

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).

In (a), substituted "board of social services" for "welfare agency" in the introductory paragraph, substituted "\$84,120" for "\$76,740" in the introductory paragraph of 1, substituted "\$16,824" for "\$15,348" in 1i, and substituted "CBOSS" for "CWA" throughout.
 Amended by R.2001 d.199, effective June 18, 2001.
 See: 32 N.J.R. 2021(a), 33 N.J.R. 2195(a).

In (a), rewrote the third and fourth sentences of the introductory paragraph, substituted "\$84,120, as indexed annually in accordance with 42 U.S.C. § 1396r-5(g) and published as a notice in the New Jersey Register, and" for "\$74,740" in 1, and rewrote 1i.
 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)1, substituted "\$92,760" for "\$84,120" in the introductory paragraph, and substituted "\$18,552" for "\$16,824" in i.
 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)1, substituted "\$95,100" for "\$92,760"; and in (a)1i, substituted "\$19,020" for "\$18,552".
 Public Notice: Notice of Increase in the Community Spouse's Share of a Couple's Combined Countable Resources.
 See: 39 N.J.R. 705(b).

Case Notes

Medicaid eligibility when one spouse is institutionalized and the other is living in the community is determined by reference to total assets owned by the couple at time of application, and amount of exempt assets attributable to community spouse that was previously established at time of institutionalization, plus \$2,000 of assets attributable to institutionalized spouse, constitute the asset cap that cannot be exceeded at the time of application, unless that cap was increased to reflect a rise in the consumer price index. *A.K. v. Div. of Med. Assistance*, 350 N.J.Super. 175, 794 A.2d 835.

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 board of social services 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 board of social services 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 board of social services shall establish the total countable resources of the couple. The county board of social services 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 board of social services.

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 board of social services or the requesting parties request a delay.

(c) At the time of providing the couple with a copy of the resource assessment, the county board of social services 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).
 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) and (c), substituted "board of social services" for "welfare agency" throughout.

10:71-4.10 Transfer of assets

(a) The provisions of this section shall apply, effective June 18, 2001, only to persons who are receiving an institutional level of services, including individuals who are receiving services under a 42 U.S.C. § 1915(c) home and community care waiver under Medicaid, or who are seeking that level of service, and who have transferred assets on or after August 11, 1993. An individual shall be ineligible for institutional level services through the Medicaid program if he or she (or his or her spouse) has disposed of assets at less than fair market value at any time during or after the 36 month period, or the 60 month period in the case of a transfer to a trust, immediately before:

1. In the case of an individual who is already eligible for Medicaid benefits, the date the individual becomes an institutionalized individual; or

2. In the case of an individual not already eligible for Medicaid benefits, the date the individual applies for Medicaid as an institutionalized individual.

(b) The following definitions shall apply to the transfer of assets:

1. Individual means:
 - i. The individual him or herself who is applying for benefits;
 - ii. The individual's spouse;
 - iii. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse;
 - iv. Any person including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
2. An institutionalized individual, for the purposes of this chapter, is a person who is receiving care in a Medicaid certified nursing facility, intermediate care facility for the mentally retarded (ICFMR), or a licensed special hospital (Class C) or Title XIX psychiatric hospital (if under the age of 21 or age 65 and over). For purposes of this chapter, an institutionalized individual shall also include a person seeking benefits under a home or community care waiver program. An institutionalized individual shall not include a person who is receiving care in an acute care general hospital.
3. Assets shall include all income and resources of the individual and of the individual's spouse. Assets shall also include income and resources which the individual or the individual's spouse is entitled to but does not receive because of action or inaction by the individual or the individual's spouse; or by any person, including a court or administrative body with the legal authority to act in place of or on behalf of the individual or the individual's spouse; or any person, including a court or administrative body, acting at the direction of or upon the request of the individual or the individual's spouse. Examples of actions that would cause income or resources not to be received shall include, but shall not be limited to:
 - i. Irrevocably waiving pension income;
 - ii. Waiving the right to receive an inheritance, including spousal elective share pursuant to N.J.S.A. 3B:8-10;
 - iii. Not accepting or accessing injury settlements;
 - iv. Tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of an individual who is a plaintiff; and
 - v. Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony.

4. Resources, for the purpose of asset transfer, shall include all resources, both included and excluded, in accordance with the provisions of this chapter. For example, the transfer of a home, even if it is serving as the individual's principal place of residence, shall be subject to the transfer of assets provisions.

5. Income, for the purposes of this section, shall have the same definition as found in N.J.A.C. 10:71-5. In determining whether a transfer of assets involves countable income, the income disregards in N.J.A.C. 10:71-5 shall be applied.

6. Fair-market value shall be an estimate of the value of an asset, based on generally available market information, if sold at the prevailing price at the time it was actually transferred. Value shall be based on the criteria for evaluating assets as found in N.J.A.C. 10:71-4.1(d).

- i. In determining whether or not an asset was transferred for fair-market value, only tangible compensation, with intrinsic value shall be considered. For example, a transfer for "love and affection" shall not be considered a transfer for fair market value.

- ii. In regard to transfers intended to compensate a friend or relative for care or services provided in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation. In regard to transfers allegedly intended to compensate a friend or a relative for care or services that were provided in the past, care and services provided for free at the time they were delivered shall be presumed to have been intended to be delivered without compensation. Thus, a transfer of assets to a friend or relative for the alleged purpose of compensating for care or services provided free in the past shall be presumed to have been transferred for no compensation. This presumption may be rebutted by the presentation of credible documentary evidence preexisting the delivery of the care or services indicating the type and terms of compensation. Further, the amount of compensation or the fair market value of the transferred asset shall not be greater than the prevailing rates for similar care or services in the community. That portion of compensation in excess of the prevailing rate shall be considered to be uncompensated value.

- iii. Under a life estate, an individual who owns property transfers the ownership of that property to another individual, while retaining for the rest of his or her life, or the life of another person, certain rights to that property. A life estate entitles the owner of the life estate to possess, use, and obtain profits from the property as long as he or she lives, although actual ownership of the property has passed to another individual. In a transaction involving a life estate, a transfer of assets is involved. In determining whether a penalty shall be assessed in the case of a transfer involving a life estate, the value of the asset transferred and the value of the life estate shall be

14. One-third of the amount received as child support from an absent parent shall be excluded.

15. Income received as compensation for services performed as an employee, or from self-employment, by an unmarried student who is under 22 years of age, shall be excluded to the extent that such income does not exceed \$1,200 in a calendar quarter and/or \$1,620 per calendar year.

i. A person shall be considered a student if he or she meets the following criteria:

(1) He or she is enrolled in a course or courses of study and attends to the extent required for continued enrollment. Specifically, a person must attend:

(A) A college or university at least eight semester or quarter hours weekly; or

(B) A secondary school at least 12 clock hours weekly; or

(C) A course of vocational or technical training (other than at a secondary school, college, or university) designed to prepare the student for gainful employment involving shop practice, at least 15 clock hours a week; or without shop practice, at least 12 clock hours per week; or

(D) Less than the appropriate requirements in (a)15i(1)(A), (B), and (C) above, if it is determined that there are extenuating circumstances beyond the control of the student and he/she is pursuing a course of study comparable to the requirements of (a)15i(1)(A), (B), and (C) above.

(2) A student shall be considered in regular attendance if he or she is engaged in home study provided by a secondary school, college, university, or governmental agency, and a home visitor or tutor supervises the study or training. For purposes of this section, government-sponsored courses in the various self-improvement and anti-poverty programs are considered to be for the purposes of preparing the student for gainful employment.

