

New (b) and (c) added; old (b)-(d) now (d)-(f).
 Amended by R.1995 d.651, effective December 18, 1995.
 See: 27 N.J.R. 3543(a), 27 N.J.R. 5046(a).

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

10:71-3.15 County Welfare Agency responsibility and procedures; eligibility factors

(a) The CWA shall be responsible for determining income and resource eligibility, as outlined in subchapter 4 of this chapter, for Medicaid Only when applicant is receiving care in institutions defined above. This does not include residents of the State psychiatric hospitals, the State schools for the mentally retarded, Bergen Pines County Psychiatric Hospital, and Essex County Hospital Center, which are the responsibility of the Institutional Services Section of the Division of Medical Assistance and Health Services.

(b) When eligibility depends upon the disability or blindness factor, the determination of medical eligibility shall be the responsibility of the medical review team. The CWA shall furnish the MRT with current, pertinent social and medical information as outlined in this subchapter.

(c) When eligibility for Medicaid Only has been determined, the CWA will complete and process a Medicaid Status File Transaction, form MAP-1, within ten working days from the date of such determination. The CWA will issue and distribute Medicaid validation stubs to Medicaid Only recipients who are not in long term care facilities. The CWA will complete the statement of income available for nursing home payment (PA-3L) when appropriate.

(d) A determination of continuing eligibility shall be made in accordance with subchapter 5 of this chapter.

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

10:71-3.16 Medical assistance units

(a) Medicaid District Office (MDO): The Division of Medical Assistance and Health Services has local medical offices throughout the State, known as Medicaid District Offices (MDOs). The role of these offices is to provide liaison with providers of health services; provide information about Medicaid to recipients and members of the community; provide utilization review in determining the medical need for certain covered services requiring prior authorization; and provide information about Medicaid to, and cooperate with, appropriate agencies in order to ensure maximum utilization of the services available through the Medicaid program.

(b) Any questions with respect to policy, regulations, or procedures of the Medicaid program should be directed to the appropriate MDO as listed at N.J.A.C. 10:49, Appendix, Form #17.

Amended by R.1985 d.291, effective June 3, 1985.
 See: 17 N.J.R. 38(a), 17 N.J.R. 1415(a).
 Addresses to MDO have been changed.
 Amended by R.1995 d.651, effective December 18, 1995.

SUBCHAPTER 4. RESOURCES

Law Review and Journal Commentaries

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

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

10:71-4.1 Financial eligibility standards; resources

(a) The resources criteria and eligibility standards of this section apply to all applicants and recipients.

(b) Resources defined: For the purpose of this program a resource shall be defined as any real or personal property which is owned by the applicant (or by those persons whose resources are deemed available to him/her, as described in N.J.A.C. 10:71-4.6) and which could be converted to cash to be used for his/her support and maintenance. Both liquid and nonliquid resources shall be considered in the determination of eligibility, unless such resources are specifically excluded under the provisions of N.J.A.C. 10:71-4.4(b).

(c) Availability of resources: In order to be considered in the determination of eligibility, a resource must be "available". A resource shall be considered available to an individual when:

1. The person has the right, authority, or power to liquidate real or personal property, or his or her share of it;
2. Resources have been deemed available to the applicant (see N.J.A.C. 10:71-4.6 regarding deeming of resources); or
3. Resources arising from a third-party claim or action are considered available from the date of receipt by the applicant/recipient, his or her legal representative or other individual acting on his or her legal behalf in accordance with the following definition and provisions.

i. Definition of "availability of resources in third-party situations": In third-party situations in which applicants/recipients have brought an action or made a claim against a third party who is or may be liable for payment of medical expenses related to the cause of the action or claim, funds are considered available or countable at the moment of receipt by the applicant/recipient, his or her legal representative, guardian, relative or any person acting on the applicant's/recipient's behalf. Such funds should be considered available or countable at the earliest date of receipt by any of the aforementioned entities.

(1) In determining resource eligibility in accordance with N.J.A.C. 10:71-4.5(a), those funds actual-

ly available to the applicant/recipient or any person acting on his or her behalf as of the first day of the month subsequent to the month of receipt shall be considered a countable resource, unless otherwise excluded (see N.J.A.C. 10:71-4.4).

