

December 27, 2019

BASIC ELIGIBILITY FOR MEDICAID HOME CARE IN NEW YORK STATE

-- For People Age 65+ or <65 who have Medicare --

Since Medicare does not cover most long-term home care, many people age 65+ or who are under 65 and have **Medicare** because of disability also need to apply for **Medicaid** to obtain home care. To receive Medicaid, their income and financial resources must be below strict limits.

In addition to long-term care, Medicaid can help pay Medicare's high out-of-pocket costs for deductibles and coinsurance and can help subsidize the cost of prescription drugs. Medicaid also covers some of the gaps in Medicare such as dental care, vision, hearing aids, non-emergency medical transportation.

WARNING: This Fact Sheet Only Explains Eligibility for Age 65+ or < 65, Disabled with Medicare: This fact sheet describes the rules of financial eligibility for one category of people seeking Medicaid – those who are Disabled, Aged 65+ or Blind (“DAB” or “NON-MAGI”).

A different category of people have expanded eligibility rules for Medicaid under the Affordable Care Act. These are children and adults under 65, including those with disabilities who do not have Medicare. They have higher income limits than people age 65+ and have no limit on assets for Medicaid. This category is sometimes called “MAGI.” They apply for Medicaid on the New York State of Health Marketplace. Those different eligibility rules not covered by this Fact Sheet -- See <https://nystateofhealth.ny.gov/> for information.

EXCEPTION: A small group of people age 65+ or < 65 and who have Medicare may be eligible for Medicaid under the more liberal “MAGI” rules of the Affordable Care Act. They are those who live with and care for a child, grandchild or other relative under 18 or under 19 and in school. They should contact a Navigator for assistance. www.communityhealthadvocates.org or <https://info.nystateofhealth.ny.gov/IPANavigatorSiteLocations>.

I. Financial eligibility is based on INCOME and RESOURCES

A. RESOURCES (including bank accounts, CDs, stock, investments, etc.)

If you are age 65+, blind, or disabled, you are allowed to have these cash resources:

202-	Living Alone	Married Couple
	\$15,750	\$23,100 (Spousal Impoverishment rules may allow more savings. See below)

Income or Resource? At the end of April, Sidney’s combined bank accounts had a balance of \$15,000. His May Social Security check is \$1000, and when direct deposited, his bank account balance on May 5th is \$16,000. He is still eligible for Medicaid in May, as long as he spends down his account so that the closing balance at the end of May is \$15,750 or less. His Social Security is INCOME in the month received and only becomes a RESOURCE if saved into the next month.

BURIAL FUND \$1500 -- applicant and spouse may each have one burial fund (includes the cash value of any life insurance policies). This must be a separate account from your other savings. Open the account with a \$1500 deposit. You can let the interest accrue and it will not count towards your income limit. If you have life insurance with a “cash surrender value,” the cash value counts toward the \$1500 burial fund limit, or it can count toward your resource limit.

PRE-PAID NON-REFUNDABLE FUNERAL AGREEMENT – purchase this in any reasonable amount from a funeral home to cover costs of funeral, burial space, casket, etc. (This is allowed in addition to the \$1500 burial fund). However, any money left over will go to Medicaid. If the value of “non-burial space-related items” (such as flowers, religious services, transportation) is \$1500 or less, you may also have a separate \$1500 burial fund. See more information at <http://wnylc.com/health/entry/36/>.

HOUSE or co-op - if you are seeking home care services the equity in a house or co-op or condo must be under \$878,000. However, if you have a spouse

or minor or disabled child living in that home, there is no limit on the equity value of the home you live in. If the equity is above the limit, and no spouse, minor or disabled child lives with you, you can reduce the equity by taking out a mortgage or reverse mortgage. If you own a home, you should consult an elder law attorney to take steps to protect the home, since Medicaid may place a lien on the home if you later enter a nursing home (if no spouse, minor or disabled child lives there). Also, if the home is part of your Estate when you die, Medicaid may make a claim against your Estate, with certain exceptions.

WARNING - Transfer Penalty: Transfers of the home can disqualify you or your spouse from receiving nursing home care for up to five years after the transfer, and can trigger high income taxes on appreciation of the home. An experienced elder law attorney is needed to sort through these issues.

HOLOCAUST Reparations, including the Ghetto Pension or other payments made based on your status as a Nazi victim are exempt. While it is best to separate the reparations from other funds going forward, one should still be eligible if, in the past, the reparations were combined with other funds, as long as the amount received can be documented. Interest on reparations is exempt as “income,” but counts toward the resource limit if it is saved beyond the month received. More info at “[*Holocaust or Nazi Victim Reparations -- Effect on Medicaid, SSI and other Federally Funded and New York State Benefits*](#)” posted at <http://wnylc.com/health/entry/65/> .

