused portion of this \$20 deduction shall be subtracted from the earned income of the ABD person, or that person's spouse or parents (§50549.2(b))

#### 469-2

Court-ordered alimony or child support paid pursuant to an agreement with a DA shall be deducted from the income of the ABD-MN beneficiary when actually paid, not to exceed the amount in the court order or DA agreement. (*Gibbins v. Rank*; All-County Welfare Director's Letter No. 87-77, modifying §50554.)

#### 469-3

When a state has elected to participate in the MN program, it must determine income for aged, blind, or disabled individuals by deducting those amounts which would be deducted in determining eligibility under SSI.

The state must also deduct the highest amounts from income that would be deducted in determining eligibility for optimal state supplements if these supplements are paid to all individuals who are receiving SSI or who would be eligible for SSI except for their income.

(42 Code of Federal Regulations §435.831(b)(3))

469-4

The first \$65 (as well as any remaining portion of the \$20 unearned income deduction) plus one-half of the remainder shall be deducted from the combined nonexempt earned income of all aged, blind, or disabled MN persons and the spouse or parents of these persons. (§50551.3)

469-5

In addition to earnings deductions set forth in §50551.3, the actual cost of work related expenses shall be deducted from the nonexempt earned income of a blind person. (§50551.4)

469-6 ADDED

4/12

Net non-exempt income for the QMB, SLMB or QI program shall be determined in accordance with all the applicable provisions of Article 8 and Article 10, except that the health insurance premiums as specified under Section 50555.2 are not allowed (§50570)

469-7 ADDED

8/14

A maximum of \$7,060 per calendar year or \$1750 per month shall be deducted from the nonexempt earned income of a blind or disabled person who is all of the following:

- a. Under age 22, and
- b. Not now married, and
- c. Not a parent, and
- d. Enrolled or will be enrolled in a school for at least 8 hours per week during one month of either:
  - (1) Current calendar quarter, or
  - (2) Next calendar quarter.

(§50551, All County Welfare Directors Letter No.: 14-17, April 4, 2014)

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469-8 ADDED

8/14

Effective April 1, 2005, Section 432 of the Social Security Protection Act extended the Student Earned Income Exclusion (SEIE) to all individuals in the budget unit who are working students under the age of 22, including those that meet the Supplemental Security Income program's definition of a child. To qualify, the student must be in the Medi-Cal Family Budget Unit (MFBU) of an aged, blind or disabled individual to receive the deduction. SEIE will apply to earnings from an ineligible spouse or parent(s) and to joint earned income of eligible couples when both members are under age 22 and are working students. (All County Welfare Directors Letter No.: 14-17, April 4, 2014)