

LEXIS 209). D.M. v. DMAHS, OAL Dkt. No. HMA 6394-06, 2007 N.J. AGEN LEXIS 546, Final Decision (June 11, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 209) adopted, which concluded that an application for Medicaid benefits under the Medically Needy program was correctly denied for the applicant's failure to provide requested information regarding three attempts to sell the subject annuity, which the applicant claimed was an unavailable resource; while the Division may ultimately bear the burden of proving that a market exists, and that this particular annuity could be sold, this did not relieve the applicant of her obligation to produce information the Division requested. D.M. v. DMAHS, OAL Dkt. No. HMA 6394-06, 2007 N.J. AGEN LEXIS 546, Final Decision (June 11, 2007).

Medicaid applicant's irrevocable trust arrangement was void because it violated New Jersey's public policy against shielding assets to become Medicaid eligible, pursuant to N.J.S.A. 30:4D-6(f), and therefore the trust res was considered an available resource. Because public policy considered the trust null and void, it was as if the trust assets were available to the applicant throughout the duration of the trust and at the time of the Medicaid application made on February 8, 2006; thus, the transfer of assets did not occur until February 8, 2006, pursuant to N.J.A.C. 10:71-4.10(m)(1), and the penalty period for the transfer began on that date. J.S. v. DMAHS, OAL Dkt. No. HMA 4896-06, 2006 N.J. AGEN LEXIS 1054, Initial Decision (December 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 456) adopted, which concluded that a special needs trust, of which petitioner was a beneficiary, was an excludable resource under N.J.A.C. 10:71-4.4(b)6 for purposes of determining Medicaid Only eligibility because petitioner was not the grantor, the trust was not funded by any of petitioner's assets, a trustee other than petitioner had sole discretion to disburse trust funds, petitioner could not compel the distribution of the corpus or income, and petitioner was not the beneficiary of any remaining funds upon the trust's termination. A.M. v. DMAHS, OAL Dkt. No. HMA 8525-05, 2006 N.J. AGEN LEXIS 586, Final Decision (June 26, 2006).

Custodial bank accounts of Medicaid applicant's children were not available to applicant or her husband and thus were not countable resources in determining applicant's eligibility for the Nursing Home Medicaid program for the year in question; the accounts, created years before applicant's entry into the nursing home, were governed by the New Jersey Uniform Transfers to Minors Act, N.J.S.A. 46:38A-1 et seq. L.A.S. v. Union County Div. of Soc. Servs., OAL Dkt. No. HMA 1215-05, 2006 N.J. AGEN LEXIS 348, Initial Decision (April 26, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 669) adopted, which concluded that a July 7, 1993 irrevocable trust, which had entitled the Medicaid applicant to payments at the discretion of the trustee and terminated that discretion upon the applicant becoming a nursing home resident, had to be counted as an available resource notwithstanding that the trust was a pre-August 11, 1993 trust. L.C. v. DMAHS, OAL Dkt. No. HMA 3857-05, 2005 N.J. AGEN LEXIS 1475, Final Decision (December 7, 2005).

No Medicaid eligibility for trustor entitled to receive funds under irrevocable trust. Dickson v. Division of Medical Assistance and Health Services and Bergen County Board of Social Services, 97 N.J.A.R.2d (DMA) 33.

Medicaid benefits were properly denied where applicant had excess resources despite incurring large debt to nursing home. Estate of L.L. v. Essex County Department of Citizens Services, 96 N.J.A.R.2d (DMA) 41.

Transfer of real property for less than true value raised presumption of transfer to obtain Medicaid benefits. P.V. v. Camden County Board, 95 N.J.A.R.2d (DMA) 38.

Ceremonial marriage required; medicaid resource eligibility. P.M. v. Morris County Board of Social Services, 94 N.J.A.R.2d (DMA) 8.

Combined countable resources included unsecured promissory notes. H.H. v. New Jersey Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (DMA) 58.

Husband's estate funds were available to pay wife's nursing home costs. L.S. v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (DMA) 7.

10:71-4.2 Countable resources

(a) Any resource which is not specifically excludable under the provisions of N.J.A.C. 10:71-4.4 shall be considered a countable resource for the purpose of determining Medicaid Only eligibility.

1. No portion of a cash reward offered by the Division to an individual for providing information about fraud and/or abuse in any program administered in whole or in part by the Division shall be included in the computation of resources for financial eligibility purposes, if the resource is maintained in a separate account, in accordance with N.J.A.C. 10:71-4.4(b).

(b) Verification of resources: If verification is required in accordance with the provisions of N.J.A.C. 10:71-4.1(d)3, the CWA shall proceed in the following manner:

1. Real property which produces income: If the CWA determines that it is necessary to establish whether or not real property is producing income consistent with its current market value (see N.J.A.C. 10:71-4.4(b)5), inquiry shall be made of local real estate brokers, tax assessors or other persons knowledgeable of the prevailing rate of return on real property in the community.

2. Nonexcludable household goods and/or personal effects: If the CWA determines that certain household goods and/or personal effects are not excludable (see N.J.A.C. 10:71-4.4), inquiry shall be made of one or more local merchants who deal in used household goods or personal goods in order to determine the current market value of the resource.

3. The CWA shall verify the existence or nonexistence of any cash, savings or checking accounts, time or demand deposits, stocks, bonds, notes receivable or any other financial instrument or interest. Verification shall be accomplished through contact with financial institutions, such as banks, credit unions, brokerage firms and savings and loan associations. Minimally, the CWA shall contact those financial institutions in close proximity to the residence of the applicant or the applicant's relatives and those institutions which currently provide or previously provided services to the applicant.

(c) Documentation of verification: Any verification which occurs in connection with the determination or evaluation of resources shall be fully documented in the case record.

Amended by R.1986 d.481, effective December 15, 1986 (operative January 1, 1987).

See: 18 N.J.R. 542(a), 18 N.J.R. 2457(a).

Old (b) and (c) deleted; (c)1 renumbered (b); (b)3 added; (d) renumbered to (c).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

In (b), substituted "CBOSS" for "CWA" throughout.

Amended by R.2002 d.124, effective April 15, 2002.

See: 33 N.J.R. 4188(a), 34 N.J.R. 1546(a).

Added (a)1.

Amended by R.2012 d.025, effective February 6, 2012.

See: 43 N.J.R. 804(a), 44 N.J.R. 230(a).

In the introductory paragraph of (b), and in (b)1, (b)2 and (b)3, substituted "CWA" for "CBOSS"; in (b)1, deleted a comma following "assessors"; and in (b)3, substituted the second occurrence of "or" for the second occurrence of "of", and deleted a comma following "receivable" and "firms".

Law Review and Journal Commentaries

Protecting the Home in Government Benefits Planning. Gary Mazart. 164 N.J.Law. 34(Mag.) (Oct. 1994).

Case Notes

Federal Medicaid statute requiring that state's methodology for determining resource eligibility of medically needy person be no more restrictive than for categorically needy person required exclusion of husband's individual retirement account from computation of wife's resources for purposes of determining eligibility. *Mistrick v. Division of Medical Assistance and Health Services*, 299 N.J.Super. 76, 690 A.2d 651 (A.D.1997).

Initial Decision (2005 N.J. AGEN LEXIS 669) adopted, which concluded that a July 7, 1993 irrevocable trust, which had entitled the Medicaid applicant to payments at the discretion of the trustee and terminated that discretion upon the applicant becoming a nursing home resident, had to be counted as an available resource notwithstanding that the trust was a pre-August 11, 1993 trust. *L.C. v. DMAHS*, OAL Dkt. No. HMA 3857-05, 2005 N.J. AGEN LEXIS 1475, Final Decision (December 7, 2005).

10:71-4.3 (Reserved)

10:71-4.4 Excludable resources

(a) A resource which is classified as excludable shall not be considered either in the deeming of resources or in the determination of eligibility for participation in the Medicaid Only Program.

(b) The following resources shall be classified as excludable:

1. A house occupied by the individual as his or her place of principal residence, and the land appertaining thereto, shall be excluded:

i. Short temporary absences from home such as trips, visits, and hospitalizations do not affect this exclusion so long as the individual intends, and may reasonably be expected, to return home. An absence of more than six months is assumed to indicate that the home no longer serves as a principal residence. However, if the home is used by a spouse or there is evidence that the absence from the house is temporary, the home may continue to be excluded. With that exception, the

CWA shall extend the period only with approval from the Division of Medical Assistance and Health Services.

2. In the determination of resources of an individual (and spouse, if any), an automobile shall be excluded or counted as follows:

i. One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household.

ii. Any other automobiles shall be considered to be non-liquid resources. Equity in all such automobiles is counted as a resource.

(1) The equity value of an automobile is the value of the vehicle as indicated by the "Average Wholesale Value" in the most recent April or October edition of the Red Book; Official Used Car Valuations minus any encumbrances.

3. Personal effects and household goods, to the extent that the total equity value of such resources does not exceed \$2,000:

i. The amount by which the equity value of such resources exceeds \$2,000 shall be countable toward the appropriate resource maximum.

ii. In determining the value of household goods and personal effects of an individual (and spouse), there shall be excluded a wedding ring and an engagement ring.

iii. Prosthetic devices, dialysis machines, hospital beds, wheel chairs, and similar equipment shall not be considered in the evaluation of personal effects, unless such items are used extensively and primarily by other members of the household, as well as by the person whose physical condition requires them.

