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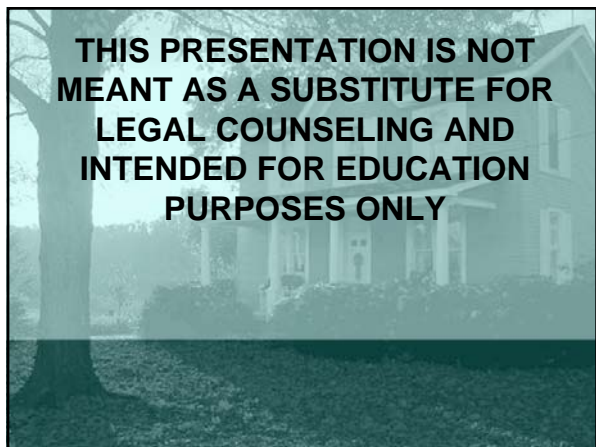
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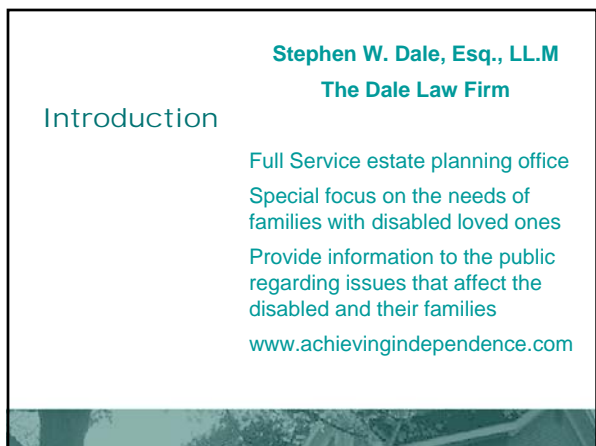
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The greatest issue that our office deals with is:



Housing

Housing

Housing

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Persons with Disabilities Have Diverse Needs



Looking for:

- Security
- Continuity
- Accessibility
- Community
- Investment Opportunity

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www.policy.ssa.gov

Social Security Online SSA's Program Operations Manual System

Program Policy Home POMS Table of Contents Help

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This section of the SSA Program Policy Information Site contains the public version of the Program Operations Manual System (POMS). The POMS is a primary source of information used by Social Security employees for processing claims for Social Security benefits.

Please note that a document intended for SSA employees contains technical terms and instructions that will be difficult for you to fully and effectively understand. These materials should be used only for the Social Security purposes which are their primary purpose.

# What are POMS?

The POMS is a primary source of information used by Social Security employees for processing claims for Social Security benefits. It is not enforceable at law by any party in a civil or criminal action.

The POMS states only internal SSA guidance. It is not enforceable at law by any party in a civil or criminal action.

This site is not intended to be the primary source of information. Please contact your local Res. Office at 1-800-772-1213 or TTY 1-800-325-0770 for assistance.

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Benefit Basics

Some basic concepts before we begin

Needs Based Benefits	Benefits based on Entitlement
Supplemental Security Income Medi-Cal 	Social Security Medicare 

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Supplemental Security Income

661 line federal

The SSI rate is **\$889.40** as of January 2015

of disability and financial need



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Benefits

Stephen W. Dale  
The Dale Law Firm, PC  
Pacheco, Ca  
925-826-5585  
[www.achievingindependence.com](http://www.achievingindependence.com)

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### 3 Part SSI Test

- Meet definition of disability
- Income test determines how much is received
- Resource test determines eligibility




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### Types of SSI Income



Unearned Income	Earned Income	In-Kind Support & Maintenance
Gifts, annuities & pensions, alimony & support, dividends, interest, rents, awards and payment from other benefit programs	Consists of wages, royalties, net earnings from self-employment, and any honoraria received for services rendered	Actual receipt of food, or shelter, or something that can be used to get one of these.
Reduces benefits dollar for dollar after the first \$20	Reduces benefit \$1 for every \$2 after the first \$65 earned monthly	Reduces benefits dollar for dollar up to a max. of \$264.33 in 2014 (PMV)

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### Two Important Definitions Concerning Housing

**In-Kind Support & Maintenance (ISM)**

Actual receipt of food or shelter, or something that can be used to get one of these.

**Presumed Maximum Value (PMV)**

Instead of determining the actual value of in-kind support and maintenance, we presume that its value is not more than an amount equal to one-third of the applicable FBR plus \$20.

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### 10 Items Used to Determine ISM

When computing household operating expenses for ISM or the following 10 items are the only ones used in the applicable computations.

