

Presumption of transfer of assets for less than fair market value in order to establish applicant's Medicaid eligibility was not rebutted. *S.G. v. Division of Medical Assistance*, 95 N.J.A.R.2d (DMA) 33.

Transfer by applicant of his interest in a mortgage within 24 months of application did not preclude his eligibility for Medicaid benefits. *A.R. v. Passaic County*, 95 N.J.A.R.2d (DMA) 21.

Securities transferred by recipient were not a resource for Medicaid eligibility when solely for purpose of repaying a loan. *W.B. v. Dmahs & Atlantic County*, 95 N.J.A.R.2d (DMA) 17.

Transfer of a resource, a mortgage, held on a condominium for less than fair market value operated to render applicant ineligible for Medicaid benefits. *C.M. v. Division of Medical Assistance*, 95 N.J.A.R.2d (DMA) 14.

Transfer of securities was not a countable resource in determining Medicaid eligibility. *Applewood Estates v. Division of Medical Assistance*, 95 N.J.A.R.2d (DMA) 1.

Institutional level services Medicaid eligibility; penalty period of 30 months; couple sold house to children at less than fair market value. *G.A. v. Ocean County Board of Social Services*, 94 N.J.A.R.2d (DMA) 45.

Trust was Medicaid qualifying trust, and application for Medicaid was properly denied. *C.C. v. Bergen County Board of Social Services*, 94 N.J.A.R.2d (INS) 31.

Presumption that transfer of home was made solely to qualify for Medicaid rebutted. *A.W. v. Morris County Board of Social Services*, 94 N.J.A.R.2d (DMA) 22.

There was failure to rebut presumption that marital assets were transferred for less than fair market value in order to contravene eligibility guidelines. *S.G. v. Union County Division of Social Services*, 94 N.J.A.R.2d (DMA) 13.

Medicaid eligibility denied; presumption that property was transferred to establish eligibility. *M.C. v. DMAHS*, 94 N.J.A.R.2d (DMA) 1.

Transfer of property to children preserving life estate was prohibited transfer of resources. *C.D. v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 91.

Reduction in alimony pursuant to consent order was transfer of resources. *B.S. v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (DMA) 35.

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.

Presumption that transfer of three-family building was for purpose other than to establish Medicaid eligibility was not rebutted. *E.B. v. Hudson County Board of Social Services*, 92 N.J.A.R.2d (DMA) 13.

Penalty period for transfer of resources governed by regulations in effect on date of transfer. *H.P. v. Division of Medical Assistance and Health Services*, 92 N.J.A.R.2d (DMA) 7.

10:71-4.8 Institutional eligibility; resources of a couple

(a) In the determination of resource eligibility for an individual requiring long term care, the county welfare agency shall establish the combined countable resources of a couple as of the first period of continuous institutionalization beginning on or after September 30, 1989. This determination shall be made upon a request for a resource assessment in accordance with N.J.A.C. 10:71-4.9 or at the time of application for Medicaid benefits. The total countable resources of the couple shall include all resources owned by either member of the couple individually or together. The CWA shall establish a share of the resources to be

attributed to the community spouse in accordance with this section. (No community spouse's share of resources may be established if the institutionalized individual's current continuous period of institutionalization began at any time before September 30, 1989.)

1. The community spouse's share of the couple's combined countable resources is based on the couple's countable resources as of the first moment of the first day of the month of the current period of institutionalization beginning on or after September 30, 1989 and shall not exceed \$76,740 unless authorized in (a)4 or 5 below. The community spouse's share of the couple's resources shall be the greater of:

- i. \$15,348; or
- ii. One half of the couple's combined countable resources.

2. In determining the resource eligibility of the institutionalized spouse, the community spouse's share of the resources is subtracted from couple's total combined resources as of the first moment of the first day of the month of application for Medicaid. If the remaining resources are less than or equal to \$2,000, the institutionalized spouse is resource eligible. If the remaining resources exceed \$2,000, eligibility may not be established.

- i. In the case of an individual whose eligibility for institutional care is determined in accordance with the rules applicable for New Jersey Care (see N.J.A.C. 10:72 et seq.), resource eligibility will exist when the couple's combined resources, less the community spouse's share of the resources, are equal to or less than \$4,000.

3. To the extent that the community spouse's share of the combined resources are not already owned by the community spouse, the ownership of the community spouse's share of the resources must be transferred to the community spouse within 90 days of a determination of eligibility for institutional Medicaid services. The CWA may extend the transfer period if individual circumstances warrant a longer period to affect the transfer. Resources not transferred by the end of the 90-day period (or extension) shall be counted in the determination of eligibility for the institutionalized individual.

- i. Eligibility for the institutionalized individual shall be established pending the actual transfer of the resources if he or she attests, in writing, that he or she intends to transfer the community spouse's share of the resources to the community spouse.

