

Income Counting in the 250% Working Disabled Medi-Cal Program

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This month's practice tip demystifies two of the most opaque eligibility rules for the 250% Working Disabled Program: the income and SSI/SSP tests.

Is this practice tip for you? Look at Hypothetical D, below – if you understand that, you are probably good to go! But if Hypothetical D leaves you scratching your head, let's start from the beginning and work through these difficult eligibility criteria together.

The 250% Working Disabled Program is one of the most beneficial non-MAGI Medi-Cal programs around. It has a higher income limit and a different assets test from other non-MAGI programs and is a powerful tool for avoiding the dreaded Share of Cost. Yet, we see a general lack of awareness about the program and many problems with the application and eligibility process.

In brief, the eligibility criteria for 250% Working Disabled Program requires that the applicant:

1. be employed;
2. meet the federal definition of disability except the individual is allowed to perform Substantial Gainful Activity (SGA);
3. **have net nonexempt income below 250 percent of the FPL;**
4. **be eligible to receive SSI/SSP benefits if earnings were disregarded;**
5. pay a monthly premium based on the individual's income;
6. meet all other non-financial Medi-Cal eligibility requirements.

See Welf. & Inst. Code § 14007.9; Medi-Cal Eligibility Procedures Manual (MEPM) [Article 5R-1](#).

This practice tip focuses exclusively on Steps 3 and 4 of eligibility criteria because they are generally poorly understood and there are few comprehensible guidelines devoted to explaining them.

To understand these two eligibility criteria, we need to break down each question into its component parts.

SPOUSAL DEEMING

Tip #1: Before anything, figure out if spousal deeming applies.

To find out whether the countable income is less than 250% of the FPL we must figure out **whose** income counts to whom. Spousal or parent/child deeming is determined per SSI rules, which state: income will deem when the ineligible spouse's net non-exempt income is compared to the current SSI Standard Allocation prior to deeming. [Note: for more on parent/child deeming, see Tip #7, below.]

To determine spousal deeming (indeed, to understand much of the documentation on 250% Working Disabled) you need to understand a few key terms:

- Applicant/beneficiary/individual = the person applying for 250% Working Disabled
- Ineligible spouse = the person married to the applicant/beneficiary/individual

Now that we know who is who, we move on to the next step:

- If the ineligible spouse's income is greater than the SSI standard allocation, then there is spousal deeming to the applicant.
- If the ineligible spouse's income is less than the SSI standard allocation, then NO spousal deeming to the applicant.

Great . . . except what is the SSI standard allocation? The SSI standard allocation is the Federal SSI Benefit Rate (FBR) for a Couple minus the FBR for an individual. DHCS releases the SSI allocation amounts in an ACWDL near the beginning of each year. This year the SSI standard allocation is \$375 as published in [ACWDL 18-04](#).

Now that we know who is who and that the SSI standard allocation is \$375 this year, we can do the real work to see if spousal deeming applies!

To illustrate how this works, let's use a hypothetical. Stan gets \$1485/month in SSDI benefits. His wife Dorothy earns \$580 tutoring Mario and has a \$500 teacher's pension per month. Dorothy does not want to apply for Medi-Cal. Does Dorothy's income deem to Stan?

Ineligible Spouse Income Exemption Determination (from Form MC 338 , Section III)	
1. Enter gross unearned income amount for ineligible spouse (Dorothy)	\$500
2. Enter amount of gross earned income of ineligible spouse (Dorothy)	\$580
3. Add lines 1 and 2	\$1080
4. Allocation to ineligible children	0
5. Subtract line 4 from line 3 to get remainder	\$1080
6. If line 5 is <i>less</i> than the current standard SSI allocation of \$375 , STOP no spousal deeming. If it is <i>greater</i> than there is spousal seeming	☐ NO spousal deeming ☒ YES spousal deeming

Tip #2: Spousal deeming is the key to household size.

In the 250% Working Disabled Program the household size depends on spousal deeming. See MEPM 5R-3. If there is spousal deeming, then the applicant has a household size of 2. If there is NO spousal deeming, then the applicant has a household size of 1.