- Food
- Mortgage (including property insurance)
- Real property taxes (less any tax rebate/credit)
- Rent
- Heating fuel
- Gas
- Electricity
- Water
- Sewer
- Garbage removal

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### Basics Of SSI Eligibility Resources



- Anything that can be converted to cash for support is a resource
- If resources exceed \$2,000 on the first day of a calendar month, the beneficiary's public benefits will be lost until resources are reduced

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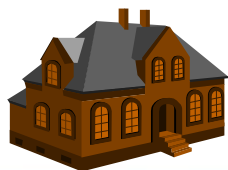
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### BASICS OF SSI ELIGIBILITY Exempt Resources

A home.....  
if the beneficiary has an ownership interest  
and it serves as his/her principal residence



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**BASICS OF SSI ELIGIBILITY**  
Exempt Resources

- Household goods of any value – as of March 2005



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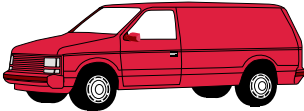
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**BASICS OF SSI ELIGIBILITY**  
Exempt Resources

**One automobile of any value** (as of March 2005)



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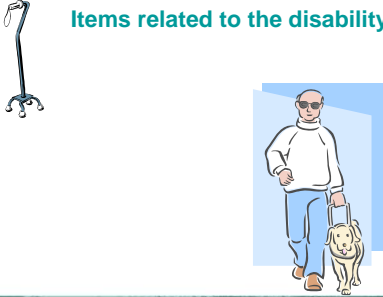
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**BASICS OF SSI ELIGIBILITY**  
Exempt Resources

**Items related to the disability**



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### BASICS OF SSI ELIGIBILITY Exempt Resources



- Life insurance policies with cash surrender value, if their total face values amount to less than \$1,500 – AND -
- All term life insurance
- A burial plot, or other burial space, worth any amount
- Up to \$1,500 set aside for burial expenses

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### BASICS OF MEDI-CAL ELIGIBILITY



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If an SSI beneficiary receives at least \$1 of SSI, the beneficiary then receives full scope free Medi-Cal automatically.

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### Aged & Disabled Federal Poverty Level Medi-Cal

#### Rules if Medi-Cal is not based on SSI eligibility:

- 22 CCR 22 50509(a) states –  
“Income in kind is any support or maintenance received in kind from a person other than a responsible relative for:
  - 1) housing
  - 2) utilities
  - 3) food
  - 4) clothing
- (b) Income in kind shall be considered income only if the entire item of need is provided.”




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# Elements of a Special Needs Trust and How It Affects Housing

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## Elements of a Special Needs Trust



- A Trust is a contract to control property for the benefit of a beneficiary to meet some objective
- A Special Needs Trust is drafted specifically so trust assets are considered not to be "available resources" in calculating the disabled person's eligibility for needs based benefits.

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## Types of Special Needs Trusts

	Source of Funds	Who Establishes Trust	Distribution Upon Death
<b>Third Party</b>	Anyone except beneficiary	Anyone except beneficiary	No restrictions
<b>MediCal Payback D4A</b>	Disabled Beneficiary under age of 65	Parent, grandparent, legal guardian or court	MediCal repaid before anything can be given to remaining beneficiaries
<b>Pooled D4C</b>	Disabled Beneficiary	Beneficiary, parent, grandparent, legal guardian or court signs retainer agreement	MediCal must be repaid from assets not retained by the Trust prior to remainder beneficiaries

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**Home as a Resource**  
(see POMS SI 01120.200)

Ownership or Purchase of a Home by a Special Needs Trust

The Program Operations Manual of SSI states:

- "If the Trustee of a *Special Needs Trust* holds title to a house as a home for the Beneficiary, the house would not be a resource to the Beneficiary."
- It would also not be a resource "if the Beneficiary moved from the house."




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Issues with Home Ownership

Issues	3 <sup>rd</sup> Party SNT	Self Settled Trust	Owned By Individual
Capacity	Not subject to Conservatorship	Not subject to Conservatorship	Could require Conservatorship of Estate
Home Sale	No issue -- Excess funds are assets of Trust	No issue -- Excess funds are assets of Trust	Excess not used to purchase replacement home will be resource after 6 months
Prop 13	No reassessment	No reassessment	No reassessment
Payback	Not an issue	Subject to payback	May be an issue after age 55

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Ownership or Purchase of a Home By a Special Needs Trust

The Trust holds legal title to the house, therefore the eligible individual would be considered to be living in his/her own home based on having an "equitable ownership under a Trust."




