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8 Attorneys for Petitioner

9 Superior Court of California  
10 City and County of San Francisco

11 Debra Abney,

12 Petitioner,

13 v.

14 California Department of Health Care Services,  
15 Richard Figueroa, Acting Director, California  
16 Department of Health Care Services,  
17 City and County of San Francisco, Human  
18 Services Agency of the City and County of  
19 San Francisco, DOES 1-20, inclusive,

20 Respondents.

ENDORSED  
FILED  
San Francisco County Superior Court

FEB 13 2020

CLERK OF THE COURT  
NEYL WEBB  
Deputy Clerk

Case No. **CPF-20-517020**

) Petition for Writs of Administrative Mandate  
) (CCP §1094.5) and Ordinary Mandamus  
) (CCP §1085)

21 **I. Introduction**

- 22 1. California's Medi-Cal program provides critical health care services to low-income  
23 residents, including coverage of physician and hospital services, prescription medications,  
24 dental services, and mental health services.  
25 2. In order to be eligible for the Medi-Cal program, an individual must have monthly,  
26 countable income below the program's allowed subsistence levels.

- 1 3. California law proscribes that only income which is "actually available" to meet the  
2 current needs of a person or family may be counted in determining Medi-Cal eligibility.  
3 Income which is not available to meet those current needs may not be counted. 22 Cal.  
4 Code of Regs. ("CCR") §§50513(a), 50515(a).
- 5  
6 4. When determining whether income that is being withheld to pay a tax debt is countable,  
7 Respondents do not consider whether that income is actually available to pay for current  
8 needs. Instead, Respondents have adopted and are enforcing a policy and practice  
9 ("policy") of substituting income counting regulations and rules from the Social Security  
10 Administration's federal Supplemental Security Income / State Supplementary Program  
11 ("SSI") program for the requirements of §§50513(a) and 50515(a). *See* Exhibit "A".
- 12  
13 5. The SSI program does not require that income be actually available in order to be  
14 counted. Instead, it allows income that is not received by the person to be counted when  
15 determining SSI eligibility. *See* 20 C.F.R. §416.1102; Exhibit A, 9-12.
- 16  
17 6. In the case of Petitioner Abney, Respondents' policy has resulted in the counting of  
18 \$598.20 that is being withheld from payment to Ms. Abney in order to pay a tax debt  
19 owed to the Internal Revenue Service. As a result, Ms. Abney is not eligible for no-cost  
20 Medi-Cal but instead has been assessed an unaffordable monthly share of cost premium  
21 of \$729.00 that must be paid before Ms. Abney may receive Medi-Cal covered health  
22 care services for any month.
- 23  
24 7. (Petitioner Abney seeks a writ of ordinary mandate prohibiting Respondents from failing  
25 to decide what income is actually available for purposes of Medi-Cal eligibility based  
26 upon the Medi-Cal laws and regulations and from failing to treat income that is withheld

1 from the individual to pay a tax debt as unavailable, pursuant to 22 CCR §§50513(a) and  
2 50515 (a).

- 3  
4 8. Ms. Abney also seeks an order of administrative mandamus voiding Respondents'  
5 hearing decision and directing Respondents to immediately redetermine her Medi-Cal  
6 eligibility and that the withheld \$598.20 be treated as unavailable income for purposes of  
7 that redetermination.

8 **II. Parties**

- 9  
10 9. Petitioner Debra Abney is 65 years old. Ms. Abney suffers from numerous disabling  
11 conditions, including chronic severe pain in her back, legs, and neck, a broken hip,  
12 arthritis, diabetes and untreated cavities and broken teeth resulting in chronic, severe oral  
13 pain.

- 14  
15 10. Respondents' illegal policy of counting income that is not actually available to pay for Ms.  
16 Abney's current needs has resulted in her income being wrongly and illegally determined  
17 to be too high for no-cost Medi-Cal and, as a result, her being denied Medi-Cal covered  
18 health care services, including needed dental treatment and services.

- 19  
20 11. Respondent Richard Figueroa is the acting director of Respondent Department of Health  
21 Care Services ("Department"), the state agency charged with administering California's  
22 Medi-Cal program. Respondent Figueroa is sued in his official capacity. Respondents  
23 Figueroa and Department have a legal duty to ensure that determinations of countable  
24 income for purposes of Medi-Cal eligibility are based upon the requirements of 22 CCR  
25 §§50513 (a) and 50515 (a) that on income which is actually available for current needs  
26 may be counted. .

1 12. Respondents City and County of San Francisco and Human Services Agency of the City  
2 and County of San Francisco ("CCSF") perform Medi-Cal eligibility determinations on  
3 behalf of Respondent Department for residents of San Francisco, California. CCSF  
4 performed the income eligibility determination for Petitioner Abney that is the subject of  
5 this lawsuit. CCSF has a legal duty to ensure that determinations of countable income for  
6 purposes of Medi-Cal eligibility are based upon the requirements of 22 CCR §§50513 (a)  
7 and 50515 (a) that only income which is actually available for current needs may be  
8 counted.  
9

10  
11 13. DOES I-XX are individuals and entities whose true names are unknown to Petitioner at  
12 this time. Petitioner will seek leave of this court to add their true names and capacities  
13 when they have been ascertained.  
14

### 15 **III. Statutory Framework**

#### 16 **A. Medi-Cal Statutory Framework**

17 14. The Medicaid program was established by Congress in 1965 at title XIX of the Social  
18 Security Act. The purpose of the Medicaid program is to enable states to furnish  
19 "medical assistance on behalf of families with dependent children and of aged, blind or  
20 disabled individuals whose incomes and resources are insufficient to meet the costs of  
21 necessary medical services..." 42 U.S.C. §1396.  
22  
23  
24  
25  
26  
27