ELIGIBILITY CRITERION: IS NET NON-EXEMPT INCOME BELOW 250% FPL?

Tip #3: Countable income exemptions are the magic of 250% Working Disabled Program.

The exempt income in 250% Working Disabled Program is one of the reasons the program is so crucial. **ALL** disability-based income is exempt. That includes: SSDI, State Disability Income (SDI), private disability benefits, Worker's Comp, and disability income that converted to retirement. This last category of benefit includes Disabled Widow/er and Disabled Adult Child. See [ACWDL 11-38](#).

*Tip #3a: The county can call the local Social Security office to get a **verbal verification** for DAC or DW. Although this may be unlikely, it is provided for in [ACWDL 11-38](#), page 4.*

After exempting all disability-based income, the income counting rules are the same as with other non-MAGI programs including the disregards:

- Earned income = (\$\$ - \$65) ÷ 2
- Deduct Income Related Work Expenses (IRWE) (See [MEPM 5R-3](#))
- Unearned income = \$\$ - \$20
- In-Kind income. *Remember!* In-kind income is countable only if:
 - It is received from a person not obligated to support the applicant. That means in-kind income can't be from a spouse or a parent supporting a minor child. 22 C.C.R. § 50509(a); [ACWDL 00-51](#) Q13
 - It is for the entire item of need. That means if the applicant contributes anything toward the item, then the applicant is not receiving in-kind income. 22 C.C.R. § 50509(b).

Hypothetical B:

Let's look again at Stan and Dorothy and see if they have "net non-exempt income below 250% FPL." Stan gets \$1485/month in SSDI benefits. His wife Dorothy earns \$580 tutoring Mario and has a \$500 teacher's pension per month. Dorothy does not want to apply for Medi-Cal. We have already determined in Hypo A that Dorothy's income deems to Stan. Stan got a job bringing in their neighbor's mail for \$100 per month.

Directions (Form MC 338)	Applicant (Stan)	Ineligible Spouse (Dorothy)
Unearned Income	\$0 (Stan's disability income is EXEMPT)	\$500 (pension)
Unearned income deduction		- \$20
Countable unearned income	\$0	\$480

Earned Income	\$100 (checking neighbor's mail)	\$580 (tutoring job)
Subtract Income Related Work Expense (IRWE)	\$0	\$0
Earned income deduction	- \$65	- \$65
Subtotal	\$35	\$515
Divide by 2 to get countable earned income	\$17.50	\$257.50
Countable income (earned + unearned)	\$0 + \$17.50 = \$17.50	\$480 + \$257.50 = \$737.50
Household countable income	= \$755	

Stan and Dorothy's net non-exempt countable household income is \$755, which is less than 250% FPL for a household of 2.

ELIGIBILITY CRITERION: WOULD BE ELIGIBLE TO RECEIVE SSI/SSP BENEFITS IF EARNINGS WERE DISREGARDED

Tip #4: Do not sleep on the SSI/SSP eligibility test – it can make or break eligibility!!

Do not be lulled into thinking this step is a throwaway. It is easily the most confusing and least understood eligibility criterion in the 250% Working Disabled Program by county eligibility staff and advocates alike. We have had many people ask for technical assistance arguing, "Why is SSI part of the criteria? If my client were eligible for SSI, they would not need 250% Working Disabled." Or, the notice of action says that this is the reason for denied even though it appears the applicant has income below 250% FPL.

To figure out whether the applicant would be eligible to receive SSI/SSP if the earnings were disregarded:

- Use [Form MC 338 A](#) – to use this form you will need to have completed [Form MC 338](#) first.
- Disregard ALL of the applicant's disability-based income, but make sure to count other unearned income
- Disregard ALL of the applicant's earnings
- Remember that Household Size is determined by spousal deeming
- SSI/SSP Amounts change each year and are the Social Security publication called [SSI in California](#)
- In 2018, the amounts are:
 - \$910.72 for an individual
 - \$1,532.14 for a couple

Hypothetical C:

What does this look like for Stan and Dorothy? Remember, Stan gets \$1485/month in SSDI benefits. Stan got a job bringing in their neighbor's mail for \$100 per month. His wife Dorothy earns \$580 tutoring Mario and has a \$500 teacher's pension per month. Dorothy's income deems to Stan.