(3) A student shall be considered in regular attendance during normal vacation periods if he or she is in regular attendance in the month immediately preceding and immediately following the vacation period.

(4) A student shall be considered to be in regular attendance for the month in which he or she completes or discontinues his or her school or training program.

16. Benefits provided under the State's Lifeline Utility Credit Program shall be excluded.

17. Interest on or appreciation in value of burial funds excluded from consideration as resources at N.J.A.C. 10:71-4.4(b)9 shall be excluded from income.

18. The first \$20.00 per month of income, other than income received as a VA pension based upon need, shall be excluded. This exclusion shall be applied first to unearned income, and any remaining amount of exclusion then applied to earned income. In the determination of countable income of a couple, this \$20.00 exclusion is applied to the combined income of both.

19. Earned income, in the amount of \$65.00 per month plus one-half of the remaining sum, shall be excluded. In the determination of countable income of a couple, this exclusion applies to the combined earned income of both.

20. In the case of blind persons only, all expenses reasonably attributable to the earning of income shall be excluded.

21. In the case of blind or otherwise disabled persons, the amount of money which is needed to achieve an approved plan of self-support shall be excluded.

i. In order for this exclusion to apply, the plan of support must have been approved, in writing, by the Division of Vocational and Rehabilitation Services or the Commission for the Blind and Visually Impaired. The plan must also be current.

As amended, R.1983 d.167, effective June 6, 1983.

See: 15 N.J.R. 422(a), 15 N.J.R. 925(a).

17. Interest on burial funds added, 17-20 renumbered 18-21.

Amended by R.1995 d.651, effective December 18, 1995.

See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

Law Review and Journal Commentaries

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

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).

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.

Receipt of worker's compensation benefits causing loss of AFDC eligibility did not entitle recipient to 12-month extension of Medicaid eligibility. C.S. v. Morris County Board of Social Services, 94 N.J.A.R.2d (DEA) 1.

Countable income reduced by child support. R.M. v. Division of Medical Assistance and Health Services, 93 N.J.A.R.2d (DMA) 41.

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1. Wages, salaries, tips, and commissions: Any and all compensation for services performed as an employee shall be included as earned income.

2. Income from self-employment: Net adjusted income from self-employment shall be included as earned income.

i. Determination of net adjusted income from self-employment: In the determination of net adjusted income, IRS rules shall apply.

(1) Individual business: Net adjusted income shall be the amount of gross income, less all allowable deductions attributable to the trade or business.

(2) Partnership: Net adjusted income shall be the individual's distributive share of the trade or business in which he/she is a partner.

ii. Annualization of income: If income from self-employment is received on other than a monthly basis, such income shall be averaged over the most recently ended taxable year in order to determine the average monthly or quarterly income to the individual, with the following exceptions:

(1) Seasonal self-employment: An individual whose income from seasonal self-employment is supplemented by income from employment and/or other sources during the balance of the year shall not have his/her self-employment income annualized. Income from self-employment shall be averaged only over the period in which it is intended to cover.

3. Annuities, pensions, and other benefits: Payments received in an annuity, pension, retirement or disability benefits, workers or unemployment compensation, veteran's Social Security (gross income), or strike benefits shall be included as unearned income.

i. Social security income: SSA gross income shall be defined as the actual amount of the check, plus any premium deduction made under the Supplemental Medical Insurance Program (SMI on Part B Medicare).

4. Educational grants and loans: Scholarships, educational grants, fellowships, and veteran's educational benefits shall be included as unearned income, except as provided in N.J.A.C. 10:71-5.3(a)10.

5. Support, alimony, and inheritances: Support, alimony, and inheritances, in the amounts actually received, shall be included as unearned income except as provided in N.J.A.C. 10:71-5.3(a)14.

6. Vendor payments: Cash payments, except those for medical costs, which are made on behalf of the individual

by an organization or other third party shall be included as unearned income.

7. Proceeds of life insurance policies: Payments made as the result of the settlement of a life insurance policy claim shall be included as unearned income except as provided in N.J.A.C. 10:71-5.3(a)8.

8. Prizes, gifts, and awards: Cash or in-kind payments which are received as prizes, gifts, or awards shall be included as unearned income. (Occasional gifts, such as Christmas presents, with a value of \$20.00 or less, are excluded.)

i. Gift defined: A gift shall be defined as any payment which is neither given as compensation for services or other consideration, nor as satisfaction of any legal obligation to the beneficiary of the gift.

ii. Value of in-kind prizes, gifts, or awards: The value of an in-kind prize, gift, or award shall be its cash value.

9. Dividends, interest royalties: Dividends, interest, and royalties shall be included as unearned income.

10. Rental income and income from roomer-boarder: The amount remaining, after all the costs (except depreciation costs) of producing the income have been deducted, shall be included as unearned income.

11. Lump-sum payments: A lump-sum payment shall be included as income (either earned or unearned, as appropriate) either in the month in which it is received or prorated over three months when the payment exceeds the individual's monthly deficit, except as follows:

i. No portion of a cash reward provided to any individual by the Division 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 income for financial eligibility purposes.

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have income in the amount of:

\$213.00 for an individual

\$309.66 for a couple

i. In the event the individual/couple can demonstrate that the actual value of in-kind support and maintenance is less than the assigned value, the lesser value shall be counted as unearned income.

ii. The income levels in (a)12 above shall be revised annually to reflect the annual cost-of-living adjustment to the SSI payment standard made by the Social Security Administration in accordance with 42 U.S.C. § 1382f. The income level revisions to (a)12 above will be published annually as a notice of administrative change in the New Jersey Register.

13. Support and maintenance furnished in-kind (other living situations):

i. Title XIX facilities: In-kind support and maintenance is not counted in cases in which the individual is considered institutionalized for program purposes (i.e., the individual's eligibility is determined under the Medicaid "Cap").

ii. Private nonprofit domiciliary care facility: The value of in-kind support and maintenance provided an individual in a nonprofit residential care facility is excluded when all the following conditions are met:

(1) The facility is not a public facility. A public facility is one which is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(2) The facility, or the distinct portion in which the individual resides, is neither a Title XIX in-kind nor an institution for educational or vocational training.

(3) The facility is tax-exempt under Section 501(c) or (d) of the Internal Revenue Code.

(4) The facility (or organization controlling it) provides support and maintenance to the individual but does not receive payment for that part to be excluded or receives such payment from a private nonprofit organization which is also tax exempt under Section 501(c) or (d) of the Internal Revenue Code.

(5) The nonprofit facility or nonprofit organization has not undertaken an express obligation to furnish full support and maintenance to the individual. An express obligation to provide full support and maintenance exists when an institution agrees to provide lifetime care in return for a specified lump sum payment and there is no requirement for any current or future payment. An express obligation also exists if, as a result of the membership of the individual or of a relative, in an organization (fraternal or religious order, union, etc.) there exists a written document requiring the facility to provide lifetime care regardless of payment provided.

(6) If the criteria in (a)13ii(1)-(5) above are not met, the value of support and maintenance is determined in accordance with (a)13iii below.

iii. Other nonmedical facilities:

(1) Facility is proprietary (private for-profit) or private non-profit and no third party pays: The value of in-kind support and maintenance is excluded from income if it is provided by such a facility, no third party payment is made for it, and:

(A) The individual makes some payment which the facility accepts as payment in full (even though its usual charge may be higher); or

(B) The individual contracts a written indebtedness to the facility for his/her support and maintenance and the facility accepts the amount of the debt plus the individual's payment, if any, as payment in full.