1 15. California has elected to participate in the federal Medicaid program. Its Medicaid  
2 programs, known as "Medi-Cal", is codified at Welfare and Institutions Code §14000 *et*  
3 *seq.*<sup>1</sup>  
4

5 16. In establishing Medi-Cal, the California Legislature declared its intent to provide "...for  
6 the health care for those aged and other persons...who lack sufficient annual incomes to  
7 meet the costs of health care, and whose other assets are so limited that their application  
8 toward the costs of such care would jeopardize the person or family's future minimum  
9 self-maintenance and security" and "to afford qualifying individuals health care and  
10 related remedial or preventative services..." §14000.  
11

12 17. Medi-Cal beneficiaries are entitled to a uniform set of health care services, including  
13 physician and hospital services, prescription medications, dental services, and mental  
14 health treatment services. *See* §14132.  
15

16 18. States participating in Medicaid must designate a "single state agency" to be responsible  
17 for implementing and administering the program. 42 U.S.C. §1396a(a)(5).  
18

19 19. Respondent Department is the single state agency in charge of administering Medi-Cal.  
20 §14100.1.  
21

22 20. As the single state agency, Respondent Department is responsible for ensuring that the  
23 Medi-Cal program is administered in such a manner as to comply with state Medi-Cal  
24 laws and regulations (22 CCR §50004 (b)(2), (3)) and so as to promptly secure for all  
25 persons the amount of aid for which they are eligible (§§10500, 10000).  
26

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27 <sup>1</sup> Unless otherwise specified, all statutory references will be to the Welfare and Institutions Code.  
28





1 34. Within 30 days after the Department has received a copy of the administrative law  
2 judge's proposed decision for the state administrative hearing, Respondent Director must  
3 adopt that decision, decide the matter himself on the record or order a further hearing.  
4 Welf. & Inst. Code §10959.  
5

6 **C. California Administrative Procedure Act**

7 35. California's Administrative Procedure Act ("APA") prohibits state agencies from issuing  
8 or enforcing regulations unless they were adopted in accordance with the APA. Cal. Gov.  
9 Code § 11340.5.  
10

11 36. The APA defines a "regulation" as "every rule, regulation, order, or standard of general  
12 application or the amendment, supplement, or revision of any rule, regulation, order, or  
13 standard adopted by any state agency to implement, interpret, or make specific the law  
14 enforced or administered by it, or to govern its procedure." Cal. Gov. Code § 11342.600.  
15

16 37. Respondents' policy is a regulation as defined by the California APA.

17 38. Respondents have a legal duty to only adopt and enforce regulations for counting income  
18 for purposes of Medi-Cal eligibility that have been promulgated in conformity with the  
19 requirements of the California APA. *See* Cal. Gov't Code §11346 et seq.  
20

21 **IV. Relief Sought By This Lawsuit**

22 **A. CCP § 1094.5**

23 39. Pursuant to California Code of Civil Procedure §1094.5, Petitioner seeks an order finding  
24 that Respondents' administrative hearing decision is arbitrary, capricious and contrary to  
25 law and voiding that decision. Petitioner further requests that this Court direct  
26

1 Respondents to immediately redetermine her Medi-Cal eligibility and that the withheld  
2 \$598.20 be treated as unavailable income for that redetermination.

3 **B. CCP § 1085**

4  
5 40. Pursuant to California Code of Civil Procedure §1085, Petitioner seeks a writ of  
6 ordinary mandate (1) prohibiting Respondents from failing to comply with their duty to  
7 determine countable income in conformity with the requirements of lawfully adopted  
8 state Medi-Cal laws and regulations and (2) from failing to treat income that is withheld  
9 for payment of a tax debt as unavailable, pursuant to the requirements of 22 CCR  
10 §§50513(a) and 50515 (a).  
11

12 41. Mandamus is a proper legal remedy to correct Respondents' abuse of discretion in failing  
13 to determine countable income for purposes of Medi-Cal eligibility in conformity with  
14 the requirements of 22 CCR §§50513(a) and 50515(a).  
15

16 **V. Factual Allegations**

17 42. Petitioner Debra Abney is a 65 year old, low-income resident of San Francisco,  
18 California. Ms. Abney suffers from a variety of severe impairments, including chronic  
19 severe pain in her back, legs, and neck, chronic severe dental pain as a result of cavities  
20 and broken teeth, a broken hip, arthritis and diabetes.

21 43. Ms. Abney is eligible for a monthly Social Security disability payment of \$1,484.50.  
22 From that amount, \$598.20 is withheld each month to pay a tax debt owed to the Internal  
23 Revenue Service. Ms. Abney does not have any control or discretion over the withheld  
24 \$598.20. That amount is not available to meet her current needs.  
25  
26

- 1 44. At the beginning of 2019, CCSF conducted a review of Ms. Abney's Medi-Cal eligibility.  
2 In doing so, CCSF included within Ms. Abney's countable income the \$598.20 that is  
3 withheld to pay the IRS tax debt. Exhibit A, pages 2-3.  
4
- 5 45. On March 19, 2019, CCSF issued a Notice of Action assessing Ms. Abney with a  
6 monthly Medi-Cal share of cost premium of \$729.00, effective April 1, 2019. The  
7 \$729.00 premium must be paid in order for Ms. Abney to be eligible for Medi-Cal health  
8 care services in any month.  
9
- 10 46. In assessing the \$729.00 monthly premium, CCSF applied and enforced the policy  
11 challenged herein of counting income that being withheld to pay a tax debt. Exhibit A,  
12 pages 2-3, 9-11.  
13
- 14 47. If the withheld \$598.20 were not counted, Ms. Abney would be eligible for Medi-Cal  
15 with no share of cost.  
16
- 17 48. Ms. Abney appealed the share of cost assessment to a state administrative hearing.  
18
- 19 49. At the state administrative hearing, Ms. Abney's attorney argued that state Medi-Cal law  
20 precludes counting the \$598.20 being withheld to pay a tax debt income because it is not  
21 actually available to meet her current needs. Exhibit A, page 2.  
22
- 23 50. At the state hearing, Respondents reaffirmed their policy of substituting the SSI income  
24 counting provisions in place of §§50513(a) and 50515(a). Exhibit A, page 2.  
25
- 26 51. In a hearing decision dated December 3, 2019, the administrative law judge ("ALJ")  
27 affirmed and enforced the challenged policy. Exhibit A, page 12.  
28
52. Respondents adopted the state hearing decision for Ms. Abney pursuant to Welf. &  
Inst. Code §10959. As a result, Ms. Abney is not eligible for Medi-Cal unless she pays a

1 monthly share of cost premium of \$729.00. See exhibit "A", pages 1, 12. Such an  
2 unaffordable monthly premium amounts to a denial of Medi-Cal eligibility.

