

Medicaid Spousal Impoverishment Protection

Part 7



DHS/DHCAA/BEPS Training

April 2010

Background

Spousal impoverishment allows the Community Spouse of an institutionalized person to retain income and assets that are above the regular Medicaid financial limits.



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Background

The Spousal Impoverishment Protections were created with the Medicare Catastrophic Coverage Act of 1988. Affects any married person institutionalized on or after September 30, 1989.

Prior to this act the Institutionalized person's spouse was legally obligated to provide financial support.

Background

Spousal Impoverishment:

- Allows institutionalized spouse to become Medicaid-eligible without depleting all couple's financial resources.
- Enables spouse at home to maintain financial independence while institutionalized spouse receives care.

Terminology

“Institutionalized Spouse”: A married individual who is elderly or disabled, applying for or receiving Medicaid long-term care, and resides in a medical institution (for 30 days or more) *or* is functionally eligible for a community waiver program.

“Community Spouse”: An individual who is married to an elderly or disabled applicant for institutional Medicaid and is not residing in a nursing home or other medical institution.

Terminology

“Medical Institution”:

For Medicaid purposes, “institution” means medical institution. A medical institution can be, but is not limited to, skilled nursing facilities (SNF), intermediate care facilities (ICF), institutions for mental disease (IMD), and hospitals.

Terminology

Medical institution means a facility that:

- Is organized to provide medical care, including nursing and convalescent care.
- Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards.

Terminology

Medical institution means a facility that (*con't.*):

- Is organized to provide medical care, including nursing and convalescent care,
- Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards,
- Is authorized under State law to provide medical care,
- Is staffed by professional personnel who are responsible to the institution for professional medical and nursing services.

Eligibility

Apply the Spousal Impoverishment rules when the Long Term Care Medicaid applicant/recipient:

- Resides in a medical institution or resides in the community and is applying for HCBW, Family Care, Partnership or PACE.
- Has a spouse that is not residing in a medical institution.

Note: A person is considered to be residing in a medical institution if s/he is in the institution or expects to be in the institution for 30 days or more.

Financial Impacts

Affects both the assets and income:

- Institutionalized spouse may have assets in excess of standard \$2,000 asset limit at the point of application for Medicaid.
- Institutionalized spouse may allocate income to community spouse and other dependent family members.



Asset Assessment

The first step in processing a Spousal Impoverishment case is to perform an Asset Assessment to determine the asset limit for the Community Spouse also referred to as the Community Spouse Asset Share (CSAS).

The CSAS is the amount of countable assets greater than \$2,000 that the community spouse, the institutionalized person, or both, can possess at the time the institutionalized person applies for MA.

Asset Assessment

The CSAS is calculated using the verified countable assets owned by the couple as of:

- The beginning of the first continuous period of institutionalization of 30 days or more or
- The first request for Family Care or HCBW, whichever is earlier.



Asset Assessment

The couple's combined non-exempt liquid assets are counted, regardless of ownership.

The following assets are (generally) not counted:

- Homestead property
- One vehicle
- Burial assets
- Household goods and personal items
- Assets not counted for other EBD Medicaid
- IRA of a community spouse

Spousal Impoverishment Protection: Asset Assessment

The Community Spouse Asset Share (CSAS) is the portion of total countable assets > \$2,000 that the couple can possess at time the institutionalized spouse applies for Medicaid.

IF total countable assets of the couple in 2009 are:	THEN the CSAS in 2009 is:
\$219,120 or more	\$109,560
Less than \$219,120 but greater than \$100,000	½ of the total countable assets of the couple
\$100,000 or less	\$50,000

Asset Test

At time of Medicaid application, current countable assets of couple are compared to the greater of:

- \$2,000 plus CSAS, or
- \$2,000 plus an amount ordered by a court or fair hearing

Asset Test

- The Institutionalized person passes the asset test if the current countable assets of the couple are equal to or less than this amount.
- If assets exceed CSAS plus \$2,000, the couple must spend the excess funds on allowable expenses (e.g., daily living expenses, nursing home care, home repair, bills, etc.)

Spousal Impoverishment Protection: Asset Test - Example

John applied for Family Care in January 2009. His wife Jane lives with him at home. The couple's combined countable assets in January total \$120,000. The Community Spouse Asset Share (CSAS) in this case is \$60,000. The CSAS plus John's \$2,000 asset limit totals \$62,000.

