

## Medi-Cal Eligibility: Where The Asset Rules and The Income Rules Meet

In previous editions of this weekly email newsletter, we have explored the need for long-term care planning as part of a comprehensive estate plan, the ethics of Medi-Cal planning, how to find and pay for the right nursing home, resource limitations which apply to Medi-Cal eligibility, and three particular strategies to qualify for Medi-Cal long term care benefits when an applicant has too much in the way of assets, including asset spenddown, asset conversion, and asset transfers. We also examined two types of assets which can be used to special advantage in Medi-Cal planning: irrevocable, single-premium, and immediate annuities, and retirement accounts. Last week, we discussed how Medi-Cal limits the amount of income a Medi-Cal recipient is allowed to keep and ways to protect that income, if needed, for the support of the recipient's spouse.

This week, we consider the possibility that the combined monthly income of a married couple (one of whom is ill and living in a nursing home and one of whom is healthy and still living at home) falls below the minimum monthly maintenance needs allowance ("MMMNA") of \$2,232, the threshold poverty income level that Medi-Cal sets each year for a married couple.

**Example:** John and Mary Smith are married. John has Alzheimers and lives in a nursing home which is paid for by Medi-Cal. Mary is healthy and still lives in the couple's home. Mary has cash in savings of \$350,000. John receives monthly payments from Social Security in the amount of \$735 and Mary receives monthly payments from Social Security in the amount of \$450. Together, their gross monthly income is \$1,185. Recall from last week's discussion that John is allowed to keep \$35 a month as his personal needs allowance and the balance of his monthly income of \$700 (\$735 less \$35) can go to his wife instead of the nursing home in order to bring her income up to the MMMNA of \$2,232 in 2002. In this case, even with John's help, Mary's income will still fall short of the MMMNA by \$1,082 (\$2,232 less John's contribution of \$700 less Mary's income of \$450).

Recall from previous editions of this newsletter that the house is a non-countable or exempt asset under Medi-Cal rules and regulations. Accordingly, it is not even a factor in determining Medi-Cal eligibility. Also recall from previous editions of this newsletter that the healthy spouse is allowed to keep \$89,280 of non-exempt, or countable, assets (which generally include cash and investments) in addition to the house, leaving this couple in particular over resource limits by \$258,720 (\$350,000 less the CSRA limit of \$89,280 less the amount a Medi-Cal applicant is allowed to keep of \$2,000).

Normally, this couple would be told to spenddown their cash on nursing home care and return when their total countable assets did not exceed \$91,280 (the CSRA of \$89,280 and the personal exemption of \$2,000). However, in this case, because the healthy spouse needs the assets in order to generate investment income (interest and dividends) to bring her up to the MMMNA, she will be allowed to keep some, if not all, of the couple's otherwise countable resources.

The formula works as follows: (amount of shortfall) divided by .05 (an assumed rate of interest) times 12. In this case, the amount of cash the healthy spouse would be allowed to keep would be \$259,680 (the amount of the monthly shortfall of \$1,082 divided by .05 times 12). This is the amount of money the healthy spouse would need to invest at a 5% annual percentage rate to generate \$1,082 in interest income each month. Together with their Social Security income, the healthy spouse is thereby guaranteed to receive at least \$2,232 in gross monthly income if assets are properly invested.

The amount of the CSRA can only be increased by an administrative law judge or a court order. Because marital property rights and spousal support rights also need to be determined, most elder law attorneys recommend that the matter be submitted to a court of law rather than an administrative law judge whose jurisdiction is limited in such matters.

As we saw last week, if the healthy spouse needs more than \$2,232 a month to support and maintain him or her in the manner to which he or she has become accustomed, a family law or probate law judge is authorized to increase the minimum by way of a spousal support order. If, in this example, the healthy spouse can justify the need for monthly support payments in the amount of \$2,608, rather than the MMMNA of \$2,232, it would be possible to petition the court for both a monthly income allowance of \$2,608 (and thereby indirectly increasing the MMMNA which a court is otherwise unable to do) as well as an increase in the CSRA to \$350,000. Assuming the CSRA were increased to \$350,000, the healthy spouse should be able to earn at least 5% a year on the invested monies, or \$1,458 a month in interest income. Together with their Social Security income of \$1,150 (\$700 from John and \$450 from Mary), the healthy spouse should be able to bring home at least \$2,608 (\$1,150 plus \$1,458) in gross monthly income if assets are properly invested.

This strategy involves complex court procedures and a thorough understanding of Medi-Cal rules and regulations. Therefore, it is highly recommended that you consult with a knowledgeable elder law attorney before undertaking or relying upon such a strategy.

Editor's Note: This article is one in a series of articles dedicated to the need for long-term care planning in a comprehensive estate plan and how to pay for nursing home care without going broke. This information is for general informational purposes only and does not constitute legal advice. Please do not rely on the limited information given here. Medicaid is a highly complex area of the law; it varies from state to state and even within a particular state. *Unfortunate and costly mistakes can be made if you do not know what you are doing.* Before taking any steps to protect assets, you are strongly urged to consult with an elder law attorney who is competent in this area of the law so that you will understand all of the ramifications of your actions, including but not limited to property, estate, gift, and income tax; financial and estate planning considerations; and even possible *criminal sanctions*.

If you need help in planning for long-term care as part of a comprehensive estate plan or finding the right nursing home or paying for it without going broke, please give us a call. We can help!

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