3 53. Ms. Abney suffers from severe chronic dental pain that is the result of cavities and  
4 broken teeth. As a result, Ms. Abney is able to chew food on only one side of her mouth  
5 and sometimes cannot chew at all due to pain. Swelling in her mouth also prevents  
6 eating proper food.  
7

8 54. Ms. Abney had x-rays taken of her teeth as a first step in getting dental treatment;  
9 however, the dentist told her she had to first pay her monthly share of cost premium  
10 before Medi-Cal will cover the needed dental treatments.  
11

12 55. Ms. Abney cannot afford to pay a share of cost and also pay for the most basic living  
13 expenses so she has not been able to obtain Medi-Cal covered dental treatment.  
14

15 56. Ms. Abney cannot afford private dental insurance or to pay out of pocket for needed  
16 dental treatment services.  
17

### 18 **First Cause of Action**

19 (Violations of 22 CCR §§50004(b), 50513(a), 50515(a); and Welf & Inst. Code §§10000,  
20 10500 )  
21

22 57. Petitioner realleges and incorporates by reference each and every allegation contained  
23 within paragraphs 1 – 57.  
24

25 58. Respondents' policy of determining countable income based upon SSI income counting  
26 regulations and procedures violates their ministerial duties to determine countable income for  
27 purposes of Medi-Cal eligibility based upon the requirements of Medi-Cal laws and  
28

1 regulations (22 CCR §50004 (b)) and to only include that income which is "actually  
2 available" to meet "current needs" pursuant to the requirements of §§50513(a) and 50515(a).  
3  
4 59. Respondents' policy is resulting in the assessment of unaffordable monthly share of cost  
5 premiums that effectively delay and prevent otherwise eligible persons, such as Ms. Abney,  
6 from obtaining coverage of needed health care services in violation of Respondents' duties  
7 under §§10000 and 10500.

8 **Second Cause of Action**

9 (Violation of California Administrative Procedures Act)

10  
11 60. Petitioner realleges and incorporates by reference each and every allegation contained  
12 within paragraphs 1 – 60.

13 61. Respondents' challenged policy is a rule, regulation, order, or standard of general  
14 application, as defined by as defined by the California Administrative Procedures Act.  
15 See Cal. Gov't Code §§11340.5; 11342.600.

16  
17 62. California's Administrative Procedure Act prohibits state agencies from issuing or  
18 enforcing regulations unless they were adopted in accordance with the APA. Cal. Gov.  
19 Code § 11340.5.

20  
21 63. Respondents have a legal duty to ensure that all rules, regulations, orders, or standards of  
22 general application that are used to determine countable income for purposes of Medi-Cal  
23 eligibility are adopted in accord with the requirements of the California APA.

24 64. Respondents' challenged policy has not been adopted in conformity with the  
25 requirements of California's APA.



1 70. Petitioner seeks a writ of ordinary mandate (1) prohibiting Respondents from failing to  
2 comply with their duty to determine countable income in conformity with the  
3 requirements of lawfully adopted state Medi-Cal regulations and (2) from failing to treat  
4 income that is withheld for payment of a tax debt as unavailable, pursuant to the  
5 requirements of 22 CCR §§50513(a) and 50515 (a).  
6

7 71. As a Medi-Cal recipient and a person affected by Respondents' policy, Petitioner Abney  
8 has a direct and beneficial interest in ensuring that the program is administered in a  
9 lawful manner.  
10

11 72. Petitioner lacks a plain, speedy and adequate remedy at law except by way of ordinary  
12 mandate pursuant to CCP §1085.

13 **Fourth Cause of Action**

14 (Administrative Mandamus – CCP §1094.5)

15 73. Petitioner realleges and incorporates by reference each and every allegation contained  
16 within paragraphs 1 – 73.  
17

18 74. Petitioner Abney is entitled to have her Medi-Cal eligibility determined in accordance  
19 with the requirements of 22 CCR §§50513(a) and 50515(a).  
20

21 75. The \$598.20 that is being withheld from Ms. Abney to repay a tax debt owed to the  
22 Internal Revenue Service is not actually available to Ms. Abney to meet her current needs.  
23 Ms. Abney has no control or discretion over this amount.

24 76. Respondents' failure to determine Ms. Abney's countable income in conformity with the  
25 requirements of 22 CCR §§50513(a) and 50515(a) is arbitrary, capricious, and contrary to  
26 law and should result in this court issuing its order voiding Respondents' hearing decision.  
27

1 (exhibit "A") and directing that her eligibility be immediately redetermined and that the  
2 \$590.20 being withheld to pay a tax debt be treated as unavailable income for that  
3 redetermination of eligibility.

4  
5 77. Petitioner requests that Respondents immediately prepare a transcript of the  
6 administrative hearing for this matter, file the transcript with the court and provide  
7 Petitioner's counsel with a copy.