The couple has excess assets of \$58,000 which must be spent on allowable expenses before John can become eligible for Family Care (assuming all other eligibility requirements are met).

Asset Transfer Period

- After the institutionalized spouse is determined Medicaid-eligible, s/he may transfer assets to the community spouse.
- The maximum that can be transferred to community spouse is CSAS, or an amount greater than CSAS if ordered by a court or a fair hearing.
- If the community spouse already has assets, those assets, plus the amount transferred by institutionalized spouse, may not exceed CSAS (unless ordered by a court or a fair hearing.)

Asset Transfer Period

- The Institutionalized spouse must transfer assets to the community spouse by next regularly scheduled review (12 months).
- If his/her assets exceed \$2,000 at the next review, s/he will be determined ineligible for Medicaid.
- S/he will remain ineligible until his/her assets no longer exceed the \$2,000 Medicaid asset limit.

Asset Transfer Period - Example

Robert was first institutionalized September 2006. His wife Lucinda remained in the community. The couple passed the joint asset test and Robert was determined eligible in September 2006. The couple's total combined assets were \$42,000, \$32,000 of which were owned solely by Robert. Robert had until the next scheduled review (September 2007) to get his total assets under the \$2,000 Medicaid asset limit.



Asset Transfer Period - Example

By September 2007, he had only transferred \$23,000 to Lucinda. He still had \$9,000 in assets. He became ineligible October 2007 and will remain ineligible as long as his assets remain over \$2,000.



Community Spouse Income Allocation

Once the institutionalized person is found eligible, s/he may allocate some of his/her income to the Community Spouse and any dependent family members that are living with the Community Spouse.

Any income allocated to the Community Spouse or dependent family member must be counted as unearned income in that person's Medicaid and/or FoodShare eligibility determination.

Community Spouse Income Allocation

The institutionalized person will have to decide how much, if any, of his or her income to allocate.

S/he can allocate enough income to bring the Community Spouse's (and dependent family member's) income up to the maximum Community Spouse Income Allocation amount or s/he can choose to allocate a lesser amount if, for example, the Community Spouse's Medicaid or SSI eligibility or cost share would be adversely affected by the additional income being allocated.

Community Spouse Income Allocation

The Maximum Community Spouse Income Allocation is the lesser of:

- \$2739.00 or
- \$2428.33 plus excess shelter allowance. These are shelter expenses above \$728.50. Subtract \$728.50 from the Community Spouse's shelter expenses and add the remainder to \$2428.33. If the LTC applicant or recipient's Community Spouse lives with him/her, do not add the excess shelter expenses to the income allocation.

A court order or fair hearing can increase the amount the institutionalized person can allocate to the Community Spouse.

Community Spouse Income Allocation in “Exceptional Circumstances”

- If the Community Spouse needs additional income beyond the maximum allocation amount s/he may request fair hearing.
- S/he must prove “exceptional circumstances” require additional income to avoid “financial duress.”
- S/he must be prepared to show documentation of all basic and necessary living expenses.
- May request help to prepare for hearing from Elderly or Disability Benefits Specialist or private attorney who specializes in estate planning.

Community Spouse Income Allocation – Example 1

Jim, a nursing home resident, has monthly income of \$1600. His wife Sara lives alone in their home; her monthly income is \$1000. Sara’s shelter expenses are less than \$728.50/month. Jim may allocate \$1428.33 to Sara.

Community Spouse Income Allocation – Example 1

Jim's patient liability is calculated as follows:

Jim's gross income =	\$1600 MINUS...
Personal allowance =	\$45 MINUS...
Community Spouse Income Allocation =	\$1428.33 MINUS...
Total Dependent Family Member Allocation =	\$0 MINUS...
Court-Ordered Guardian/Atty Fees & Other Special Exempt Income =	\$0 MINUS...
Health Insurance Premiums =	\$50.00 EQUALS...

Jim's Patient Liability = \$76.67

Community Spouse Income Allocation – Example 2

Brian is in a nursing home; his monthly income is \$850. His wife Irene lives alone in the community; her monthly income is \$500. After deducting \$45 personal needs allowance, Brian allocates the remaining \$805 to Irene. That allocation brings her income up to \$1305.

Community Spouse Income Allocation – Example 2

Brian's patient liability is \$0 (because there's nothing left after the income allocation to Irene and the personal needs allowance).