Directions from <u>Form MC 338A</u>	Amount
Enter combined countable unearned income (Stan = \$0; Dorothy = \$500 - \$20 = \$480)	\$480
Enter <i>ineligible spouse's</i> total earned income	\$580
<i>Ineligible spouse's countable</i> earned income	(\$580 - 65) ÷ by two = \$257.50
Total countable income for this test (Countable earned + countable unearned income)	\$737.50
SSI/SSP level for household size: Because Dorothy's income deems to Stan, we use the amount for a couple	\$1,5312.14
Is the total countable income less than the SSI/SSP level?	YES - \$737.50 is less than \$1,5312.14.

Getting to yes means that Stan would be eligible for SSI/SSP if the earnings were disregarded. Because of this he can also be eligible for 250% Working Disabled if he meets the rest of the eligibility criteria.

Hypothetical D:

Now imagine that in addition to the income listed in Hypothetical C, Stan just found out that he earned the Novelties Salesmen Trade Association's lifetime achievement award, which earns him \$900 a month for life! That is unearned income we must now take into account

Directions from <u>Form MC 338A</u>	Amount
Enter combined countable unearned income (Stan = \$900; Dorothy = \$500 - \$20 = \$480)	\$1,380
Enter <i>ineligible spouse's</i> total earned income	\$580
<i>Ineligible spouse's countable</i> earned income	(\$580 - 65) ÷ by two = \$257.50
Total countable income for this test (Countable earned + countable unearned income)	\$1,657.50
SSI/SSP level for household size: Because Dorothy's income deems to Stan, we use the amount for a couple	\$1,5312.14
Is the total countable income less than the SSI/SSP level?	NO - \$1,657.50 is <u>more</u> than \$1,5312.14.

In this scenario, Stan would be found ineligible for the 250% Working Disabled Program. If you had only done Step 3 to determine whether his countable income was below 250% FPL, you would have (incorrectly) believed that he would be eligible for 250% Working Disabled Program.

Tip #5: Significant non-disability based unearned income is red flag waving at you to look at the SSI/SSP test.

Looking only at non-disability unearned income is no substitute for going through the full analysis. However, when there is lot of this type of unearned income it is a key indicator that you need to walk through each step of the eligibility analysis.

Tip #6: Verify whether your county is sending NOAs per [ACWDL 18-05](#).

Unfortunately, DHCS only recently recognized that they need to send out denial or discontinuance notices of action when an individual is found ineligible for the 250% Working Disabled Program. Although DHCS released these NOAs in ACWDL 18-05, your county may not yet have programmed it into the SAWS. If your client receives no NOA or an inadequate notice, that alone is a reason for:

- A fair hearing request
- Good cause for late filing of a hearing request
- Aid paid pending request beyond the normal time limit
- See DSS Manual of Policies & Procedures 22-072.522(a)

CHILDREN & THE 250% WORKING DISABLED PROGRAM

Tip #7: Children in the 250% Working Disabled Program, is it ever the best option?

Yes, a child could technically be in the 250% Working Disabled Program. Think carefully if this is ever the best option. As you can see from the Medi-Cal Hierarchy ([ACWDL 17-03](#)), there are many programs for children that should be considered before 250% Working Disabled Program. In particular, the MAGI programs for children have higher income limits (up to 266% FPL), no assets test, and sometimes come with consumer protections like CEC or TMC.

RESOURCES

Want to know more about the 250% Working Disabled Program? Please check out these resources:

- Western Center on Law & Poverty, Health Care Eligibility Guide, [Chapter 3: Non-MAGI](#), pages 3.83-3.89.
- Medi-Cal Eligibility Procedures Manual, [Article 5R](#): 250 Percent Working Disabled Program
- Santa Clara County, Medi-Cal Handbook, [Chapter 32](#): 250% Working Disabled Program
- Disability Rights CA, [Spousal Deeming in the SSI Program](#)