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# MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

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## 22 C-2 – DETERMINING SUBSTANTIAL GAINFUL ACTIVITY

### 1. BACKGROUND

Section 435.540 of the Code of Federal Regulations (42 CFR) requires Medi-Cal to use the Supplemental Security Income (SSI) definition of disability to decide if a client is eligible for Medi-Cal disability.

To be considered disabled, SSI requires that an individual be:

"unable to engage in **Substantial Gainful Activity** (SGA), due to a medically determined physical or mental impairment, which is expected to result in death, or which is expected to last for a continuous period of 12 months".

A client who performs SGA is not disabled, even if a severe physical or mental impairment exists.

### 2. WHEN TO USE THESE PROCEDURES

These procedures will be used when a client:

- files for Medi-Cal disability, states on the MC 223 that he/she is working, and has gross earnings of more than \$700 per month, or
- meets the criteria for Presumptive Disability (PD), but earns over \$700 per month. PD should NOT be approved until an SGA determination is made.

**NOTE:** These procedures do not apply to clients who are blind or to beneficiaries who return to work after disability has been approved. If an SGA evaluation was not performed because the client alleged blindness, and SP-DED found that the client was disabled but not blind, an SGA evaluation must be performed before eligibility as a disabled person can be established.

### 3. PROCEDURES

#### A. SGA DETERMINATIONS

The EW shall determine if client is performing SGA when client has earned income of over \$700 per month. The EW shall:

1. Obtain: Client's gross monthly earnings (if irregular, earnings should be averaged). Earnings derived from In-Home Supportive Services are treated as earned income.
2. Determine: Whether there are impairment-related work expenses (IRWEs) or subsidies that can reduce earnings below \$700. (A discussion of IRWEs and subsidies follows.)

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3. Deny: Disability "net countable earnings" are over \$700.
4. Submit: A full disability packet to SP-DED, including an MC 220, MC 221, and MC 223, only if "net countable earnings" are \$700 or less.
5. Alert: SP-DED via a DED Pending Information Update Form (MC 222) when a disability packet was sent to SP-DED and client is subsequently found to be engaging in SGA. SP-DED will stop case development and return case to the county.

Work Activity Report form (MC 273, Exhibit 2) should be provided to client whose earnings are over \$700 to help in making SGA determinations.

### B. IMPAIRMENT-RELATED WORK EXPENSES

Impairment-related work expenses (IRWEs) are certain expenses which are incurred and paid by an impaired client to enable him/her to work.

#### 1. \$700 SGA Determination

IRWEs can be deducted from gross earnings to arrive at "net countable earnings". If "net countable earnings" are over \$700, deny the application. For self-employment, IRWEs can be deducted from net income, if not already deducted from gross income as a business expense.

*Example: Client earns \$950 per month and has \$200 worth of IRWEs for special transportation costs to go to work, and for medications needed to control a seizure condition. As "net countable earnings" are \$750 per month, client is performing SGA and application is denied.*

Note: Do NOT apply ABD-MN or AFDC MN/MI earned income deductions when determining SGA.

#### 2. Allowable IRWE Deductions

Deductions are allowed when the following conditions exist.

- a. Disabled client needs the item/service in order to work. The need must be verified by the prescribing source (e.g. doctor, Vocational Rehabilitation [VR]). The cost must also be verified.
- b. Cost is paid by disabled client and not reimbursed by another source (e.g. Medicare, VR). The cost must be paid in cash, including checks or money orders, and not in kind.
- c. Expense is "reasonable". It represents comparable charges for the item/service in the community. Sources such as a medical supplier or VR may be contacted.

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*Example: Client states he/she needs an attendant to assist in activities to prepare for work. Client has a family member perform the services and is charged \$15 per hour. If Personal Care Services provided through In-Home Supportive Services allows a payment of \$4.25 per hour, only \$4.25 per hour should be allowed as a deduction.*

### 3. Budgeting of IRWE

Payment must be made after client became disabled in order for cost to be deducted. Payment is computed in the following ways:

- a. Recurring and Non-Recurring IRWEs
  1. Recurring costs, such as monthly payments for a wheelchair: the amount paid monthly is deductible.
  2. Non-recurring down payments, or full purchase price paid for an item: a lump sum payment may be prorated over 12 months.
- b. Cost Incurred Before or After Work
  1. Before work started: Prorate the cost over a 12 month period; deduct only the balance of the 12 months while the client is working.

*Example: Client paid \$600 in January for an item. Work started in April. Prorate the cost over 12 months. IRWE applies to the balance of the 12 months of employment, or \$50 per month for April through December.*
  2. After work ended: Deduct IRWE from the last month earned income is received.

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### 4. IRWE Categories

#### ***DEDUCTIBLE***

##### Attendant Care Services

- Performed in work setting or in process of assisting in preparations for work, the trip to/from work and after work (e.g., bathing, dressing, cooking, eating).
- Services which incidentally benefit the family (e.g., cooking meal for individual also eaten by family).
- Services performed by a family member for a cash fee where the family member suffers an economic loss by reducing or terminating work to perform such services.
- Requires verification of duties, of amount of time spent, that they were paid for in cash, and that payment is made on a regular basis.

