

## SUBCHAPTER 4. INCOME ELIGIBILITY

**10:70-4.1 Medically Needy Income Levels**

(a) Income eligibility for the Medically Needy Program may be established by two methods. If the countable income of the budget unit (as determined in this subchapter) is equal to or less than the Medically Needy Income Level (MNIL) appropriate for the budget unit size, income eligibility is established and the eligible persons are entitled to Medically Needy Program payment for covered services. For cases in which the countable income of the budget unit exceeds the appropriate MNIL, income eligibility may only be established through medical spend-down (see N.J.A.C. 10:70-6).

1. The monthly MNIL for budget units consisting of two to ten persons shall be based on the AFDC-C and -F allowance standards (as set forth at N.J.A.C. 10:82-1.2(c)). The allowance standard for the eligible unit size corresponding to the budget unit size will be multiplied by 1.333. The result of this computation shall be multiplied by 12 and the result rounded up to the next nearest \$100.00. After rounding, the amount shall be divided by 12. Any cents resulting from this calculation are dropped and the remainder is the monthly MNIL.

2. To establish the monthly MNIL for budget units of more than 12 persons, the calculation in 1. above shall be applied to the AFDC-C and -F increment applicable for each additional person in eligible units of more than 10 persons (see N.J.A.C. 10:82-1.2(c)). The resulting amount for each additional budget unit member shall be added to the monthly MNIL for ten persons.

3. For budget units of one person, the AFDC-C and -F allowance standard for two persons shall be reduced by the increment for each additional person applicable to eligible units of more than ten persons (see N.J.A.C. 10:82-1.2(c)). The result of this computation shall be calculated as in 1. above. The resulting amount is the monthly MNIL for one person.

**10:70-4.2 Eligibility periods**

(a) The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made.

(b) The prospective eligibility period is the six calendar months beginning with the month of application. Once established, the prospective eligibility period will not be changed unless the case becomes ineligible for the Medically Needy Program during the eligibility period. Upon reapplication for the program, a new prospective eligibility period will be established.

1. Except for certain pregnant women, eligibility does not extend beyond the end of the eligibility period. A pregnant woman, who delivers her child near the end of the six-month eligibility period, may be eligible for a

period exceeding six months if her post-partum extended eligibility exceeds the last day of the prospective eligibility period (see N.J.A.C. 10:70-3.4(b)1). In all other cases, continuation of program benefits is contingent upon a redetermination of all factors of eligibility (see N.J.A.C. 10:70-2.5). Any period of eligibility for a pregnant woman which exceeds the prospective eligibility period under the provisions of N.J.A.C. 10:70-3.4(b)1 shall be without regard to income or resources for such additional period of time.

Amended by R.1991 d.331, effective July 1, 1991.  
See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).

Change in continued eligibility for pregnant women and newborns based on amendments to the Social Security Act (42 U.S.C. 1396a).

**10:70-4.3 Computing income for six-month prospective period**

(a) The county welfare agency shall establish the best estimate of income that will be available in the six-month prospective eligibility period.

1. The best estimate of income shall be based on an average of the budget unit's income for the full two-month period prior to the date of application. Adjustments shall be made in the estimated income to reflect changes in income that either have occurred or are reasonably anticipated to occur which would affect countable income for the prospective budget period. Once established, the best estimate of monthly income shall be applied to each of the six months of the budget period. If the income for the full six-month period is less than or equal to the MNIL for the six-month period, eligibility for program benefits has been established. If the income for the period exceeds the six-month MNIL, eligibility for program benefits may be established through the medical spend-down process.