IRA, KEOGH or retirement funds of you or your spouse are exempt as a resource only if you or your spouse are withdrawing periodic payments, even if you are younger than age 70.5, or even under age 59.5. Medicaid rules are not the same as IRS tax rules concerning IRA’s – which do not require withdrawals until age 70.5. The minimum amount of the periodic distribution varies depending on the amount of money in your IRA, your age, and marital status. Although taking out these distributions exempts your IRA as a resource, the withdrawals themselves are counted as “income.”

For information on exempt resources go to <http://www.wnyc.com/health/entry/113/>

IF YOU HAVE EXCESS RESOURCES, over the limits above as of the first day of the month in which you are applying for Medicaid, you can become eligible for Medicaid in three ways:

1. One way is to *spend* the excess down on:
 - (a) Medical care or private home care, or
 - (b) Household items or expenses, or purchase a house, or
 - (c) Burial agreement and/or burial fund – ***see exempt resources above***
2. If you have old *unpaid* medical bills, present them with your Medicaid application. These can offset the amount of your excess resources or spend-down. They can be as much as six years old because they are still “viable,” meaning provider could still sue to collect them. See NYS website at http://nyhealth.gov/health_care/medicaid/excess_income.htm
3. **TRANSFERS OF ASSETS – There is NO TRANSFER PENALTY for COMMUNITY MEDICAID INCLUDING HOME CARE**

You may be eligible for community Medicaid including for home care the 1st of the month after the month in which assets or transferred or spent down to the Medicaid limits. However, rules are complex. If you need nursing home care within 5 years of transferring assets, Medicaid may refuse to pay for that care for a period of time. This is called a “transfer penalty.” For information on transfers of assets and the transfer penalty, see <http://wnylc.com/health/entry/38/> and consult an elder law professional, which can be found at www.naela.org.

B. INCOME – is the amount you receive each month or less regularly – from Social Security, pensions, work, gifts, and distributions from IRAs or annuities.

INCOME LIMITS – (2020) (increased from 2019)

\$875/month -- Living alone \$1,284/month -- Couple

Medicaid generally counts GROSS income, but there are some deductions and exemptions described below. Again, these rules for Disabled-Aged-Blind (DAB) are different than those used for younger people. - For more information see <http://www.wnylc.com/health/entry/195/>

1. Basic Budgeting Rules for Income:

1. **“In-kind” income** -- Direct payments to the landlord, utility company, or other vendor for rent, phone bills, or other expenses are NOT counted as income, if made by persons who are not “legally responsible” for the client. (An adult daughter’s payment to the landlord of her mother’s rent is NOT income because she is not legally responsible for her mother. Only a spouse is legally responsible for a spouse, or a parent for a child under age 21).
2. **EXEMPTIONS** -- Some income is not counted, such as German or Austrian War Reparations, reverse mortgage payments, interest and dividends, and bona fide loans. These exemptions are for the DAB non-MAGI category – Disabled, Aged 65+ and Blind. MAGI has different exclusions.
3. **DEDUCTIONS from income** -- For people aged 65+, blind, or disabled, subtract from GROSS income:
 - \$20 off the top
 - Medicare Part B, Medicare Supplemental (Medigap) insurance, and other health insurance premiums.
 - EARNED INCOME – if you or your spouse is working, special deductions apply – From monthly gross income, deduct the first \$65 then one-half of the remainder.

If the amount left after these deductions is above the above limits, you are eligible for Medicaid after you "spend-down" the excess income on medical expenses (or use a pooled trust – see below).

EXAMPLE: Anne lives alone with gross \$1113 Social Security/month, before her Part B is deducted. Her "surplus" or spend-down is \$73.40 (2020).