8 Wherefore, Petitioner prays as follows:

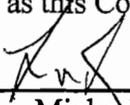
9  
10 1. For a preliminary and permanent injunction and a writ of ordinary mandate  
11 finding that Respondents have failed and are continuing to fail to comply with their duty to  
12 determine countable income based upon lawful Medi-Cal regulations and rules and prohibiting  
13 Respondents from failing to take those steps necessary to ensure that income which is withheld  
14 to pay a tax debt is treated a unavailable income pursuant to 22 CCR §§50513(a) and 50515(a).

15  
16 2. For a writ of administrative mandamus voiding Respondents' hearing decision  
17 (exhibit "A") and directing that Respondents immediately conduct a redetermination of Ms.  
18 Abney's Medi-Cal eligibility and that the redetermination treat as unavailable income the amount  
19 being withheld to repay the Internal Revenue Service tax debt.

20  
21 3. For costs of this lawsuit, including reasonable attorney's fees and expenses, as  
22 permitted by law.

23 4. For such other and further relief as this Court may deem necessary.

24 Dated: February 5, 2020

  
\_\_\_\_\_  
Michael Keys  
Bay Area Legal Aid

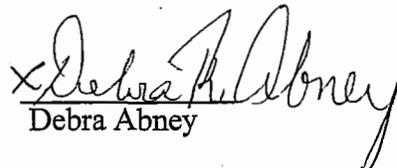
1 VERIFICATION

2 I, the undersigned, declare:

3 That I am a petitioner in the above-entitled action; that I have reviewed the foregoing  
4 Petition For Writs of Ordinary and Administrative Mandate and that I certify that the factual  
5 allegations contained therein are correct and true to the best of my knowledge.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed on January 27, 2020 at San Francisco, California.

8  
9   
10 Debra Abney

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# Exhibit A

California Department of Social Services

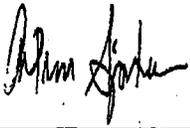
Hearing No. 104590813

In the Matter of Claimant(s):

Debra Abney  
1693 OAKDALE AVE,  
SAN FRANCISCO, CA 94124-2324

DECISION

Pursuant to the authority of the Director,  
I adopt the attached final decision.



Adopt Date: December 03, 2019

Arlana Spikener  
Administrative Law Judge

Hearing Information

Hearing Date: September 26, 2019 11:15 AM  
Release Date: December 04, 2019  
Aid Pending: N/A  
Issue Codes: 438-2,502-2  
Language: ENGLISH

CDSS State Hearings Division

Decision Cover Page

## SUMMARY

The Claimant is not eligible to receive California Medical Assistance Program (Medi-Cal) benefits with no share of cost under the Aged and Disabled (A&D) Federal Poverty Level (FPL) program, because her countable income exceeds the eligibility limit for those programs. However, the Claimant is eligible to receive Medi-Cal benefits with a share of cost of \$729.00 per month effective April 1, 2019. [438-2] [502-2]

## FACTS

On March 19, 2019, San Francisco County (County) mailed the Claimant a Notice of Action informing her that she was approved for Medi-Cal benefits with a SOC of \$729.00 monthly, effective April 1, 2019.

On June 10, 2019, the Claimant filed a request for hearing to challenge the new share of cost.

On July 15, 2019, the Claimant's Attorney also filed a request for hearing to challenge the new share of cost. On September 26, 2019, the state hearing was held. The Claimant and her Attorney participated in the telephonic hearing and the County appeals representative appeared for the County. The County appeals representative prepared and submitted a Statement of Position, which was received into the administrative record, along with all of its attachments.

The Attorney prepared and submitted a Statement of Position on behalf of the Claimant which was received into the administrative record, along with all of its attachments.

At the hearing the County appeals representative testified that the Claimant had received Medi-Cal benefits with zero share of cost under the Aged & Disabled Federal Poverty Level program (A&D FPL program) since November 1, 2011. The County appeals representative testified that the Claimant had an Medi-Cal Family Budget Unit (MFBU) of one.

The County appeals representative testified that the Claimant receives \$1,484.50 monthly from Social Security Administration (SSA) Retirement, Survivors and Disability Benefits and she pays \$135.00 monthly for her Medicare Part B premium. The County appeals representative testified that the Claimant submitted an SSA award letter which indicated \$598.20 is withheld from each payment to pay a debt to the Internal Revenue Service (IRS).

The County appeals representative testified that based on the Claimant's gross monthly income of \$1,484.50, the Claimant is not eligible for zero share of cost under the Medi-Cal Aged & Disabled Federal Poverty Level program, because her countable income exceeds the program's income limit. The County appeals representative testified that the County recalculated the Claimant's budget for April 2019, and determined the Claimant is not eligible for the zero share of cost program because of the amount of her monthly unearned income. The County appeals representative testified that the County calculated the Claimant's ineligibility for continued zero share of cost under the Medi-Cal Aged & Disabled Federal Poverty Level program (A&D FPL program) as follows:

Gross Unearned Income (SSA Income)	\$1,484.50
Less Income Deduction	-\$155.50
Remaining Unearned Income	\$1,329.00
Less Disregard for Qualified Individuals	-\$230.00
Net Nonexempt Income	\$1,099.00
Program Income Limit	\$1,041.00
Net Income is greater than the Program Income Limit	<b>NOT ELIGIBLE</b>

The County appeals representative testified that the County calculated the Claimant's share of cost of \$729.00, effective April 1, 2019 in the Medi-Cal program as follows:

Gross Unearned Income (SSA)	\$1,484.50
Less Income Deduction	-\$155.50
Net Nonexempt Income	\$1,329.00
Less Maintenance Need	-\$600.00
<b>Share of Cost</b>	<b>\$729.00</b>

The County appeals representative testified that all income, whether available or not, is counted in the budget. The County appeals representative testified that unearned income is counted, and that withheld amounts from unearned income, whether voluntary or not, to repay a tax debt, or to meet a legal obligation, are still considered unearned income received by the individual.