2. Income changes during the six-month eligibility period require an adjustment to the countable income for the month of the income change and a new best estimate of income must be established for the remaining months of the eligibility period if the change in income will continue.

i. For a case not subject to medical spend-down, an increase in countable income for the remaining months of the eligibility period, will result in the establishment of a spend-down liability if the income for those months exceeds the MNIL for the remaining months.

ii. For a case which has been determined eligible pending spend-down, changes in income during the eligibility period require a recomputation of spend-down liability for the eligibility period which may increase or decrease the liability of the budget unit. If a decrease in income is sufficient to reduce the budget unit's income below the six-month MNIL, eligibility is established without a spend-down liability for the remaining months of the eligibility period.

iii. For a case which has met the spend-down liability during the eligibility period, the recomputation of income for the remaining months of the eligibility period will result in the establishment of an additional spend-down liability if the countable income for the remaining months exceeds the MNIL for those months. Eligibility for the months in which the previously computed liability was met will not be retroactively affected by the new liability established for the remaining months of the eligibility period.

#### 10:70-4.4 Computing income for retroactive period

(a) In determining income eligibility for the retroactive eligibility period, countable income actually received in each month of the three-month period shall be compared to the budget unit's monthly MNIL for the same month. If the countable income for a month is less than or equal to the MNIL, eligibility for program benefits for that month has been established. If the income for a month exceeds the MNIL for that month, eligibility for program benefits may be established through the spend-down process (see N.J.A.C. 10:70-6).

#### 10:70-4.5 Countable income: AFDC-related cases

(a) Except as specified below, countable income for AFDC-related cases shall be determined in accordance with regulations applicable to income in the AFDC-C program (see N.J.A.C. 10:82).

1. The maximum income limits as provided for at N.J.A.C. 10:82-1.2(d) do not apply.
2. The \$30.00 and the one-third disregard of earned income at N.J.A.C. 10:82-2.8(a)3 and 10:82-4.4(c) do not apply.
3. The deeming of stepparent income at N.J.A.C. 10:82-2.9(d) does not apply. See N.J.A.C. 10:70-3.5(b)2 regarding inclusion or exclusion of the stepparent from the budget unit.
4. The deeming of income of an alien's sponsor at N.J.A.C. 10:82-3.13 does not apply.

(b) Nonrecurring lump sum income received by an AFDC-related budget unit shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months. The receipt of such income will require a recomputation of income eligibility for the remaining months of the eligibility period.

(c) Any person who received AFDC or Medicaid based on AFDC rules and became ineligible for such assistance because of a period of ineligibility imposed as a result of the provisions of N.J.A.C. 10:82-4.15 shall likewise be ineligible for the Medically Needy Program for the same period as determined in AFDC. Once imposed, the period of ineligibility may only be reduced in accordance with the provisions of N.J.A.C. 10:82-4.15(a)5.

(d) For AFDC-related cases the following persons are legally responsible relatives to members of the AFDC-related eligibility group: parents of a child under the age of 18; parents of a child aged 18 to 21 unless the child is him or herself a parent; and the spouse of any member of the eligibility group. When a legally responsible relative resides in the same household as the member of the eligibility group, income of the legally responsible relative is counted in accordance with the structure of the budget unit and no additional evaluation of the relative is required. When the eligible group member does not reside in the same household as the legally responsible relative, the county welfare agency shall pursue support from such relative in accordance with the provisions of N.J.A.C. 10:82-3.8 et seq.

1. Except when the legally responsible relative resides in the same household as the member of the eligibility group, income of the relative shall be counted only to the extent that the income is actually available.

#### 10:70-4.6 Countable income: SSI-related cases

(a) Except as specified below, countable income for SSI-related cases shall be determined in accordance with regulations applicable to income in Medicaid Only—Aged, Blind, and Disabled (see N.J.A.C. 10:71-5).

1. The disregard of cost-of-living increases in Social Security benefits provided for in N.J.A.C. 10:71-5.3(a)7x and xi do not apply in the Medically Needy Program.
2. The deeming of the income of an alien's sponsor as provided for at N.J.A.C. 10:71-5.7 does not apply.

(b) Nonrecurring lump sum income received by an SSI-related budget unit shall be counted as income in the month received and any portion retained shall be counted as a resource in subsequent months. The receipt of such income will require a recomputation of eligibility for the remaining months of the eligibility period.

