caringkind The Heart of Alzheimer's Caregiving

360 Lexington Avenue, 4th Fl.
New York, NY 10017
caringkindnyc.org
F: 212-697-6037

24-hour Helpline
P: 646-744-2900
helpline@caringkindnyc.org

Spousal Impoverishment Protections

On Sept. 24, 2013, New York State announces that spousal impoverishment protections are available to married participants in Managed Long Term Care (MLTC) plans. Prior to this, spousal impoverishment protections were only available to nursing home and Lombardi (long term home health care program) participants.

The Lombardi Program is being phased out so without these protections married Lombardi participants would have been at financial risk. Now that Lombardi participants will be moving into MLTC plans, they will maintain these spousal protections. The policy expands on GIS 12 MA/013, which relates to traumatic Brain Injury (TBI) and Nursing Home Transition and Diversion (NHTD) waiver programs.

Spousal impoverishment protections were enacted by Congress in 1988 to protect spouses of nursing home residents. Under previous law, the spouse who remains at home was not given an allowance on which to survive. The law put into effect allowances for community spouses to live on.

New York State has always exercised the federal government's option of applying the spousal impoverishment protections to the Lombardi program (long term health care program) and other waivers. Although threatened at some points over the years by the federal government, participants in the Lombardi program who have a community spouse have had eligibility determines under spousal impoverishment budgeting if that worked better for the recipient.

The 2013 directive published this month refers to the 2012 directive that extended spousal budgeting to TBI or NHTD waiver programs and explained how spousal impoverishment protections were being implemented. It gives recipients a choice of using the move advantageous option of two budgeting methodologies for income:

The first option is spousal impoverishment budgeting, which includes deducting from the applicants income:

> An amount to bring his spouse's income up to the "Minimum Monthly Maintenance Needs Allowance" (MMMNA), which is $3,259.50 in 2021. The allowance provided to the non-applying spouse is called a "community spouse monthly income allowance" (CSMIA). The CSMIA is calculated by subtracting from the MMMNA ($2,898) the non-applying spouse's own income and the monthly cost of his/her health premiums (e.g. $2,898 MMMNA MINUS $200 medical insurance premiums = $498); a Family Member allowance (FMA), if applicable, is allowance of $647 per dependent family member up to a maximum of $1,939 (2013) and a Personal Needs Allowance (PNA) for the waiver participants, which is $375 in 2013 (the difference between the regular Medicaid level for ONE PERSON and TWO PERSON households).

Please Turn Over

The second option is community budgeting where an MLTC/Waiver participant's own income is budgeted, after deducting all income disregards (including the $20 monthly disregard) available in the community SSI related Medicaid recipients. The net income is compared to the regular Medicaid level of $800/month (2013). In some cases it may be favorable than the spousal impoverishment allowance.

In advising Agencies how to calculate, GIS 12 MA/013 indicated that it would only advantageous to the recipient to apply the post-eligibility rules if the CSMIA, plus FMA, is applicable, exceeds $445 ($453 in 2013). In other words, if the non-applying spouse's income, after deductions for health insurance premiums, is less than $2,453 per month, then the spousal impoverishment rule is more favorable.

Under both budgeting options, spousal impoverishment rules are to be applied to the couple's resources.

This budgeting will be new to many Medicaid workers so it is necessary to request spousal budgeting. Those who want budgeting before renewal will have to request it.

This article was taken from Elder Law Review, October, 2013