

Introduction to Spousal Impoverishment: Helpful Information for Long-Term Care Options Counseling



A PROFESSIONAL'S GUIDE



Webcast: Introduction to Spousal Impoverishment: Helpful Information for Long-Term Care Options Counseling

Competency/skill – Understand the main components of Spousal Impoverishment.

Objectives:

1. Define spousal impoverishment provisions.
2. Describe how spousal impoverishment provisions protect assets or resources.
3. Explain what assets are considered “exempt.”
4. Describe ways a couple can spend down excess assets to the required level.
5. Explain what the minimum monthly maintenance needs allowance is.

Sample discussion questions:

1. What are key components of the spousal impoverishment provision?
2. How do people access this provision? Role play how you would explain spousal impoverishment to a consumer?
3. What happens if a community spouse had less than the minimum monthly needs allowance?
4. What information is included in the “The Snapshot” or asset assessment?
5. When do couples transfer assets?

INTRODUCTION TO SPOUSAL IMPOVERISHMENT: HELPFUL INFORMATION FOR LONG-TERM CARE OPTIONS COUNSELING

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SPOUSAL IMPOVERISHMENT: What does that mean?

- Simply put, spousal impoverishment provisions aim to keep spouses of individuals who have to enter nursing homes from becoming poor.
- Spousal impoverishment provisions apply to spouses of
 - Medical Assistance (MA) recipients who are in nursing homes
 - spouses of Community Waivers/Community Options Program participants
 - Participants in managed long term care waivers programs (i.e. Family Care, PACE and Partnership)

SPOUSAL IMPOVERISHMENT CONCEPT

- Spousal impoverishment provisions aim to allow the community spouse to remain independent and in the community while still providing MA benefits to the institutionalized spouse.
- Couples are now allowed to protect a greater amount of assets and a higher amount of income and still qualify for the benefits of MA.
- Wisconsin allows maximum asset limits compared to other states

HOW DO SPOUSAL IMPOVERISHMENT PROVISIONS PROTECT ASSETS OR RESOURCES?

- As with income, the spousal impoverishment rules are meant to preserve a certain level of resources for couples.
- **These rules DO NOT guarantee that couples will be able to keep all the assets they have accumulated over time.**

WHAT IS THE TOTAL VALUE
OF ALL THE COUPLE'S
ASSETS AT THE FIRST
PERIOD OF
INSTITUTIONALIZATION?
(Asset Assessment or "The
Snapshot")

ARE ALL OF THE COUPLE'S ASSETS INCLUDED IN THE ASSET ASSESSMENT? (Countable Resources/Assets)

- Exempt assets: the home, car, certain pre-paid burial expenses, a small life insurance policy for the nursing home spouse, the IRA of the community spouse, etc.

WHAT AMOUNT OF ASSETS MAY THE NURSING HOME SPOUSE KEEP?

Based on the results of the "snapshot" . . .

- \$0 - \$50,000 CSRA: ALL
- \$50,001 - \$100,000 CSRA: \$50,000
- \$100,001 - \$199,079 CSRA: HALF
- \$199,080+ CSRA: \$99,540

In addition, the asset Limit for Institutionalized or Waiver Spouse

- \$2,000

Note: Consumers have 1 year to reduce assets
It's not necessary to transfer assets before applying for Medicaid.

HOW CAN A COUPLE SPEND DOWN EXCESS ASSETS TO THE REQUIRED LEVEL?

- Purchase exempt assets;
- Pay bills, medical debt, do house repairs, buy a new furnace, purchase a new roof, buy new furniture, etc.

Can a couple give excess assets away? (DIVESTMENT):

- **CAUTION** Giving away excess assets creates the potential for the nursing home spouse to be denied eligibility for institutional care for a certain period of time.
- A private attorney who specializes in elder law should advise individuals of the consequences of giving assets away.
- Note: transfer of assets between spouses is not considered divestment

WHAT HAPPENS AFTER MA ELIGIBILITY IS ESTABLISHED?

- Once MA eligibility is established, none of the community spouse's resources are considered available to the nursing home spouse. This means that once the institutionalized spouse is found eligible, the community spouse may acquire additional resources above and beyond the CSRA.
- And remember the couple has one year to transfer assets that are in the name of the institutionalized spouse.

HOW DO SPOUSAL IMPOVERISHMENT PROVISIONS PROTECT INCOME?

