

Medicaid Eligibility Rules

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Introduction

Medicaid is a state-administered program jointly funded with state and federal dollars, governed by at least two layers of law: state and federal. Medicaid is administered by the South Dakota Department of Social Services (DSS). Medicaid is a “need based” (or “means tested”) government program which can finance an individual’s long term care or nursing home expenses *if* the individual qualifies. Eligibility for Medicaid funding of long term care expenses is based on satisfying (a) state residency requirements¹; (b) aged/disabled requirements²; (c) income requirements³; and (d) resource requirements.⁴

This article discusses the income and resource limitation rules for Medicaid eligibility in South Dakota. Essentially, to qualify for long term care Medicaid assistance, an individual must be “poor enough” under the applicable definitions. This article describes what Medicaid defines as “poor enough” to satisfy the Medicaid eligibility rules.

Income Limitations

The income rules limit Medicaid eligibility to individuals whose income does not exceed 300% of the “maximum SSI standard.”⁵ In 2009, this amount is \$2,022/month.

Certain income is considered exempt, and is not counted towards this threshold amount.⁶ Exempt income includes third-party payments to medical providers, income tax refunds, unearned irregular income of \$20/month or less, life insurance dividends and veteran’s aid and attendance benefits.

With the exception of a “personal needs allowance” (PNA) of \$60/month, all of an unmarried individual’s income must be turned over to the long term care facility once the

¹ ARSD 67:46:03:04; see also ARSD 67:46:03:06.

² ARSD 67:46:03:02; see also ARSD 67:46:03:03.

³ ARSD ch. 67:46:04.

⁴ ARSD ch. 67:46:05.

⁵ ARSD 67:46:04:14.

⁶ ARSD 67:46:04:03.

individual becomes eligible for Medicaid assistance.⁷ A deduction for health insurance premium payments is also allowed.⁸

Resource Limitations

Individuals must also meet the resource limitation rules in order to qualify for Medicaid. The resource limitation for an individual is \$2,000. The resource limitation for a married couple is \$3,000.⁹

Certain resources are exempt and not counted towards these limits. Exempt resources include one automobile¹⁰, household good and personal effects and collections not exceeding \$2,000 in value¹¹, trade or business property essential for self-support¹², equipment and tools essential for self-support not exceeding “\$6,000 in value¹³, life insurance,¹⁴ irrevocable prepaid burial contracts,¹⁵ burial spaces,¹⁶ separate burial funds,¹⁷

⁷ ARSD 67:46:06:05; see also ARSD 67:46:07:10.

⁸ ARSD 67:46:06:96.

⁹ ARSD 67:46:05:30.

¹⁰ ARSD 67:46:05:31(1). The state rules provide that the value of the vehicle is capped at \$4,500 unless it is used for transportation to medical appointments or for essential daily activities, or it has been modified for handicapped purposes. Id.

¹¹ ARSD 67:46:05:31(2).

¹² ARSD 67:46:05:24.

¹³ ARSD 67:46:05:21; ARSD 67:46:05:22.

¹⁴ ARSD 67:46:05:37. The face value on all policies combined is capped at \$1,500. Id. Life insurance policies without a cash surrender value are exempt. Id.

¹⁵ ARSD 67:46:05:39.

¹⁶ ARSD 67:46:05:44. Burial spaces must be intended for the individual or his family. Id.

¹⁷ ARSD 67:46:05:45. Separate burial funds of up to \$1,500 only are considered exempt. Id.

retirement accounts owned by the individual's spouse,¹⁸ agent orange settlement payments¹⁹, and Indian Trust land.²⁰

A home is an exempt resource for eligibility purposes if it continues to be the individual's principal place of residence or continues to be occupied by the individual or her/her spouse or his/her dependent relative.²¹ If the individual's spouse does not live in the home, the home loses its exempt status unless the convincing evidence can be presented, such as a physician's statement, that the individual's residence in a long term care facility is temporary, or that a return to the home is realistic.²² In other words, the home is exempt if either spouse is still living in it or is realistically expected to return to it. Once the house is vacant and expected to remain vacant, its exempt status is lost and the value of the house is considered an available asset.

Special Rules for Spouses: The Community Spouse Concept

The Medicaid rules depend in large degree on the concept of a "community spouse." A community spouse is a non-institutionalized spouse of a person who has entered a long term care facility. In other words, there is a community spouse in the Medicaid eligibility equation when one spouse is still living independently while his or her spouse has entered long term care. Understandably, the Medicaid eligibility rules need to take account of the fact that in these circumstances, the community spouse is going to have some minimum standard of living requirements and the resource and income limitations have to be modified accordingly.

(a) Income Rules

Although the income of the institutionalized spouse is subject to the income cap rules discussed above, the income of the community spouse is not considered in connection with Medicaid eligibility. (By contrast, the resources and assets of both spouses are "pooled" or deemed available in full to the institutionalized spouse regardless of whether an asset is titled in one or both of the spouses' names.) The fact that the community spouse's income is not counted in establishing Medicaid eligibility underlies some Medicaid eligibility planning options; individuals try to convert a resource into an income stream for the community spouse. Stated another way, a community spouse's income (unlike assets) is not considered available to the institutionalized spouse.

¹⁸ ARSD 67:46:05:48. This includes IRAs and 401(k) accounts.

¹⁹ ARSD 67:46:05:50.

²⁰ ARSD 67:46:05:20.

²¹ ARSD 67:46:05:15. The equity value in the home is capped at \$500,000. Id.

²² ARSD 67:46:05:18.

There are provisions, however for using income of the institutionalized spouse to support the community spouse.

A second income rule associated with circumstances where there is a community spouse is the “Minimum Monthly Maintenance Needs Allowance” (or MMMNA). In 2009, the MMMNA is \$1,750. The MMMNA recognizes that the community spouse has minimum monthly income needs to fund their living expenses, and allows the shifting of the institutionalized income to the community spouse in order to reach these minimums. The MMMNA can be increased if the community spouse can show that his or her shelter expenses are more than 30% of the minimum allowance.²³

(b) Community Spouse Resource Adjustments

The resource limitations have to be adjusted upwards when there is a community spouse involved. Most of the times, the home will not be counted as an asset. In addition, the resource limitation of \$3,000 for a married couple is increased to at least \$21,912, and as much as \$109,560 (2009 numbers). This number is the “Community Spouse Resource Amount” (also known as the “spousal share” or “CSRA”). In addition to the CSRA, the institutionalized spouse is permitted to retain \$2,000 in resources.

The CSRA is determined by DSS to be somewhere between \$21,912 and \$109,560 on a case by case basis. The exact CSRA for any community spouse is different, depending on the circumstances. DSS essentially takes a “snapshot” of a couple’s non-exempt resources when one spouse enters a long term care facility, and allows the community spouse to retain one-half of this amount, but in no case more than \$109,560 or less than \$21,912.²⁴

WHERE TO FIND THE LAW

The law is generally comprised of statutes, regulations and caselaw (reported opinions by a court to specific facts). The law cited within the above discussion can be found at the links provided in the “Law” section of the ThomasESimmons.com website. South Dakota statutes are abbreviated as “SDCL” for South Dakota Codified Laws. South Dakota administrative rules are abbreviated as “SDAR.” Federal statutes are abbreviated as “USC” for United States Code.

²³ ARSD 67:46:07:12.

²⁴ ARSD 67:46:07:03. The spousal share can be increased if a hearing determines the calculated amount to be inadequate to support the community spouse. Id.

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