

Spousal Impoverishment Protections Under WI Medicaid

Federal and state spousal impoverishment prevention provisions were enacted to protect a spouse living at home from becoming impoverished when his or her spouse moves into a nursing facility. These provisions include asset and income protections that were created to allow an institutionalized spouse to become eligible for Medicaid without depleting all of the couple's financial resources. Under these rules, a community spouse may retain a share of the couple's marital assets. In addition, a community spouse may be entitled to receive a portion of the institutionalized spouse's monthly income.

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| ASSET PROTECTIONS |
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At the beginning of the first continuous period of institutionalization, a person or couple should apply for Institutional Medicaid. This will establish the “snapshot date” and provide for the highest amount of asset protection. The income maintenance consortium will review the couple's total assets and request verifications. Be aware that Wisconsin marital property law does *not* apply. This means that a premarital agreement or marital property agreement is irrelevant in determining Medicaid eligibility. All assets will be examined, regardless of title ownership, and whether they are joint or individually owned property.

In general, certain resources are considered to be “exempt” and are therefore not counted in the asset assessment. Contact your local benefit specialist or an elder law attorney for a full explanation of exempt, unavailable, and countable assets.

Examples of exempt assets are:

- Home
- Household goods and personal property
- One vehicle
- Burial/funeral preplanning (if Medicaid-compliant)
- IRA or work-related pension owned by the community spouse



Once the total amount of countable assets is calculated, the income maintenance consortium will determine the “community spouse resource allowance” (CSRA). **This is the amount that the community spouse is able to keep when the institutionalized spouse qualifies for Medicaid.** Remember, the spouse in the nursing home can keep an additional \$2,000.

| IF COUPLE'S COMBINED COUNTABLE ASSETS ARE: | COMMUNITY SPOUSE MAY KEEP: |
|---|-----------------------------------|
| \$0 - \$50,000 | ALL |
| \$50,001 - \$100,000 | \$50,000 |
| \$100,001 - \$252,839 | HALF |
| \$252,840 + | \$126,420 |

If the couple has more countable assets than the community spouse resource allowance (CSRA), the couple will not qualify for Medicaid until they spend down to the CSRA amount. There are very specific rules about how couples can and cannot spend down their assets. Examples of allowable ways to spend down include:

- Medicaid-compliant funeral/burial pre-planning
- Home improvements (new furnace, windows, flooring, siding)
- Home modifications (ramps, grab bars, wheelchair accessibility)
- Pay down debt owed in your name (medical, credit card debt, loans)
- Private pay for nursing home care
- Setup a special needs trust (requires an attorney)



Let's review some examples to demonstrate how this works:

EXAMPLE #1:

Pat and Mary Watson have been married for 40 years. In March 2018, Mary falls, breaks her leg, and needs skilled nursing facility care for an extended period of time. Mary applies for Medicaid, and the income maintenance consortium determines that Mary and her spouse have \$45,000 in countable assets. (The couple's home and car were exempt, but Mary's IRA has \$30,000 in it, and Pat has a life insurance policy with a face and cash value of \$5,000. They also have a joint checking account with \$10,000 in it.) Since their total countable assets are less than \$50,000, Mary is eligible for Institutional Medicaid upon application.

EXAMPLE #2:

Mr. Winthrop entered a nursing home in February 2018 and applies for Medicaid. Mrs. Winthrop still lives in the marital home. The couple's combined countable assets total \$130,000 (not counting their home, car, personal property, or burial pre-planning). The income maintenance consortium determines that Mrs. Winthrop may keep \$65,000 (see chart on bottom of page 1). And Mr. Winthrop may keep \$2,000 in assets himself; so the couple can keep \$67,000 in countable assets. That means they need to spend down \$63,000 of their assets. Mr. Winthrop will not be eligible for Medicaid until their countable assets total \$67,000.