##### Transportation Costs

- Structural or operational modifications to vehicle, needed to drive to work or be driven to work, even if also used for non-work purposes.
- Driver assistance or taxicabs where such special transportation is not generally required by unimpaired individuals in the community.
- Mileage expense limited to travel related to employment.

#### ***DEDUCTIBLE***

#### ***NON DEDUCTIBLE***

##### Attendant Care Services

- Performed on non-workdays or involving shopping or general homemaking (e.g., cleaning, laundry).
- Services performed for someone in the family other than the beneficiary (e.g., babysitting).
- Services performed by a family member for a cash fee where the family member suffers no economic loss.

##### Transportation Costs

- Cost of a vehicle whether modified or not.
- Cost of modification to a vehicle not directly related to the impairment or critical to the operation of the vehicle (e.g., paint or decor preferences).
- Cost of travel related to obtaining medical items or services.

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### *NON DEDUCTIBLE*

#### Medical Devices

- Wheelchairs, hemodialysis equipment, pacemakers, respirators, traction equipment, braces (arm, leg, neck, back).

#### Work-Related Equipment and Assistants

- One-handed typewriters, typing aids (e.g., page-turning devices), electronic visual aids, telecommunications devices for people with hearing impairments and special work tools.
- Expenses for a person who serves as a reader for a visually impaired person, expenses for an interpreter for a deaf person, and expenses for a job coach.

#### Prosthesis

- Artificial hip and artificial replacement of an arm, leg or other part of the body.

#### Residential Modifications

- Individual Employed Outside Home: Modifications to exterior of house to allow access to street or transportation (e.g., exterior ramps, exterior railings, pathways, etc.).
- Individual Self-Employed at Home: Modifications made inside home to accommodate impairment (e.g., enlargement of a doorway leading into an office, etc.).

#### Medical Devices

- Any device not used for a medical purpose.

#### Work-Related Equipment and Assistants

- Any work-related device not paid for by the person with a disability or, in the case of a self-employed individual, equipment previously deducted as a business expense.

#### Prosthesis

- Any prosthetic device that is primarily for cosmetic purposes.

#### Residential Modifications

- Individual Employed Outside Home: Modifications to the house primarily intended to facilitate functioning in the home environment (e.g., enlargement of interior door frames, lowering of kitchen appliances and bathroom facilities, interior railings, stairway chairlift, etc.).

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- Individual Self-Employed at Home: Any modification expenses previously deducted as a business expense in determining SGA.

### DEDUCTIBLE

#### Routine Drugs/Medical Services

- Regularly prescribed medical treatment or therapy that is necessary to control a disabling condition (even if unsuccessful), such as anti-convulsant drugs or blood level monitoring, radiation treatment or chemotherapy, corrective surgery for spinal disorders, anti-depressant medication, etc. The physician's fee relating to these services is deductible.

#### Diagnostic Procedures

- Objective of procedure must be related to the control, treatment or evaluation of a disabling condition (e.g., electroencephalograms, brain scans, etc.).

#### Non-Medical Appliances/Devices

- In unusual circumstances, when devices or appliances are essential for the control of disabling condition either at home or in the work setting (e.g., an electric air cleaner for a client with severe respiratory disease); the need is verified by a physician.

#### Other Items/Services

- Medical supplies of an expendable nature (e.g., incontinence pads, elastic stockings, catheters).
- The cost of a guide dog, including food, licenses, and veterinary services.

### NON DEDUCTIBLE

#### Routine Drugs/Medical Services

- Drugs and/or medical services used for only minor physical or mental problems (e.g., routine physical exams, allergy treatment, dental exams, optician services, etc.).

#### Diagnostic Procedures

- Procedures paid for by other sources (e.g., VR, Medicare) or not related to a disabling condition (e.g., allergy testing).

#### Non-Medical Appliances/Devices

- Devices used at home or at the office which are not ordinarily for medical purposes (e.g., portable room heaters, air conditioners, humidifiers, dehumidifiers, etc.) and the client has no verified medical work-related need.

#### Other Items/Services

- An exercise bicycle or other device used for physical fitness unless verified as necessary by a physician.



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### C. SUBSIDIES

An employer may because of a benevolent attitude toward a handicapped individual subsidize the employee's earnings by paying more in wages than the reasonable value of the actual services performed. When this occurs, the excess will be regarded as a subsidy rather than earnings and should be deducted from the gross earnings. Subsidies:

1. May involve: giving the impaired worker the same pay but more supervision or fewer/simpler tasks than other non-impaired workers.
2. May result in: more pay than the actual work is worth. Workers in sheltered workshops or settings are generally subsidized.
3. Are deducted: from gross earnings to arrive at "net countable earnings" for SGA eligibility determinations but are not considered an earned income exemption for budget determinations, once a medical decision is made.
4. Should be verified: by an employer contact to confirm a subsidy exists and determine the value of the subsidy.