4. The cash surrender value of all life insurance policies owned and in the control of the individual, if the total face value of such policies does not exceed \$1,500 (see also (b)9 below):

i. If the total face value of such policies exceeds \$1,500, the total cash surrender value of all policies shall be included as a resource, countable toward the appropriate resource maximum.

5. Nonhome property that is used in a business or nonbusiness self-support activity that is essential to the means of self-support of an individual and/or spouse, is excluded from resources.

i. Tools, equipment or other items that are used for trade or business and required for employment, including, but not limited to, the machinery and livestock of a farmer, are assumed to be of a reasonable value and producing a reasonable rate of return and are, therefore, excluded from resources.

2. A pooled trust is a special needs trust, containing the assets of a disabled individual, which meets the following conditions:

- i. The trust shall be established and managed by a non-profit association;
- ii. A separate account shall be maintained for each beneficiary of the trust, but for purposes of investment and management of the funds, the trust may pool the funds from those accounts;
- iii. Accounts in the trust shall be established solely for the benefit of the disabled individual by the individual, by a parent, grandparent, or legal guardian of the individual, or by a court;
- iv. To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust shall pay to the State of New Jersey the amount remaining in the account, up to an amount equal to the total amount of medical assistance paid under Title XIX of the Social Security Act on behalf of the individual. To meet this requirement, the trust shall include a provision specifically providing for such payment; and
- v. Funds of an individual 65 or older, which are transferred to a pooled trust shall be subject to the transfer penalty provisions contained in N.J.A.C. 10:71-4.10.

(h) Title XIX of the Social Security Act (42 U.S.C. § 1917(d)(4)(B)) provides for an exemption from the trust provisions for qualified income trusts (also known as Miller trusts). Special provisions for this form of trust apply, under the law, only in those states which do not provide medically needy coverage for nursing facility services. Because New Jersey does cover services in nursing facilities under the medically needy component of the Medicaid program, the establishment of a qualified income trust shall be presumed to be an asset transfer for the purposes of qualifying for Medicaid. This presumption shall apply whether the individual is seeking nursing facility services or home and community based services under one of the waiver programs.

(i) Upon the denial of eligibility or the termination of long-term care level services due to the application of the trust provisions in (e) and (f) above, the county welfare agency shall notify the applicant/beneficiary of his or her right to request an undue hardship exception. An applicant/beneficiary may apply for an exception to these trust provisions if he or she can show that the transfer will cause an undue hardship to him- or herself. The applicant/beneficiary shall provide sufficient documentation to support the request for an undue hardship waiver to the county welfare agency within 20 days of notification of the denial of eligibility or termination of benefits due to these trust provisions.

1. For the purposes of this chapter, undue hardship shall be considered to exist when:

i. The application of the trust provisions would deprive the applicant/beneficiary of medical care such that his or her health or his or her life would be endangered. Undue hardship may also exist when application of the trust provisions would deprive the individual of food, clothing, shelter, or other necessities of life; and

ii. The applicant/beneficiary can irrefutably demonstrate the assets placed in trust are beyond his or her control and that the asset cannot be recovered. The applicant/beneficiary shall demonstrate that he or she made good faith efforts, including exhaustion of remedies available at law or in equity, to recover the assets placed in trust.

2. In the event that a waiver of undue hardship is denied, neither the Department of Human Services, the Department of Health and Senior Services, nor the county boards of social services shall have any obligation to take any action to assure that payment of services is provided during the penalty period.

3. If the request for undue hardship consideration is denied by the county welfare agency, the county welfare agency shall notify the applicant of the denial and that the applicant may request a fair hearing in accordance with the provisions of N.J.A.C. 10:49-10.

New Rule, R.2001 d.199, effective June 18, 2001.
See: 32 N.J.R. 2021(a), 33 N.J.R. 2195(a).
Amended by R.2012 d.025, effective February 6, 2012.
See: 43 N.J.R. 804(a), 44 N.J.R. 230(a).
Rewrote (d) through (g) and (i).

Law Review and Journal Commentaries

Special-needs trusts can help preserve family wealth. Harold L. Grodberg, 164 N.J.L.J. 822 (2001).

Case Notes

Medicaid applicants challenging state's treatment of community spouse annuity trusts (CSATs) as countable assets in determining Medicaid eligibility lacked standing to challenge state's undue hardship procedures for otherwise ineligible claimants as untimely, where, although state did not have undue hardship procedures in place before action was brought, state offered applicants the opportunity to apply for undue hardship hearings, and applicants chose not to seek such hearings, thereby suffering no injury related to lack of timeliness provision. Johnson v. Guhl, 357 F.3d 403.

Medicaid applicant's irrevocable trust arrangement was void because it violated New Jersey's public policy against shielding assets to become Medicaid eligible, pursuant to N.J.S.A. 30:4D-6(f), and therefore the trust res was considered an available resource. Because public policy considered the trust null and void, it was as if the trust assets were available to the applicant throughout the duration of the trust and at the time of the Medicaid application made on February 8, 2006; thus, the transfer of assets did not occur until February 8, 2006, pursuant to N.J.A.C. 10:71-4.10(m)(1), and the penalty period for the transfer began on that date. J.S. v. DMAHS, OAL Dkt. No. HMA 4896-06, 2006 N.J. AGEN LEXIS 1054, Initial Decision (December 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 456) adopted, which concluded that a special needs trust, of which petitioner was a beneficiary, was an excludable resource under N.J.A.C. 10:71-4.4(b)6 for purposes of determining Medicaid Only eligibility because petitioner was not the grantor, the trust was not funded by any of petitioner's assets, a trustee other than petitioner had sole discretion to disburse trust funds,

petitioner could not compel the distribution of the corpus or income, and petitioner was not the beneficiary of any remaining funds upon the trust's termination. *A.M. v. DMAHS*, OAL Dkt. No. HMA 8525-05, 2006 N.J. AGEN LEXIS 586, Final Decision (June 26, 2006).

Where trust property was described, in testimony, as the family home, and under the Trust Agreement co-trustees could in their sole discretion distribute all or any part of the trust principal reasonably necessary for the Settlor's care, support, and maintenance, and where a provision requiring the trustee to take into account any funds that may be available to the Settlor to meet those needs from any source other than the trust, which would presumably include Medicaid funds, flew in the face of the law and public policy, the applicant and his wife had resources in excess of the maximum permitted under the regulation. *J.C. v. DMAHS*, OAL Dkt. No. HMA 7550-05, 2006 N.J. AGEN LEXIS 349, Initial Decision (April 25, 2006).

SUBCHAPTER 5. INCOME

Law Review and Journal Commentaries

Marital Status and 60+ Crowd. Elizabeth Brody, 164 N.J.Law. 39 (Mag.) (Oct. 1994).

Medicaid—Pension Benefits, Judith Nallin, 135 N.J.L.J. No. 17, 53 (1993).

Protecting the Home in Government Benefits Planning. Gary Mazart, 164 N.J.Law. 34 (Mag.) (Oct. 1994).

10:71-5.1 Income; financial eligibility standards

(a) As a condition of eligibility for the Medicaid Only Program, applicants must comply with the income standards set forth in this subchapter (see N.J.A.C. 10:71-5.6).

(b) Income defined: For the purpose of this program, income shall be defined as receipt, by the individual, of any property or service which he or she can apply, either directly or by sale or conversion, to meet his or her basic needs for food or shelter. All income, whether in cash or in-kind, shall be considered in the determination of eligibility, unless such income is specifically exempt under the provisions of N.J.A.C. 10:71-5.3.

1. Availability of income: In order to be considered in the determination of eligibility, income must be "available." Income shall be considered available to an individual when:

- i. With the exception of income from self-employment, the individual actually receives the income;
- ii. With the exception of income from self-employment, the income becomes payable but is not received by the individual due to his/her preference for voluntary deferment;
- iii. Income has been deemed available to the applicant (see N.J.A.C. 10:71-5.5 regarding the deeming of income);
- iv. Net earnings from self-employment have been determined in accordance with N.J.A.C. 10:71-5.4(a)2.

2. Earned income: Earned income shall be defined as payment received by an individual for services performed as an employee, or the net earnings as the result of self-employment. When the individual is both employed as self-employed, earned income shall consist of gross wages (or salary, etc.) plus any net earnings from self-employment.

3. Unearned income: Unearned income shall be defined as any income which is not coincident with the provisions of (b)2 above. This definition includes deemed income (see N.J.A.C. 10:71-5.5).

(c) The grandfather clause: An individual (including an essential person) meeting the criteria delineated in N.J.A.C. 10:71-4.5(e) may have his/her income eligibility determined in accordance with the procedures formerly used in New Jersey's OAA, AB, and DA programs if it is more advantageous (see Financial Assistance Manual, Chapter 300, for regulations in effect prior to January 1, 1974).

Amended by R.2012 d.025, effective February 6, 2012.
See: 43 N.J.R. 804(a), 44 N.J.R. 230(a).

In the introductory paragraph of (b), substituted "her or she" for "he/she", "his or her" for "his/her" and "or shelter" for " , shelter, or clothing", and inserted a period at the end.