(2) Facility if proprietary or private nonprofit and third party pays: When a proprietary (private for-profit) or private nonprofit facility provides support and maintenance to an individual because a third party pays the facility on that individual's behalf, that individual is receiving in-kind support and maintenance. The value of the in-kind support and maintenance is determined in accordance with (a)12 above.

(3) Other situations regardless of third-party payment: In other types of facilities, support and maintenance provided by that facility is unearned income to the individual in accordance with (a)12 above.

(b) Countable income: Income remaining after appropriate income exclusions shall be applied toward the applicable income eligibility standard. The applicant's living arrangement affects the method of treatment of income and its relationship to the standards as stated in the variations appearing below.

1. Applicant/beneficiary living alone: If the applicant/beneficiary lives alone, only his or her countable income shall be applied to the appropriate income standard.

2. Applicant/beneficiary couple: In the case of an applicant/beneficiary couple, living together, the total amount of husband's and wife's countable income shall be combined and applied to the appropriate income eligibility standard for a couple. Such individuals will continue to have their countable income combined until they have been separated for a period of six months.

i. One member of couple institutionalized: When one member of an applicant/beneficiary couple is institutionalized and the other remains in the community, no income of the community spouse will be used in the determination of income eligibility beginning in the month of admission into a Title XIX facility.

ii. Institutionalized couple: When an applicant/recipient couple is institutionalized in the same facility, the gross income of each individual is combined and applied to an amount equal to two times the Medicaid "Cap." If, however, the applicant/recipient couple is institutionalized in separate facilities, the income of each is applied individually to the Medicaid "Cap."

3. Applicant/beneficiary living with ineligible spouse: If the applicant/beneficiary lives with an ineligible spouse, the income of the ineligible spouse is deemed to the applicant/beneficiary (see N.J.A.C. 10:71-5.5). Such individual's income shall continue to be deemed until the husband and wife have been separated for one month. At such time the individuals will be considered to be living alone and deeming shall cease.

i. Effect of institutionalization: Income of the community spouse shall not be considered in the determination of income eligibility of the institutionalized individual beginning with the month of admission into a Title XIX facility.

4. Applicant/beneficiary unmarried and under 18 years of age, living with parents: If the applicant/recipient is an unmarried child under 18 years of age who lives with his or her parents (including stepparents), the income of the parents is deemed to the child (see N.J.A.C. 10:71-5.5(c)3). Such deeming will cease when a child has ceased living with his/her parents for a period of one calendar month.

i. Child not living with parents due to institutionalization: If a physician has certified that the child's duration of stay in a Title XIX facility (or a combination of such facilities) is expected to be a full calendar month or more, such child shall be considered to be not living with his/her parents and deeming shall cease at the time of such certification.

Emergency Amendment, R.1981 d.276, effective July 1, 1981.

See: 13 N.J.R. 501(a).

Adopted concurrent proposal, R.1981 d.385, effective September 24, 1981.

See: 13 N.J.R. 501(a), 13 N.J.R. 773(a).

Substantially amended.

Amended by R.1982 d.314, effective August 31, 1982.

See: 14 N.J.R. 758(a), 14 N.J.R. 1058(a).

Amended by R.1983 d.381, effective August 30, 1983.

See: 15 N.J.R. 1187(a), 15 N.J.R. 1585(a).

Originally filed as an emergency rule R.1983 d.289, effective July 1, 1983.

As amended as emergency rule R. 1983 d.593, effective December 19, 1983, operative January 1, 1983.

See: 15 N.J.R. 1733(a), 15 N.J.R. 2171(a).

Readopted, R.1984 d.566, effective November 28, 1984 (amendments effective January 1, 1985).

See: 16 N.J.R. 2845(a), 16 N.J.R. 3451(a).

Previously filed as emergency rule R.1984 d.289. Raised amounts of unearned income.

Emergency Amendment R.1985 d.714, effective December 27, 1985 (operative January 1, 1986, expires February 24, 1985).

See: 18 N.J.R. 215(a).

Unearned income raised.

Amended by R.1986 d.74, effective February 24, 1986.

See: 18 N.J.R. 215(a), 18 N.J.R. 565(a).

Emergency amendment, R.1987 d.78, effective December 29, 1986 (operative January 1, 1987; expires February 27, 1987).

See: 19 N.J.R. 245(a).

Unearned income raised.

Adoption of concurrent proposal, R.1987 d.174, effective April 20, 1987.

See: 19 N.J.R. 245(a), 19 N.J.R. 646(b).

Emergency amendment, R.1988 d.55, effective January 4, 1988 (operative January 4, 1988, expires March 4, 1988).

See: 20 N.J.R. 207(a).

Unearned income raised.

Adopted concurrent proposal, R.1988 d.193, effective May 2, 1988.

See: 20 N.J.R. 207(a), 20 N.J.R. 985(a).

Previously filed as an Emergency Rule.

Emergency amendment, R.1989 d.57, effective December 29, 1988 (operative January 1, 1989, expires February 27, 1989).

See: 21 N.J.R. 207(a).

Individual raised from \$138.00 to \$142.67 and couple raised from \$197.33 to \$204.33.

Emergency amendment expired February 27, 1989. Concurrent proposal adopted February 28, 1989, as R.1989 d.174, effective March 20, 1989.

See: 21 N.J.R. 217(a), 21 N.J.R. 763(a).

Emergency provisions retained.

Emergency amendment R.1990 d.55, effective December 26, 1989, operative January 1, 1990 (expires February 24, 1990).

See: 22 N.J.R. 251(a).

Includable income limits raised at (a)12.

Adopted concurrent proposal, R.1990 d.177, effective February 23, 1990.

See: 22 N.J.R. 251(a), 22 N.J.R. 954(a).

Provisions of emergency amendment R.1990 d.55 readopted without change.

Amended by R.1991 d.32, effective January 22, 1991.

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

Deleted text in N.J.A.C. 10:71-5.4(b)2i concerning includable income when one member of a couple is institutionalized and added statement establishing new guidelines. Deleted text in N.J.A.C. 10:71-5.4(b)3i concerning physician's certification and added statement establishing new includable income standard.

Emergency amendment, R.1991 d.37, effective December 31, 1990 (operative January 1, 1991).

See: 23 N.J.R. 233(a).

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

Adopted Concurrent Proposal, R.1991 d.169, effective March 1, 1991.

See: 23 N.J.R. 233(a), 23 N.J.R. 1007(a).

Provisions of emergency amendment R.1991 d.37 readopted without change.

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".

(e) Deeming of income from a parent (and spouse of a parent) to a child: The computation methods for deeming of income from an ineligible parent (and spouse of a parent) to a child differ depending on the type of parental income.

1. Step 1: Determine the total monthly parental income, both earned and unearned (separately), less any income excluded in N.J.A.C. 10:71-5.5(b). Do not combine the two totals.

i. 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. No allowance may be deducted for a child receiving public assistance.

ii. Subtract the living allowance for each ineligible child, determined in (e)1i above, from the unearned income of the parent(s). Subtract any remaining living allowance from the earned income of the parent(s).

iii. The remaining parental income should be treated in accordance with the procedures of Step 2, 3, or 4 below, as appropriate.