INSTITUTIONALIZED SPOUSE'S MONTHLY INCOME ELIGIBILITY LIMIT

- Monthly need must be greater than monthly income in order to become eligible.
- Once eligible, the institutionalized spouse may keep at a minimum \$45 / month. This is known as the “personal needs allowance” (Some other deductions may apply.)

HOW MUCH INCOME IS THE COMMUNITY SPOUSE ENTITLED TO? (Minimum Monthly Maintenance Needs Allowance)

- Generally up to, \$2,138.33/ month. This amount changes annually
- Dependent family member allocation is also available

WHAT HAPPENS IF THE COMMUNITY SPOUSE HAS LESS INCOME THAN THE MMMNA (\$2,138.33)?

- She or he may be entitled to an allocation of income from the institutionalized spouse, assuming the institutionalized spouse has income to give. The goal is for the community spouse to retain as much income as possible up to a maximum of \$2,138.33.

- The government does not supplement the community spouse's income even if that income combined with the allocation from the institutionalized spouse falls below the Minimum Monthly Maintenance Needs Allowance.

WHAT IF THE COMMUNITY SPOUSE'S INCOME MEETS OR EXCEEDS THE MMMNA (\$2,138.33)?

- The institutionalized spouse's income, minus the \$45 Personal Needs Allowance (PNA) and other allowable deductions, will go towards the cost of nursing home care.
- The community spouse, on the other hand, may keep her or his own entire income even if it exceeds \$2,138.33.

- *A community spouse may receive more than \$2,138.33 in income so long as that income is in the community spouse's own name.*

ADDITIONAL COMMUNITY SPOUSE INCOME PROTECTIONS

In certain instances, couples may be entitled to a higher CSRA than the standard amounts set forth in the chart.

- If the couple owns income-generating assets that provide a stream of income to the community spouse AND,
- The community spouse's income is below the MMMNA (\$2,138.33).

A community spouse's income allowance may be increased to a maximum of \$2,488.50 if the community spouse incurs "excess shelter expenses."

- If the community spouse's shelter expenses exceed \$641.50 the community spouse's monthly income allowance can be increased provided the sum is not greater than \$2,488.50.

- Allowable shelter expenses include rent or mortgage payments, property taxes, insurance, required maintenance charges, and a standard utility allowance.
- Assuming the institutionalized spouse has additional income available the community spouse may request an additional allocation. The couple may also request an increased CSRA to take advantage of income generating assets

Exceptional circumstances resulting in financial duress

- If the community spouse is unable to meet “necessary and basic needs” the community spouse income allowance may be increased.
- What amounts to “necessary and basic needs” is left to the discretion of the hearing officer making the determination.

EXAMPLE

What is the amount of Betty and Jerry's non-exempt assets?

- | | |
|-------------------------|-----------|
| • Joint Savings Account | \$15,000 |
| • Stock | \$15,000 |
| • Loon Lake Cottage | \$290,000 |
| • Total | \$320,000 |

What is Betty's CSRA?

- \$99,540

Does Jerry Qualify for Medical Assistance?

- NO
- Purchase Exempt Assets
- Pay Bills
- Pay Jerry's Cost of Care
- Seek Advice of an Elder Law Attorney

How much of Jerry's income will Jerry need to contribute to his care in a nursing home?

- MMMNA \$2,138.33
- Subtract Betty's Income \$742.00
- Possible Allocation from Jerry \$1,396.33

- Jerry's Income \$1,080
- Compare to Possible Allocation \$1,396.33
- All of Jerry's Income to Betty and \$0 contribution towards the cost of care at Rutledge Home

Betty's Income?

- Jerry's Income \$1,080
- Subtract Personal Needs Allowance \$45
- Allocation to Betty \$1,035
- Add Betty's Income \$742
- Betty's Available Income \$1,777

Methods to Increase Betty's Income

- No Additional Allocation Available from Jerry
- Income Generating Assets?
- Excess Shelter Expenses?

HELPFUL INFORMATION FOR LONG-TERM CARE OPTIONS COUNSELING: AN OVERVIEW OF LIEN LAW

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Methods of Recovery

- Liens on homes
- Recovering assets from estates
- Voluntary recoveries

MEDICAL ASSISTANCE PAYMENTS SUBJECT TO LIEN

- MA benefits received after October 1, 1991 by a person of any age while living in a nursing home.
- MA benefits received after April 1, 2000 by a person age 55 and older for: home health skilled nursing services; home health aide services; home health therapy and speech pathology; private duty nursing services; services provided under COP waiver and CIP.

- MA benefits received after April 1, 2000 by a person 55 and older for service under COP "Classic."
- MA benefits received after April 1, 2000 by a person of any age for the Disease Aids Programs.

