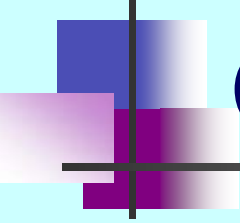


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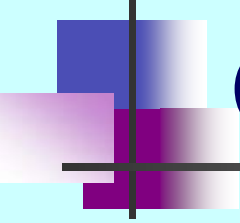
Bringing You Up To Date: IHSS Functional Index Appeals and Status of IHSS Cuts

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Summary of IHSS Cuts and Changes

- Cut #1: cut domestic and related services for those with Functional Index (FI) ranks below 4.
 - Planned for Nov. 1; now stopped by court.
- Cut #2: cut all IHSS services for those with FI score below 2.0.
 - Planned for Nov. 1, now stopped by court.



Summary of IHSS Cuts and Changes

- Cut #3: eliminate “buy-out” payments for those with Medi-Cal with a Share of Cost (SOC).
 - Took effect this month (October 2009).
- New requirements for IHSS providers.
 - Effective November 2009 for new providers, June 2010 for current providers.



Lawsuit Against Cut #1 and #2

- Disability Rights California, NSCLC, IHSS provider unions, and others filed a lawsuit, *V.L. v. Wagner*, challenging the legality of Cut #1 and Cut #2.
- Good news! Federal district court found plaintiffs were likely to succeed, and issued preliminary injunction.



Lawsuit Against Cut #1 and #2

- Those who would have been cut will get “don’t worry” notice.

Notice says: A federal court has stopped cuts to In-Home Supportive Services (IHSS) that were supposed to happen on November 1, 2009. These cuts were based on something called a **functional index**. The court order means that you will keep getting the same number of IHSS hours that you get now.

The federal court order applies **only** to people who were going to lose some or all of their IHSS hours because of their functional index. If you get a Notice of Action about **other** changes in your IHSS benefits or hours, those changes will still happen unless you file an appeal.



What is “Functional Index” Rank?

The functional index rank is supposed to measure how much help a person needs with a particular function or activity of daily living. The IHSS social worker is required to determine how much help/assistance you need to complete each IHSS function or activity of daily living.

A number called a functional index rank between 1-5 is assigned for each function.



What is “Functional Index” Rank?

- Rank 1: Independent, no assistance needed.
- Rank 2: Needs verbal assistance, such as reminding, guidance or encouragement.
- Rank 3: Needs some human assistance, including but not limited to direct physical assistance.
- Rank 4: Needs substantial human assistance.
- Rank 5: Cannot perform function, with or without human assistance.
- (Rank 6: Paramedical services needed.)

What functions must be ranked?

- Domestic Services (Housework);
 - Laundry;
 - Shopping and Errands;
 - Meal Preparation/Meal Cleanup;
 - Ambulation (formerly Mobility Inside);
 - Bathing, Oral Hygiene and Grooming/Routine Bed Bath (Bathing and Grooming);
 - Dressing/Prosthetic Devices (Dressing);
 - Bowel and Bladder;
 - Transfer (Repositioning);
 - Eating;
 - Respiration;
 - Memory;
 - Orientation; and
 - Judgment.



IHSS Cut #1 (Stopped by Court)

Those with a functional index rank below a "4" (a rank of 3 or lower) in any of the functions listed below would not receive IHSS hours for that particular service.

- They are:
 - Domestic (housekeeping)
 - Laundry
 - Shopping & Other Errands
 - Meal Preparation & Meal Clean up



What is “Functional Index” Score?”

- A functional index score is a mathematical calculation based on an individual's functional index ranks.
- Score is a weighted average, some ranks weighted more heavily than others. Some ranks are not included in score.
- See ACL-88-118,
<http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl88/88-118.pdf>.



IHSS Cut #2 (Stopped by Court)

Those with a functional index score below "2" (1.99 or lower) would lose all IHSS services.

All-or-nothing: will lose all IHSS services.

Note: Exceptions for individuals who receive protective supervision or paramedical services.



Weights used in FI Score Calculation

The weights are:

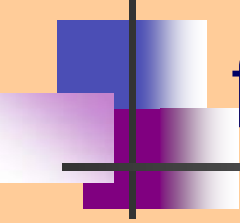
- housework = .038
- laundry = .037
- shopping and errands = .040
- meal preparation and clean up = .222
- mobility inside (ambulation) = .079
- bathing and grooming = .095
- dressing = .057
- bowel, bladder and menstrual = .129
- transfer = .094
- eating = .127
- respiration = .082



FI Score Calculation Steps

- FI Score Step 1 - 1 is subtracted from the rankings for each function.
- FI Score Step 2 - Each resulting ranking is multiplied by the appropriate weight for each function.
- FI Score Step 3 - All sums are added together and 1 is added to total. (The ratios are calculated to 3 decimal points.)
- FI Score Step 4 - The FI score is rounded off to two decimal points.

What information does the county use to determine my functioning?



The social worker determines your functioning (i.e. ranks) based on:

- information you provide,
- information provided by others,
- information provided by your doctor, family members, IHSS provider(s), and
- based on the social worker's own observations of what you can and cannot do.

The rank for each function must be based on physical, cognitive and emotional impairment in functioning. The rank is not based on physical limitations alone.



How the FI Score is calculated?

- 1) The IHSS social worker meets with a client and gathers information about the client's functional limitations.
- 2) The FI ranks are determined by the social worker.
- 3) The ranks are entered into a computer called "CMIPS" and the computer calculates the FI score.



Can I appeal the functional index score?

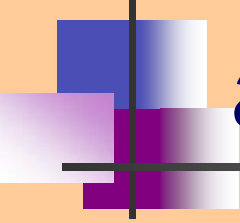
- Yes – However, the score is based on a mathematical calculation made by the computer. The calculation is probably correct. However, if the functional index ranks are not correct the functional index score will not be correct.
- It is more important to focus on your functional index ranks because your score is based on your ranks.



What if I think the county incorrectly ranked a task?

Appeal right away!!!

- You have until before the change takes effect to appeal and ask for aid paid pending a hearing.
- If you ask for aid paid pending your services will continue at least until your hearing date.



What if I miss the deadline for asking for Aid Paid Pending?

- You can still ask for a hearing because you have 90 days from the date on your notice of action to ask for a hearing.



How to ask for a hearing

Information about how to request a hearing (i.e. appeal) is on the back of your notice of action.

- You can fill in the back of the notice.
- You can ask for a hearing by phone by calling 1-800-743-8525. Push 1, 1, 1 and, 3 to get through telephone tree.
- You can write a letter.
- You can send in a fax.



How to prepare for a hearing

To prepare for a hearing you should use the packet provided called:

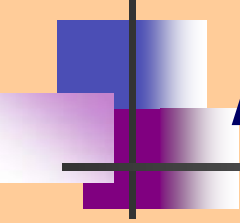
**Functional Limitation Appeal
and Self-Assessment**



Functional Limitation Appeal and Self-Assessment

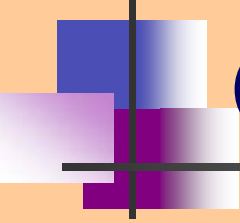
The Functional Limitations Appeal & Self Assessment document contains the steps you need to follow to prepare for a hearing.

- They are:
 - 1) Get current information from your doctor about your functional limitations.
 - 2) Conduct a self assessment of the time it takes to be provided with IHSS services.
 - 3) Transfer information about your functional limitations & time needed to receive an IHSS service to the Functional Limitations Appeal and Self-Assessment and document why you need more time for the completion of an IHSS service, if necessary.



At the Hearing

- Appeals Representative represents the county at the hearing. Many times problems can be resolved without a need for a hearing.
- County has burden of proof to show medical improvement and/or what information was relied on to make their decision about your functional limitations and ranks.
 - Examples of information the county may rely on include social worker observations, interviews and notes, information provided by a doctor (such as reports and or completed forms), information provided by family, care givers and others.



Advice for Clients on Cuts #1 and 2

- Examine your FI ranks and score.
- Request a hearing to challenge FI ranks.
 - Within 10 days for aid paid pending.
 - Get medical support to document functional limitations.