Divestment

A **divestment** is a transfer for less than fair market value. It is important that a person **not** divest any assets. Sometimes people in the spend down phase want to gift money to their family members. However, such transfers will render the person ineligible for Medicaid. Currently, the Medicaid program looks back 5 years prior to the date that a person applies for Institutional Medicaid in order to evaluate transactions for possible divestments. Transfers between spouses are not divestments. Therefore, spouses are permitted to transfer assets to each other without concern. However, transfers to adult, non-disabled children are divestments.

Medicaid Eligibility Approval

Once Medical Assistance eligibility is approved, the community spouse's assets are no longer considered available to the institutionalized spouse going forward. Therefore, the community spouse's assets can increase beyond the CSRA limit after Medicaid eligibility is approved.

EXAMPLE #3:

Mr. and Mrs. Winthrop, from Example #2, spent their excess \$63,000 on Mr. Winthrop's nursing home bill, some previous medical bills, and a new furnace for their home (where Mrs. Winthrop continues to live). Once they document to the income maintenance consortium that they have met the spend down requirement, Mr. Winthrop is approved for Medicaid. Approximately 6 months later, Mrs. Winthrop receives a \$25,000 inheritance from her sister. This \$25,000 is hers to keep, in addition to the \$65,000 community spouse resource allowance. Medicaid law does *not* require her to pay any of the \$25,000 to the nursing home. In addition, her receipt of the inheritance has no effect on Mr. Winthrop's continued eligibility for Medicaid.

NOTE: It is *not* necessary to have all assets titled in the community spouse's name at the time the Medicaid application is submitted. However, the transfer of the assets into the community spouse's name *must* occur within one year from the date that the Medicaid application is approved. **Failure to do so will result in a denial of Medicaid at the one-year review date.**

WARNING: The community spouse must be careful *not* to give away or divest any assets, especially during the first 5 years *after* Medicaid is approved. Doing so will create a **divestment penalty** and render the other spouse ineligible for Medicaid for a certain period of time.

INCOME PROTECTIONS

Spousal Impoverishment Prevention: Income Allocation

The spousal impoverishment provisions also protect a certain level of monthly income to allow the community spouse to maintain financial independence. This amount of income is called the Community Spouse Income Allocation (CSIA). The CSIA limit is adjusted annually according to the federal poverty guidelines, and is currently \$2,818.34. If the community spouse's monthly income is below \$2,818.34, the institutionalized spouse can transfer income to the community spouse to bring him or her up to the CSIA.



The first step is to determine to whom the various sources of income belong. It is usually easiest to make two columns titled with each spouse's name and write their income amounts underneath each respective person's name. With regards to income, Medicaid follows a "name on the check" rule. For example, each spouse may receive monthly retirement benefits from Social Security. That income is allocated according to whose name the individual benefit is paid out to. Income from employment belongs solely to the spouse who earns it. Any income that comes in the name of both spouses (rental income, investment income, etc.) is deemed half to each spouse.

Once each spouse's individual income has been determined, we need to calculate the deductions the institutionalized spouse is entitled to. For example, the spouse in the nursing facility is always entitled

to keep a \$45 personal needs allowance. The personal needs allowance is to cover the cost of personal items that a person living in a nursing facility may need, such as haircuts, toiletries, and spending money. In addition to the personal needs allowance deduction, there are also income deductions for any out of pocket medical costs that may be owed including, but not limited to, medical copays, prescription drug copays, Medicare premiums, employer medical insurance premiums, long-term care insurance premiums, Medicare supplement premiums, etc. These out of pocket medical expenses may be monthly, ongoing expenses, or they may be one-time costs. Finally, court-ordered family support payments and guardianship fees can also be deducted from the institutionalized spouse’s income.

After taking out the deductions from the institutionalized spouse’s income for the personal needs allowance, out of pocket medical expenses, and any court-ordered guardianship fees, determine how much income the institutionalized spouse has remaining. The remaining amount of monthly income would typically be paid to the nursing facility and go towards that person’s monthly cost of care, pursuant to Medicaid rules. This is called a “patient liability” or “cost share.” However, if that person is married, some or all of this income may be allocated to the community spouse.

