

LONG-TERM CARE AND PUBLIC ASSISTANCE

by
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INTRODUCTION

Medicare and *Medicaid* are frequently mistaken for one another. *Medicare* is a federal medical benefits program which is financed by Social Security deductions and which is primarily for the elderly. *Medicaid* is a joint state and federal program for public assistance recipients and other medically indigent adults. *Medicare* pays for short term skilled nursing care and does not cover long-term nursing home care. Generally, *Medicaid* pays for in-patient and out-patient hospital care, physicians' services, psychiatric services, some prescription drugs, home health services, and nursing home care. Nursing home care is extremely expensive and many nursing home residents eventually run out of money and require the assistance of *Medicaid*.

APPLICATION

The place of application is usually the office of the local social services department serving your locality. If you are unable to come to the office, the agency, upon request, must arrange to have your application taken in your home or in the facility in which you are a resident. If you are in an institution, the application and eligibility determination rests with the locality in Virginia in which you last resided outside the institution. At the time of application, you will be asked to list all property transfers, *i.e.*, the date of transfer, property value, and compensation received, made

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as well as all your resources and income.

Prior to entering a nursing home, a pre-eligibility screening must be done in order to verify that the intended care is medically appropriate. However, a pre-admission screening is not required if institutionalization occurs prior to the Medicaid application being filed.

ELIGIBILITY

You may be automatically eligible for *Medicaid* or eligible for *Medicaid* as a medically needy individual. You will be automatically eligible for *Medicaid* if you receive Supplemental Social Security and are at least 65, blind, or disabled, and meet Virginia's limit on resources. You may be eligible for *Medicaid* as a medically needy individual if you are at least 65, blind, or disabled, and meet Virginia's limit on resources and income or if you are placed on a *spend down*.

Income

There is no strict income limit for individuals receiving nursing home care, provided the individual's income is less than the monthly private-pay-rate for care in the nursing home. If you are a *Medicaid* applicant to whom an income limit applies and your income is above the *Medicaid* limit, you may be placed on a *spend down* which is a systematic reduction of your income, if your excess income is insufficient to meet the total cost of needed medical care for a six-month period. The amount of your income which must be spent before you will be eligible for *Medicaid*, the *spend-down* amount, is the amount your income exceeds the *Medicaid* income limit over a six-month period. Once your medical expenses equal or exceed the *spend-down* amount, you will receive *Medicaid* coverage for the remainder of the six-month period. At the end of that six-month period, you will need to reapply for *Medicaid*. Medical expenses incurred

within the six-month period beginning with the application month may be deducted from your excess income. The income spend down does not apply to you if you require nursing home care. Once eligible for *Medicaid*, you will be entitled to maintain a small amount of income for personal needs. If married, your spouse may be entitled to keep all his or her income and, if your spouse's income is less than \$1,812.25, he or she will be entitled to that portion of your income needed to raise it to \$1,812.25. If you believe that the income allowance is insufficient to meet the income needs of your spouse, it may be raised by a hearing, a court order of support, or under the excess-shelter-allowance formula (presently \$546.38). Expenses considered in determining whether or not to allow a spouse more income under the excess-shelter-allowance formula are: rent, mortgage, taxes, insurance, standard utility charges and any maintenance charges on condominiums. The maximum maintenance needs allowance is \$2,739.00.

Resources

You may request a *Medicaid* resource assessment before you file an application for *Medicaid*; and, at the time you file a *Medicaid* application, a resource assessment will be performed.

Although the income of your spouse is not deemed yours, married persons are considered to have available to them all resources held by their spouses. For *Medicaid* to assess your resources, you must list all assets, owned by you or your spouse, which will be categorized as either *countable* or *non-countable*. Non-countable assets are assets which you may retain. Some non-countable assets are: your home, your personal furnishings, cemetery plots, some funds set aside for burial, and some life insurance policies. Countable assets are assets which belong to you and for which there is a meaningful possibility that they could be sold or otherwise converted into cash. You

must spend all but \$2,000 of your countable assets before you will be eligible for *Medicaid*. If you are married and require institutionalized care, you will be referred to as the institutionalized spouse and your well spouse will be referred to as the community spouse. The community spouse will receive a notice of *Medicaid* resource assessment which will state the spousal share for the community spouse. The spousal share is the minimum value of assets which the community spouse may retain and protect from the necessary resource reduction before the institutionalized spouse achieves eligibility. The spousal share is determined by adding the couple's joint and individual countable resources and dividing them by two. The spousal share is subject to a minimum amount of \$21,912 and a maximum of \$109,560.

RESOURCE REDUCTION

It is important not to give away your property or transfer it for less than fair market value in an attempt to qualify for *Medicaid* eligibility; such action would disqualify you for *Medicaid* for a period equal to a period for which the uncompensated transfer would have paid for nursing home care at the state determined rate. An uncompensated transfer is a gift or a transfer made for less than fair market value. Certain transfers are valid and would not preclude *Medicaid* eligibility, *e.g.*, transfers between spouses, transfers made for fair market value, and, in certain cases, transfers of your home. However, an attorney should be consulted before any transfers are made.

APPEALS

If your *Medicaid* application is denied, you have the right to receive written notice of the denial

including the reason and specific regulation(s) supporting the denial and an explanation of your right to appeal. If you would like to request a hearing, this must be done within 30 days of the notice of denial.

CONCLUSION

The current *Medicaid* rules and regulations were enacted to avoid spousal impoverishment and to permit certain transfers; however, ill-advised actions taken to qualify an individual for *Medicaid* can be extremely costly to the individual and family and may also result in adverse tax consequences. The *Medicaid* rules are very complex and detailed rules exist governing transfers of homes, joint bank accounts, transfers between spouses, income, *spend down*, resources, life insurance and estate recovery. It is prudent to get expert advice if you have questions about *Medicaid*. For further information, contact an elder law attorney.

*The information provided is current as of January, 2010. *Medicaid* rules and regulations change frequently.