Law Review And Journal Commentaries

Medicaid. P.R. Chenoweth, 136 N.J.L.J. No. 14, 56 (1994).

Case Notes

Wife was sole owner of pension where court in making equitable distribution of assets in divorce from bed and board directed pension's administrator to pay wife; benefits could not be considered income available to former husband. *L.M. v. State, Div. of Medical Assistance & Health Services*, 140 N.J. 480, 659 A.2d 450 (1995).

Definition of "available income" for Medicaid eligibility; valid. *Estate of G.E. v. Division of Medical Assistance and Health Services*, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Pension was "available income" for Medicaid eligibility even though payment ordered to wife. *Estate of G.E. v. Division of Medical Assistance and Health Services*, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Regulation governing when income is available did not constitute exercise by the state of its authority to adopt less restrictive income standards than federal standards. *Estate of G.E. v. Division of Medical Assistance and Health Services*, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Voluntarily waived state pension benefits would be "available income" in evaluating Medicaid eligibility. *M.R. v. State Dept. of Human Services, Div. of Medical Assistance and Health Services*, 268 N.J.Super. 586, 634 A.2d 143 (A.D.1993).

Comparison of Medicaid monthly income eligibility limits to those for the Medical Assistance to the Aged program; Medicaid income eligibility depends on participants' living arrangements. *Texter v. Dept. of Human Services*, 88 N.J. 376, 443 A.2d 178 (1982).

Applicant was not entitled to Medicaid assistance where she voluntarily reduced her pension income but remained able to rescind the reduction; thus, the original monthly pension benefit of \$556.34 was available to the applicant and was properly counted in the determination of Medicaid eligibility. *J.C. v. DMAHS*, OAL Dkt. No. HMA 6950-07, 2008 N.J. AGEN LEXIS 39, Initial Decision (January 17, 2008).

Court-ordered spousal support was nevertheless available income to applicant and otherwise countable toward determining Medicaid eligibility. *L.M. v. Division of Medical Assistance*, 95 N.J.A.R.2d (DMA) 51.

Pension benefits paid to former spouse under qualified domestic relations order not gross income. *E.M. v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 93.

Voluntary revocable repudiation of pension was not unavailable income. *M.R. v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 1.

Pension paid to wife pursuant to qualified domestic relations order was part of husband's countable income. *G.E. v. Division of Medical Assistance and Health Services*, 92 N.J.A.R.2d (DMA) 59.

Petitioner eligible for Medicaid Only program because countable income is equal to program's applicable income standard; income not required to be less than standard. *C.W. v. Middlesex Cty. Welfare Agency*, 1 N.J.A.R. 47 (1980).

10:71-5.2 Determination of countable income

(a) Countable income shall be determined by adding the applicant's nonexempt unearned income (less appropriate exclusions) to his/her earned income (less appropriate exclusions).

(b) Procedures regarding the determination of income eligibility shall be as follows:

1. Determination of initial income eligibility shall be based on all earned and unearned income which has or will be received during the month for which application is made, beginning with the first day of such month, except that quarterly, semiannual, or annual payments shall be prorated in accordance with (b)2 below. (See N.J.A.C. 10:71-5.3(a)15 regarding exclusion of student earnings.)

2. The following shall apply to income received other than monthly:

i. Income received weekly shall be multiplied by 4.333 to determine the monthly amount; biweekly income shall be multiplied by 2.167. (If earned income is irregular, the initial determination shall be based on the average of the amounts received for any four weeks within the 10 week period which includes the five weeks immediately before and after the date of application.)

ii. When income received on a quarterly, semiannual, or annual basis is of sufficient amount to affect the individual's eligibility, it shall be prorated as a monthly amount and entered on the Medicaid Eligibility Worksheet (Form PA-1E) accordingly. (See also N.J.A.C. 10:71-5.4(a)11, regarding lump-sum payments.)

3. The period of income eligibility begins with the month in which application is made and continues until the scheduled redetermination, or until a change in status or income occurs which requires an earlier redetermination. (See N.J.A.C. 10:71-8.1(a), regarding determination of continuing eligibility.)

4. At the time of application, the applicant shall identify any income which he or she receives periodically (less frequently than once a month) or anticipates receiving prior to the time of redetermination.

5. In situations where earned or unearned income is received irregularly or in irregular amounts, redetermination shall be made as frequently as necessary. The individual shall be advised of his or her responsibility to report significant changes in income. (See N.J.A.C. 10:71-5.3(a)12 regarding exclusion of certain irregular income.)

Amended by R.1995 d.651, effective December 18, 1995.
See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

10:71-5.3 Income exclusions

(a) Only the following income shall be excluded in the determination of countable income. Income exclusions shall be applied to unearned income first, then to earned income as appropriate. Exclusions shall be applied in the order of their appearance in this section.

1. Monies received as a result of the sale of a resource shall be excluded. These monies shall be treated as a resource (see N.J.A.C. 10:71-4.2 and N.J.A.C. 10:71-4.4(b)8ii).

2. Monies received as a result of the settlement of a casualty insurance claim, if such settlement is intended as compensation for the loss or destruction of a previously excludable resource, shall be excluded (see N.J.A.C. 10:71-4.4(b)8i).

3. Third-party payments for medical care or services, including room and board furnished during medical confinement, shall be excluded.

4. The value of social services (for example, advice, training, consultation) performed by any governmental or private agency shall be excluded.

5. The value of food stamps shall be excluded.

6. All loans which are actually repayable shall be excluded.

i. Regular contributions to an individual by his or her family, which are made over an extended period of time and which would be impossible to repay given the individual's current and/or future financial status, shall not be considered loans. Contributions of this nature shall be treated as income in accordance with N.J.A.C. 10:71-5.2.

7. Benefits received under the following Federal programs shall be exempt:

i. The value of benefits received under the Federal WIC program shall be exempt.

ii. The value of meals provided under the National School Lunch Act shall be exempt.

iii. Training incentive payments made under the Comprehensive Employment Training Act (CETA) of 1973 shall be exempt.

iv. Payments received under Title II of the Uniform Relocation and Real Property Acquisition Policies Act of 1970 shall be exempt.

v. Payments received for services performed in connection with the Domestic Volunteer Service Act of 1973 shall be exempt. Such programs include the Foster Grandparents Program, Older Americans Community Service Program, the Retired Senior Volunteer Program (RSVP), the Service Corps of Retired Executives (SCORE), Volunteers in Service to America (VISTA), the Active Cooperative Volunteer Program (AVP), the Active Corps of Executive (ACE), and other programs which are coordinated by the Federal ACTION agency.

vi. Payments made by the Disaster Assistance Administration shall be exempt.

vii. The value of assistance to children under the Child Nutrition Act of 1966 shall be exempt.

viii. Payments from Home Energy Assistance (HEA) and the Crisis Intervention Program shall be exempt.

ix. Payments received from the Youth Incentive Entitlement Pilot Projects, Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under the Youth Employment and Demonstration Projects Act of 1978 shall be exempt. However, payments from the Adults Conservation Corps under that Act or any other payments under the Comprehensive Employment and Training Act (CETA) of 1973 (with the exception of (a)6iii above) may not be excluded.

x. The amount of the annual cost-of-living increase in Social Security benefits for those individuals who

became ineligible for Supplemental Security Income (SSI) solely as a result of SSA cost-of-living increases after June 30, 1977 shall be exempt. Individuals eligible for this exemption are entitled to an additional exemption of the dollar amount of all SSA cost-of-living increases subsequent to that increase which created their SSI ineligibility.

xi. For certain individuals, the dollar amount of the October 1972, 20 percent cost-of-living increase in Social Security benefits shall be exempt. In order to qualify for this exemption, the individual must have been, for the month of August 1972:

(1) Eligible for or receiving cash assistance under Old Age Assistance, AFDC, Aid to the Blind, or Disability Assistance (including persons who were eligible for such assistance but not receiving such assistance because they had not applied for it or because they were residents in medical or intermediate care facilities); and

(2) Entitled to a monthly insurance benefit under Title II of the Social Security Act (RSDI).

8. That part of the proceeds of a life insurance policy which is used to pay the last illness and burial expenses of the insured shall be excluded.

i. Last illness and burial expenses shall include related hospital, medical, funeral, burial plot, interment expenses, and related costs.

9. Refunds on taxes for food, real property, or income shall be exempt.

10. That portion of a grant, scholarship, or fellowship which is to be used to pay tuition and mandatory fees (as defined by the educational institution) shall be excluded.

Emergency Amendment, R.1992 d.84, effective January 22, 1992, operative January 1, 1992, (expires March 22, 1992).
See: 24 N.J.R. 651(a).

Increase in Medicaid Only eligibility computation amounts at (a)12.

Amended by R.1993 d.402, effective August 16, 1993.

See: 25 N.J.R. 1818(a), 25 N.J.R. 3786(a).

Amended by R.1994 d.428, effective August 15, 1994.

See: 26 N.J.R. 1754(a), 26 N.J.R. 3478(a).

Amended by R.1996 d.46, effective January 16, 1996.

See: 27 N.J.R. 3668(a), 28 N.J.R. 291(a).

In (a)12 imputed income amounts revised upward.

Amended by R.1996 d.466, effective October 7, 1996.

See: 28 N.J.R. 2779(c), 28 N.J.R. 4480(a).

Amended by R.2000 d.415, effective October 16, 2000.