(2) If a bona fide lien or judgment exists against such funds, making all or some portion of the funds inaccessible to the applicant/recipient, CWAs shall deduct the encumbrances and consider the remaining amount as a countable resource.

(3) If between the date of receipt of such moneys and the first day of the subsequent month the applicant/recipient pays outstanding medical expenses and/or other expenses, the CWA shall consider only the funds remaining after such payment as a countable resource.

(d) Evaluation of resources: The value of a resource shall be defined as the price that the resource can reasonably be expected to sell for on the open market in the particular geographic area minus any encumbrances (i.e., its equity value).

1. Real property:

i. Sole ownership: When the eligible individual is sole owner and has the right to dispose of the property, the total equity value (see (d)iv. below) shall be counted toward the resource maximum.

ii. Joint ownership or ownership in common: Under joint ownership or ownership in common, the equity value of the property must be divided by the number of owners and the eligible individual's share counted toward the resource maximum.

iii. Ownership by the entirety: Ownership by the entirety (or tenancy by the entirety) refers to property owned by a husband and wife whereby each member has ownership interest in the whole property which is indivisible. When a married couple (either one or both are eligible) is living together, the total equity value of all nonexempt property shall be counted toward the resource maximum. The same policy applies to an eligible couple who have been separated less than six months. If the eligible couple has been separated for six months or more, one half of the value represents a resource to each individual.

(1) When an eligible individual and an ineligible spouse own nonexempt property by the entirety and the couple is separated for a full calendar month, the cooperation of both owners is necessary to ascertain resource value. If the ineligible owner expresses willingness to dispose of the property, then its value is divided by the number of owners. If there is no such willingness by the ineligible owner, then no value may be assigned to the property. (See also N.J.A.C. 10:71-4.4(b)6 regarding situations in which a co-owner refuses to liquidate.)

iv. Equity value: The equity value of real property is the tax assessed value of the property multiplied by the reciprocal of the assessment ratio as recorded in the most recently issued State Table of Equalized Valuations, less encumbrance, if any. The Table is available from the State of New Jersey, Department of the Treasury, Trenton, New Jersey 08625.

2. Savings and checking accounts: When a savings or checking account is held by the eligible individual with other parties, all funds in the account are resources to the individual so long as he/she has unrestricted access to the funds (i.e., an "or" account) regardless of their source. When the individual's access to the account is restricted (i.e., an "and" account), the CWA shall consider a pro rata share of the account toward the appropriate resource maximum, unless the client and the other owner demonstrates that actual ownership of the funds is in a different proportion. If it can be demonstrated that the funds are totally inaccessible to the client, such funds shall not be counted toward the resource maximum. Any question concerning access to funds should be verified through the financial institution holding the account.

3. Verification of value: The CWA shall verify the equity value of resources through appropriate and credible sources. Additionally, the CWA shall evaluate applicant's past circumstances and present living standards in order to ascertain the existence of resources which may not have been reported. If the applicant's resource statements are questionable, or there is reason to believe the identification of resources is incomplete, the CWA shall verify the applicant's resource statements through one or more third parties.

i. Responsibility of applicant: If the third party contact is required in accordance with the provisions above, the applicant shall cooperate fully with the verification process. If necessary, the applicant shall provide written authorization allowing the CWA to secure the appropriate information.

(e) Resource eligibility: Resource eligibility is determined as of the first moment of the first day of each month. If an individual or couple is resource ineligible as of the first moment of the first day of the month, subsequent changes within that month in the amount of countable resources will not affect the original determination of ineligibility. If resource eligibility is established as of the first moment of the first day of the month, resource eligibility is established for the entire month regardless of any increase in the amount of countable resources.

1. This policy applies equally to individuals and couples in the month of application. Regardless of the date of application, resource eligibility is determined as of the first moment of the first day of that month.

2. If, prior to the first moment of the first day of the month, the applicant or recipient has drawn a check (or equivalent instrument) on a checking or similar account, the amount of such check shall reduce the value of the account. The value of such accounts shall not be reduced by any unpaid obligations for which funds have not already been committed by the drafting of a check.

i. When checks have been drawn on an account, the CWA shall review the appropriate account registers or check stubs to ascertain the actual balance as of the first moment of the first day of the month. Full documentation of such circumstances is required.