The Attorney testified that IRS debt should be allowed as a deduction. The Attorney testified that the income is not available as "available income" is defined under 50513. The Attorney testified that if income is garnished from a Claimant by the IRS, that income is not available to the Claimant to meet her needs. The Attorney argued the Claimant was down to half of her monthly income due the IRS garnishment and the money is not available to her. The Attorney argued that garnished income is not available income to the Claimant.

The Claimant testified that she cannot afford to buy her prescriptions and she has medical conditions.

Following the hearing the County was allowed to submit statutory authority for the parties to consider that specifically stated IRS garnishment did not qualify as 'unavailable' income. On September 26, 2019, the County submitted the Social Security Program Operations Manual System, Garnishment or Other Withholding (20 CFR 416.1123(b)(2)); the authority expressly lists Federal, State or local income taxes, as items which may be withheld from income, but are still considered received income.

Based on a preponderance of the evidence in the administrative record, it is found that the Claimant has not received Supplemental Security Income/State Supplementary Payment (SSI/SSP); that she receives SSA income in the amount of \$1,484.50 monthly, as her sole monthly income. The finding is based on the County appeals representative testimony regarding the Claimant's monthly income, and the income verifications received into the administrative record, and the testimony of the Attorney regarding the Claimant's income and source of income.

It is further found that specific amounts are garnished/deducted from the Claimant's unearned income for her IRS debt repayment or for her Medicare Participated B premium payment from her unearned income monthly, and that the IRS repayment deduction is involuntary.

It is found that the Claimant has not received Supplemental Security Income/State Supplementary Payment (SSI/SSP); that she receives SSA income in the amount of \$1,894.00 monthly and that she has no medical expense deductions. These findings are made based on the credible testimony of the County appeals representative, and the Authorized Representative regarding the Claimant's income, and on the verification of income in the administrative record.

## LAW

The California Department of Health Care Services (DHCS) issues Medi-Cal regulations and these regulations are found in Title 22, California Code of Regulations (CCR). All further references, unless otherwise specified, are from the CCR. (§50005) For purposes of this decision, W&IC is the abbreviation for the Welfare and Institutions Code.

### Pickle Amendment

ABD persons may be eligible for zero SOC Medi-Cal benefits if they meet all the following conditions:

1. The person receives Title II Social Security, i.e., RSDI.
2. The person has received, and been entitled to receive, RSDI (formerly OASDI) and SSI/SSP in the same month in any month since April 1977.
3. The person has been discontinued from SSI/SSP for any reason.
4. The person has received an RSDI cost-of-living adjustment (COLA) in any month since SSI/SSP was discontinued.
5. The person would be eligible to receive SSI/SSP benefits if the RSDI COLAs received after SSI/SSP ineligibility are disregarded.

(Pickle Handbook, §15, p. 15-1, implementing *Lynch v. Rank*)

In the Pickle eligibility determination, the person must have "received" both RSDI (formerly OASDI) and SSI/SSP in the same month. This requirement has been interpreted as follows:

- (1) If Title XVI (SSI/SSP) and/or Title II (RSDI) ben are awarded retroactively, Pickle eligibility may be determined from the last date of actual SSI/SSP eligibility and the first date of entitlement to RSDI benefits.
- (2) Those who received SSI/SSP, but were later found by the SSA to be ineligible for those benefits are not potential Pickle eligible.
- (3) Actual receipt of SSI/SSP is required, but only entitlement to, rather than actual receipt of RSDI is needed to meet Pickle eligibility requirements.

(Pickle Handbook, §2, p. 2-1)

### A&D FPL Program Eligibility

Effective January 1, 2001, the State has established an A&D FPL Program which will provide zero SOC Medi-Cal benefits to those persons who qualify. The basics of the program, are as follows:

- Qualified individuals/couples need to be aged or disabled and not in Long-Term Care.
- Eligibility of qualified individuals will be determined using the income and property medically needy rules.
- If qualified individuals have other family members applying for Medi-Cal benefits, qualified members will be ineligible member(s) of the other family member's Medi-Cal Family Budget Unit (MFBU). All ineligible family members' income will be used and be considered a part of the MFBU for purposes of determining the maintenance need size.
- Blind applicants or beneficiaries (under Title XVI or XIX) will be referred to the State Programs-Disability in order to determine if they meet disability criteria.
- January Social Security Cost-of-Living Allowance increases should be temporarily disregarded until the effective FPL increases are issued (generally in April).
- Disabled individuals in the A&D FPL program are not subject to an age limitation and as such children who are disabled need to be evaluated for this program.

(All-County Welfare Directors Letters (ACWDLs) No. 00-57, November 14, 2000; 00-68, December 29, 2000; and 02-38, June 28, 2002)

The law which authorized the A&D FPL program provides, in pertinent part, the following:

- (c) An aged or disabled individual shall satisfy the financial eligibility requirement of this program if both the following conditions are met:
  - (1) Countable income, as determined in accord with (42 United States Code (USC) §1396a(m)) does not exceed an income standard equal to 100 percent of the applicable federal poverty level, plus \$230 for an individual or, in the case of a couple, \$310, provided that the income standard so determined shall not be less than the SSI/SSP payment level for a disabled individual or, in the case of a couple, the SSI/SSP payment level for a disabled couple.
  - (2) Countable resources, as determined in accord with 42 USC §1396a(m) do not exceed the maximum levels established in that section.
- (d) The financial eligibility requirements provided in subdivisions (c) may be adjusted upwards to reflect the cost of living in California, contingent upon appropriation in the annual Budget Act.
- (f) For purposes of calculating income under this section during any calendar year, increases in social security benefit payments under Title II of the Social Security Act (42 USC §401 et seq.) arising from cost-of-living adjustments shall be disregarded commencing in the month that these social security benefit payments are increased by the cost-of-living adjustment through the month before the month in which a change in

the federal poverty level requires the department to modify the income standard described in subdivision (c).

