

UNDERSTANDING THE COMMUNITY SPOUSE RESOURCE ALLOWANCE

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The costs of nursing home care, which in Kentucky averages about \$40,000 per year, can quickly deplete a lifetime of savings and assets for most elderly couples. To prevent the impoverishment of individuals whose spouses enter a nursing home, Congress enacted provisions to protect the so-called *community spouse* from becoming impoverished while trying to pay for a spouse's nursing home care.

For an individual who is receiving nursing facility benefits through Medicaid, it is important to understand that, except under limited circumstances, that individual's income will be used to pay for his own medical expenses. A Medicaid recipient is allowed to retain \$40 of his monthly income as a personal needs allowance with the remainder of his income being used to pay for his medical care. Medicaid then pays the balance of the Medicaid recipient's medical expenses. One of the few circumstances where this does not occur is where there is a community spouse. To clarify, under the terms used in the regulations, an *institutionalized spouse* is a married individual who is receiving nursing facility benefits through Medicaid. The *community spouse* is the marital partner of the institutionalized spouse. The community spouse is not confined to a nursing facility or is not receiving home and community-based services under Medicaid and is still living in the community.³

Pursuant to federal law, a community spouse is entitled to receive a portion or all of the institutionalized spouse's income to make sure that the community spouse can meet her own financial needs.¹ This is referred to as the community spouse income allow-

ance or the minimum monthly maintenance needs allowance. In order to demonstrate the application of the community spouse income allowance, it is important to understand that each spouse's income is calculated separately. This is different from a resource assessment where the couple's assets are considered collectively.

Kentucky utilizes a minimum community spouse income allowance of \$1,515 and a maximum of \$2,267. The community spouse's income, if the income is available to be transferred from the institutionalized spouse, must fall between these two figures. The calculation to determine how much income the community spouse can receive from the institutionalized spouse depends on how much income the community spouse receives in her own name and is also based upon certain shelter expenses.

As stated above, the minimum a community spouse is entitled to receive, if the institutionalized spouse has sufficient income available, is \$1,515. To demonstrate, if a community spouse receives \$1,000 of income in her own name and the institutionalized spouse receives \$1,600 in his name, the community spouse would be entitled to receive a minimum of \$515 per month from the institutionalized spouse in order to bring her up to the minimum.

However, it is possible for a community spouse to receive a maximum of up to \$2,267 of monthly income under the community spouse income allowances, depending on the shelter expenses of the community spouse. More specifically, the Department for Medicaid Services considers rent or mort-

gage payments, property taxes, home insurance costs, utility expenses, and a standard telephone expense of \$30 to determine the shelter expenses which determine how much additional income the community spouse is entitled to receive from the institutionalized spouse.

As an example, if the community spouse had \$1000 of her own monthly income and had the following monthly expenses, the community spouse income allowance would be calculated as follows:

Mortgage	\$450.00
Insurance	\$ 60.00
Taxes	\$ 75.00
Utilities	\$189.00
Telephone Standard	\$ 30.00
Total Shelter Expenses	\$813.00
Less Standard Shelter Expenses	<u>\$455.00</u>
Excess Shelter Expense	\$358.00

The excess shelter expense is added to the Minimum Community Spouse income allowance. This would mean the community spouse would be entitled to have a maximum income of \$1,873, so long as the institutionalized spouse actually had income available to transfer to the community spouse. Utilizing the figures above, the institutionalized spouse had monthly income of \$1,600 so that income is actually available to transfer to the community spouse.

The community spouse income allowance would also affect the amount of the institutionalized spouse's liability for his own care. The legal priority of payments goes first to the institutionalized spouse's personal needs allowance of \$40. The second priority is ensuring the community spouse receives her income allowance. Finally, the remainder of the institutionalized spouse's income is equal to his amount of liability for his medical expenses. Using the figures from above, if the institutionalized spouse has \$1,600 of monthly income, he would first receive his personal needs allowance of \$40. The community spouse would then receive her \$873 of transferred income from the institutionalized spouse. The balance of the institutionalized spouse's income of \$687 would be paid over to the nursing facility to pay for that individual's nursing home care.

Upon a determination of the community spouse income allowance, a community spouse or the institutionalized spouse can request a hearing to in-

crease the amount of income which the community spouse is entitled to keep. However, to be successful, the individual requesting the increase must prove that an exceptional circumstance exists which results in significant financial duress, which justifies the increase for the monthly maintenance needs allowance. This is a high burden for the individual seeking the increase. Many jurisdictions have interpreted this to mean that the individual must show that the community spouse will be unable to provide for her own necessary and basic maintenance needs.

In conclusion, the determination of the community spouse income allowance is extremely case sensitive. It is not necessary for the community spouse to request the minimum monthly maintenance needs allowance, as this determination should be made at the time the institutionalized spouse's liability for his nursing home care is determined. It is important, however, that those affected by these provisions understand how they work and under what circumstances the community spouse monthly income allowance can be increased.

1. 42 U.S.C 1396r-5
2. 907 KAR 1:655, Section 3 (a)(1)
3. 907 KAR 1:655, Section (1)(14)
4. 907 KAR 1:655, Section 1(2)
5. 907 KAR 1:655, Section 3 (3)(b)(2) and O.M. Policy Update Numbers 03-22 and 03-25.
6. 907 KAR Section 3(7)(a) and (b)

About Melissa Yates

With a background in customer service, Melissa has a unique ability to understand the needs of her clients and to make them feel comfortable. In fact, the aspect of her law practice in which Melissa most prides herself is her commitment to maintaining client relationships.

With enthusiasm she advocates her clients' causes. Since joining the firm, she has been involved with many areas of the firm's general practice including elder law and municipal law. Melissa also has training in health care law and has completed a mediator training program so that she might better serve the firm's clients.

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