

**County of Orange Social Services Agency
Family Self-Sufficiency & Adult Services Division**

Program/Area: Adult Services/In-Home Supportive Services
Title: Able and Available Spouse Policy
Number: 1015 **Status:** Revised
Effective Date: 12/1/2006 **Revision Date:** 10/8/2024
Approved: Signature on file

PURPOSE To provide In-Home Supportive Services (IHSS) staff information regarding Able and Available (A&A) Spouse regulations.

POLICY A&A Spouse regulation indicates that when an IHSS applicant/recipient is married, the spouse is presumed able and available to assist the recipient with specified IHSS service tasks without payment. This is the presumption unless the spouse provides proof of inability and/or unavailability due to health, employment, or other unavoidable reasons and demonstrates that the services must be performed by someone else in the spouse's absence.

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BACKGROUND Welfare and Institutions Code (WIC) Section 12301(a) defines an A&A spouse. Social Security Administration's (SSA) Supplemental Security Income/State Supplementary Payment (SSI/SSP) regulations are outlined in Title 20, Code of Federal Regulations (20 CFR), Section 416.1806 (a) and are used to define a spouse for IHSS.

DEFINITIONS **Spouse**
A member of a married couple, whether a traditional marriage, same-sex marriage, or domestic partnership.

Able Spouse

A spouse not receiving IHSS benefits is presumed able to perform all IHSS tasks without compensation except for Personal Care and Paramedical Services unless medical verification of the spouse's inability to do so exists.

Available Spouse

A spouse not receiving IHSS benefits is presumed available to perform all IHSS tasks without compensation except Personal Care and Paramedical Services unless the spouse is determined unavailable due to employment, health, or other unavoidable reasons, and the services must be performed in the spouse's absence.

Same-Sex Marriage

Two individuals married under California state law are considered spouses for the IHSS Program regardless of sex or gender.

Domestic Partnership

In California, registered domestic partners are subject to the same responsibilities, obligations, and duties under the law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

Alternative Resources

Alternative resources are IHSS services available from other agencies, programs, or the A&A Spouse to meet the recipient's needs. When available, the County will arrange to deliver such alternative resources as necessary instead of IHSS program-funded services and incur no additional cost to the IHSS program or recipient.

CLARIFICATION OF A SPOUSE

The IHSS program identifies a spouse according to the SSA's SSI/SSP rules. Under California state law, two individuals are considered married if they are legally married where the couple's permanent home is or when they lived together. Additionally, two individuals in a same-sex marriage are considered spouses for purposes of the IHSS Program.

For IHSS, individuals are considered married in one of four different ways:

- If the IHSS recipient lists the other individual living in the same household as a spouse in Section 6 of the Application for In-Home Supportive Services (SOC295).
- The SSA determines that either of the two individuals is entitled to the other's SSI benefits as the person's spouse.
- Two individuals are living together in the same household at or after the time one of the individuals applies for SSI benefits, and both individuals lead people to believe they are married.
- The recipient is in a registered domestic partnership.

The County may request a copy of the couple's marriage certificate. It may also use public records to obtain one from the State Office of Vital Statistics or the County registrar's office. As long as the couple remains married, does not obtain a divorce or annulment of the marriage, or is not legally separated, A&A Spouse regulations apply. This includes all legally married couples, even if the couple lives in separate locations.

ABILITY OF THE SPOUSE TO PROVIDE IHSS A spouse who does not receive IHSS is presumed able to provide all IHSS tasks to a spouse without compensation except for Personal Care and Paramedical Services unless medical verification of the spouse's inability to do so has been provided and accepted.

AVAILABILITY OF THE SPOUSE TO PROVIDE IHSS A spouse not receiving IHSS is presumed available to perform all IHSS tasks without compensation except Personal Care and Paramedical Services unless the spouse is determined unavailable due to employment, health, or other unavoidable reasons, and the services must be performed in the spouse's absence. Examples of unavoidable reasons for unavailability include incarceration, military deployment, restraining order against the spouse, or when the recipient has left the home or evicted the spouse from the home to escape documented domestic violence by the spouse.

If the spouse is unavailable to provide IHSS to the recipient for an unavoidable reason, the spouse should not be the recipient's provider for any IHSS service, including Personal Care and Paramedical Services. If necessary, the County IHSS office may require the recipient to provide documentation of the spouse's unavailability.

If the recipient informs IHSS staff that the able spouse is out of the home for an extended period of 24 consecutive hours or more for employment, health, or other unavoidable reasons, the spouse is presumed unavailable to provide any IHSS to the recipient for that period of unavailability. As such, hours may be authorized for a non-spouse provider to perform the recipient's authorized IHSS task(s) during the extended unavailability. However, the spouse will continue to be counted as an available spouse for the purposes of determining Household Member Relationship Status because the period of unavailability is temporary.

A&A SPOUSE & IHSS SERVICE TASKS Able and Available Spouse as an Alternative Resource
Any IHSS task(s) that the spouse must perform without compensation (not a Personal Care or Paramedical Service) will typically be counted as met by the spouse and, therefore, considered an alternative resource unless the spouse has provided medical verification of their inability to perform the specified IHSS task, is unavailable for a valid reason, or is prevented from full-time employment because no other suitable provider is available.

Domestic Services, Related Services, Yard Hazard Abatement, Teaching and Demonstration, and Heavy Cleaning

When the recipient has an A&A spouse, no payment will be made to the spouse or any other provider for Domestic Services, Related Services, Yard Hazard Abatement, Teaching and Demonstration, and Heavy Cleaning. These IHSS categories will be considered met by an alternative resource. However, there may be exceptions when a spouse is unable or periodically unavailable to perform specific tasks. As such, the regulations should be applied to the case, and alternative resources should be assessed appropriately.

Personal Care Services and Paramedical Services

A recipient with an A&A spouse may hire a provider, including the spouse, to provide Personal Care and Paramedical Services at any time, even during spousal availability. As such, spousal ability and availability will not be assessed.

Meal Preparation, Medical Accompaniment (Transportation), and Protective Supervision

If the spouse is able and available, Meal Preparation, Medical Accompaniment (transportation), and Protective Supervision will be counted as met by the spouse and an alternative resource.

If the able spouse must leave full-time employment or is prevented from full-time employment because no other suitable provider is available to provide care to the recipient, the spouse may be paid to provide Medical Accompaniment and Protective Supervision.

REFERENCES

CDSS Manual of Policies and Procedures MPP 30-763.41

CDSS Manual of Policies and Procedures MPP 30-763.6.

CDSS Manual of Policies and Procedures MPP 30-701(s)(4)

ACL 08-18 Training Questions/Comments and Answers

ACL 21-91 Clarification of In-Home Supportive Services Able and Available Spouse Regulations

ATTACHMENTS Application for IHSS (SOC 295)