- (g) Notwithstanding any other provision of law, the program provided for pursuant to this section shall be implemented only if, and to the extent that, the department determines that federal financial participation is available.
- (h) Subject to subdivision (g), this section shall be implemented commencing January 1, 2001.

(W&IC §14005.40)

In determining eligibility for the A&D FPL Program, count the income of the applicant and the applicant's spouse. (All-County Welfare Directors Letter No. 01-18, March 16, 2001)

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))

Health care premiums and all other medically needy deductions are allowable deductions in the A&D FPL program, except for the IHSS deduction. (ACWDL No. 02-38, June 28, 2002)

Health insurance premiums shall be deducted from income if paid by and purchased for any person in the family. Health insurance premiums paid less than monthly shall be averaged on a monthly basis, except that the premium for Part B Medicare shall be deducted for those months in which the beneficiary actually makes the payment. (§50555.2) Once the State has begun its "buy-in", a Medi-Cal beneficiary cannot then pay his/her own Medicare Part B premium in order to qualify for the A&D FPL program. (ACWDL No. 02-38, June 28, 2002)

### **MN Program**

Rules governing the MN program are the same rules used for the A&D FPL program, pursuant to All County Welfare Directors Letter 00-57. These rules include all property determinations, income deductions, and allocations (including those to Public Assistance [PA] or other PA spouses), and exemptions. (ACWDL 08-42, September 23, 2008)

There shall be a deduction of \$20 from the combined nonexempt unearned income of all ABD MN persons and the spouse or parent of these persons. (§50549.2)

Effective April 1, 2017, the Federal Poverty Level (FPL) for one person is \$1,005. (ACWDL No. 17-10, March 3, 2017)

In order to be certified and receive a Medi-Cal card under the Medically Needy (MN) program, the person shall be determined eligible and meet income and SOC requirements specified in these regulations. (§50653(d))

When an MFBU does not include a person in Long-Term Care, net nonexempt income is determined for members of the MFBU. From the net income, the appropriate maintenance need is subtracted in order to determine the SOC. (§50653(a))

The SOC shall cover a one-month period and be determined as follows for MFBU's which do not include a person in LTC:

- (A) Determine the net nonexempt income available to the members of the MFBU.
- (B) Round the total net nonexempt income determined in (A) to the nearest dollar, with amounts ending in 50 cents or more rounded to the next higher dollar.
- (C) Determine the appropriate maintenance need for the MFBU in accordance with Section 50603.
- (D) Subtract the combined maintenance need from the total rounded net nonexempt income. The remainder, if any, is the share of cost.

(§50653(a)(1))

The Medi-Cal maintenance need for a MFBU of one person is \$600. (§50603; ACDWL No. 95-19, March 23, 1995)

The SOC shall be determined:

- 1) At the time of application, reapplication or restoration.
- 2) When there is a change in income, family composition or any other factor affecting the share of cost. In these instances, the share of cost shall be determined in accordance Section 50653.3 and 50655.5.

(§50653)

**Qualified Medicare Beneficiary (QMB)**

Net non-exempt income for the QMB, SLMB or QI-1 programs 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)

The DHCS policy as to implementation of this program is set forth in ACWDL No. 90-02, January 8, 1990; Medi-Cal Eligibility Procedures Manual (MEPM) 5F, issued as part of ACWDL No. 91-09, February 7, 1991, referencing ACWDLs 90-02, 90-29, 90-71 and 90-73.

For Qualified Medicare Beneficiaries (QMBs), the DHCS shall pay the premiums, deductibles, and coinsurance for elderly and disabled persons entitled to benefits under the Title XVIII of the Social Security Act, when the person's income does not exceed the FPL, and resources do not exceed 200% of the SSI Program standard. (Welfare and Institutions Code (W&IC) §14005.11) DHCS shall also pay applicable additional premiums, deductibles and coinsurance for drug coverage, as offered to categorically needy recipients, as defined in W&IC §14050.1 and Title XIX of the Social Security Act. (W&IC §14005.11(b))

The four QMB requirements are:

- 1. A QMB must be eligible for Medicare Part A (Hospital Insurance)
- 2. A QMB must have income less than 100% of the federal poverty level.

3. A QMB must have property valued at \$4,000 or less if a single person, or \$6,000 or less if married and living with a spouse.
4. A QMB must meet certain other Medi-Cal program requirements, such as California residency.

(ACWDL Nos. 97-34, 09-52, 12-01)

The QMB limit has been 100% of the FPL since 1996. (ACWDL No. 97-34, August 5, 1997)

#### **Specified Low-Income Beneficiary (SLMB)**

A Specified Low Income Medicare Beneficiary (SLMB) is ineligible as a QMB solely due to excess income.

The SLMB program is limited to the payment of the Medicare Part B premium. It does not pay Medicare Part A premium, or the Part B deductibles or coinsurance. The SLMB's Medicare Part B premium will be purchased under the State buy-in process.

To be eligible, a SLMB must:

- Be entitled to Medicare Part A and B;
- Have no more than twice the Medi-Cal property limit (\$4,000 for one person, \$6,000 for a couple);
- Have income below 120% of the FPL; and
- Be a citizen or alien who would be eligible for full scope Medi-Cal benefits if he or she were eligible for a regular Medi-Cal program, except for excess income or property.

(Medi-Cal Eligibility Procedures Manual §5J-1; ACWDL 09-52; ACWDL 12-01)

The SLMB income level (120% of the FPL) effective April 1, 2017 for one person is \$1,206.00. (ACWDL 17-10)

#### **Qualifying Individuals Program (QI-1)**

The Balanced Budget Act of 1997 established a new Medi-Cal program which pays some or all of the Medicare Part B premium for those eligible to the Qualifying Individuals (QI) program. The QI program is divided into the QI-1 and QI-2 programs. (The QI-2 program was sunsetted effective December 31, 2002)

If an individual has income under 100% of the Federal Poverty Level (FPL) and meets other eligibility criteria such as residency and resource limits, the individual is eligible under the QMB program.