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### Ownership or Purchase of a Home By a Special Needs Trust

- An eligible individual does not receive in-kind support and maintenance (ISM) in the form of rent-free shelter while living in a home in which he/she has an ownership interest
- Accordingly, an individual with "equitable home ownership under a Trust" (see SI 01120.200F.1.) does not receive rent-free shelter
- Also, because SSI considers such an individual to have an ownership interest, payment of rent by the Beneficiary to the Trust has no effect on the SSI payment




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### Receipt of Income from a Home Purchase

- Since the purchase of a home by a Trust for the Beneficiary establishes an equitable ownership interest for the Beneficiary of the Trust, the purchase results in the receipt of shelter in the month of purchase. This will be considered income in the form of ISM. (See SI 00835.400.)
- This ISM is valued at no more than the presumed maximum value (PMV)




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### Outright Purchase of a Home

If the Trust, which is not a resource, purchases the home outright and the individual lives in the home in the month of purchase, the home would be income in the form of ISM and would reduce the individual's payment no more than the PMV in the month of purchase only, regardless of the value of the Home

(See SI 01120.200e.1.B.)




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### Mortgage Payments

Even though the Beneficiary has an ownership interest in the home and, if living in the home, does not receive ISM in the form of rent-free shelter, purchase of the home or payment of the monthly mortgage by the Trust is a disbursement from the Trust to a third party that results in the receipt of ISM in the form of shelter

(See SI 01120.200e.1.B.)



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For example.....

- A home purchased with a \$1,500/mo mortgage = **\$264.33 reduction**
- versus
- A home purchased with no mortgage = **\$0 reduction**

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### Purchase by Mortgage

- *If the Trust is used to purchase the home with a mortgage and the individual lives in the home in the month of purchase, the home would be In-kind Support Maintenance (ISM) in the month of purchase*
- *Each of the subsequent monthly mortgage payments would result in receipt of income in the form of ISM to the Beneficiary living in the house, each valued at no more than the PMV.*

(See SI 1120.200e.1.B.)



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Additional Household Expenses

- If the Trust pays for other shelter or household operating expenses, these payments would be income in the form of ISM in the month payment is made. (See SI 00835.350.)
- Countable shelter expenses are listed (See SI 00835.465d.)




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10 Items Used to Determine ISM

When computing household operating expenses for inside ISM - or the CMV of household costs for outside ISM - the following 10 items are the only ones used in the applicable computations

- Food
- Mortgage (including property insurance)
- Real property taxes (less any tax rebate/credit)
- Rent
- Heating fuel
- Gas
- Electricity
- Water
- Sewer
- Garbage removal




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Additional Household Expenses

If the Trust pays for improvements or renovations to the home, e.g., renovations to the bathroom to make it handicapped accessible or installation of a wheelchair ramp or assistance devices, etc., the individual does not receive income




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Additional Household Expenses

Disbursements from the Trust for improvements increase the value of the resource and, unlike household operating expenses, do not provide ISM.

(See SI 01120.200e.1.C.)



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Other Considerations



- Trailer Space
- Condominium Fees



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SI 00835.465 ISM and Households

- The use of land alone is not a household cost. Thus, if an individual receives land or the use of land without charge, this does not result in outside ISM. Similarly, third party vendor payments of real property tax, rent or mortgage on land alone do not cause an individual to receive ISM in the form of shelter.

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SI 00835.465 ISM and Households

- A trailer space rental fee which is for space **alone** is not a household operating expense for purposes of determining inside ISM, nor is it outside ISM if someone outside the household pays the fee. However, if the fee is **not** for use of land alone, that part of the fee which is for water, sewer, etc. is part of the household costs for purposes of determining inside and outside ISM.




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SI 00835.465 ISM and Households

- **EXAMPLE:** James Smith, an eligible individual, lives alone in a house trailer that he owns. The trailer is situated on the property of his brother, Bill. James pays no rent for the use of the land. Bill provides water and electricity free of charge. The free use of the land results in no ISM to James. However, James is charged with outside ISM based on the CMV of the water and electricity.




