SECTIONS 50193(d), 50406, 50407, 50412, 50413, 50415, 50441, 50483, 50507, 50517, 50533, 50167(a)(7)(L & R);
ACWDLs: 08-17; SSA Program Circular/SSI 10/4/1991 ñHome Equity Conversion Plansò

9D - LOANS REQUIRING REPAYMENT

Loans requiring repayment that are not exempt under Title 22, California Code of Regulations (CCR) section 50533, are considered property in the month of receipt rather than income (22 CCR section 50483). The purpose of this section is to provide procedures for determining if a loan requires repayment. This is not an exhaustive list of the types of loans that might be considered property in the month of receipt. Counties must apply the general principles outlined below to any new type of loan reported to the county. If you have any questions on how to treat a new type of financial product, call the Department of Health Care Servicesô(Departmentõs) Medi-Cal Eligibility Property Analyst for assistance.

GENERAL PRINCIPLES

Loans are unsecured or secured. A secured loan uses a security agreement, in which the borrower provides written consent to use an asset they own, such as property, as security for the loan. An unsecured loan is a loan made without a security agreement.

UNSECURED LOANS

I. The proceeds from an unsecured loan may be used to pay bills by the lender directly without going through the borrowerõs hands (such as a balance transfer on a new credit card or a consolidation loan), or to purchase items directly through the loan (such as a credit card purchase without a security agreement), or to take a cash advance. The county shall determine how the individualõs Medi-Cal eligibility is affected by an unsecured loan by taking the following steps:

a. No amount should be included in the property reserve if the proceeds are used toð
   1. Pay a debt,
   2. Directly purchase an exempt item
b. An amount must be included in the property reserve if the proceeds are ð
   1. Used to directly purchase a nonexempt item since unsecured loans cannot become encumbrances of record (22 CCR section 50413). The county shall determine the market value of the item purchased (22 CCR section 50412) and include that market value in the property reserve (22 CCR section 50420).
   2. In the form of cash, such as a cash advance on a credit card.

II. When the proceeds from an unsecured loan are used for nonexempt property in the month of receipt the county must take the following steps:

a. If the person is at or below the property limit (22 CCR section 50419) when the market value is included in the property reserve, then there is nothing further for the county to do.
b. If the included nonexempt property exceeds the properly limit, but the person was eligible at sometime within the month, then they will be eligible for Medi-Cal in the month of receipt (22 CCR section 50193(d)).
c. If the person converts the excess proceeds from the loan before the end of the following month, then the county will need to determine how the proceeds were used (22 CCR sections 50406 and 50407). If the person converted the proceeds to:
   1. Purchase an exempt item, then it would not be countable.
   2. Pay a debt, then there would be nothing to count.
   3. Purchase a nonexempt item, then the market value of that item would need to be evaluated.

d. If the person retains the cash proceeds into the following month, then the person may have excess property for the month following the month of receipt, unless they once again bring their property within the property limit.

SECURED LOANS

Counties shall follow the same steps outlined under the General Provisions for Unsecured Loans above, to determine what the proceeds of a loan are, what those proceeds were used for, and whether there is any nonexempt proceeds or property purchased to include in the property reserve. Additionally, when looking at a secured loan, counties must assess the property that is used as security for the loan and determine the following before including amounts in the property reserve:

I. Determine which property item is being used as security for the loan.

II. If the item used as security for the loan is exempt, then it is not valued or included in the property reserve.

III. If the secured item is nonexempt, then the market value of the item is determined (22 CCR section 50412), the encumbrance of record is subtracted (Section 50413) and the remaining net market value (Section 50415) is included in the property reserve (Section 50419).

TYPES OF LOANS

The list below contains descriptions of some of the types of loans that beneficiaries may report. Counties shall determine, on a case-by-case basis, whether the loan is secured or unsecured and apply the General Principles outlined in this MEPM Section to determine what amount, if any, should be included in the property reserve.

I. Commercial Loans

Commercial loans [e.g. real estate loans, car loans, cash advances on credit cards, signature (unsecured) or personal loans, etc.] are usually negotiated between two or more individuals, or between individuals and financial institutions such as banks or finance companies, and involve formal contracts. The formal contracts usually specify the borrower's promise to pay a designated sum of money monthly, at a specified time or upon demand.

If only a portion of the loan must be repaid, as may be the case with certain nonexempt student loans, only the portion that must be repaid is considered property in the month of receipt. The remaining portion should be considered income and apportioned in accordance with Title 22 CCR section 50517.

II. Personal Loans

Personal loans are negotiated between private parties and are often informal. They may involve oral or written agreements.

To be considered property for Medi-Cal purposes, a personal loan must be based on an agreement (whether written or oral) which contains the following components:

a. The borrower's acknowledgment of an obligation to repay (with or without interest) and
b. Either of the following:
    1. A timetable and plan for repayment (e.g., the borrower plans to repay the loan when he/she receives future income) or
    2. The borrower's express intent to repay the loan by pledging real or personal property or anticipated income as a demonstration of credit worthiness (e.g., the loan will be repaid as soon as unemployment insurance begins or employment begins).

c. In the case of oral loans, the borrower and the lender must provide a statement that documents the conditions listed above, and states that those conditions existed at the time the loan was created.

d. If a personal loan does not meet the above criteria and it is retained, then the funds would be considered income in the month of receipt and property the month following.

III. <u>Home Equity Conversion (HEC) Plans</u>

HEC plans allow homeowners to convert the equity in their homes into cash. Since these plans are loans requiring repayment, the proceeds are converted to property. HEC plans are secured loans so counties must follow the steps under General Principles above for Secured Loans to evaluate them. A copy of an individual's HEC plan shall be contained in their file.