- MA benefits received after April 1, 2000 by a person 55 and older for personal care services.
- MA benefits received after April 1, 2000 by a person who is hospitalized and likely to remain there on a permanent basis.

PROPERTY SUBJECT TO LIEN

- The state may only place a lien on the MA recipient's home.
- "Home" is the property in which a person has an ownership interest and which used to be the person's dwelling.

LIMITS ON THE STATE'S AUTHORITY TO PLACE A LIEN

- There is a “reasonable” expectation that the recipient will return home
- The spouse lives in the home.
- A child under 21 lives in the home.

- A disabled child of any age lives in the home.
- A sibling who has an ownership interest in the home and has lived in the home for one year before the MA recipient entered the nursing home.

LIMITS ON THE STATE'S AUTHORITY TO COLLECT ON THE LIEN

- A living spouse, no matter where the spouse lives
- A child under 21 or a disabled child, no matter where the child lives

- If the MA recipient is survived by a non-disabled adult child who lived with the parent for two years and provided care that delayed the parent's nursing home admission lives in the home.

Example: Georgia Adair entered a nursing home in July of 1999. Her son, Tom, who is disabled lives in her home. May the state place a lien?

- No.
- Paid services are recoverable.
- On the home
- Disabled child living in the home*

Example: Lloyd Buchelski has been in a nursing home for two years. Last year, his wife, Marie, moved to a small apartment. Can the state place a lien on the home?

- Yes.
- Paid services are recoverable
- On the home
- No “protected person” living in the home

Can the state enforce its lien on the home if Marie sells it?

- No.
- A living spouse, no matter where living

**HELPFUL INFORMATION FOR
LONG-TERM CARE
OPTIONS COUNSELING:
AN OVERVIEW OF ESTATE
RECOVERY**

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MEDICAL ASSISTANCE PAYMENTS SUBJECT TO RECOVERY

- MA benefits received after October 1, 1991 by a person of any age while living in a nursing home.
- MA benefits received after July 1, 1995 by a person age 55 and older for: home health skilled nursing services; home health aide services; home health therapy and speech pathology; private duty nursing services; services provided under COP waiver and CIP.

- MA benefits received after January 1, 1996 by a person 55 and older for service under COP "Classic."
- MA benefits received after January 1, 1996 by a person of any age for the Disease Aids Programs.
- MA benefits received after April 1, 2000 by a person 55 and older for personal care services.

CLAIMS AGAINST AN ESTATE

- The Department of Health and Family Services files a claim against the estate in the amount of Medical Assistance benefits paid on behalf of the deceased recipient.
- The state will be unsuccessful in collecting its claim if there is a surviving spouse, a surviving disabled child of any age, or a surviving child under the age of 21.

- Generally the state may only file a claim against the estate of the deceased recipient. If the deceased received benefits under the Community Options Program or the Disease Aids Programs the state may file a claim against the estate of the surviving spouse.

ASSETS SUBJECT TO RECOVERY

- The state may recover only assets that pass through the probate process by will or the laws of intestacy. *For example, real estate, cars, boats, bank accounts, etc.*
- Property that does not pass through probate is not subject to recovery. *For example life insurance or real estate held in joint tenancy.*

- Effective July 29, 1995 the state may recover from joint bank accounts or “payable on death” accounts.
- The probate court may reduce the state’s claim by up to \$5,000 to allow the heirs to receive the deceased’s wearing apparel, jewelry, household furnishings, and appliances.
- Generally the state will only request recovery for cash assets in small estates.

ESTATE RECOVERY AND LIENS

- If the estate includes a home and a spouse, or a disabled or minor child survives the deceased MA recipient the state may convert its claim to a lien.
- The same protections against enforcement apply to these liens as discussed in the lien section of this outline.

- Exception for Adult child who lived in home 24 months prior to admission and provided care that delayed recipients entry into nursing home.
- Exception for sibling who lived in home 12 months prior to admission.

WAIVER OF CLAIM FOR UNDUE HARDSHIP

- The waiver applicant is receiving General Relief, Relief to Needy Indian Persons or Veterans Benefits based on need; or
- The waiver applicant would become or remain eligible for SSI, FoodShare, AFDC, or Medical Assistance if the Department pursued its claim; or

- A decedent's real property is used as part of a waiver applicants business, and recovery by the Department would affect the property and would result in the waiver applicant losing his or her means of livelihood.

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Wisconsin Department of Health & Family Services
Division of Disability & Elder Services
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