If an otherwise eligible individual has income between 100% and 120% of the FPL, the individual is eligible for the SLMB program.

If an otherwise eligible individual has income of at least 120% but less than 135% of the FPL, the individual is eligible under the QI-1 program. The QI-1 program will pay the full Part B Medicare premium.

(ACWDL No. 98-47, October 22, 1998, referencing ACWDLs 97-45 and 98-15; ACWDL No. 03-02 and 09-52; ACWDL No. 12-01)

Counties must review medically needy applications and eligibility redeterminations to determine if there is eligibility for the Qualified Medicare Beneficiary (QMB) program. If the individual is not eligible as a QMB due to income, counties must evaluate the individual for either the Specified Low Income Medicare Beneficiary (SLMB) or the Qualified Individual (QI) program, so that the DHCS can claim funding for the state payment of Medicare Part B payments. While federal law prohibits a QI from being eligible for any other Medicaid program, medically needy individuals with an SOC may be eligible for QI in those months the SOC is not met. (All-County Welfare Directors Letters No. 99-61, November 17, 1999)

The QI-1 Program is limited to the payment of the Medicare Part B premium. It does not pay the Medicare Part A premium or the Part B deductibles or copayments.

To be eligible, a QI-1 must:

- Be entitled to Medicare Part B (which included doctor's services, outpatient hospital care, diagnostic tests, durable medical equipment, ambulance services, and other health services and supplies);
- Have income at or above 120% of the FPL and up to but not including 135% of the FPL; have no more than twice the Medi-Cal property limit (\$4,000 for one person, \$6,000 for a couple);
- Be a citizen or alien who would be eligible for full scope Medi-Cal benefits if he or she were eligible for a regular Medi-Cal program, except for excess income or property.

QI-1, Other Medi-Cal Coverage:

1. An individual may not be determined eligible for the QI-1 program if he or she is eligible for any other zero share of cost Medi-Cal program, such as SSI cash based Medi-Cal, or ABD-MN with no share of cost.
2. A QI-1 with a share of cost is not considered eligible for the share of cost program until the share of cost is met. Therefore, the QI-1 may be reported to MEDS in both the QI-1 and the share of cost aid code in the same month.

(Medi-Cal Eligibility Procedures Manual §5J-5(B.1))

The QI-1 program provides the state payment of the Medicare Part B premium for individuals with income below 135% of the FPL. The QI-1 program was scheduled to sunset on December 31, 2002. That sunset date has been extended several times.

The QI-1 program sunset date was again extended, this time to March 31, 2014. Counties are to continue accepting applications and determining eligibility for the QI-1 program until the DHCS notifies them that the QI-1 program has been discontinued.

(ACWDL No. 09-11, July 31, 2008; ACWDL No. 12-18, June 8, 2012; ACWDL No. 13-04, February 1, 2013; CMCS Informational Bulletin, Medicaid Provisions in Recently Passed Federal Budget Legislation, December 27, 2013).

**§416.1123 How we count unearned income.**

(a) *When we count unearned income.* We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each month. We describe exceptions to the rule on how we count unearned income in paragraphs (d), (e) and (f) of this section.

(b) *Amount considered as income.* We may include more or less of your unearned income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security insurance benefit) (see §416.1121) has been reduced to recover a previous overpayment. You are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of the debt reduction is also part of your unearned income. *Exception:* We do not include more than you actually receive if you received both SSI benefits and the other benefit at the time the overpayment of the other benefit occurred and the overpaid amount was included in figuring your SSI benefit at that time.

*Example:* Joe, an SSI beneficiary, is also entitled to social security insurance benefits in the amount of \$200 per month. However, because of a prior overpayment of his social security insurance benefits, \$20 per month is being withheld to recover the overpayment. In figuring the amount of his SSI benefits, the full monthly social security insurance benefit of \$200 is included in Joe's unearned income. However, if Joe was receiving both benefits when the overpayment of the social security insurance benefit occurred and we then included the overpaid amount as income, we will compute his SSI benefit on the basis of receiving \$180 as a social security insurance benefit. This is because we recognize that we computed his SSI benefit on the basis of the higher amount when he was overpaid.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare premiums.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program other than SSI, legal fees connected with the claim are subtracted. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(4) In certain situations, we may consider someone else's income to be available to you, whether or not it actually is. (For the rules on this process, called deeming, see §§416.1160 through 416.1169.)

(c) *In-kind income.* We use the current market value (defined in §416.1101) of in-kind unearned income to determine its value for SSI purposes. We describe some exceptions to this rule in §§416.1131 through 416.1147. If you receive an item that is not fully paid for and are responsible for the balance, only the paid-up value is income to you.

*Example:* You are given a \$1500 automobile but must pay the \$1000 due on it. You are receiving income of \$500.

(d) *Retroactive monthly social security benefits.* We count retroactive monthly social security benefits according to the rule in paragraph (d)(1) of this section, unless the exception in paragraph (d)(2) of this section applies:

(1) *Periods for which SSI payments have been made.* When you file an application for social security benefits and retroactive monthly social security benefits are payable on that application for a period for which you also received SSI payments (including federally-administered State supplementary payments), we count your retroactive monthly social security benefits as unearned income received in that period. Rather than reducing your SSI payments in months prior to your receipt of a retroactive monthly social security benefit, we will reduce the retroactive social security benefits by an amount equal to the amount of SSI payments (including federally-administered State supplementary payments) that we would not have paid to you if your social security benefits had been paid when regularly due rather than retroactively (see §404.408b(b)). If a balance is due you from your retroactive social security benefits after this reduction, for SSI purposes we will not count the balance as unearned income in a subsequent month in which you receive it. This is because your social security benefits were used to determine the amount of the reduction. This exception to the unearned income counting rule does not apply to any monthly social security benefits for a period for which you did not receive SSI.