*Example: Employer states that the value of client's work is half the actual earnings. Client earns \$800 per month. As half the work is subsidized, \$400 is considered the real value of work and client is not engaging in SGA. **NOTE:** \$800 is the non-exempt income for CWD use in computing client's budget.*

### D. SPECIAL WORK CONSIDERATIONS

If client is forced to stop working after a short time due to an impairment, the work is generally considered an unsuccessful work attempt (UWA) and earnings from that work will not show ability to do SGA.

#### 1. UNSUCCESSFUL WORK ATTEMPT (UWA) REQUIREMENTS

All of the following must be present for work to be considered an UWA:

- there is a break in client's employment of 30 days or more, and
- work lasted less than six months, and
- work stopped due to client's impairments.

#### 2. EVALUATING UNSUCCESSFUL WORK ATTEMPTS

The following are examples of possible situations which might be encountered when evaluating work activity. How the EW analyzes the situation and what action the EW takes are also provided below.

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**EXAMPLE A:** Client worked from 12/1/92 to 6/30/94. Work stopped due to his impairment. He returned to work on 8/5/94 and stopped again on 9/1/94. He applied on 9/2/94 with a request for retro back to 7/94.

**EW's Analysis**

- There is a break in employment of over 30 days between 6/30 and 8/5.
- Work lasted less than six months from 8/5 to 9/1.
- Work stopped due to client's impairment.

**EW's Actions**

- In Item 10 of MC 221, indicate "work after 6/94 is an UWA".
- In Item 6 of MC 221, list retro months of 7/94 and 8/94.

**EXAMPLE B:** Client worked sporadically from 10/93 to 12/93, 3/94 to 4/94 and 6/94 to 7/94 because of his mental illness. He applies on 7/10/94, asking for retro back to 4/94.

**EW's Analysis**

- There is a break in employment of over 30 days between each work period.
- Work lasted less than six months for each employment period.
- Work stopped due to client's impairment.

**EW's Actions**

- In Item 10 of MC 221, indicate "work prior to application is an UWA".
- In Item 6 of MC 221, list retro months 4/94, 5/94 and 6/94.

**EXAMPLE C:** Client worked until 5/30/94 and applied on 7/7/94, requesting retro onset to 4/94. CWD determined that client was engaging in SGA in 4/94 and 5/94. In Item 6 of MC 221 that was sent to SP-DED, EW Indicated "6/94", and indicated in Item 10 "client engaged in SGA in 4/94 and 5/94". On 8/31/94, client reports a return to work for 8/94 only, but stopped because of her impairment.

**EW's Analysis**

- There is a break in employment over 30 days from 5/30 and 8/1.
- Work in 8/94 lasted less than six months.
- Work stopped due to client's impairment.

**EW's Actions**

- Complete and send MC 222, DED Pending Information Update form to SP-DED.
- Indicate in Item 9 that client's return to work in 8/94 was an UWA, and that client is no longer working.

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### E. NOTIFICATION

#### 1. Notifying SP-DED

If CWD has evaluated client's earnings for SGA and the client has gross monthly earnings of \$700 or more, the CWD must include a copy of the SGA Worksheet (MC 272) in the disability packet. If the CWD determines that the individual is not performing SGA, the CWD must annotate in Item 10 (County Worker Comment) of the MC 221 that there is "no SGA issue."

If CWD has already sent the disability packet to SP-DED, and an SGA issue has been clarified, SP-DED should be informed of the evaluation of client's work activity via an MC 222, DED Pending Information Update form along with a copy of the MC 272.

If SP-DED returns a disability packet to the county as a Z56 for an SGA determination, the CWD must complete an SGA determination. Should the CWD determine that the client is not performing SGA, a new MC 221 MUST be completed and resubmitted with a copy of the MC 272.

#### 2. Notifying Client

If client's application is denied due to performance of SGA, client should be sent a Notice of Action (NOA) informing him/her of the reason for the denial. The NOA may contain the following sample statement:

*"The reason why you are not entitled to Medi-Cal based on disability is because you are working and doing substantial gainful activity. This means that your net countable earnings are over \$700 a month, which is the earnings limit if you are working and applying as a disabled person."*

NOTE: The Title 22 reference section is: **50224**

### F. FORMS

#### 1. SGA Worksheet, Form MC 272 (Exhibit 1):

May be used to compute client's earnings and IRWE/Subsidy deductions.

- a. **Net earnings \$700 or less:** process application in the usual manner.
- b. **Net earnings more than \$700:** deny claim as client is engaging in SGA.
- c. Whenever the gross monthly earnings are \$700 or more and the CWD determines that there is no SGA issue, a copy of the MC 272 must be included in the disability packet. Item 10 of the MC 221 must indicate that there is "no SGA issue."

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2. Work Activity Report, Form 273 (Exhibit 2):

Should be used to determine what client's earnings are and whether the client's gross earnings can be reduced by the amount of any applicable IRWE or subsidy.

3. DED Pending Information Update, Form MC 222:

Must be sent if a disability packet is pending at SP-DED, and client is subsequently found to be engaging in SGA. The MC 272 must also be included.