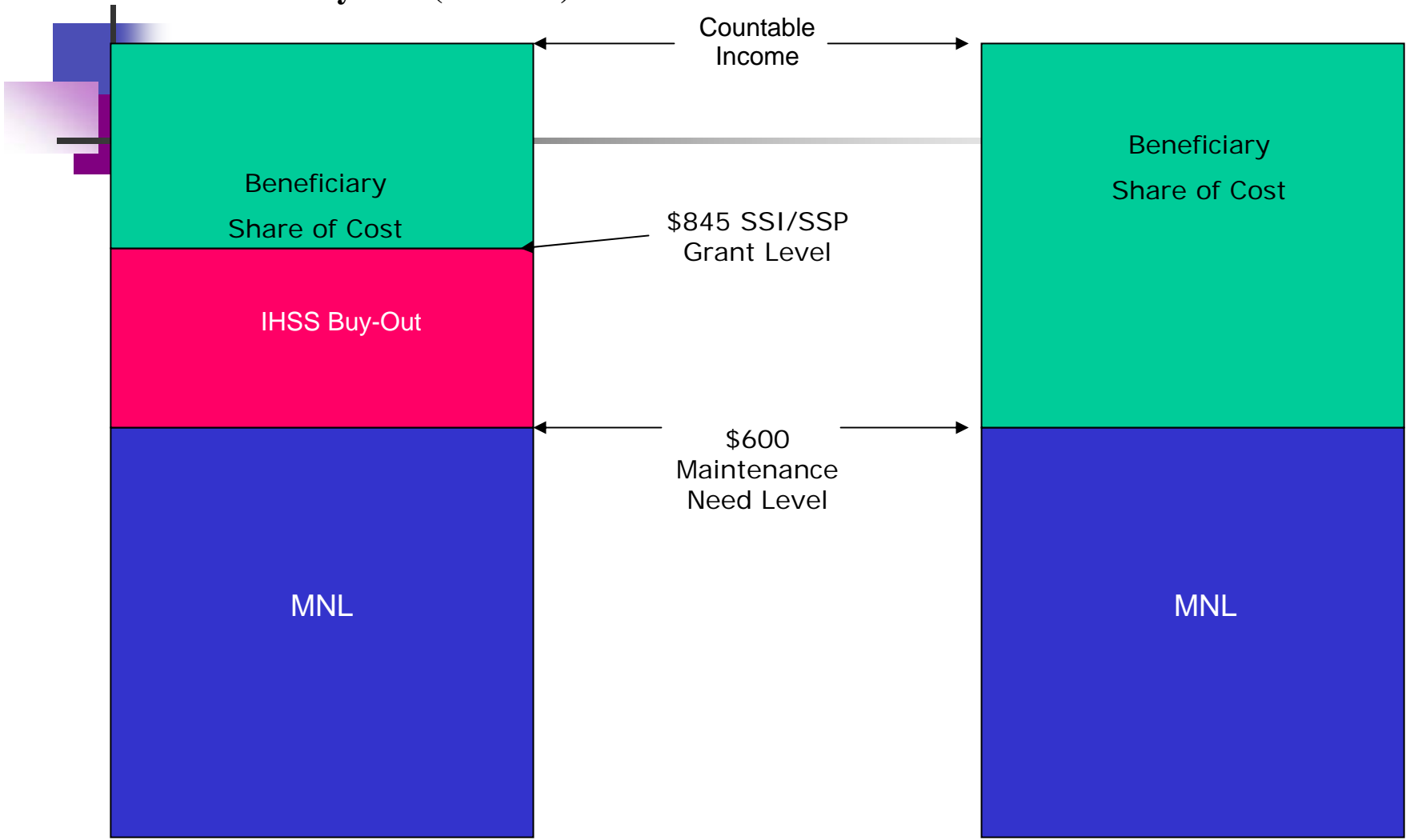
IHSS Cut #3

Elimination of the state share of cost (SOC) buy out program for all Medi-Cal recipients with a share of cost.

- Individuals will be required to spend down any income in excess of the Medi-Cal maintenance need level of \$600 per month.
- Does not apply to those on Medi-Cal program with zero SOC and a higher income cap: Aged and Disabled Federal Poverty Level Program; Medi-Cal's Pickle Program or Disabled Adult Child Program; 250% Working Disabled Medi-Cal Program.

Medically Needy Individual with IHSS Buy-Out (Pre-Cut)

Medically Needy without IHSS Buy-Out (Post-Cut)



$$\begin{aligned} & \$1200 \text{ Countable Income} - \\ & \$600 \text{ MNL} - \$245 \text{ IHSS Buy-Out} = \\ & \quad \quad \quad \$355 \text{ SOC} \end{aligned}$$

$$\begin{aligned} & \$1200 \text{ Countable Income} - \\ & \$600 \text{ MNL} = \$600 \text{ SOC} \end{aligned}$$



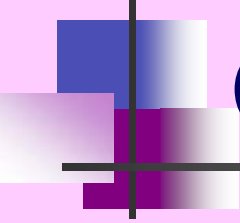
IHSS Cut #3

- Budget Cut #3: timeline.
 - Effective October 1, 2009 for all.
 - Effective July 1, 2009 for new IHSS recipients.
 - For period between July 1-Oct. 2009, those with continuing eligibility get buy-out.
 - See All-County Letter No. 09-47,
<http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acl/2009/09-47.pdf>.



