

DEPARTMENT OF HEALTH SERVICES

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SACRAMENTO, CA 95814

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August 11, 1981

To: All County Welfare Directors

Letter No. 81-37

BELTRAN vs. MYERS (TRANSFER OF PROPERTY LITIGATION)

On July 30, 1981 the District Court issued a preliminary injunction in the subject court case which means the following modifications to our transfer of property policy must be made immediately:

1. Transfers of property occurring more than two years prior to the date of initial application shall, under no circumstances, be evaluated.

California Administrative Code (CAC), Title 22, Section 50408(b) specifies: "There is a presumption that property transferred by the applicant or beneficiary more than two years preceding the date of initial application was not transferred to establish eligibility or reduce the share of cost. Such property shall not be considered in determining eligibility, unless there is evidence that disproves this presumption".

Effective immediately, even if there is evidence to disprove the presumption, no adverse action shall result.

2. The period of ineligibility resulting from a transfer of property without adequate consideration cannot exceed 24 months when the net market value for which consideration was not received is \$12,000 or less.

Effective immediately if the net market value of the property transferred without consideration is \$12,000 or less, calculate the period of ineligibility in accordance with CAC, Title 22, Section 50411. In those instances in which the period of ineligibility would extend for more than 24 months beyond the date of transfer, the denial or discontinuance Notice of Action should specify that the period of ineligibility shall cease after the 24th month.

It should be noted that the individual must still be advised that the period of ineligibility may be reduced by costs of medical care, out-of-home care, or major home repairs. If an individual later presents such expenses to reduce the period of ineligibility, these expenses should be applied against the period of ineligibility computed in accordance with CAC, Title 22, Section 50411 rather than the 24 month maximum.

Example: Mr. B transfers \$12,000 cash to his son in March 1981. He applies for Medi-Cal in July 1981. He cannot overcome the presumption that the transfer was to qualify. Mr. B lives at home and had no other property at the time the transfer occurred.

\$12,000	NMV of property transferred
- 1,500	Property reserve
<u>\$10,500</u>	NMV to determine period of ineligibility
- 984	Maintenance need -- 3 months at \$328
<u>\$ 9,516</u>	
÷ 359	Current maintenance need
26	Months of ineligibility = June 1983

In this case the Notice of Action denying eligibility should advise Mr. B that his period of ineligibility will cease in April 1983, 24 months after the transfer occurred. Mr. B should also be advised of the methods by which the period of ineligibility can be reduced.

Mr. B appears in December 1981 and shows that he has spent \$300 on major home repairs. He wants to know how that affects his period of ineligibility.

\$12,000	NMV of property transferred
- 1,500	Property reserve
<u>\$10,500</u>	
- 300	Major home repairs
<u>\$10,200</u>	
- 984	Maintenance need -- 3 months at \$328
<u>\$ 9,216</u>	
÷ 359	Current maintenance need
25	Months of ineligibility = May 1983

Mr B should be advised that his period of ineligibility still expires in April 1983.

3. Persons must be allowed to overcome the presumption that the property was transferred to establish eligibility by presenting "convincing evidence" including subjective evidence that the transfer was exclusively for some other purpose.

CAC, Title 22, Section 50409 specifies methods by which persons can overcome the presumption that the property was transferred to establish eligibility or reduce the share of cost. Persons who cannot overcome the presumption by these methods shall be allowed to present other types of evidence to overcome the presumption, such as subjective statements that the sole purpose was for some other reason. Subjective evidence may include statements that the transfer was to avoid probate or lack of knowledge of the Medi-Cal program at the time of transfer. These statements, however, must be convincing. If the individual had some other purpose for transferring the property, but establishing eligibility seems to have also been a factor in his/her decision to transfer, the presumption is not successfully rebutted.

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Example A: Mrs. C applies for Medi-Cal in August 1981. In July she gave her adult daughter \$3,000 to purchase a car as the daughter needed a reliable car in order to obtain her current employment. At the time of the transfer Mrs. C knew she had minor surgery scheduled for August. Mrs. C has no other property or health insurance. Mrs. C states she was not aware of the Medi-Cal program in July. When she gave her daughter the money it was her intention to pay for her surgery in monthly installments. During her last visit to the doctor before the surgery she learned that she was expected to pay in full and that monthly payments were not acceptable. The receptionist at the doctor's office recommended she apply for Medi-Cal.

Mrs. C has provided convincing subjective evidence that the money was not transferred to qualify for Medi-Cal.

Example B: Mrs. D applies for Medi-Cal in July 1981. In June she gave \$6,000 to her son as a wedding present. She has no health insurance, no other property and knew in June that she was soon to be hospitalized. She states that she was not aware of the Medi-Cal program in June. She stated she knew that persons without any way to pay for hospitalization were somehow able to get the care. The hospital told her to apply for Medi-Cal.

Mrs. D has provided subjective evidence that she was not aware of the Medi-Cal program when the property was transferred. However, Mrs. D has not presented convincing evidence to demonstrate that the transfer was made exclusively to honor her son's marriage.

4. Only nonexempt property which is transferred can trigger a denial of eligibility.

This has already been implemented via All County Welfare Directors Letter No. 81-27.

Since these modifications are the result of the preliminary injunction they are of course subject to change. In order to easily identify the cases affected we are requesting that any case granted or denied eligibility due to these modifications be flagged as Beltran vs. Myers cases and be stored in such a fashion as to be readily accessible.

If you have any questions contact your Medi-Cal Program Consultant.

Sincerely,

Original signed by

David Mitchell for
Madalyn M. Martinez, Chief
Medi-Cal Eligibility Branch