(2) *Social security disability benefits where drug addiction or alcoholism is a contributing factor material to the determination of disability.* If your retroactive social security benefits must be paid in installments because of the limitations on paying lump sum retroactive benefits to disabled recipients whose drug addiction or alcoholism is a contributing factor material to the determination of disability as described in §404.480, we will count the total of such retroactive social security benefits as unearned income in the first month such installments are paid, except to the extent the rule in paragraph (d)(1) of this section would provide that such benefits not be counted.

(e) *Certain veterans benefits.* (1) If you receive a veterans benefit that includes an amount paid to you because of a dependent, we do not count as your unearned income the amount paid to you because of the dependent.

(2) If you are a dependent of an individual who receives a veterans benefit and a portion of the benefit is attributable to you as a dependent, we count the amount attributable to you as your unearned cash income if—

- (i) You reside with the individual who receives the veterans benefit, or
- (ii) You receive your own separate payment from the Department of Veterans Affairs.

(f) *Uniformed service compensation.* We count compensation for services performed as a member of a uniformed service (as defined in §404.1330 of this chapter) as received in the month in which it is earned.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 0960-0128)

[45 FR 65547, Oct. 3, 1980, as amended at 47 FR 4988, Feb. 3, 1982; 47 FR 13794, Apr. 1, 1982; 50 FR 48574, Nov. 26, 1985; 55 FR 20599, May 18, 1990; 56 FR 3212, Jan. 29, 1991; 59 FR 59364, Nov. 17, 1994; 60 FR 8152, Feb. 10, 1995; 71 FR 45378, Aug. 9, 2006]

## CONCLUSION

The regulations provide that, to be eligible to receive Medi-Cal benefits with a zero SOC under the Pickle Amendment program, the Claimant must be Aged, Blind and Disabled and have received SSI/SSP benefits since April 1997. It is undisputed that Claimant has never received SSI/SSP benefits. It is concluded that the County correctly determined the Claimant is not eligible to receive Medi-Cal benefits with a zero SOC under the Pickle Amendment program as she has never received SSI/SSP benefits.

Under the A&D FPL program, the Claimant may be eligible for zero SOC Medi-Cal benefits if her income, less any applicable deductions, is below the FPL. Under the regulations, applicable deductions include \$20 for any income, \$230 for a standard disregard for an individual, and the actual amount paid by Claimant for her Medicare premium or other health insurance, including medical, vision or dental insurance. Here, the Claimant's social security income of \$1,484.50 must be counted which is then subject to limited deductions and allowances. In this case, these consist of the \$20.00 any income deduction and the \$230 income disregard for an individual. The Claimant pays a Medicare Part B premium. After the allowable amounts are subtracted, the remainder of the \$1,484.50 exceeds the \$1,041.00 FPL income limit for an individual. Therefore, it is concluded the County correctly determined the Claimant is not eligible to receive Medi-Cal benefits with a zero share of cost under this program as her net non-exempt income exceeds the income limit for this program.

Under the Medi-Cal MN program, the Claimant's income of \$1,484.50, less the \$155.50 income deduction \$600 maintenance allowance set by law, leaves \$1,329.00 as the Claimant's Medi-Cal share of cost. Therefore, it is concluded the County correctly determined the Claimant is eligible to receive Medi-Cal benefits with a \$729.00 Share of cost under this program. While the \$729.00 share of cost may impose a substantial hardship on the Claimant, there is no authority for the County, The Department of Health Care Services, or this Administrative Law Judge to consider the Claimant's tax garnishment in excess of the \$600.00 maintenance need allowance set by the legislature to determine the Claimant's share of cost. Accordingly, the Claimant's Medi-Cal share of cost must be set at \$729.00 per month, effective April 1, 2019.

It is noted that any health insurance premium, including that for Medicare Part B, paid by the Claimant would be deductible from her monthly income in determining eligibility for no share of cost under the A&D FPL program and also in determining her share of cost under the Medically Needy program. Therefore, the Claimant may want to consider purchasing additional medical, vision or dental insurance that could make her eligible for zero share of cost under the A&D Federal Poverty Level program or otherwise reduce her share of cost under the Medically Needy program.

Pursuant to Title 20 CFR §416.1123, amounts withheld from unearned income for IRS debt or Medicare premium payments, whether voluntary or involuntary, are considered unearned income received by the individual, and thus counted in the benefit determination.

Here, the Attorney argues the amount garnished from the Claimant's unearned income should not be considered available income to the Claimant, because she does not actually receive the much needed income. Although, the argument is pragmatically correct, the regulations do not allow for the interpretation, where the regulation specifically states such amounts shall be considered received unearned income.

It is therefore determined that the amount withheld for the Claimant's IRS debt is not subject to deduction or exemption, and must be considered as 'received' in determining the Claimant's

Medi-Cal share of cost. The Administrative Law Judge independently reviewed the verification of income attached to the Statement of Position, and determined the verification of SSA income includes the monthly benefit amount, the source of the income, and the itemized deductions therefrom.

The Administrative Law Judge also independently reviewed the County's calculation for the Claimant's Medi-Cal share of cost in the amount of \$729.00 monthly, effective April 1, 2019, and found the calculations to be correct. Thus, the County action establishing the Claimant's Medi-Cal share of cost in the amount of \$729.00 monthly, effective April 1, 2019 is sustained.

The Claimant is encouraged to seek out additional medical insurance to bring down his countable income in the Aged & Disabled Federal Poverty Level program, as the Claimant appears to miss out on eligibility for zero share of cost by less than \$60.00. The Claimant is encouraged to speak to a County worker about his options.

### ORDER

The claim is denied.