

5101:6-7-02 ~~Hearings decisions - special situations~~ HEARINGS INVOLVING COUPLES SEPARATED BY INSTITUTIONALIZATION.

(A) "INCOME" AS USED IN THIS RULE WILL BE DEFINED ACCORDING TO 42 U.S.C. 1396r-5 (b)(2) WHICH IS INCLUDED IN THIS RULE AS "APPENDIX A".

(A) (B) ~~Hearings involving couples separated by institutionalization.~~ HEARINGS INVOLVING THE MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE (MMMNA).

(1) If either the institutionalized spouse (IS) or the community spouse (CS) can document that the CS needs income above the level otherwise provided by the minimum monthly maintenance needs allowance (MMMNA) due to exceptional circumstances that cause extreme financial duress, a hearing decision may substitute a higher MMMNA to provide additional income as necessary. The hearing decision may do so by utilizing the income of the IS, less the personal needs allowance and without regard to the family allowance.

(2) "Extreme financial duress" is defined as circumstances other than those taken into account in establishing maintenance standards for the community spouse. An example is incurment by the community spouse of expenses for medical, remedial, and other support services which contribute to the ability of the community spouse to maintain themselves in the community and in amounts that they could not be expected to pay from amounts already recognized for maintenance and/or amounts held in resources. The following are examples of exceptional circumstances which could indicate a need to increase the MMMNA. These examples are not all inclusive and are only meant to serve as circumstances in which extreme financial duress may exist.

(a) Significant medical expenses of the community spouse and/or applicable family member that require a financial obligation from the CS. Significant medical expenses are those that exceed normal and/or routine medical care costs such as office visits, prescriptions, and eyeglasses.

(b) Catastrophic events or other unexpected events which necessitate home repairs or maintenance that are the financial obligation of the CS.

This list is not all-inclusive. The hearing decision must indicate the specific circumstances on a case-by-case basis when an increase in the MMMNA is ordered.

(3) The increase in the MMMNA can be time-limited. For example, a five hundred dollar medical expense could cause a one hundred dollar increase in the MMMNA for five months.

(C) HEARINGS INVOLVING THE COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA).

(A) (1) If either the IS or the CS disagrees with the attribution of resources or believes that the income generated by the resources attributed to the CS in addition to the CS's income is not enough to meet the MMMNA, a state hearing can be requested.

(A) (2) If the hearing establishes that the CS's income, and the income generated by the CS's resource allowance, is inadequate to raise the CS's income to the MMMNA, there shall be substituted a resource amount adequate, when combined with the CS's income, to provide the MMMNA. The hearing decision must specify the amount of the additional transfer authorized and must increase the CS's resource allowance by the same amount.