2. Step 2: Remaining parental income is earned income only:

i. From the remaining parental earned income, subtract \$85.00 (\$20.00 general income exclusion plus \$65.00 work expense exclusion).

ii. Next, subtract the appropriate parental living allowance for the parent (and spouse of a parent) living in the household. This parental allowance is found in Table A, Figure 4a.

iii. The remaining amount is the income deemed to the applicant/beneficiary child(ren). This deemed income is treated as unearned income.

iv. Combine any income deemed to the eligible child together with any countable income of the eligible child.

(1) Subtract the \$20.00 general income exclusion from the child's unearned income.

v. If the child's total countable income is less than the appropriate income eligibility standard in Table B, the child is financially eligible for Medicaid Only.

3. Step 3: Remaining parental income is unearned only:

i. From the remaining parental unearned income, subtract \$20.00 (general income exclusion).

ii. Next, subtract the appropriate parent living allowance for the parent (and spouse of a parent) living in the household. This parental allowance is found in Table A, Figure 4b.

iii. The remaining amount is the income deemed to the applicant/beneficiary child(ren). This deemed income is treated as unearned income.

iv. Combine any income deemed to the eligible child together with any countable income of the eligible child.

(1) Subtract the \$20.00 general income exclusion from the child's unearned income.

v. If the child's total income is less than the appropriate income eligibility standard in Table B, the child is financially eligible for Medicaid Only.

4. Step 4: Remaining parental income is both earned and unearned:

i. First, subtract the \$20.00 general income exclusion from the remaining parental unearned income. Then, subtract any unused portion of the general income exclusion from the remaining parental earned income.

ii. From the remaining earned income, subtract \$65.00 (work expense allowance) and one-half of the remainder of earned income. Combine any remaining earned income with the remaining unearned income.

iii. Subtract the appropriate parental living allowance for the parent (and spouse of parent) living in the household. This parental allowance is found in Table A, Figure 4c.

iv. The remaining amount is the income deemed to the applicant/beneficiary child(ren). This deemed income is treated as unearned income.

v. Combine any income deemed to the eligible child together with any countable income of the eligible child.

(1) Subtract the \$20.00 general income exclusion from the child's unearned income.

vi. If the child's total income is less than the appropriate income eligibility standard in Table B, the child is financially eligible for Medicaid Only.

(f) Treatment of income deemed to a child: Any income deemed to a child is treated as unearned income and thus subject to the \$20.00 general income exclusion. If there is more than one applicant/beneficiary child in the household, the deemable income is divided equally among them. However, no income is to be deemed in excess of the amount which, when combined with the child's own countable income, creates ineligibility. That portion of deemed income that exceeds the eligibility level in Table B, for the appropriate living arrangement, is available for deeming equally to other applicant/beneficiary children in the household in addition to their equal shares of the total parental deemable income. The following steps shall apply in treatment of income deemed to a child:

1. Step 1: Combine any income deemed to the eligible child together with any countable income of the eligible child.

2. Step 2: Subtract the \$20.00 general income exclusion from the child's unearned income.

3. Step 3: If the child's total remaining income is less than the appropriate income eligibility standard in Table B the child is financially eligible for Medicaid Only. The child has no excess deemed income available for other applicant/beneficiary children.

4. Step 4: If, in the process of deeming of income to an applicant/beneficiary child, such child becomes financially ineligible for Medicaid Only, that portion of deemed income that exceeds the appropriate income eligibility standard in Table B shall be divided equally among other applicant/beneficiary children in the household, in addition to their equal shares of the total parental deemable income, and shall be counted in determining financial eligibility for Medicaid Only for such other children.

(g) Table A which follows shall be used in deeming computation amounts. Table A will be revised annually in accordance with Federal cost-of-living adjustments made pursuant to 42 U.S.C. § 1382(f). A notice of administrative changes containing the revisions will be published annually in the New Jersey Register.

Table A
Deeming Computation Amounts

1. Living allowance for each ineligible child	\$290.00	
2. Remaining income amount		
	<u>Head of Household</u>	<u>Receiving Support and Maintenance</u>
	\$ 289.50	\$ 193.34
3. Spouse to Spouse Deeming—Eligibility Levels		
a. Residential Health Care Facility		\$1,439.36
b. Eligible Individual Living Alone or with Ineligible Spouse		\$1,184.36
c. Living Alone or with Others		\$ 900.25
d. Living in the Household of Another		\$ 672.09
4. Parental Allowance—Deeming to Children Remaining Income is:		
	<u>One Parent</u>	<u>Parent and Spouse of Parent</u>
a. Earned only	\$1,158.00	\$1,738.00
b. Unearned only	\$ 579.00	\$ 869.00
c. Both earned and unearned	\$ 579.00	\$ 869.00

As amended on an emergency basis, R.1981 d.276, effective July 1, 1981.

See: 13 N.J.R. 501(a).

Readopted, R.1981 d.385, effective September 24, 1981.

See: 13 N.J.R. 501(a), 13 N.J.R. 773(a).

Substantially amended.

Amended by R.1982 d.314, effective August 31, 1982.

See: 14 N.J.R. 758(a), 14 N.J.R. 1058(a).

Figures which appeared at 14 N.J.R. 758(a) were effective upon filing through September 30, 1982. The new figures became effective October 1, 1982 and represent a \$2.10 increase in the optional State supplement in SSI payment level.

Amended by R.1983 d.381, effective August 30, 1983, with changes upon adoption.

See: 15 N.J.R. 1187(a), 15 N.J.R. 1585(a).

Originally filed as emergency rule R.1983 d.289 effective July 1, 1983.

Amended by R.1983 d.593, effective December 19, 1983, operative January 1, 1984.

See: 15 N.J.R. 1733(a), 15 N.J.R. 2171(a).

Deeming computation amounts increased.

As amended on an emergency basis, R.1984 d.467, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2845(a).

Table A amended.

Readopted, R.1984 d.566, effective November 28, 1984 (amendments effective January 1, 1985).

See: 16 N.J.R. 2845(a), 16 N.J.R. 3451(a).

Previously filed as emergency rule R.1984 d.289.

(d): Raised computation amounts.

Emergency amendment, R.1985 d.714, effective December 27, 1985 (operative January 1, 1986, expires February 24, 1986).

See: 18 N.J.R. 215(a).

Table A amended.

Amended by R.1986 d.53, effective March 3, 1986.

See: 17 N.J.R. 2732(a), 18 N.J.R. 484(a).

(a)1 added text "regarding earnings of ... reaches age 18". Old (c) deleted; new (c)-(e) added; old (d) recodified to (g).

Emergency amendment, R.1987 d.78, effective December 29, 1986 (operative January 1, 1987; expires February 27, 1987).

See: 19 N.J.R. 245(a).

Table A amended.

Adoption of concurrent proposal, R.1987 d.174, effective April 20, 1987.

See: 19 N.J.R. 245(a), 19 N.J.R. 646(b).

Emergency amendment, R.1988 d.55, effective January 4, 1988 (operative January 4, 1988, expires March 4, 1988).

See: 20 N.J.R. 207(a).

Table A amended.

Adoption of concurrent proposal, R.1988 d.193, effective May 2, 1988.

See: 20 N.J.R. 207(a), 20 N.J.R. 985(a).

Previously filed as Emergency Rule.

Emergency amendment, R.1989 d.57, effective December 29, 1988 (operative January 1, 1989, expires February 27, 1989).

See: 21 N.J.R. 207(a).

Table A amended.

Emergency amendment expired February 27, 1989. Concurrent proposal adopted February 28, 1989, as R.1989 d.174, effective March 20, 1989.

See: 21 N.J.R. 207(a), 21 N.J.R. 763(a).

Emergency provisions retained.