(c) In the following circumstances, an SSI-related case will have the value of in-kind support and maintenance counted as unearned income.

1. Any SSI-related adult, who would in accordance with rules at N.J.A.C. 10:71-5.6(c) be determined to be "living in the household of another", shall be considered to have unearned income in the amount specified at N.J.A.C. 10:71-5.4(a)12 less \$20.00. The amount of income so assigned is not rebuttable.
2. Any SSI-related person other than those addressed in (c)1 above, to whom food, clothing, or shelter is given or paid for by someone other than by a spouse, a parent, or a minor child residing in the same household, shall be presumed to receive in-kind support and maintenance. The presumed value of the support and maintenance will be the values specified at N.J.A.C. 10:71-5.4(a)12. The presumed value so assigned may be rebutted in accordance with provisions of that subsection.

(d) In accordance with the rules at N.J.A.C. 10:71-5.5, the income of an ineligible spouse shall be deemed to the eligible spouse when they are residing in the same household. Income of the parent(s) of an SSI-related child under the age of 18 residing in the same household shall be deemed available to the child in the determination of eligibility for Medically Needy benefits. Income shall not be deemed from any person whose income is counted in determining income eligibility for an AFDC-related case which is eligible for the Medically Needy Program.

1. When an ineligible spouse's income must be deemed to both an SSI-related spouse and an SSI-related child, the income of the ineligible spouse is deemed to the SSI-related spouse to the extent that the total income of the SSI-related spouse equals the MNIL for two persons. The excess income of the ineligible spouse is deemed to the SSI-related child. The eligibility of the SSI-related child is based on a budget unit of one person. Allowable incurred medical expenses of the ineligible spouse shall be applied to the spend-down liability, if any, of the SSI-related child.

2. When parental income must be deemed to more than one SSI-related child, income shall be deemed in accordance with the following model based on two SSI-related children. Income to child A is deemed to the extent that the child's total income equals the MNIL for a budget unit of one person. The remaining deemed income shall be deemed to child B. Child A's eligibility will be based on a budget unit of one person (with no spend-down liability) and child B's eligibility will be based on a budget unit of one and the allowable incurred medical expenses of the parents applied to child B's spend-down liability if any. For additional SSI-related children, deeming of income would be to the MNIL for one person for each additional child.

Amended by R.1991 d.331, effective July 1, 1991.  
See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).  
Internal N.J.A.C. cites changed.

**SUBCHAPTER 5. RESOURCE ELIGIBILITY**

**10:70-5.1 Resource eligibility limits**

(a) Eligibility for the Medically Needy Program does not exist for any month in which the total value of a budget unit's countable resources exceeds the limits below:

Budget Unit Size	1	2	3	4	5	Each Additional
Before 1/1/87	\$3,400	\$5,100	\$5,200	\$5,300	\$5,400	\$100
1/1/87-12/31/87	3,600	5,400	5,500	5,600	5,700	100
1/1/88-12/31/88	3,800	5,700	5,800	5,900	6,000	100
1/1/89 and after	4,000	6,000	6,100	6,200	6,300	100

**10:70-5.2 AFDC-related cases**

For AFDC-related cases, the resource provisions of AFDC (see N.J.A.C. 10:82) apply in determining countable resources.

1. AFDC provisions requiring the deeming of the resources of an alien's sponsor do not apply in the determination of resource eligibility for the Medically Needy Program.
2. AFDC provisions allowing the establishment of eligibility pending the liquidation of nonexempt resources (N.J.A.C. 10:82-3.6) do not apply in the determination of resource eligibility for the Medically Needy Program. All nonexempt property shall be counted in the determination of resource eligibility.

**10:70-5.3 SSI-related cases**

(a) For SSI-related cases, the resource provisions of the Medicaid Only (Aged, Blind, and Disabled) program shall apply in determining countable resources for the Medically Needy Program.

1. Medicaid Only provisions requiring the deeming of the resources of an alien's sponsor (N.J.A.C. 10:71-4.6(f)) do not apply in the Medically Needy Program.

(b) The provisions relating to deeming of resources found at N.J.A.C. 10:71-4.6 apply in SSI-related cases. In the deeming of resources from one parent to a child, the countable parental resource in excess of the Medicaid Only resource limit for an individual shall be deemed to the child. When the resources of two parents must be deemed to the child, countable parental resources in excess of the Medicaid Only resource limit for a couple shall be deemed to the child.

Amended by R.1991 d.331, effective July 1, 1991.  
See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).  
Internal N.J.A.C. cites changed.

**10:70-5.4 Transfer of resources**

(a) For AFDC-related cases, the AFDC policy regarding the transfer of resources to qualify for benefits (N.J.A.C. 10:81-3.38(c)) shall apply to all members of the budget unit.

(b) For SSI-related cases, the Medicaid Only Program policy regarding the transfer of resources (N.J.A.C. 10:71-4.7) shall apply to all members of the budget unit.

Amended by R.1991 d.331, effective July 1, 1991.  
See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).  
Internal N.J.A.C. cite changed.

**SUBCHAPTER 6. MEDICAL SPEND-DOWN**

**10:70-6.1 Eligibility under medical spend-down**

(a) Persons who are eligible in all respects for the Medically Needy Program, except that the countable income of

the budget unit as determined in subchapter 4 exceeds the medically needy income level, may establish eligibility for payment of covered services benefits through medical spend-down.

1. Medical spend-down is a process whereby the excess countable income of a budget unit is offset by the allowable incurred medical expenses of the budget unit.

2. Spend-down liability is the amount by which the countable income of the budget unit exceeds the medically needy income level as determined under the provisions of this subchapter.

(b) The retroactive eligibility period is the three calendar months immediately preceding the month in which application for benefits is made. For each of the three months, a monthly spend-down liability is established. The monthly spend-down liability shall be the amount by which actual countable income of the budget unit for that month exceeds the medically needy income level for that month.

1. Within the retroactive eligibility period, income eligibility is established for any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability established for that month.

2. Eligibility for payment of covered services is established effective with the first day of each or any month in which the allowable incurred medical expenses of the budget unit exceed the spend-down liability only for those claims for services that are not covered under the Medically Needy Program and were not used to meet spend-down liability. (Note: The effective date to be entered in the Medicaid Status File is the day after the day that spend-down liability is met.)

(c) Except for retroactive eligibility, income eligibility for the Medically Needy Program is determined using a six-month prospective eligibility period. The six-month period begins with the month in which application for benefits is made. For the full six-month period, a six-month spend-down liability is established. The six-month spend-down liability shall be the amount by which the countable income of the budget unit, as determined at N.J.A.C. 10:70-4.2, exceeds the budget unit's medically needy income level for the full six-month period.

1. Eligibility for medically needy benefits is established effective with the first day of the month in which the allowable incurred medical expenses of the budget unit exceed the six-month spend-down liability only for those claims for services that are covered under the Medically Needy Program and were not used to meet spend-down liability. (Note: The effective date to be entered on the Medicaid Status File is the day after the day spend-down liability is met.)

2. Changes in the countable income of the budget unit and/or the size of the budget unit during the six-month prospective period require a recalculation of the six-month spend-down liability.

3. In order to receive program benefits, upon meeting the spend-down liability, all other factors of program eligibility must also be met.

#### 10:70-6.2 Allowable incurred medical expenses

(a) Allowable incurred medical expenses which may be applied against spend-down liability are those which are:

1. Incurred by a member of the budget unit and for which a member of the budget unit has an express obligation for payment;

2. For necessary medical or remedial services recognized under state law, provided, prescribed, or recommended by a qualified and appropriately licensed medical practitioner; and

3. Submitted with sufficiently detailed information and documentation to determine the allowableness of the expense. Minimum necessary information includes: the date of the service, name of the provider, the nature of the service, the name of the individual to whom the service was provided, and the total amount of the bill, as well as the remaining balance outstanding.

(b) Medical expenses which have been paid in full prior to the retroactive budget period, shall not be applied against spend-down liability. However, medical expenses paid by a member of the budget unit during an eligibility period may be used in meeting spend-down liability so long as the expense met the criteria specified in (a) above.

(c) The county welfare agency shall refer the submission of expenses for questionable medical services to designated staff of the Division of Medical Assistance and Health Services for a determination of allowableness.

(d) To the extent that payment of any bill for medical service is the responsibility of a third party (for example, a health insurer), the expense shall not be applied against spend-down liability. An exception would be made for any medical expense paid by a State or territory, or a subdivision of a State or territory (except for a Medicaid program), if the program is financed by a State or territory.

(e) Any bill for medical services rendered more than six months prior to the bill's submission to the county welfare agency for application against spend-down liability must be accompanied by a statement from the provider that the expense remains an express obligation of a member of the budget unit and has not been forgiven by the provider or otherwise determined uncollectible.

Amended by R.1991 d.331, effective July 1, 1991.  
See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).

Modification of spend-down requirement at (d) based on federal Department of Health and Human Services, (HCFA) in the State Medicaid Manual, Part 3—Eligibility, Transmittal 48, Nov. 1990.

**10:70-6.3 Application of medical expenses toward spend-down**

(a) In determining eligibility under medical spend-down, expenses are applied in the following order against the spend-down liability:

1. Medicare and other health insurance premiums, deductibles, or coinsurance charges incurred by a member of the budget unit;
2. Expenses incurred by the members of the budget unit for allowable medical expenses for services not covered under the Medically Needy Program (including covered services provided to members of the budget unit who are not members of a medically needy eligibility category);
3. Expenses incurred by budget unit members, who are also members of a medically needy eligibility category, for services covered by the Medically Needy Program.

(b) Health insurance premiums billed less often than monthly, shall be averaged over the period of coverage that the premium is intended to purchase and applied incrementally against spend-down liability. The client is required to report to the county welfare agency the cancellation of any such insurance.

(c) If a member of a budget unit has arranged to make monthly payments toward a previously incurred medical expense thereby modifying the terms of the liability for the expense, the amount of the monthly obligation rather than the outstanding balance shall be applied against spend-down liability.

(d) Any medical expenses may be applied against spend-down liability only once. However, incurred medical expenses in excess of those required to meet the spend-down liability for a budget period (which have not been applied against spend-down liability), may be applied against spend-down liability in future budget period so long as a member of the budget unit continues to have an express obligation for payment of the expense.

1. If, in any eligibility period, the budget unit does not meet its spend-down liability, the incurred medical expenses that were compared to that spend-down liability are not considered to have been used in meeting spend-down liability. Any such expenses may be applied to subsequent eligibility periods so long as the expenses remain allowable in accordance with N.J.A.C. 10:70-6.2.

(e) In certain circumstances, it may be beneficial to program applicants or recipients to delay the application of incurred medical expenses against spend-down liability. For example: An individual has sufficient incurred medical expenses to establish eligibility under medical spend-down in

each of the three months of the retroactive eligibility period. However, during that period, he has no or few incurred expenses for services covered under the Medically Needy Program. The individual may elect to forego eligibility for the months of retroactive coverage and apply the incurred medical expenses against spend-down liability for the prospective eligibility period. In any such circumstances, the county welfare agency shall fully explain the options available and the ramifications thereto.

**SUBCHAPTER 7. OTHER ADMINISTRATIVE REQUIREMENTS**

**10:70-7.1 Notice of county welfare agency decision**

(a) The county welfare agency shall promptly notify any applicant for, or recipient of, the Medically Needy Program in writing of any agency decision affecting the applicant or recipient. When a decision relates to any adverse action which may entitle a recipient to a fair hearing, the action may not be implemented until at least ten days after the mailing of the notice (see (f) of this section for exceptions to the ten-day notice).