- (b) (3) The resources required by the CS that are necessary to increase the CS's income in order to provide the MMMNA shall be based on the MMMNA in effect at the time of the filing of the request for a state hearing.
- (c) (4) The MMMNA periodically increases, creating a need for additional income to be diverted from the IS to the CS. An additional allocation of resources shall not be made to the CS when the MMMNA increases. If the MMMNA increases, the IS can allocate a portion of the IS's income to the CS to raise the CS's income to the MMMNA.
- (d) (5) To establish that the resource allowance is inadequate and to receive a substituted allowance, the applicant must provide verification of all of the income of the CS not including the amount generated by the resource allowance. The CS's income must be established to determine the shortfall between existing income and the MMMNA. The eligibility determiner shall total all of the gross income of the CS not generated by the resources of both spouses and subtract the CS's gross income from the MMMNA. The eligibility determiner shall also note any benefits for which the CS may be eligible, but is not receiving (e.g., social security, VA pension, etc.). The amount of benefits that the CS could be receiving shall be estimated and submitted to the hearing officer with the appeal summary. The income that the CS is eligible for, but not receiving, must be considered as available income when determining a reallocation of resources and an MIA.
- (e) (6) The amount of resources adequate to increase the CS's gross income to provide the CS's MMMNA shall be based on the cost of a single premium lifetime immediate monthly payment annuity (SPLIMPA) with monthly payments equal to the difference between the MMMNA and other countable income (including income available to the CS but not being received) not generated by either spouse's countable resources.
- (f) (7) An annuity that is a delayed payment annuity, a time-period certain, an annuity with a death benefit, or an annuity that guarantees return of the principle is not a SPLIMPA and cannot be used to determine the amount of additional resources needed to generate the difference between the CS's gross income and the MMMNA.
- (g) (8) In order for the CS to receive the substituted allowance, the CS or IS shall be required to obtain three written estimates of the cost of a SPLIMPA. These amounts shall be averaged to determine the cost of a SPLIMPA.
- (h) (9) If the IS or CS is unable to obtain the three estimates of the cost of the annuity, the eligibility determiner shall offer assistance in accordance with rule 5101:1-2-212 of the Administrative Code.
- (i) (10) The averaged estimate representing the cost of a SPLIMPA shall be substituted for the amount of resources attributed to the CS when the amount of resources previously determined is less than the averaged cost of a SPLIMPA. If the amount of resources previously attributed for the CS is greater than the averaged cost of a SPLIMPA, there shall be no substitution for the cost of a SPLIMPA. The attribution shall remain as previously determined.
- (j) (11) Neither the CS nor the IS shall be required to purchase a SPLIMPA as a condition of medicaid eligibility. However, if there has been a reallocation of resources for a SPLIMPA, the income that could be received from the SPLIMPA will be used whenever a determination or redetermination of the MIA is computed.
- (k) (12) If the state hearing decision determines that a resource reallocation is not required (i.e., the original allocation is adequate), the CS can still receive a monthly income allowance (MIA) from the IS. The income that is generated from the original resource allocation must be considered as available income when determining the MIA.

- (†) (13) If the state hearing decision determines that an additional transfer should be made, but there are not sufficient resources to transfer to generate the full amount of income necessary to meet the MMMNA, an MIA can also be determined. The determination of the MIA that can be given to the CS by the IS will include as available income, the amount of income that could be generated monthly by the reallocated resources. This amount is determined by obtaining three estimates of the monthly amount that could be generated by a SPLIMPA based on the reallocated resources. The average of the three estimates is the amount of monthly income that is determined to be available to the CS. An MIA can be given to the CS by the IS to provide the amount of the MMMNA that is not generated by the CS's income and the amount that could be received by the reallocated resources SPLIMPA.
- (m) (14) If after a reallocation of resources has been determined, the IS still exceeds the resource limit, the medicaid application remains denied. If the IS reapplies for medicaid at a later date, the reallocated resources remain as the amount of the CS's share. The SPLIMPA amount that was originally determined would still be considered countable income when determining the CS's eligibility for an MIA. However, if the remaining resources at the time of the new application are less than the reallocated amount, the CS or IS can obtain three SPLIMPA estimates of the amount of monthly income that could be generated by the CS's resource allowance. This amount will be considered available income when determining whether the CS is entitled to an MIA from the IS.
- (m) (15) The CS will continue to have the option to receive an MIA from the IS in lieu of a fair hearing to determine if there should be a reallocation of resources.

~~(B) Hearings involving emergency assistance~~

- ~~— When a hearing decision orders authorization of emergency assistance, it must specify that the date of authorizations for the emergency assistance payment shall be the date the agency originally denied the request.~~
- ~~— Even though the check or voucher for the item or service may reflect the actual date of the issuance, the case record and any other record of the individual's receipt of emergency assistance must contain documentation showing the original date of denial as the effective date of receipt of emergency assistance.~~
- ~~— Thus, the individual will not be penalized for the additional time period between the date of denial and the hearing decision that would cause an extension of the usual twelve months of ineligibility.~~

“Enacted”

APPENDIX A

UNITED STATES CODE ANNOTATED
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 7--SOCIAL SECURITY
SUBCHAPTER XIX--GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS
1396r-5

(b) Rules for treatment of income

(1) Separate treatment of income

During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.

(2) Attribution of income

In determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d) of this section, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

(A) Non-trust property

Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides--

(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(B) Trust property

In the case of a trust--

(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this subchapter (including sections 1396a(a)(17) and 1396p(d) of this title), and

(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust--

(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(C) Property with no instrument

In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

(D) Rebutting ownership

The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

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