COMMUNITY SPOUSE INCOME ALLOCATION (CSIA)

The community spouse’s income can be *increased up to* the CSIA of \$2,818.34 by allocating some or all of the institutionalized spouse’s remaining income to the community spouse. Remaining income is any income remaining after a \$45 personal needs allowance, any out of pocket medical expenses, court-ordered guardianship fees, and court-ordered family support payments are deducted from the institutionalized spouse’s income.

EXAMPLE #4:

John and Sally have been married a long time when John’s dementia worsens and he can no longer be cared for at home. After John moves into the nursing facility, Sally worries about how she will afford her current standard of living.

| <u>John---Inst. spouse</u> | <u>Sally—Comm. spouse</u> |
|----------------------------|---------------------------|
| \$1,583 SS income | \$1,352 SS income |
| + \$500 pension | ---- |
| \$2,083 total income | \$1,352 total income |
| - \$45 personal needs | |
| - \$250 medical exp | |
| \$1,788 income remaining* | |

John has \$1,788 of remaining income. **If John was not married, that \$1,788 would be his monthly patient liability to the nursing facility to help pay for his care.*

Since John is married to Sally, and she lives in the community, John can allocate some or all of his remaining income to Sally while John is in the nursing facility. To figure out how much income John can give to Sally, we need to find out how far below the Community Spouse Income Allowance (CSIA) Sally's current income is. The CSIA is \$2,818.34. We subtract Sally's monthly income from the CSIA to figure out how much income John can allocate to Sally to bring her up to the CSIA.

$$\mathbf{\$2,818.34 - \$1,352 = \$1,466.34}$$

John can allocate \$1,466.34 of his remaining income to Sally in order to bring her up to the \$2,818.34. That leaves John with \$321.66 income remaining which will be his patient liability to the nursing home towards the cost of his care. (Medicaid will pay the difference each month between his patient liability and the total nursing facility cost. The average monthly nursing facility cost in Wisconsin is \$8,738.40.)

| <u>John---Inst. spouse</u> | <u>Sally---Comm. spouse</u> |
|--|--|
| \$1,583 SS income | \$1,352 SS income |
| + \$500 pension | ---- |
| <hr/> | <hr/> |
| \$2,083 total income | \$1,352 total income |
| - \$45 personal needs | |
| - \$250 medical exp | |
| <hr/> | |
| \$1,788 income remaining | \$1,352 Sally's income |
| -\$1,466.34 to Sally | + \$1,466.34 from John |
| <hr/> | <hr/> |
| \$321.66 John's patient liability | \$2,818.34 Sally's new monthly income |

Let's try another example:

EXAMPLE #5:

Kevin and Jane are married and living exclusively on Social Security retirement income. Kevin had a stroke and now needs care in a nursing facility. Jane is worried about maintaining the finances on her own. Their mortgage is paid off, but they have a car payment, utilities, groceries, household supplies, and medical copays for Jane, etc. Jane needs to know how she will afford it all by herself.

| <u>Kevin---Inst. spouse</u> | <u>Jane---Community spouse</u> |
|------------------------------|--|
| \$950 total monthly income | \$750 total monthly income |
| - \$45 personal needs | |
| - \$73 out of pocket medical | |
| <hr/> | |
| \$832 income remaining | |
| -\$832 to Jane | \$750 monthly income |
| <hr/> | + \$832 from Kevin |
| \$0 patient liability | \$1,582 Jane's new monthly income |

The CSIA is \$2,818.34. So we subtract Jane's monthly income from the CSIA to figure out how much income Kevin can allocate to Jane to bring her up to the CSIA.

$$\mathbf{\$2,818.34 - \$750 = \$2,068.34}$$

Since Kevin only has \$832 income remaining to give to Jane, all of Kevin's \$832 income remaining will go to her to bring her monthly income up to \$1,582. Kevin will have \$0 patient liability to the nursing facility towards the cost of his care.

NOTE: the government does not provide Jane with additional income to bring her up to the CSIA of \$2,818.34. She can only increase her monthly income with the funds her spouse receives and has available.

COMMUNITY SPOUSE INCOME ALLOCATION (CSIA)

Excess Shelter Expenses

It is possible for the community spouse to receive more than \$2,818.34 per month if the community spouse has excess shelter expenses and additional income is available from the institutionalized spouse. The CSIA can be increased to a maximum of \$3,160.50 if the community spouse's monthly shelter expenses exceed \$845.50. The maximum income allowance can be increased by the amount of shelter expenses above \$845.50.

Expenses (prorated monthly) that can be counted towards the community spouse's shelter expenses are:

1. rent, mortgage (principle and interest), or second mortgage;
2. mobile home lot rent and loan payments;
3. property taxes;
4. homeowners or renter's insurance;
5. condominium or cooperative fees;
6. special assessment(s); and
7. a monthly utility allowance (set by Dept. of Health Services)



EXAMPLE #6:

Mrs. Monica Ward, a community spouse, has a mortgage payment of \$350 per month, a pro-rated property tax obligation of \$195 per month and a pro-rated homeowner's insurance payment of \$25 per month. She pays all of her utilities, including heat (thus, she is entitled to a \$456 utility allowance). Her monthly shelter expenses are \$1,026. Therefore, her excess monthly shelter costs are \$180.50 ($\$1,026 - \$845.50 = \180.50). **As a result, Mrs. Ward's monthly income allowance can be increased to \$2,998.84** (the standard CSIA of \$2,818.34 + \$180.50 in excess shelter expenses).

This increase in the monthly income allowance will be approved after presenting appropriate bills, receipts, and other documents to the income maintenance consortium.

NO INCOME ALLOCATION **Community Spouse Income *Greater* than \$2,818.34**

If the community spouse's own monthly income is already greater than \$2,818.34 (or \$3,160.50 if there are excess shelter expenses), the institutionalized spouse **cannot** give any of his or her income to the community spouse. Additionally, the community spouse's income above \$2,818.34 is *not* paid to the nursing facility as part of the institutionalized spouse's cost-sharing obligation. Rather, the community spouse keeps all of his or her income, absent a court order requiring contribution to the institutionalized spouse's cost of care.

EXAMPLE #7: Mrs. Rodriguez is in a nursing home and eligible for Medicaid. Mr. Rodriguez continues to live in their home. Mr. Rodriguez's monthly income is \$3,215 (from Social Security, his retirement pension, and interest on several investments). Mrs. Rodriguez's monthly income is \$1,000 (from Social Security alone). Because Mr. Rodriguez's income is already greater than the \$2,818.34 limit, and he does not have excess shelter expenses, *none* of Mrs. Rodriguez's income will be allocated to him. Mrs. Rodriguez will pay \$955 (\$1,000 less her \$45 personal needs allowance) to the nursing facility for her patient liability each month. Mr. Rodriguez will keep his income for himself.

EXCEPTIONAL CIRCUMSTANCES & FINANCIAL DURESS

In exceptional situations, a community spouse may seek an increased income or asset allowance above the set limits to pay for basic and necessary living expenses and/or prevent undue financial hardship. The community spouse must prove that "exceptional circumstances" require an allowance above the income or asset limit to avoid "financial duress." This increase in the resource allowance **can be accomplished only by requesting a fair hearing and presenting the case to an administrative law judge**. Income maintenance consortium staff have no discretion to authorize an increase.

Further information:

It is important to obtain accurate and up-to-date information regarding your specific set of circumstances. If you have further questions about Medicaid planning or transfers of assets or property, consult a private attorney who practices elder law. To find an elder law attorney near you, visit www.naela.org (National Academy of Elder Law Attorneys) and enter your zip code. Or, call the State Bar of Wisconsin's Lawyer Referral and Information Service at (800) 362-9082.

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