4. If a court of competent jurisdiction has ordered that resources be transferred to the community spouse in an amount higher than that authorized in (a)1 above, the higher court-ordered amount shall be recognized as the community spouse's share. Any resource transferred under such a court order shall not be subject to the resource transfer penalty described at N.J.A.C. 10:71-4.7.

5. If, in accordance with N.J.A.C. 10:71-5.7(d), additional resources have been authorized to be set aside for the community spouse in order to provide for a sufficient income maintenance level, such additional resources are not subject to the limitation in this section on the community spouse's share of the couple's combined resources. Any resource transferred to the community spouse under this provision shall not be subject to the resource transfer provision described at N.J.A.C. 10:71-4.7.

6. For purposes of this section, an institutionalized individual does not include any individual who is not likely to remain in a Title XIX facility for a period of 30 consecutive days. If a physician has not certified that the individual's stay in the facility is expected to be a period of 30 or more consecutive days, that individual's Medicaid eligibility will be determined as if he or she continued to reside in the community until he or she has been in a Title XIX facility (or a combination of Title XIX facilities) for a period of 30 consecutive days.

7. For purposes of this section, a continuous period of institutionalization means 30 consecutive days of institutional care in a medical institution, and/or Medicaid funded home and community-based waiver services. Continuity is broken by absences from the institution for 30 consecutive days or the non-receipt of home or community based services for 30 consecutive days.

8. For purposes of determining the community spouse's share of the couple's resources only, countable resources of a couple shall include all resources not subject to exclusion under N.J.A.C. 10:71-4.4, except that one automobile shall be excluded without regard to the dollar limits set forth at N.J.A.C. 10:71-4.4(b)2 and personal effects and household goods shall be excluded without regard to the dollar limits set forth at N.J.A.C. 10:71-4.4(b)3.

9. In determining retroactive eligibility (the three-month period immediately preceding the month of application) based on the first Medicaid application in a continuous period of institutionalization, the community spouse's share of the resources shall be deducted from the couple's combined total resources. If the institutionalized individual subsequently files another Medicaid application for the same continuous period of institutionalization, retroactive eligibility will be based on all resources actually owned by the institutionalized individual.

New Rule, R.1991 d.32, effective January 22, 1991.

See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).

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).

Resource eligibility revised upward.

Adopted concurrent amendment, R.1992 d.191, effective April 20, 1992.

See: 24 N.J.R. 651(a), 24 N.J.R. 1498(b).

Provisions of emergency amendment, R.1992 d.84, readopted without change.

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)1 and (a)1i resource eligibility 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).

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).

Individual Retirement account (IRA) in husband's name is includable resource for purposes of determining a wife's Medicaid eligibility when wife enters a nursing home but husband remains in the community, despite claim that the "no more restrictive" provision excluding IRAs from supplemental security income (SSI) eligibility determinations controlled; the "no more restrictive" provision was superseded by Medicare Catastrophic Coverage Act of 1988 (MCCA). *Mistrick v. Division of Medical Assistance & Health Services*, 154 N.J. 158, 712 A.2d 188 (N.J. 1998).

Spouse's IRA must be included in calculation of institutionalized spouse's available resources for Medicaid eligibility determination. *S.M. v. Division of Medical Assistance and Health Services and Passaic County Board of Social Services*, 96 N.J.A.R.2d (DMA) 37.

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.

10:71-4.9 Resource assessment

(a) At the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989), the institutionalized spouse or the community spouse (or a representative of either spouse) may request an assessment of the couple's total countable resources. The purpose of the assessment is to establish the community spouse's share of the couple's total countable resources (see N.J.A.C. 10:71-4.8(a)).

(b) The county welfare agency shall, upon a request for a resource assessment, advise the requesting parties of the documentation and verification necessary to make the assessment. When the necessary documentation and verification is not submitted to the county welfare agency in a timely manner, the requesting parties shall be advised that the resource assessment cannot be completed. Upon receipt of all relevant documentation of resources from the couple the county welfare agency shall establish the total countable resources of the couple. The county welfare agency shall notify both members of the couple of the total value assigned to their combined countable resources and the community spouse's share of those resources. A copy of the notice shall be retained at the county welfare agency.

1. The county shall complete the resource assessment and notify the requesting parties of its results within 45 calendar days of the request unless third party verification has not been received by the county welfare agency or the requesting parties request a delay.

(c) At the time of providing the couple with a copy of the resource assessment, the county welfare agency shall advise the couple that there is no immediate right to a fair hearing on the county's resource assessment, but that there will be an opportunity to appeal the findings of the assessment when and if the institutionalized spouse applies for Medicaid.

New Rule, R.1991 d.32, effective January 22, 1991.
See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).

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/she can apply, either directly or by sale or conversion, to meet his/her basic needs for food, shelter, or clothing. 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).

Law Review and Journal Commentaries

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