*Note that spousal impoverishment protections do not include the provision of additional funds to bring Irene up to the maximum community spouse allocation amount (\$2428.33).

Spousal Impoverishment Protection: Family Member Income Allowance

- Income allowance for dependent family members living with the community spouse.
 - Minor children
 - Children 18 or older claimed as dependents for taxes
 - Siblings of either spouse claimed as dependents
 - Parents of either spouse claimed as dependents
- Maximum allowance is \$607.08 (in 2009).
- Dependent family member's income is subtracted from \$607.08. Remainder can be used to reduce institutionalized person's income for determination of cost sharing.

Spousal Impoverishment Protection: Family Member Income Allowance - Example

John is in a CBRF applying for Family Care. His wife Jane lives in an apartment with their minor child Max. His Family Member Income Allowance is calculated as follows:

- \$607.08 (maximum family member income allowance), minus
- \$500.00 (Max's monthly income), equals
- \$107.08 (Max's income allowance)
- \$107.08 (Total family member income allowance)

\$107.08 will be deducted from John's income when determining his Family Care cost share.

Both Spouses applying for HCBW, FC, PACE, Partnership

When both spouses are applying for Community Waivers, FC or Pace/ Partnership, both eligibility determinations are done using Spousal Impoverishment policies.

Both Spouses applying for HCBW, FC, PACE, Partnership

Since income allocated to a spouse is counted as income for that spouse, the couple should decide which spouse should allocate to the other spouse and how much to allocate.

Both Spouses applying for HCBW, FC, PACE, Partnership

One spouse may have more income or less expenses so could allocate to the other spouse with less income or more expenses. Each case will have to be assessed individually and the income allocation adjusted to meet the needs of the couple.



Cost Sharing Calculation – Example (Using Spousal Impoverishment Income Allocation Worksheet)

Primary Person's Name (Last, First, MI) Doe, John A.	Social Security Number 123-45-6789
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Section A – Community Spouse Income Allocation

Spouse's Name (Last, First, MI) Doe, Jane A.	
1. ENTER Maximum Community Spouse Income Allocation	\$2,509.83
2. MINUS Gross Income of Community Spouse	\$2,000.00
3. EQUALS Community Spouse Income Allocation	\$509.83

Cost Sharing Calculation – Example (Using Spousal Impoverishment Income Allocation Worksheet)

Section B – Dependent Family Member Income Allocation

	Name Max Doe	Name
1. ENTER Maximum Dependent Family Member Income Allocation	\$607.08	
2. MINUS Dependent Family Member's Income	\$500.00	
3. EQUALS Individual Allowance	\$107.08	
4. ENTER – Total Dependent Family Member Allocation (Add line 3 of all columns)	TOTAL \$107.08	

Cost Sharing Calculation – Example (Using Spousal Impoverishment Income Allocation Worksheet)

Section C – Cost of Care/Cost Sharing Calculation

1. ENTER – Institutionalized Spouse's Gross Income	\$2,000
2. MINUS – Personal Allowance	\$1,154.00
4. MINUS – Community Spouse Income Allocation (from Section A, Item 3)	\$846.00
5. EQUALS	\$509.83
6. MINUS – Total Dependent Family Member Allocation	\$229.09
7. EQUALS	\$107.08

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Cost Sharing Calculation – Example (Using Spousal Impoverishment Income Allocation Worksheet)

Section C – Cost of Care/Cost Sharing Calculation (continued from previous slide)

8. MINUS – Any Court-Ordered Guardian or Attorney Fees & any other special exempt income	\$0.00
9. EQUALS	\$229.09
10. MINUS – <u>Community Waivers Only</u> : Medical/remedial Costs and Cost of Community Waivers Person's Health Insurance Premiums <u>Nursing Home Cases Only</u> : Cost of Institutionalized Person's Health Insurance Premiums	\$150.00
11. EQUALS – Nursing Home Liability Amount/Community Waivers Cost Sharing Amount	\$79.09

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Group C Waiver and Spousal Impoverishment

Unlike other categories of LTC Medicaid, the income allocation to the community spouse in a Group C case is done after the eligibility has been determined and the spenddown amount has been calculated.

Once eligibility has been established the Spousal Allocation Worksheet is filled out to determine the income allocation and the cost share amount.

To Exit

Congratulations, you have completed:

The Medicaid Spousal Impoverishment Protection Training

Click the "X" on the navigation bar to exit properly.