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**Medi-Cal Liens**

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### Comparison of Home Ownership Options

- A home owned by a Medi-Cal Beneficiary will be subject to Medi-Cal recovery based on the amount of Medi-Cal used by the benefits recipient after age 55
- Self settled Special Needs Trusts will have liens for all Medi-Cal benefits used during the Beneficiary's lifetime
- A 3<sup>rd</sup> Party Special Needs Trust will have no liens because the Beneficiary never owned the home




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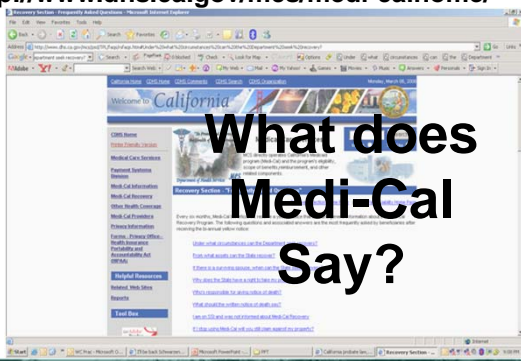
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<http://www.dhs.ca.gov/mcs/medi-calhome/>



# What does Medi-Cal Say?

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### Why does the State have a right to take my property?



- Medi-Cal is not insurance, but is instead, a public assistance welfare program funded entirely by taxpayers
- These programs are intended to provide medical care services to needy persons only
- Federal law mandates that all states establish Estate Recovery programs.

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Under what circumstances can the Department seek recovery?



The Department can file a claim if the decedent was over the age 55 when the services were received

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Under what circumstances can the Department seek recovery?



The Department cannot claim recovery:

- During the lifetime of a surviving spouse
- When there is a surviving child under the age of 21, or
- When the surviving child is blind, or is permanently and totally disabled within the meaning of the federal Social Security Act

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What assets can the State recover?



- Claims can be filed against the estates of deceased Medi-Cal beneficiaries
- "Estate" is defined as all real and personal property and other assets in which the individual had any legal title or interest at the time of death, including assets conveyed to a dependent or survivor through joint tenancy, tenancy in common, Life Estate, Living Trust, or other arrangement

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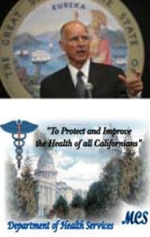
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Can the State claim recovery from a surviving spouse?



- When the surviving spouse of a deceased Medi-Cal Beneficiary dies, the State can present a claim in the estate of the surviving spouse for payments made on behalf of the Medi-Cal Beneficiary
- If both persons are Medi-Cal Beneficiaries, claim can be presented for services paid on behalf of both persons
- These claims are limited to the amount which Medi-Cal paid, or the value of the assets, whichever is less

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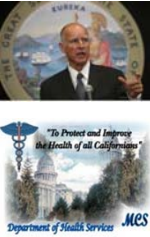
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If I stop using Medi-Cal will the State still make a claim against my property?



The Department will present a claim against your estate for any services you received after your 55th birthday, up to the date Medi-Cal was discontinued.

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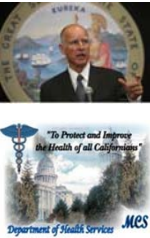
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Who's responsible for notifying the State of the death of a Beneficiary?



- Under California law the Department of Health Services must be informed by the person or persons settling the affairs of a Medi-Cal decedent
- State law says that the Department must be notified in writing, within 90 days from the date of death

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### What should the written notice of death say?



- Include a copy of the death certificate
- The name, address and phone number of the responsible party
- If the estate is being probated, include the name, address and phone number of the attorney along with the probate number and the county where probate is occurring
- List what assets were owned by the decedent, how the title was held and what is the fair market value

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### What should the written notice of death say?



Notification should be mailed to:  
 Department of Health Services,  
 Recovery Section, P. O. Box  
 997425, MS 4720,  
 Sacramento, CA 95899-7425.

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### How can I find out how much I owe Medi-Cal?



As long as the disclosure of information about the costs of services received by a Beneficiary is directly related to the administration of the Medi-Cal program, a request for "claim detail reports" may be submitted to Electronic Data Systems (EDS)

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How can I find out how much I owe Medi-Cal?



- Such reports are limited to the past 6 years, therefore it may not always reflect the total amount paid by Medi-Cal.
- There is a fee for providing this service. For more information, you may call EDS at 916-636-1980.

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How can I get a copy of the laws giving the Department the right to recover?



If you would like a copy of the laws governing the Medi-Cal Recovery program you may write to:

Department of Health Services - Recovery Section, P O Box 997425, MS 4720, Sacramento, CA 95899-7425.

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Can I make a "voluntary" repayment to Medi-Cal now, in order to avoid encumbering my estate?



Only if the surviving spouse of a Beneficiary wants to make payments on a claim which has already been established for the deceased spouse

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**For More Information**

**Go to:**

[www.dalelawfirm.com](http://www.dalelawfirm.com)

[www.achievingindependence.com](http://www.achievingindependence.com)

[www.gspt.org](http://www.gspt.org)



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