Social Security (gross)	\$ 1113
– Medicare Part B premium (2020)	144.60
– \$20 income deduction (65+, blind, disabled)	20
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MEDICAID INCOME	948.40
Medicaid standard for one	– \$875
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Medicaid SURPLUS or SPEND-DOWN	\$73.40

2. Strategies to Eliminate or Reduce the “Spend-Down” - see more on these strategies here <http://www.wnylc.com/health/entry/222/>

1. *Deposit Income into a Supplemental Needs Trust or Pooled Trust.*

You may enroll in a *Supplemental Needs Trust* to deposit your “excess” income monthly. An overview of pooled trusts can be found here <http://www.wnylc.com/health/entry/2/> and a step by step guide to enrolling in one can be found here <http://www.wnylc.com/health/entry/44/>. Pooled trusts are listed here and have different fees. <http://www.wnylc.com/health/entry/4/>

2. *Special Housing Allowance if You Were in a Nursing Home or Adult Home AND are moving to the community with Managed Long Term Care (MLTC)*

You may be eligible for this allowance if Medicaid paid for any part of your nursing home stay, whether you are first enrolling in MLTC or were already enrolled before being admitted to the nursing home or adult home. See this article <http://www.wnylc.com/health/entry/212/> and this fact sheet <http://www.wnylc.com/health/download/711/> for more info. This allowance may ELIMINATE your spend-down!

3. *Eliminating the Spend-down for Married Individuals – Spousal Impoverishment Protections if one Spouse needs MLTC*

Where just one spouse needs Medicaid Managed Long Term Care, the married couple may keep significantly more income and assets without having to use a pooled trust or spend-down. Under the spousal impoverishment rules, the spouse receiving MLTC services

may keep \$409/month (2020), after deducting the cost of any Medicare and Medigap premiums, and allocate enough of the remainder of his/her income to the “community spouse” to bring the community spouse’s income up to \$3,216/mo (2020). By using this method, the applicant has no spend-down if the combined income is less than \$3,625/mo plus any Medicare and Medigap premiums.

When can married individual request Spousal Impoverishment protections?

- a. If applying for Medicaid in order to receive Medicaid personal care or consumer-directed personal assistance based on an **“Immediate Need,”** you may request spousal impoverishment budgeting. See “Immediate Need” fact sheet with forms at <http://www.wnyc.com/health/download/637/> and more here <http://www.wnyc.com/health/entry/203/>
- b. If applying for Medicaid but not for “Immediate Need,” then you may NOT request this special budgeting with the application. In that event, this option is only available AFTER you are enrolled in MLTC. This means that the initial budget will result in a “spend-down,” but this can be reduced immediately after MLTC enrollment. The initial application *may* use “Spousal Refusal,” explained below, and then convert the budget to use “spousal impoverishment” budgeting once the spouse needing home care is enrolled in an MLTC plan.
- c. If you are already receiving Medicaid and are enrolled in an MLTC plan, you may request this budgeting from HRA/ DSS – as long as your spouse is not on Medicaid.

SPOUSAL REFUSAL – Married individuals applying for Medicaid might be denied Medicaid – or have a very high spend-down – if the assets or income of their spouse is counted. With spousal refusal, Medicaid will count only the income and resources of the spouse applying for Medicaid, as though he or she is single. But Medicaid then has the right to sue the “well spouse” for failing to contribute. In New York City, HRA sends collection letters to refusing spouses, but if your combined income is under \$3,625/month and combined resources are under about \$150,000 HRA will generally confirm that it will not

pursue a lawsuit. Above those thresholds, they will review individual circumstances. The NYC Spousal Refusal Form can be downloaded here <http://www.wnyc.com/health/download/66/>. Couples with significant assets or income should consult an experienced elder law attorney before using Spousal Refusal.

Who benefits from spousal refusal -- Married individual applying for Medicaid in order to enroll in an MLTC plan, who may not use “spousal impoverishment” budgeting until the applying spouse is actually enrolled in an MLTC plan. If the non-applying spouse’s income would give the applying spouse a high spend-down, the non-applying spouse can do a “spousal refusal.” After the applicant is enrolled in MLTC, she can request spousal impoverishment budgeting, which may obviate the need for spousal refusal

OPTION TO USE A POOLED TRUST and IGNORE SPOUSE’S INCOME. If, despite spousal impoverishment budgeting, the spouse who needs MLTC still has excess income (spend-down), then he/she may want to enroll in a pooled supplemental needs trust. With this option, spousal impoverishment and spousal refusal are not used at all. The applying spouse uses “single” income and resource limits.

NYS DOH GIS 12-MA-13

https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/12ma013.pdf

3. Once the Spend-Down is Minimized– How Spend-Down Works.

If your net income after deductions is more than the Medicaid level, you must “spend down” the excess income on medical expenses every month to qualify for Medicaid to pay for any other medical expenses each month. If you receive home care, you will be billed by the MLTC plan for the spend-down every month. An MLTC plan may disenroll you if you do not pay the spend-down. This is why it is important to enroll in a pooled trust or use the other strategies to reduce or eliminate your spend-down described above. See <http://www.wnyc.com/health/entry/222/>

II. HOW TO APPLY FOR MEDICAID TO OBTAIN MEDICAID HOME CARE

Most adults who want Medicaid home care who are age 65+ or younger and have Medicare because of disability must first **apply for Medicaid at the local NYC or county Dept. of Social Services (DSS)** to obtain home care.