Amended by R.1986 d.97, effective April 7, 1986 (operative May 1, 1986).
 See: 17 N.J.R. 2954(a), 18 N.J.R. 691(a).
 (c)3 added.
 Amended by R.1986 d.165, effective May 5, 1986 (operative June 2, 1986).
 See: 17 N.J.R. 2524(a), 18 N.J.R. 985(b).
 (e) added.

Case Notes

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

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

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

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

10:71-4.2 Countable resources

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

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

1. Real property which produces income: If the CWA determines that it is necessary to establish whether or not real property is producing income consistent with its current market value (see N.J.A.C. 10:71-4.4(b)5), inquiry shall be made of local real estate brokers, tax assessors, or other persons knowledgeable of the prevailing rate of return on real property in the community.
2. Nonexcludable household goods and/or personal effects: If the CWA determines that certain household goods and/or personal effects are not excludable (see N.J.A.C. 10:71-4.4), inquiry shall be made of one or more local merchants who deal in used household goods or personal goods in order to determine the current market value of the resource.

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

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

Amended by R.1986 d.481, effective December 15, 1986 (operative January 1, 1987).
 See: 18 N.J.R. 542(a), 18 N.J.R. 2457(a).
 Old (b) and (c) deleted; (c)1 renumbered (b); (b)3 added; (d) renumbered to (c).

Law Review and Journal Commentaries

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

Case Notes

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

10:71-4.3 (Reserved)

10:71-4.4 Excludable resources

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

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

1. A house occupied by the individual as his/her place of principal residence, and the land appertaining thereto, shall be excluded:
 - i. Short temporary absences from home such as trips, visits, and hospitalizations do not affect this exclusion so long as the individual intends, and may reasonably be expected, to return home. An absence of more than six months is assumed to indicate that the home no longer serves as a principal residence. However, if the home is used by a spouse or there is evidence that the absence from the house is temporary, the home may continue to be excluded. With that exception, the CWA shall extend the period only with approval from the Division of Medical Assistance and Health Services.

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

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

(1) It is necessary for employment; or

(2) It is necessary as a means of transportation for the medical treatment of a specific or regular medical problem; or

(3) It is modified for operation by, or transportation of, a handicapped person.

ii. If no automobile is excluded under (b)2i above, one automobile is excluded as a resource to the extent that its current market value (CMV) does not exceed \$4,500. The CMV in excess of \$4,500 is counted against the resource limit. Where more than one automobile is involved, the car of highest value may be excluded for use if it is to the advantage of the applicant/recipient.

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

iii. Other automobiles: Any other automobiles are treated as non-liquid resources and counted to the extent of their equity value.

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

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

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

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

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

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

5. Nonhome property that is used in a business or nonbusiness self-support activity is excluded from resources when the equity does not exceed \$6,000 and the activity produces a net annual return of at least six percent of the excludable equity value. If a net return of six percent on \$6,000 equity is shown, but the equity value of the property exceeds \$6,000, the excess equity (property value less \$6,000) is a countable resource and applied to the resource standards in N.J.A.C. 10:71-4.5. If such property is not excludable because the net annual return is less than 6 percent of the equity value (with exceptions below), the total equity value is an includable resource.

i. A rate of return of less than six percent is considered acceptable when all the following conditions are met:

(1) The property is used in a business income-producing operation; and

(2) Unusual or untoward circumstances cause a temporary reduction in the net rate of return; and

(3) The usual net rate of return is six percent of equity value; and

(4) The individual expects the property to again produce a return of six percent of equity value within 18 months of the end of the taxable year in which the unusual incident which caused the reduction in the rate of return occurred.

ii. Tools and equipment required for employment are assumed to be of a reasonable value and producing a reasonable rate of return and are, therefore, excluded from resources.

6. The value of resources which are not accessible to an individual through no fault of his or her own.

i. Such resources include, but are not limited to, irrevocable trust funds, property in probate, and real property which cannot be sold because of the refusal of a co-owner to liquidate.

ii. Inaccessible resources shall be reevaluated (regarding their accessibility) at every redetermination.

7. In the case of a blind or otherwise disabled person, resources which have been accumulated in connection with a plan to achieve self-support.

To qualify for this exclusion, an individual's plan to achieve self-support shall have been approved by the Division of Vocational Rehabilitation Services or the Commission for the Blind and Visually Impaired, and must be current as of the date of the exemption.

8. The replacement value of excludable resources shall be considered as follows: