

TO: Local District Commissioners, Medicaid Directors

FROM: Betty Rice, Director
Division of Consumer & Local District Relations

SUBJECT: Treatment of Community Spouses' Retirement Funds

EFFECTIVE DATE: January 1, 2006

CONTACT PERSON: Local District Liaison
Upstate (518)474-8887 NYC (212)417-4500

This GIS informs districts of an amendment to Section 360-4.10(a)(9) of Department regulations, regarding the treatment of a community spouse's (CS's) retirement fund for purposes of determining an institutionalized spouse's Medicaid eligibility.

Retirement funds are annuities or work-related plans for providing income when employment ends (e.g., pension, disability, or other retirement plans administered by an employer or union). Additional examples are funds held in an individual retirement account (IRA) and plans for self-employed individuals (e.g., Keogh plans).

In accordance with recent federal notification regarding the Medicare Catastrophic Coverage Act of 1988, retirement funds are not excludable resources for purposes of determining an institutionalized spouse's Medicaid eligibility. Therefore, effective January 1, 2006, if a CS is NOT receiving periodic payments from his/her available retirement fund, the fund is considered a countable resource for purposes of determining the community spouse resource allowance (CSRA) and the institutionalized spouse's Medicaid eligibility. This includes situations where the retirement fund of the CS exceeds the CSRA. Prior to the regulation change, it had been the Department's policy to count the resource amount of any retirement fund belonging to the CS first toward the CSRA and to disregard any amount which exceeded the CSRA. The excess will no longer be disregarded.

This change applies to Medicaid eligibility determinations with a budget "From Date" of January 1, 2006 or after. Undercare cases are not affected by this change.

NOTE: If the community spouse has elected to receive periodic payments from his/her retirement account, the retirement account is not a countable resource in determining the institutionalized spouse's eligibility. However, the periodic payments are countable income for the community spouse.

For purposes of determining Medicaid eligibility for SSI-related individuals who are not subject to spousal impoverishment budgeting, a retirement fund owned by a non-applying or ineligible spouse continues to be excluded as a resource.

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TO: Local District Commissioners, Medicaid Directors

FROM: Betty Rice, Director
Division of Consumer and Local District Relations

SUBJECT: Retirement Funds owned by Medicaid Applicants/Recipients

EFFECTIVE DATE: Immediately

CONTACT PERSON: Wendy Butz (518) 473-5500 or Dennis Boucher
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This message is to clarify the Department's policy concerning the treatment of retirement funds for purposes of determining Medicaid eligibility. The clarification reflects the eligibility requirements of the Supplemental Security Income (SSI) program, however, the clarification applies to all Medicaid applicants/recipients.

Retirement funds are annuities or work-related plans for providing income when employment ends (e.g., pension, disability, or other retirement plans administered by an employer or union). Other examples are funds held in an individual retirement account (IRA) and plans for self employed individuals, sometimes referred to as Keogh plans.

Treatment as a Resource

A retirement fund owned by an individual is a countable resource if the individual is not entitled to periodic payments, but is allowed to withdraw any of the funds. The value of the resource is the amount of money that the individual can currently withdraw. If there is a penalty for early withdrawal, the value of the resource is the amount available after the penalty deduction. Any income taxes due are not deductible in determining the resource's value.

As advised in 90 ADM-36, retirement funds owned by an ineligible or non-applying community spouse are countable for purposes of determining the total combined countable resources of the couple. However, the retirement funds are not considered available to the institutionalized spouse. The retirement fund owned by the community spouse is counted first toward the maximum community spouse resource allowance.

Periodic Payments

Medicaid A/Rs who are eligible for periodic retirement benefits must apply for such benefits as a condition of eligibility. If there are a variety of payment options, the individual must choose the maximum income payment that could be made available over the individual's life time. (By federal law, if the Medicaid A/R has a spouse, the maximum income payment option for a married individual will usually be less than the maximum income payment option that is available to a single individual.) Once an individual is receiving periodic payments, the payments are counted as unearned income on a monthly basis, regardless of the actual frequency of the payment. For example, if the periodic benefit is received once a year, the amount is to be divided by twelve to arrive at a monthly income amount.

Once an individual is in receipt of or has applied for periodic payments, the principal in the retirement fund is not a countable resource. This includes situations where a Medicaid applicant has already elected less than the maximum periodic payment amount and this election is irrevocable. In such situations, only the periodic payment amount received is counted as income and the principal is disregarded as a resource.

NOTE: Individuals who have met the minimum benefit duration requirement of a New York State Partnership for Long Term Care policy are not required to maximize income from a retirement fund. In addition, non-applying or ineligible spouses/parents cannot be required to maximize income from a retirement fund.

The above information will be contained in a forthcoming administrative directive.

If plan option is not irrevocable -
Client will be required to maximize
election -

If process to maximize has begun or
is started after date of eligibility principal
is not counted -