Emergency amendment R.1990 d.55, effective December 26, 1989, operative January 1, 1990 (expires February 24, 1990).

See: 22 N.J.R. 251(a).

Deeming computation amounts raised.

Adopted concurrent proposal, R.1990 d.177, effective February 23, 1990.

See: 22 N.J.R. 251(a), 22 N.J.R. 954(a).

Provisions of emergency amendment R.1990 d.55 readopted without change.

Emergency amendment, R.1991 d.37, effective December 31, 1990 (operative January 1, 1991).

See: 23 N.J.R. 233(a).

Increase in Medicaid Only eligibility computation amounts at (g).

Adopted concurrent proposal, R.1991 d.169, effective March 1, 1991.

See: 23 N.J.R. 233(a), 23 N.J.R. 1007(a).

Provisions of emergency amendment, R.1991 d.37, readopted without change.

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 (g).

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).

Table A amended.

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 references to beneficiaries for references to recipients throughout; and in (g), increased dollar amounts throughout.

Amended by R.2004 d.401, effective November 1, 2004. See: 36 N.J.R. 922(b), 36 N.J.R. 4982(a).

Rewrote (g).

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 (g), updated Table A.

10:71-5.6 Income eligibility standards

(a) Table B which follows shall be used to determine income eligibility for aged, blind, and disabled persons who make application for Medicaid Only benefits. The standard used for applicants/beneficiaries shall be determined in accordance with the following living arrangement categories. (For cases involving the deeming of income, this section shall be used in conjunction with N.J.A.C. 10:71-5.5). The income eligibility standards in Table B which follows will be revised annually to reflect the annual cost-of-living adjustments to the SSI payment standards made by the Social Security Administration in accordance with 42 U.S.C. § 1382f. A notice of administrative changes containing the revisions will be published annually in the New Jersey Register.

(b) The income standard for Residential Health Care Facilities (RHCFs) (Table B, Figure I) shall be used for individuals/couples residing in such facilities which are licensed by the New Jersey Department of Health and Senior Services. Individuals in unlicensed facilities shall always be categorized as “living alone” (N.J.A.C. 10:71-5.6(c) and Table B, II).

(c) Non-institutional living arrangements:

1. The category “living alone” (Table B, Figure II) shall be used for individuals/couples who are:

- i. Living physically alone;
- ii. Living in a commercial establishment, such as a motel, hotel, rooming or boarding house (including type A, B, and C, formerly known as unlicensed boarding homes) that holds itself open to the public as such;
- iii. Living in a business-like arrangement;
- iv. Purchasing or preparing food separately, which applies to persons living with others in a private dwelling, but separately purchasing or preparing their own food. The determination is based on the person’s cus-

tomary food purchase and preparation habits. Occasional joint purchase or preparation of food does not preclude a person from this classification.

v. Taking of all meals elsewhere, which applies to persons living with others in a private dwelling but taking all meals elsewhere.

vi. Persons living as members of a household but having ownership or rental responsibility and paying more than their pro rata share of the household expenses (because other members are paying less) are considered to be living alone.

(1) It is assumed that a couple share rental or ownership responsibility. Therefore, the following steps are necessary to determine if the eligible individual with ineligible spouse and other household members is paying more than his or her pro rata share of household expenses.

(A) If the eligible individual’s contributions (singly) are more than his/her pro rata share of household expenses, he/she will be considered living alone. If not, proceed to (c)1vi(1)(B) below.

(B) If the contributions of both the eligible individual and ineligible spouse to the household are more than their pro rata share, they shall be considered to be living alone. If their contribution is equal to or less than their pro rata share, the applicants/beneficiaries shall be considered to be living with others (see N.J.A.C. 10:71-5.6(c)3).

(C) Household expenses are limited to: food; mortgage or rental payments; real property taxes; heating fuel; gas; electricity; water; sewer; garbage removal.

2. The category “living alone with ineligible spouse” (Table B, Figure III) applies when an individual lives with his or her ineligible spouse and there are no other persons who are part of the household. If any other persons, even minor children, are present in the same household, this category does not apply. Parents with minor children are always considered to be in the same household; therefore, the presence of minor children would result in the living arrangements described in either N.J.A.C. 10:71-5.6(c)3 or 5.6(c)4.

3. The category “living with others” (see Table B, Figure II) applies when the individual/couple resides with others and either:

- i. Has ownership or rental liability and pays an amount equal to or less than pro rata share of household expenses (see N.J.A.C. 10:71-5.6(c) 1vi(1)(C)); or
- ii. Does not have ownership or rental liability and is sharing household expenses with other members of the household. Sharing is defined as paying a pro rata share

or more of household expenses (see N.J.A.C. 10:71-5.6(c)1vi(1)(C)).

4. If the individual/couple lives in a household with adults other than a spouse and the living arrangement has not already been determined in N.J.A.C. 10:71-5.6(c)1 through 5.6(c)3 above, the individual/couple may be considered to be living in the household of another (Table B, Figure IV). The specific criteria for categorization in this living arrangement is the receipt of both support and maintenance. That is, the individual/couple does not purchase either food or shelter separately in accordance with (c)4i below.

i. If meals are consumed by an individual/couple in the household and the individual/couple does not purchase either food or shelter separately, the individual/couple shall be considered living in the household of another.

(1) Separate purchase of food means that the individual/couple pays a pro rata share of the household's food or actually purchases food separately. An individual/couple receiving food stamps as a separate food stamp household shall be considered to be purchasing food separately.

(2) Separate purchase of shelter exists when the individual/couple contributes an amount equal to the pro rata share of the household's shelter expenses. Shelter expenses are limited to all items except "food" in N.J.A.C. 10:71-5.6(c)1vi(1)(C).

ii. Persons determined to be living in the household of another shall not be considered to be receiving support and maintenance in-kind pursuant to N.J.A.C. 10:71-5.4(a)12 because such in-kind income has already been taken into account in the eligibility standards.

5. Table B follows:

Table B

Variations in Living Arrangements	Medicaid Eligibility Income Standards	
	Individual	Couple
I. Residential Health Care Facility	\$ 729.05	\$1,439.36
II. Living Alone or with Others	\$ 610.25	\$ 894.36
III. Living Alone or with Ineligible Spouse	\$ 894.36	
IV. Living in Household of Another	\$ 430.31	\$ 672.44
V. Title XIX Approved Facility: Includes persons in acute general hospitals, nursing facilities, intermediate care facilities/mental retardation (ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.		
	\$1,737.00†	

† Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap."

(d) For the purpose of the Medicaid program, Title XIX approved facilities shall include acute care general hospitals, nursing facilities, intermediate care facilities for the mentally retarded (ICF/MR), and licensed special hospitals (Class A, B, and C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over).

1. Persons are considered institutionalized if they enter a Title XIX approved facility and a physician has certified that the duration of stay in the Title XIX facility (or a combination of such facilities) is expected to be 30 consecutive days or more. Income eligibility shall be determined in accordance with the variations contained in N.J.A.C. 10:71-5.4(b). However, the income of the institutionalized individual shall not be reduced by any of the income exclusions found in N.J.A.C. 10:71-5.3.

2. Institutionalized individuals, identified in (d)1 above, who are found Program eligible will receive benefits as of the date of admission.

3. Persons in a facility which is not Title XIX approved or whose stay is expected to be a period of less than 30 consecutive days will have eligibility determined in accordance with the community living arrangement which existed prior to entering the facility.

4. Temporary absence from the institution: Any temporary absence, during which the individual remains a patient of the institution, does not interrupt a continuous stay in the institution.

