

Medi-Cal Eligibility: The Income Rules

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. Several weeks ago, we 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.

This week, we discuss 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.

Treatment of Income

The basic Medi-Cal rule for nursing home residents is that they must pay all of their income, minus certain deductions, to the nursing home. "Income" is money received on a regular basis that has not been in the possession of the Medi-Cal applicant for more than 30 days. Examples of income include interest, dividends, rents, royalties, pensions, IRA distributions, and Social Security payments. To be counted as income, the money must actually be distributed to the applicant. The deductions include a \$35-a-month personal needs allowance, a deduction for any uncovered medical costs (including medical insurance premiums), and, in the case of a married applicant, an allowance for the spouse who continues to live at home (also known as the "community spouse") if he or she needs income support. A deduction may also be allowed for a dependent child living at home. Rules vary by state.

For Medi-Cal applicants who are married, the income of the community spouse is not counted in determining the Medi-Cal applicant's eligibility. Only income in the applicant's name is counted in determining his or her eligibility. Thus, even if the community spouse is still working and earning \$5,000 a month, he or she will not have to contribute to the cost of caring for his or her spouse in a nursing home if she or he is otherwise covered by Medi-Cal.

The level of income that a Medi-Cal applicant receives will not affect his or her Medi-Cal eligibility. Any excess monthly income (monthly income in excess of allowable deductions) will simply have to be paid to the nursing home. This excess monthly income is called "share of cost." Once share of cost has been paid (think of it as an insurance deductible), Medi-Cal will pay the remaining cost of care.

Example: Robert is in a nursing home and receives Medi-Cal benefits. He receives a Social Security check each month in the amount of \$900. Medi-Cal will allow him to keep \$35 each month as a personal needs allowance and will require him to pay the balance of \$865 to the nursing home as his share of cost. Medi-Cal will pay the remaining cost of his monthly nursing home care. If Robert has health insurance premiums or unpaid medical bills, Medi-Cal will reduce his share of cost to allow Robert to pay them out of his monthly income.

Protections for the Healthy Spouse

The Medi-Cal law provides special protections for the spouse of a nursing home resident to make sure he or she has the minimum support needed to continue to live in the community.

In previous editions of this email newsletter, we explored ways to protect non-exempt assets (such as cash and investments and rental property) for the benefit of the community spouse (also known as the "well spouse") through judicious use of the community spouse resource allowance (the "CSRA"). In general, the CSRA will protect up to \$89,280 (in 2002) worth of otherwise non-exempt or non-countable assets from asset spenddown. Remember: the house, retirement accounts, and annuities are generally exempt or non-countable assets when determining Medi-Cal eligibility, although distributions from those same retirement accounts and annuities may well be considered to be income and figure into the share of cost calculation.

In addition to some asset protection, the well spouse is allowed to keep all of his or her monthly income. What matters most is the "name on the check": if the monthly income check is made payable to the well spouse, the well spouse may keep it; if the monthly income check is made payable to the ill spouse, the income will figure into the share of cost calculation for the ill spouse.

The purpose of both rules is to prevent spousal impoverishment: ensuring that the well spouse has sufficient assets and income in which to live.

But what if most of the couple's income is in the name of the ill spouse, and the well spouse's income is not enough to live on? In such cases, the well spouse is entitled to some or all of the monthly income of the ill spouse. How much the well spouse is entitled to depends on what the Medi-Cal agency determines to be a minimum income level for the well spouse. This figure, known as the minimum monthly maintenance needs allowance, or MMMNA, is published each year by Medi-Cal. For 2002, the MMMNA is \$2,232 a month. If the well spouse's own income falls below the MMMNA, the shortfall is made up from the ill spouse's income.

Example: Robert and Sally are married. Robert receives a pension and Social Security payments each month of \$2,000. Sally receives Social Security payments each month of \$500. Robert resides in a nursing home and receives Medi-Cal benefits. As the ill spouse, Robert will be allowed to keep \$35 a month from his income as a personal needs allowance. Sally will be entitled to keep all of her monthly income of \$500. In addition, Sally will be able to keep enough of Robert's monthly income to bring her up to \$2,232 a month (the MMMNA level for 2002), thereby reducing Robert's monthly share of cost by the difference.

If the MMMNA is insufficient to maintain the well spouse in a manner to which he or she has become accustomed, recourse can be had to the courts to establish a monthly income allowance to the well spouse in excess of the MMMNA payable out of the ill spouse's monthly income, further reducing the ill spouse's share of cost.

Example: Same example as above, except that Sally needs all of Robert's income, as well as her own, just to pay the bills. Sally can petition the court for spousal support (without the need for a divorce) from her husband equal to that amount of money which is necessary to pay her bills. Any spousal support award will serve to reduce or eliminate the ill spouse's share of cost.

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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