QUICK SUMMARY OF APPLICATION PROCESS (more explained below):

Beginning in 2016, you have a choice of TWO TRACKS for applying for home care. Here are the steps with approximate time they each take:

1. **REGULAR TRACK – Seeking Medicaid to Enroll in Managed Long Term Care:**

- a. **Apply** for Medicaid at the County DSS/HRA up to 45 days
- b. Request a “**Conflict Free Eligibility**” in-home evaluation from Maximus (NY Medicaid Choice) **1-855-222-8350** 5-14 days
- c. **Pick a plan** - MLTC, Medicaid Advantage Plus, PACE or FIDA plan (Nassau/NYC only) –
 - i. Schedule an in-home assessment with plan
 - ii. Pick a plan and enroll. } up to 30 days
 - iii. Enrollment paperwork must be submitted by 19th of month for enrollment to start 1st of next month. No mid-month pick-up dates. 10-41 days
- d. After enrollment on 1st of month, MLTC Plan conducts assessment and starts services 30 days

TOTAL TIME TO START SERVICES APPROXIMATELY 3-5 months

2. **FAST TRACK if have IMMEDIATE NEED for PERSONAL CARE/ CONSUMER-DIRECTED PERSONAL ASSISTANCE (CDPAP) SERVICES**

- a. **Apply for Medicaid AND home care** (submit physician’s order/M11q and “Attestation of Immediate Need” to DSS/ HRA)

DSS HAS 12 days to approve Medicaid and home care

(Medicaid within 1st 7 days of that period). Has more time if application in complete. Medicaid office arranges for services to be provided by a contracted home care or Consumer Directed agency “as expeditiously as possible.”

TOTAL TIME TO START SERVICES APPROXIMATELY 2-3 weeks

- b. After 120 days of receiving home care services authorized by HRA/DSS, consumer receives letter from New York Medicaid Choice that she must select and enroll in an MLTC plan within 60 days or she will be assigned to one randomly.

MORE ON MEDICAID APPLICATION PROCESS:

A. WHAT TO SUBMIT - BOTH REGULAR AND FAST TRACK - Submit Medicaid application (Access NY Health Insurance Application)

<https://www.health.ny.gov/forms/doh-4220all.pdf> with:

1. Access NY Supplement A <https://www.health.ny.gov/forms/doh-4495a.pdf> and
2. Document resources (include actual bank statements and other documentation of assets showing balance on the 1st day of the month of the application).
 - a. If you are seeking retroactive Medicaid to pay or reimburse for the 3 months before you applied, submit bank statements back to four months prior to the application).
3. HIPPA Release if you have an advocate or family member helping you with the application – NYS [OCA Form 960 - Authorization for Release of Health Information Pursuant to HIPAA](http://www.nycourts.gov/forms/Hipaa_fillable.pdf) at http://www.nycourts.gov/forms/Hipaa_fillable.pdf.
4. Proof of Identity (Passport, Medicare card).
5. Write “Seeking MLTC Services” on top of application. If you are seeking MLTC, you do NOT submit an M11q/physician’s order.. unless seeking Immediate Need.

B. WHAT ELSE TO SUBMIT FOR IMMEDIATE NEED APPLICATIONS. See this Fact Sheet on Immediate Need.

<http://www.wnyc.com/health/download/637/> and see more on Immediate Need at <http://www.wnyc.com/health/entry/203/>

C. Where to Apply for Medicaid if seeking home care in New York City –

1. **“Regular” track seeking MLTC** -File the Medicaid application in person or by CERTIFIED mail return receipt requested to:

HRA Home Care Services Program Central Medicaid Unit
785 Atlantic Avenue, 7th Floor
Brooklyn, NY 11238 T: 929-221-0849

2. “Fast Track Immediate Need Track” – E- FAX 1-917-639-0665

3. People “Excluded” from Managed Long Term Care:

NYC Home Care Services Program - Central Intake

132 W. 125th St.,5th Fl.

New York, NY 10027

Phone: 212-665-1893 Fax: 212-666-1747

WHO – If seeking solely “housekeeping” services, which are services limited to 8 hours/week just to help with chores such as laundry, shopping, and cleaning, OR you are enrolled in a HOSPICE program or the TBI, OPWDD or Nursing Home Transition & Diversion waiver and are applying for personal care/CDPAP services

WHAT - File the documents listed in Part A above (Medicaid application, Supplement A, proof of resources, HIPPA release) AND an M11q Form signed by physician < 30 days before and based on physical exam < 30 days before) (download at http://www.nyc.gov/html/hra/downloads/pdf/services/micsa/m_11q.pdf)

D. To enroll in a Managed Long Term Care Plan

1. Once Medicaid is accepted, contact *New York Medicaid Choice* and request a **Conflict Free Eligibility and Enrollment Assessment. 1-855-222-8350**

A nurse will visit and assess your need for home care.