See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

Substituted "beneficiary" for "recipient" throughout; and (a)12, increased dollar amount from \$176.67 to \$190.67 for an individual and \$255.00 to \$276.33 for a couple.

Amended by R.2002 d.124, effective April 15, 2002.

See: 33 N.J.R. 4188(a), 34 N.J.R. 1546(a).

In (a)11, added ", except as follows" at the end of the introductory paragraph and added i.

Amended by R.2004 d.401, effective November 1, 2004.

See: 36 N.J.R. 922(b), 36 N.J.R. 4982(a).

In (a)12, substituted "\$208.00" for "\$190.67" and "\$302.00" for "\$276.33" in the introductory paragraph and added ii.

Amended by R.2006 d.133, effective November 6, 2006.

See: 37 N.J.R. 3774(a), 37 N.J.R. 4505(a), 38 N.J.R. 4712(a).

In (a)12, substituted "\$213.00" for "\$208.00" and "\$309.66" for "\$302.00".

Administrative change.

See: 40 N.J.R. 2276(a).

Administrative change.

See: 41 N.J.R. 2485(a).

Administrative change.

See: 44 N.J.R. 1780(c).

Case Notes

Definition of "available income" for Medicaid eligibility; valid. Estate of G.E. v. Division of Medical Assistance and Health Services, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Pension was "available income" for Medicaid eligibility even though payment ordered to wife. Estate of G.E. v. Division of Medical Assistance and Health Services, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Regulation governing when income is available did not constitute exercise by the state of its authority to adopt less restrictive income standards than federal standards. Estate of G.E. v. Division of Medical Assistance and Health Services, 271 N.J.Super. 229, 638 A.2d 833 (A.D.1994).

Voluntarily waived state pension benefits would be "available income" in evaluating Medicaid eligibility. M.R. v. State Dept. of Human Services, Div. of Medical Assistance and Health Services, 268 N.J.Super. 586, 634 A.2d 143 (A.D.1993).

A Social Security check received by Medicaid recipient, is not a resource for inclusion in program eligibility determination (citing former N.J.A.C. 10:94-4.19 and 4.42). Gilfone v. State, 165 N.J.Super. 186, 397 A.2d 1120 (App.Div.1979).

Applicant was not entitled to Medicaid assistance where she voluntarily reduced her pension income but remained able to rescind the reduction; thus, the original monthly pension benefit of \$556.34 was available to the applicant and was properly counted in the determination of Medicaid eligibility. J.C. v. DMAHS, OAL Dkt. No. HMA 6950-07, 2008 N.J. AGEN LEXIS 39, Initial Decision (January 17, 2008).

Receipt of out of state unemployment insurance benefits precluded recipient from receiving medicaid extension. J.M. v. Cape May County Welfare Agency, 94 N.J.A.R.2d (DEA) 9.

10:71-5.5 Deeming of income

(a) When an applicant/beneficiary is an adult residing in the same household with his or her ineligible spouse or is a child residing in the same household with his or her parent(s) or spouse of the parent, the income of the ineligible spouse or parent(s) is considered in the determination of financial eligibility. The amount included as income to the applicant/beneficiary, whether or not it is actually available, is called deemed income and is computed as described in N.J.A.C. 10:71-5.5(c), (d), (e) and (f).

1. Child: For the purpose of this section, a child is an individual who is not married and is under the age of 18 (see N.J.A.C. 10:71-5.3(a)15i regarding earnings of a child who is a student). Additionally, deeming of parental income to a blind or disabled child ceases when the child reaches age 18.

2. Parent: A parent, for deeming purposes, is a natural or adoptive parent or stepparent living in the same household as an applicant/beneficiary child. However, death or divorce of the natural or adoptive parent terminates deeming responsibility of a stepparent.

(b) Items not included in deeming: In determining the income of an ineligible spouse, parent and/or spouse of a parent, or income of any ineligible children in the household, the following are not included as income:

1. Any assistance based on need and any income considered in the determination of the amount of such assistance;
2. That portion of any grant, scholarship, or fellowship, used to pay the cost of tuitions and fees at an educational institution or costs of vocational technical training designed to prepare the individual for gainful employment;
3. Amounts received for foster care of an ineligible child;
4. The value of food stamps or U.S. Department of Agriculture donated foods (e.g., supplemental food programs);
5. Home produce grown for personal consumption;
6. Refund of taxes paid on income, real property, or food purchased by the family;
7. Such income used to comply with the terms of court-ordered support and support payments pursuant to Title IV-D of the Social Security Act;
8. The value of in-kind support and maintenance furnished to the ineligible spouse, ineligible parent(s) or ineligible spouse of a parent, and ineligible children in the household;
9. Income and benefits received under certain Federal programs described in Section N.J.A.C. 10:71-5.3(a)7;

10. The earned income of an ineligible child who is a student (subject to the limitations of N.J.A.C. 10:71-5.3(a)15, unless the child actually makes the income available to the family);

11. Income necessary for a plan to achieve self-support but only if the spouse's or parental income is actually being used according to the plan to achieve self-support.