5. Persons living in the community who do not otherwise qualify for Medicaid benefits and who elect to participate in the hospice program, or who are assigned a slot in the CCPED or other waiver programs, will have financial eligibility determined in the same manner as those who reside in an institution.

i. Such individuals who are found eligible will receive benefits on the date of the election of hospice benefits, or the date of assignment to a waiver slot, whichever is applicable.

(e) No portion of a cash reward provided to any individual by the Division 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 income for financial eligibility purposes.

Amended on emergency basis, R.1981 d.276, effective July 1, 1981.

See: 13 N.J.R. 501(a).

Readopted, R.1981 d.385, effective September 24, 1981.

See: 13 N.J.R. 501(a), 13 N.J.R. 773(a).

Substantially amended.

Amended by R.1982 d.314, effective August 31, 1982.

See: 14 N.J.R. 758(a), 14 N.J.R. 1058(a).

Figures which appeared at 14 N.J.R. 758(a) were effective upon filing through September 30, 1982.

The new figures became effective October 1, 1982 and represent a \$2.10 increase in the optional State Supplement in SSI payment level.
 Amended by R.1983 d.381, effective August 30, 1983 with changes upon adoption.
 See: 15 N.J.R. 1187(a), 15 N.J.R. 1585(a).
 Originally filed as emergency rule R.1983 d.289, effective July 1, 1983.
 Amended by R.1983 d.593, effective December 19, 1983, operative January 1, 1984.
 See: 15 N.J.R. 1733(a), 15 N.J.R. 2171(a).
 Eligibility income standards increased.
 Amended by R.1984 d.244, effective June 18, 1984.
 See: 16 N.J.R. 684(a), 16 N.J.R. 1611(a).
 Table B: "882.00" was "852.90."
 As amended on emergency basis, R.1984 d.467, effective September 28, 1984 (operative October 1, 1984).
 See: 16 N.J.R. 2845(a).
 Table B eligibility Income Standards increased.
 Readopted, R.1984 d.566, effective November 28, 1984 (amendment effective January 1, 1985).
 See: 16 N.J.R. 2845(a), 16 N.J.R. 3451(a).
 Previously filed as emergency rule R.1983 d.289.
 (c)4: Table B, Figure "V" changed to "IV;" (c)5: Income standards raised in Table B.
 Amended by R.1985 d.169, effective April 15, 1985 (operative May 1, 1985).
 See: 17 N.J.R. 39(a), 17 N.J.R. 969(b).
 (e)4 added.
 Emergency amendment, R.1985 d.714, effective December 27, 1985 (operative January 1, 1986, expires February 24, 1986).
 See: 18 N.J.R. 215(a).
 Table B amended.
 Adopted concurrent proposal, R.1986 d.74, effective February 24, 1986.
 See: 18 N.J.R. 215(a), 18 N.J.R. 565(a).
 Emergency amendment, R.1987 d.78, effective December 29, 1986 (operative January 1, 1987; expires February 27, 1987).
 See: 19 N.J.R. 245(a).
 Table B amended.
 Adoption of concurrent proposal, R.1987 d.174, effective April 20, 1987.
 See: 19 N.J.R. 245(a), 19 N.J.R. 646(b).
 Emergency Amendment, R.1988 d.55, effective January 4, 1988 (operative January 4, 1988, expires March 4, 1988).
 See: 20 N.J.R. 207(a).
 Table B amended.
 Adopted concurrent proposal, R.1988 d.193, effective May 2, 1988.
 See: 20 N.J.R. 207(a), 20 N.J.R. 985(a).
 Previously filed as an Emergency Rule.
 Emergency amendment, R.1989 d.57, effective December 29, 1988 (operative January 1, 1989, expires February 27, 1989).
 See: 21 N.J.R. 207(a).
 Table B amended.
 Emergency amendment expired February 27, 1989. Concurrent proposed amendments adopted and filed February 28, 1989, as R.1989 d.174, effective March 20, 1989.
 See: 21 N.J.R. 217(a), 21 N.J.R. 763(a).
 Provisions retained.
 Emergency amendment, R.1990 d.55, effective December 26, 1989, operative January 1, 1990 (expires February 24, 1990).
 See: 22 N.J.R. 251(a).
 Income eligibility standards raised.
 Adopted concurrent proposal, R.1990 d.177, effective February 23, 1990.
 See: 22 N.J.R. 251(a), 22 N.J.R. 954(a).
 Provisions of emergency amendment, R.1990 d.55, readopted without change.
 Amended by R.1991 d.32, effective January 22, 1991.
 See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).
 Added (d)4.
 Emergency amendment, R.1991 d.37, effective December 31, 1990 (operative January 1, 1991).
 See: 23 N.J.R. 233(a).
 Increase in income eligibility standards at (c)5.
 Adopted concurrent proposal, R.1991 d.169, effective March 1, 1991.

See: 23 N.J.R. 233(a), 23 N.J.R. 1007(a).
 Provisions of emergency amendment, R.1991 d.37, readopted without change.
 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 income eligibility standards at (c)5.
 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.1992 d.442, effective November 2, 1992.
 See: 24 N.J.R. 2778(a), 24 N.J.R. 4036(a).
 Revised (d).
 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.1995 d.651, effective December 18, 1995.
 See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).
 Amended by R.1996 d.46, effective January 16, 1996.
 See: 27 N.J.R. 3668(a), 28 N.J.R. 291(a).
 Table B amended.
 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 references to beneficiaries for references to recipients throughout; and in (c)5, increased dollar amounts 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 (e).
 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), added the fourth and fifth sentences; in (c), increased the amounts for eligibility income standards in Table B.
 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 (c)5, updated Table B.

Law Review and Journal Commentaries

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

10:71-5.7 Post-eligibility treatment of income; institutionalized individuals

(a) The amounts specified in (b) through (h) of this section shall be deducted from the income of an institutionalized individual prior to the application of his or her income to the cost of the long term care. These deductions apply only after the individual is determined eligible for Medicaid and shall not be deducted in the determination of income eligibility.

1. Should the total deductions authorized under this section exceed the institutionalized individual's income, no assistance is available from the Medicaid program to make up the deficit. In such circumstances, available funds shall first be used to provide the institutionalized individual with his or her personal needs allowance. Any remaining deductible income may be distributed to the community spouse or other family members as decided by the institutionalized individual, not to exceed the amount authorized under this section for any individual.

2. The deductions authorized in (c) through (e) below for the maintenance of the community spouse and other family members apply only so long as there is a commu-

nity spouse as defined in (c) below. Deductions for the community spouse and other family members shall cease in the first full-calendar month after the community spouse dies, becomes divorced, or is institutionalized.

(b) A personal needs allowance in the amount of \$35.00 shall be deducted from the institutionalized individual's income. In addition, gross income derived from employment that is considered essential toward satisfying the individual's developmental need to achieve a certain amount of independence shall be deducted from the individual's income. The combination of these deductions shall not exceed the amount in Table B for an individual living alone as found at N.J.A.C. 10:71-5.6(c)5.

(c) There shall be deducted from the institutionalized individual's income an amount for the maintenance of the community spouse. Except as specifically provided below, the deduction for the maintenance of the community spouse shall not exceed \$1,383. For purposes of this section, a community spouse shall be defined as an individual who is legally married to an institutionalized individual under the provisions of State law and who is not himself or herself institutionalized. In arriving at the amount that may be deducted for the maintenance of the community spouse, the deductions authorized by this section shall be reduced by the gross income of the community spouse. The community spouse deduction is authorized only to the extent that the income deducted is actually made available to (or for the benefit of) the community spouse. No amount of the community spouse's maintenance deduction may be retained by the institutionalized individual.

1. If the community spouse's average monthly shelter expenses for his or her principal place of residence exceed \$414.00, the amount of that excess shall increase the maximum community spouse maintenance deduction. Shelter expenses are limited to rent or mortgage (including principal and interest), taxes and insurance, a utility standard for the individual's utility expenses, and in the case of a condominium or cooperative, the monthly required maintenance charge.

2. A utility allowance shall not be authorized unless the community spouse directly incurs charges for utilities. A community spouse who directly incurs charges for heating fuel (in accordance with food stamp regulations at N.J.A.C. 10:87-5.10(a)5iv) separate and apart from their rent or mortgage payments, shall be entitled to a utility allowance in the amount specified as the "Heating Utility Allowance" at N.J.A.C. 10:87-12.1. If the community spouse does not directly incur heating fuel charges but does directly incur charges for a utility other than telephone, water, sewerage, or garbage collection, a utility allowance in the amount specified as "Standard Utility Allowance" at N.J.A.C. 10:87-12.1 shall be authorized. If the only direct utility charge incurred by the community spouse separate and apart from the rent or mortgage is the telephone the amount specified at N.J.A.C. 10:87-12.1 as "Uniform Telephone

Allowance" shall be added to the community spouse's monthly shelter costs. The telephone allowance shall not be used if either of the above utility allowances have been used because those standard allowances include telephone charges.

(d) When the institutionalized individual's income is insufficient to provide the maximum authorized deduction for the community spouse, either the institutionalized spouse or the community spouse can request a fair hearing in accordance with N.J.A.C. 10:71-8.4. If either member can establish at the fair hearing that the income generated from the community spouse's share of the couple's resources is inadequate to raise the community spouse's income (together with the community spouse maintenance deduction) to the maximum authorized level, additional resources (beyond the community spouse's share as established at N.J.A.C. 10:71-4.8) may be set aside for the community spouse. The amount of resources to be set aside shall be that amount that is determined sufficient to generate sufficient income to raise the community spouse's gross income to the maximum authorized level.

(e) If either the institutionalized spouse or the community spouse is dissatisfied with the determination of the amount of the community spouse maintenance deduction, he or she may request a fair hearing in accordance with N.J.A.C. 10:71-8.4. If it is established at the fair hearing that the community spouse needs income above the amount established by the community spouse maintenance deduction due to exceptional circumstances resulting in financial duress, there shall be substituted for the community spouse maintenance deduction such amount as is necessary to alleviate the financial duress and for so long as directed in the final hearing decision.

(f) If a court has entered an order against an institutionalized spouse for monthly income for the support of a community spouse and the amount of the order is greater than the amount of the community spouse deduction, the amount so ordered shall be used in place of the community spouse deduction.

(g) A family member maintenance deduction shall be calculated for each family member of the institutionalized individual.

1. For purposes of this section, family members must reside with the community spouse and shall be limited to the following persons:

- i. Children of either member of the couple who are under the age of 21;
- ii. Children over the age of 21 who are claimed as dependents by either member of a couple for tax purposes under the Internal Revenue Code;
- iii. Parents of either member of a couple who are claimed as dependents for tax purposes under the Internal Revenue Code as dependents by either spouse; or

iv. A brother or sister (including half-brothers and half-sisters and siblings gained through adoption) of either member of a couple and who are claimed as dependents for tax purposes under the Internal Revenue Code.

2. The family member deduction shall be computed as follows. The family member's gross income shall be subtracted from \$1,383. One-third of the remaining amount shall be the family member deduction for that family member.

(h) If a physician has certified that the individual will be institutionalized for a temporary period only and is likely to return to the residence within six months of the date of institutionalization, a maximum of \$150.00 may be deducted from the institutionalized individual's income for the maintenance of his or her home in the community. This deduction shall be limited to the actual costs of such maintenance (for example, mortgage or rent payments, taxes, insurance, and other incidental costs) or \$150.00, whichever is less. This deduction may be applied against the individual's income for no longer than six months. This deduction may not be applied if a deduction has been made for the maintenance of a community spouse or other family member residing in that residence.

1. This deduction must be applied to the costs of maintaining the residence and may not be accumulated by the institutionalized individual.

(i) If the institutionalized individual has health insurance covering himself or herself, the amount of the insurance premiums shall be deducted.

1. If the premium is billed other than monthly, the amount of the premium shall be prorated and deducted accordingly.

2. If the premium covers other individuals in addition to the institutionalized individual, only that portion of the premium attributable to the institutionalized individual shall be deducted.

(j) No portion of a cash reward provided to any individual by the Division 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 income for financial eligibility purposes.

New Rule, R.1991 d.32, effective January 22, 1991.
See: 22 N.J.R. 7(a), 23 N.J.R. 215(b).
Amended by R.2000 d.415, effective October 16, 2000.
See: 32 N.J.R. 2565(a), 32 N.J.R. 3844(a).

In the introductory paragraph of (c) and (g)2, increased dollar amounts from \$856.00 to \$1,383; and in (e)1, increased dollar amount from \$257.00 to \$414.00.
Amended by R.2002 d.124, effective April 15, 2002.
See: 33 N.J.R. 4188(a), 34 N.J.R. 1546(a).

Added (j).

Law Review and Journal Commentaries

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

Case Notes

New Jersey did not violate Medicare Catastrophic Coverage Act by employing "income-first" approach in determining Medicaid eligibility of spouse institutionalized in long-term care facility. Cleary ex rel. Cleary v. Waldman, 167 F.3d 801 (3rd Cir. N.J. 1999).

Assets of institutionalized spouse may be diverted to cover community spouse's statutory minimum needs allowance, where community spouse's income is insufficient to meet allowance, for purposes of Medicare spend down requirements; however, resources transferred to community spouse need not be adequate to cover shortfall. Cleary v. Waldman, D.N.J.1997, 959 F.Supp. 222.

Both interest and principal of community spouse's monthly annuity payments constituted income for purposes of determining minimum monthly maintenance allowance under Medically Needy Program. J.M. and E.M. v. Division of Medical Assistance and Health Services, 96 N.J.A.R.2d (DMA) 86.

Full amount of Medicaid applicant's Social Security benefits would be included as "available income" and applied to his long-term care costs, even though applicant used portion of his benefits to satisfy pre-existing alimony obligation. L.C. v. Division of Medical Assistance and Health Services, 96 N.J.A.R.2d (DMA) 73.

Exceptional circumstances resulting in significant financial distress warranted an upward adjustment in community spouse maintenance amount. M.G. v. Division of Medical Assistance, 95 N.J.A.R.2d (DMA) 47.

10:71-5.8 Eligibility under life care and pay-as-you-go agreements

(a) In a contractual agreement where the individual has transferred his available assets to the facility in exchange for full medical care in the institution, the institution has a legal responsibility to provide such care and Medicaid benefits are not payable for the institutional care. However, Medicaid eligibility may exist in the following circumstances (see also N.J.A.C. 10:71-5.4(a)13):

1. When it can be determined that no enforceable contract exists (for example, because the facility is financially unable to fulfill its responsibilities under the contract and all terms of the agreement are thus void), the facility has a legal obligation to refund to the individual any assets which remain from the amount assigned at the time the contract was signed. The individual may be eligible for Medicaid Only as long as all other eligibility criteria (including resources) are met.