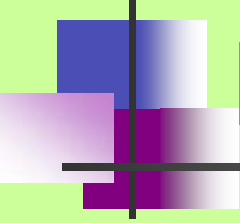
IHSS Cut #3: Legal Challenge

- Lawsuit filed challenging this cut. State court denied temporary restraining order.
- Contact Disability Rights California or Legal Aid Foundation of Los Angeles.



Advice for Clients on Cuts #3

- Make sure Medi-Cal Share of Cost calculation is accurate.
 - Request a hearing if it is not.
 - LAFLA has sample form;
<http://www.nsclc.org/areas/long-term-care/At-Home-Care/IHSS>.
- See if client could qualify for a different Medi-Cal program with zero Share of Cost.
 - For instance, health insurance premiums are deductible and decrease countable income for Medi-Cal Aged & Disabled FPL program.
- Disability Rights California soon publish detailed guide.



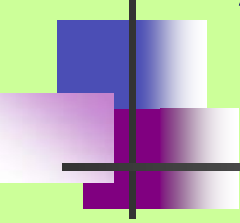
Change to Provider Requirements, “Anti-Fraud”

- Revised provider enrollment form.
 - Must declare, under penalty of perjury, that within 10 years have not been convicted or incarcerated for:
 - Crime involving fraud against government health care or supportive services program;
 - Crime of elder or child abuse;
 - Felony crime or certain serious misdemeanors.



Change to Provider Requirements

- Submit fingerprints and get background check by California Department of Justice.
 - Provider must pay costs.
- Attend provider orientation meeting and sign an agreement swearing to understand and agree to rules and responsibilities.
- Requirements apply to new providers starting November 2009; current providers starting summer 2010.



“Anti-Fraud” Measures

- Legislation allows counties to make unannounced home visits on IHSS recipients in order to verify that they are receiving services.



Additional IHSS Resources

- Laws:

- PCS and IPW programs: California Welfare & Institutions Code § § 14132.95, 14132.951.
- Residual program: California Welfare & Institutions Code § 12300 et seq.
- **www.leginfo.ca.gov/calaw.html**



Additional IHSS Resources

- IHSS Manual of Policies and Procedures (MPP)
 - Department of Social Services regulations § 30-700 et seq.
 - § 30-756 is Time-for-Task guidelines, description of ranks.
 - **<http://www.dss.cahwnet.gov/ord/PG310.htm>**.
- Medi-Cal Regulations.
 - California Code of Regulations, Title 22, §§ 51015.2, 51145.1, 51183, 51350 .
 - **www.oal.ca.gov**.



Additional IHSS Resources

- All-County Letters

- ACL-88-118, establishing FI Score formula.
- ACL 06-34E2, Hourly Task Guidelines Regulations, Annotated Assessment Criteria.
- ACL 09-47, Share of Cost Buyout Elimination (Cut #3).
- ACL 09-52, New IHSS Provider Enrollment Form
- ACL 09-56, Functional Index Cuts (Cut #1 and #2).
- Online at
<http://www.dss.cahwnet.gov/lettersnotices/PG931.htm>.



Additional IHSS Resources

- Disability Rights California materials.
 - Functional Limitation Self-Assessment Packet.
 - **http://www.disabilityrightsca.org/issues/inhome_pubs.html**.



Credit for these Slides Goes To:

- o **Dan Brzovic & Crystal Padilla**

Disability Rights California is a disability rights organization working to create a barrier-free, inclusive world that values diversity, culture, and each individual. Our services for children, youth and adults with disabilities are available throughout the state.

Disability Rights California's IHSS Hotline:
1-877-601-4477



Contact Information

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The National Senior Citizens Law Center advocates nationwide to promote the independence and well being of low income elderly and disabled Americans.

- **Advocates** for elderly and disabled poor people in legislative and administrative policymaking;
- **Litigates** on issues having broad impact;
- **Trains, informs and assists** local advocates to provide the best possible representation.