(c) Deeming of income from spouse to spouse: If the applicant's/beneficiary's own countable income, as determined in accordance with N.J.A.C. 10:71-5.2, less appropriate exclusions in N.J.A.C. 10:71-5.3, exceeds the applicable Medicaid Only income eligibility standard in Table B at N.J.A.C. 10:71-5.6(c)5, the applicant/beneficiary is financially ineligible for Medicaid Only based on his or her own countable income, and there is no deeming. However, if the applicant's/beneficiary's own countable income renders him or her financially eligible for Medicaid Only, the following steps shall be used to compute deemed income:

1. Step 1: Calculate separately the ineligible spouse's earned and unearned income, less any income excluded in accordance with N.J.A.C. 10:71-5.5(b). Do not combine the two totals.

2. Step 2: Determine the living allowance for each ineligible child not receiving public assistance, by subtracting the child's countable income from the amount of the living allowance for an ineligible child in Table A, Figure 1.

3. Step 3: Subtract the living allowance for each ineligible child, determined in Step 2 above, from the unearned income of the ineligible spouse. Subtract any remaining living allowance from the earned income of the ineligible spouse. For any ineligible child receiving public assistance, no living allowance may be subtracted.

4. Step 4: If the total remaining income (earned plus unearned) of the ineligible spouse is equal to or less than the appropriate remaining income amount in Table A, Figure 2, no income is available for deeming to the applicant/beneficiary. The deeming process stops.

i. Determine the beneficiary's income eligibility for Medicaid Only by comparing his or her own countable income to the appropriate Medicaid Only income eligibility standard in Table B at N.J.A.C. 10:71-5.6(c)5.

5. Step 5: If Step 4 above does not apply, and the ineligible spouse's remaining total income (earned plus unearned) exceeds the appropriate remaining income amount in Table A, Figure 2, the deeming process continues and the applicant/beneficiary and his or her ineligible spouse are treated as a couple. The following deeming steps shall be used to compute the couple's countable income:

i. Add the ineligible individual's remaining unearned income after the deduction of the living allowance for the ineligible child(ren) to all of the beneficiary's unearned income. Determine the value of in-

kind support and maintenance in deeming situations, in accordance with N.J.A.C. 10:71-5.4(a)12.

(1) Do not apply the \$20.00 general income exclusion to the beneficiary individual's income before combining the income.

ii. Add the ineligible individual's remaining earned income after deduction of the living allowance for the ineligible child(ren) to all of the applicant's/beneficiary's earned income.

iii. Treat the two totals of unearned and earned income in the same manner as those of an eligible couple. Apply appropriate income exclusions and compute the couple's countable income as follows:

(1) First, subtract the \$20.00 general income exclusion from the total unearned income. Then, subtract any unused portion of the general income exclusion from the total earned income, if any.

(2) From the remaining earned income, subtract \$65.00 (work expense allowance) and one-half of the remainder of earned income.

(3) Add the remaining earned and unearned income together to arrive at the couple's total countable income.

6. Step 6: If the couple's (applicant/beneficiary and ineligible spouse) remaining countable income is less than the amount in Table A, Figure 3, for the appropriate living arrangement, the applicant/beneficiary is financially eligible for Medicaid Only. If the couple's remaining income is equal to or greater than the amount in Table A, Figure 3, for the appropriate living arrangement, the applicant/beneficiary is financially ineligible for Medicaid Only.

(d) Deeming of income to spouse and child(ren): In situations when an ineligible individual is subject to deeming of his or her income to both an applicant/beneficiary spouse and an applicant/beneficiary child, the following deeming procedures are used:

1. Step 1: Determine the amount of income, if any, to be deemed to the applicant/beneficiary spouse in accordance with the procedures in N.J.A.C. 10:71-5.5(c).

2. Step 2: If, after deeming of income from the ineligible spouse, the adult applicant/beneficiary is financially eligible for Medicaid Only, there is no income available for deeming to the applicant/beneficiary child(ren). The deeming process stops.

3. Step 3: If, in the process of deeming of income to the applicant/beneficiary spouse, such spouse becomes financially ineligible for Medicaid Only, that portion of deemed income that exceeds the eligibility level in Table A, Figure 3, for the appropriate living arrangement for the adult applicant/beneficiary shall be deemed to any child applicant/beneficiary. This income is treated as unearned income to the child.