Below is a summary of the most common HEC plans. This is not an exhaustive list of HEC plans, therefore each plan must be examined on an individual basis to determine the type of the loan, how the proceeds are received, and how the proceeds are used to understand how the plan impacts an individualõs Medi-Cal determination.

a. Reverse Annuity Mortgage (RAM)

RAM HEC plans allow a homeowner to borrow, through a formal mortgage contract, a percentage of the home equity for a specified period of time or for the life of the borrower. The homeowner receives funds periodically for the duration of the lending period. At the end of the lending period the loan must be repaid. If the financial institution funds its own payments to the borrower, without utilizing an annuity, then the payments are property in the month of receipt. If the lender purchases an annuity to fund these periodic payments to the borrower, and the clientõs documents identify the loan as an annuity, then the payments from the annuity are considered unearned income pursuant to Section 50507.

b. Deferred Payment Loan (DPL)

The DPL is similar to a RAM but differs in the following ways.

1. Rather than being used as supplemental income, the proceeds from a DPL are used for some specific purpose, such as payment of real estate taxes, home repairs, or major personal expenses.
2. A DPL is received from the lender in a lump sum rather than in periodic payments.
3. A DPL is secured by placing a lien on the property, which must be satisfied before sale of the property can be completed.
4. If unpaid, the amount of the DPL may be recovered from the estate upon the death of the homeowner.

c. Sale-Leaseback

Sale-leaseback is an arrangement where an investor (buyer) purchases the home from a person (seller) and as part of the sales agreement, leases the home back to the seller. The lease allows the seller to live in the home either for life or until a specified time.

The buyer usually pays the seller a down payment (converted property in the month of receipt) and monthly installments with interest on a promissory note (see example below). The interest on the note is considered unearned income in the month of receipt. If the note can be sold, it is countable property under Title 22 CCR section 50441. The buyer is responsible for payment of real estate taxes, major maintenance costs, and casualty insurance. The value of these in-kind items is not in-kind support and maintenance to the seller who is paying rent.

The seller pays the buyer rent. Assuming that the client is the seller, if the payments on the note are greater than the rental fee, the difference between the payments on the note and the rental fee, minus the interest portion of the monthly payment will be treated as cash on hand under 22 CCR section 50451 and included in the property reserve.

For example:

$1000.00 Monthly note payment received by client

- $525.00 Rent paid by client

$475.00 Difference

- $300.00 Interest portion of monthly note payment (income)

$175.00 Cash on hand (property)

d. Time Sale/Installment Contract with Life Estate Interest

In a Time Sale or Installment Contract HEC Plan the homeowner contracts to sell their home at death. In the meantime, they retain title and the right of continued residence in the home. In effect, under this arrangement, the homeowner retains a life estate.

The buyer usually agrees to pay property insurance, property taxes, and certain maintenance and repair costs, plus monthly payments to the homeowner during their lifetime.

The principal portion of the monthly payments are converted property and the interest portion is unearned income. If the buyer purchases an annuity and transfers it to the seller to fund their payments, then the seller owns an annuity and the payments would be considered unearned income under Title 22 CCR section 50507.

e. Line of Credit

Line of Credit plans allow a property owner to obtain a certain amount of their current equity. The unused line of credit is not available property since it is still equity in the property and has not yet been separated and converted to cash. Cash proceeds can be withdrawn from the equity all at once, or in smaller amount(s) and would be considered property in the month of receipt.

1. Line of Credit Against Exempt Principal Residence
   If the line of credit exists against the principal residence, then the principal residence remains exempt and the exempt equity would include any amount of the line of credit that has not been withdrawn.

   For example:
   Principal Residence Market Value = $500,000 (exempt)
   Line of Credit = $250,000 (remains exempt until withdrawn)
   Withdrawn Cash Proceeds = $100,000
   - property in the month of receipt and
   - the county must evaluate what was done with the proceeds.

   Unused Line of Credit = $150,000 (remains equity in exempt principal residence)

2. Line of Credit Against Nonexempt Property

   If a line of credit exists against nonexempt property, the county must determine the net market value of the property used as security as well as the amount of proceeds drawn out of the equity and what was done with those proceeds.

For example:

¶ Other Real Property Market Value = $300,000 (otherwise countable property as not utilized)

¶ Line of Credit = $300,000 (remains equity in the countable Other Real Property until withdrawn)

¶ Withdrawal = $300,000 becomes an Encumbrance of Record and was spent on privately paying for LTC prior to application for Medi-Cal

¶ $0 Net Market Value of Other Real Property remaining ($300,000 Market Value - $300,000 Line of Credit Withdrawn = $0 Net Market Value of Other Real Property)

¶ $0 countable property remaining on proceeds received as it was spent on LTC

Another example:

¶ Other Real Property Market Value = $300,000 (otherwise countable property as not utilized)

¶ Line of Credit = $180,000

¶ Withdrawn Cash Proceeds = $100,000 property in the month of receipt, but spent down on a new roof. The $100,000 becomes an encumbrance of record that reduces the market value of the Other Real Property.

¶ Unused Line of Credit = $80,000 (remains equity in nonexempt Other Real Property until withdrawn)

¶ $200,000 Net Market Value of the Other Real Property ($300,000 - $100,000 drawn out of the equity through the line of credit = $200,000 net market value). The county will need to provide the individual with options for spenddown, unless the Other Real Property is included in the

Community Spouse Resource Allowance in accordance with All County Welfare Directors Letter, Number 90-01.

¶ $0 countable property remaining on proceeds received as they were spent on the new roof.