1. For notices of action adverse to a recipient, the date of mailing of the notice must appear on the notice.
2. Notices of any county welfare agency action must contain the name, address, and telephone number of the legal services agency serving that county.
3. In the case of an applicant or recipient who cannot be located, the notice shall be mailed to his or her last known address.

(b) All notices of agency decision shall state in clear and simple language, the nature of the agency decision and an accurate factual and legal basis for the decision.

1. All notices of agency decision shall include an explanation of the right to a fair hearing.
2. Notices of agency decisions adverse to the applicant or recipient shall include the citation and title of the regulations upon which the agency decision is based.

(c) For cases which are determined eligible pending spend-down, the notice shall include a statement of the amount of spend-down liability and shall advise the applicant to notify the county welfare agency when that liability is met. The notice shall also advise that the established spend-down liability is subject to a change based on changes in countable income or budget unit size or composition. Further, the notice must specify that eligibility under medical spend-down is contingent on all other factors of eligibility being met at the time that the spend-down liability is met.

(d) All notices of denial or termination shall include an explicit statement of the reason for program ineligibility and

(except in the case of the death of an applicant or recipient) advise of the right to reapply whenever the applicant or recipient believes that circumstances have changed such that the reason for program ineligibility no longer exists.

(e) When the processing of an application will be delayed beyond the standards for disposition of an application as set forth in N.J.A.C. 10:70-2.1(d), notice shall be mailed prior to the expiration of the disposition period notifying the applicant of the delay and the reasons for it.

(f) The ten-day notice requirement for actions adverse to a program recipient need not be adhered to when:

1. The county welfare agency has factual information confirming the death of a recipient;
2. The county welfare agency receives a clear written statement, signed by a recipient, that he or she no longer wishes to receive program benefits, or which gives information indicating a change in circumstances which requires a termination or reduction in benefits, and the recipient has indicated in writing, that he or she understands that this must be the consequence of supplying such information;
3. The recipient's whereabouts are unknown and agency mail directed to him or her has been returned by the post office indicating no forwarding address;
4. The recipient has been accepted for public or medical assistance in another state and that fact has been established by the county welfare agency; or
5. A recipient child has been removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his or her legal guardian.

#### 10:70-7.2 Fair hearings

(a) It is the right of every applicant for or recipient of the Medically Needy Program to be afforded the opportunity for a fair hearing in the manner set forth in N.J.A.C. 10:49-5, including when applicable, continuation of program benefits pending the results of the fair hearing.

(b) Any request for a fair hearing shall be forwarded to the Division of Medical Assistance and Health Services, CN 712, Trenton, New Jersey 08625.

#### 10:70-7.3 Case records

(a) The purpose of the case record is to provide a complete documentary record of county welfare agency decisions and actions and the reasons thereto.

(b) The case record shall include:

1. A record of all county welfare agency actions and decisions relating to the case, as well as, documentary evidence relating to such actions and decisions, including application forms;
2. All medical reports and a record of action of the Disability Review Section as appropriate;
3. All forms relating to financial eligibility including, when appropriate, spend-down liability; and
4. All case-related correspondence, memorandum, and documents except those required by law or regulation to be maintained elsewhere.

(c) No case record, or part thereof, shall be removed from its file location without a record identifying the person who has custody of it.

(d) No case record, or part thereof, shall be removed from the county welfare agency offices except upon the specific authorization of the agency director, deputy director, or other person specifically designated by the agency director to authorize such removal.

(e) All case records shall be filed in a secure and fire-resistant location.

Amended by R.1991 d.331, effective July 1, 1991.

See: 23 N.J.R. 964(a), 23 N.J.R. 2042(a).

In (b)2, "Medical Review Team" changed to "Disability Review Section."