2. When a contract is not actually rescinded and the individual retains his or her right under the terms of the contract but, where his or her contract rights for care in the facility are not fully met, Medicaid benefits may be available for those medical expenses not being met by this facility if the individual meets eligibility requirements.

3. When the contractual agreement for care in the facility does not include all of the medical care (for example, is limited to basic room and board), Medicaid benefits may be available for those medical expenses not covered by the contract as long as all eligibility criteria are met.

4. In those contractual situations above in which Medicaid eligibility may exist, the value of in-kind room and board is not considered income.

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

10:71-5.9 Deeming from sponsor to alien

(a) For the purposes of determining eligibility for Medicaid Only for a legal alien (applying for the first time on or after October 1, 1980), the income and resources (see N.J.A.C. 10:71-4.7) of any person who sponsored the alien's entry into the United States will be deemed to the alien. Such deeming applies for a period of three years from the month of the alien's entry into the United States. However, deeming shall not apply to any alien who is:

1. Admitted to the United States under the provisions of section 203(a)(7) of the Immigration and Nationality Act which were in effect prior to April 1, 1980;
2. Admitted to the United States under the provisions of section 207(c)(1) of such Act which became effective March 31, 1980;
3. Paroled into the United States as a refugee under section 212(d)(5) of such Act;
4. Granted political asylum by the Attorney General;
5. Determined to be blind or disabled if such blindness or disability began after the date of admission into the United States for permanent residence; or
6. Sponsored by an institutional sponsor such as an employer or a church.

(b) In the event an alien is sponsored by a person subject to the deeming rules at N.J.A.C. 10:71-5.5, those rules will be used in lieu of the sponsor-to-alien rules.

(c) No inquiry shall be made regarding a sponsor's financial circumstance unless the alien's own countable income and resources indicate potential program eligibility.

(d) Normal income exclusions do not apply in deeming of a sponsor's income to an alien. Additionally, SSI benefits, TANF payments, as well as any other public income maintenance payments are not excluded in sponsor-to-alien deeming.

(e) To determine the amount of income to be deemed to an alien, the dollar amounts in (e)2 and 3 below will be updated annually by publication of a notice of administrative changes in the New Jersey Register reflecting the Federal cost-of-living adjustment to the SSI standards established pursuant to 42 U.S.C. § 1382f. The CBOSS shall proceed as follows:

1. Determine the total gross earned (wages and net earnings from self employment) and gross unearned income of the sponsor (and spouse if living with the sponsor).

2. Subtract \$579.00 for the sponsor, \$869.00 for the sponsor if living with his or her spouse, \$1,158 for the sponsor if his or her spouse is a cosponsor.

3. Subtract \$289.50 for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. The remaining amount is deemed as unearned income to the alien.

(f) In the event that a sponsor has sponsored more than one alien, there is no proration of deemable income among the sponsored aliens. The income is fully charged to each alien for which the sponsor has executed an affidavit of support.

R.1983 d.373, effective September 6, 1983.

See: 15 N.J.R. 999(b), 15 N.J.R. 1477(a).

As amended on emergency basis, R.1983 d.593, effective December 19, 1983, operative January 1, 1984.

See: 15 N.J.R. 1733(a), 15 N.J.R. 2171(a).

Deeming amounts increased.

Amended by R.1984 d.566, effective November 28, 1984 (amendments effective January 1, 1985).

See: 16 N.J.R. 2845(a), 16 N.J.R. 3451(a).

Previously filed as emergency rule R.1984 d.289.

(e): amounts of income substantially amended.

Emergency amendment, R.1985 d.714, effective December 27, 1985 (operative January 1, 1986, expires February 24, 1986).

See: 18 N.J.R. 215(a).

Amount of income in (e)2 and 3 raised.

Readopted R.1986 d.74, effective February 24, 1986.

See: 18 N.J.R. 215(a), 18 N.J.R. 565(a).

Emergency amendment, R.1987 d.78, effective December 29, 1986 (operative January 1, 1987, expires February 27, 1987).

See: 19 N.J.R. 245(a).

Amount of income in (e)2 and 3 raised.

Adoption of concurrent proposal, R.1987 d.174, effective April 20, 1987.

See: 19 N.J.R. 245(a), 19 N.J.R. 646(b).

Emergency amendment, R.1988 d.55, effective and operative January 4, 1988 (expires March 4, 1988).

See: 20 N.J.R. 207(a).

Amount of income in (e)2 and 3 raised.

Adopted concurrent proposal, R.1988 d.193, effective May 2, 1988.

See: 20 N.J.R. 207(a), 20 N.J.R. 985(a).

Previously filed as an Emergency Rule.

Emergency amendment, R.1989 d.57, effective December 29, 1988 (operative January 1, 1989, expires February 27, 1989).

See: 21 N.J.R. 207(a).

(e)2 and 3 raised amount to be subtracted.

Emergency amendment expired February 27, 1989. Concurrent proposed amendment adopted and filed February 28, 1989, as R.1989 d.174, effective March 20, 1989.

See: 21 N.J.R. 207(a), 21 N.J.R. 763(a).

Provisions retained.

Emergency amendment R.1990 d.55, effective December 26, 1989, operative January 1, 1990 (expires February 24, 1990).

See: 22 N.J.R. 251(a).

Deeming computation amounts raised.

Adopted concurrent proposal, R.1990 d.177, effective February 23, 1990.

See: 22 N.J.R. 251(a), 22 N.J.R. 954(a).

Provisions of emergency amendment R.1990 d.55 readopted without change.

Emergency amendment, R.1991 d.37, effective December 31, 1990 (operative January 1, 1991).

See: 23 N.J.R. 233(a).

Increase in Medicaid Only eligibility computation amounts at (e).

Amended by R.1991 d.32, effective January 22, 1991.

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

Section recodified from 5.7.

Adopted Concurrent Proposal, R.1991 d.169, effective March 1, 1991.

See: 23 N.J.R. 233(a), 23 N.J.R. 1007(a).

Provisions of emergency amendment R.1991 d.37 readopted without change.

Emergency amendment, R.1992 d.84, effective January 22, 1992, operative January 1, 1992.

See: 24 N.J.R. 651(a).

Increase in Medicaid Only eligibility computation amounts at (e).

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), 27 N.J.R. 291(a).

Increased amounts in (e)2 and 3.

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).

In (d), substituted "TANF" for "AFDC"; and in (e), substituted "CBOSS" for "CWA" in the introductory paragraph, and increased dollar amounts in 2 and 3.

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

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

Rewrote (e).

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 (e)2, substituted "\$579.00" for "\$564.00", "\$869.00" for \$846.00 and "\$1158" for "\$1,128"; and in (e)3, substituted "\$289.50" for "\$282.00".

SUBCHAPTER 6. CASE RECORDS AND FILES

10:71-6.1 Purpose of case records

The case record is a complete record in support of the CBOSS's decisions and actions for each case.

Amended by R.1995 d.651, effective December 18, 1995.

See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(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 "CBOSS's" for "CWA's".

10:71-6.2 Contents of the case record

(a) The following items shall be included in the case record:

1. The narrative recording;
2. All medical reports and record of action from the MRT (appropriate cases);
3. All forms related to financial eligibility; and
4. All related correspondence, memoranda and documents except those which are required by law and regulation to be maintained in some other files.

10:71-6.3 Forms applicable to the Medicaid Only program

Forms applicable to the Medicaid Only program (aged, blind and disabled) are listed on page 1 of Appendix A; sample forms follow that list.