See <https://www.nymedicaidchoice.com/ask/do-i-qualify-managed-long-term-care>. See Fact Sheet and Tips on Conflict Free Assessment at <http://www.wnyc.com/health/download/573/>. Ask a family member or social worker to be present at the assessment to help point out your functional needs, medications, and diagnoses.

2. If approved after this assessment, **choose a Managed Long Term Care plan** and enroll. Contact *New York Medicaid Choice* – <http://www.nymedicaidchoice.com/>

1-888-401-6582 - This company, Maximus, is the enrollment broker under contract with the State, which can explain the

enrollment process and your options for selecting a managed long term care plan.

<http://www.nymedicaidchoice.com/program-materials>

For Lists of Plans, click on Long Term Care plans in your region) (NYC, Long Island, Westchester, and new counties being added).

Learn about Managed Long Term Care –

- Background article on MLTC
<http://wnylc.com/health/entry/114/>
- Update on MLTC – updated monthly
<http://wnylc.com/health/news/41/>
- [Tools for Choosing a Medicaid Managed Long Term Care Plan](http://wnylc.com/health/entry/169/) --
<http://wnylc.com/health/entry/169/>

3. **WARNING** – If your Medicaid is approved with a spend-down, at the time of evaluation and enrollment in an MLTC, you Medicaid case may not show up as active in the plan’s computer system. The MLTC may tell you that you are not eligible to enroll. If this happens-

- Tell the plan to ask HRA to activate the case for enrollment by submitting a MAP Medicaid Cover Sheet Form HCSP-3022 (known as a “CONVERSION FORM” – download at <http://www.wnylc.com/health/download/450/>) to the HRA HCSP MLTC Provider Relations Unit, requesting that the code be changed.

TEL: (929) 221-2427

Fax: (718) 636-7848

- If the plan refuses to schedule an assessment or fax a conversion form -- Call the MLTC Complaint line 1-866-712-7197; NY Medicaid Choice 1-888-401-6582; HRA 929-221-0849 or EFLRP at 212-613-7310 eflrp@nylag.org.

THIS DOCUMENT STATES GENERAL INFORMATION AND IS NOT LEGAL ADVICE.

VISIT OUR WEBSITE at <http://nyhealthaccess.org>

Medicaid eligibility rules are complex. For more information or help with the Medicaid application or for other questions about long term care, contact:

New York City Dept. Aging--Alzheimer's and Caregiver Resource Center 311

CSS – Community Health Advocates (888) 614-5500

New York Legal Assistance Group (city-wide) –

- General intake (212) 613-5000

- Evelyn Frank Legal Resources Program (212) 613-7310

The Legal Aid Society (city-wide) (888) 663-6880

ICAN – Independent Consumer Assistance Network - OMBUDSPROGRAM
FOR MLTC, HARP 844-614-8800 ican@cssny.org TTY: 711 icannys.org

Cardozo Bet Tzedek Legal Services (212) 790-0240

JASA/ Queens Legal Services for the Elderly (Queens only) (718) 286-1500

Legal Services NYC (citywide) (917) 661-4500

Manhattan - Lenox Hill Neighborhood House (212) 744-5022 x1392
331 E. 70th St. NY NY (walk-in Mondays 10 – noon)

Public Health Solutions – Medicaid enrollment for Age 65+/Disabled/Blind
<https://www.healthsolutions.org/community-work/health-insurance/aged-blind-disabled/>

National Academy of Elder Law Attorneys - online locator <http://www.naela.org>

To request a Conflict-Free Assessment for MLTC

New York Medicaid Choice (CFEEC) 1-855-222-8350

Complaints about MLTC plans - NY States Department of Health MLTC Complaint
Hotline: mltctac@health.ny.gov 1-866-712-7197

ICAN – Independent Consumer Assistance Network - OMBUDSPROGRAM FOR
MLTC ican@cssny.org TTY: 711 Website: icannys.org 1-844-614-8800

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