Keeping Medicaid after Cash Public Assistance or SSI Benefits Are Terminated

Scenarios: Susie is 49 years old and single, with no children. She has been receiving cash public assistance and Medicaid for three years, while she appeals the denial of Social Security Disability Insurance Benefits ("SSD" or "DIB"). She finally was approved for SSD, and will start receiving $2000/month in SS DIB benefits each month. She will also receive a retroactive benefit of $48,000 because she was found to have been disabled as of two years ago.

Tony is also 49 years old and single, with no children. Like Susie, he was just approved for SS DIB benefits for $1000/month. Before that, he received Supplemental Security Income (SSI) benefits during the five-month waiting period for SS DIB.

This article will explain:

I. Substantive Eligibility after losing PA or SSI --Whether and how Susie and Tony can keep Medicaid once they begin receiving SSD, with tips on keeping Medicaid if their income is now above the Medicaid income limits.

A. Intro

B. Summary of Eligibility rules for "DAB" - Disabled-Aged-Blind (Non--MAGI)

C. Continuation of Medicaid in Some Special Cases - 1619(b), Disabled Adult Child, Disabled Widow/Widower, PICKLE PEOPLE

II. What are the procedures for transitioning from public assistance or SSI to Medicaid-only -- known as "Rosenberg" and "Stenson?"

- Stenson notices and procedure

III. How does a retroactive lump sum SSD or SSI benefit affect Medicaid eligibility?

IV. If they are not eligible for Medicaid, how can they obtain subsidized prescription drug coverage?

I. SUBSTANTIVE ELIGIBILITY -- Because Medicaid treats different "categories" of people, and their resources and income, differently, an individual may still be eligible for Medicaid even after public assistance or SSI terminates, and their income is higher.

A.. Medicaid uses two main sets of rules for counting income and

resources for three broad categories of people:

1. MAGI - "Modified Adjusted Gross Income" --
    1. Children under 21 and their caretaker relatives, and pregnant women (called "AFDC") - within this category, there are many subcategories based on the children's age, and for pregnant women, not discussed here and
    2. Singles/Childless couples (S/CC), and
2. NON-MAGI -- Disabled, Aged 65+ or Blind (DAB)

RESOURCES -- Resource limits increased signficantly in 2023 - and are much higher than for either SSI or PA cash assistance. See current limits here. The rules for *counting* these resources, however, are very different for each of the 3 categories. This RESOURCE chart compares the different Medicaid rules for counting resources for the three basic categories of recipients.

INCOME -- The income limit for "DAB" category people in creased significantly in 2023, and now is much higher than the SSI limit. Compare Box 7 on the Medicaid Eligibility chart (Singles/Childless Couples) with Box 3 for DAB category (Disabled, Aged 65+ or Blind). Chart is explained at this link. As true for resources, the non-MAGI rules for counting income are very different for DAB compared to those for MAGI recipients, and in some ways different than for SSI beneficiaries. This Income Chart compares the different Medicaid rules for counting income for the three basic categories of recipients.

B. Summary of the Eligibility Rules for Medicaid in the DAB (Disabled/Aged 65+/Blind) Category Compared to PA or SSI

1. **Higher income and asset limit**s

In 2023, Medicaid allows a couple to have $40,821, compared to the SSI limit of $3000. Medicaid allows a single person to have $30,182, compared to the SSI limit of $2000.

2. **Spend-down.** "DAB" category people may qualify for Medicaid even if their assets or income are above the Medicaid limit, if they have medical expenses -- even unpaid medical bills from the past -- that offset the excess income or assets. People in the old AFDC category (children under 21 and their caretaker relatives) may also use "spend down" if they would not be eligible under MAGI budgeting, and prefer Medicaid to a Qualified Health Plan on the Exchange with the premium tax credits. Singles and childless adults who are not disabled and are under age 65 may NOT spend down to the Medicaid limits. Rules on spend-down are complicated. See this article and training materials, and some advocacy tips below.

    a. **Supplemental Needs Trusts** -- Unlike SSI or PA, a person determined to be "disabled" may ELIMINATE her spend-down by depositing his or her "excess income," the amount exceeding the Medicaid limit, into a supplemental needs

trust (pooled trust for people age 65+). See Overview - Supplemental Needs Trusts and Using a Pooled SNT to eliminate the Medicaid spend-down.

3. **SSI Income & Resource Disregards/Exemptions Apply.** The methodologies for assessing income and resources of the "medically needy" for Medicaid ("medically needy" are people who may use spend-down to qualify) must be no more restrictive than those used in the most closely related cash assistance program. For "DAB" people (disabled, Aged 65+, blind) , the most closely related cash assistance program is SSI. 42 U.S.C. Â§ 1396a(a)(10)(C)(i)(III); 42 C.F.R. Â§Â§ 435.831(b), 435.845, 435.601. Thus Medicaid is sometimes more generous than SSI, by allowing spend-down and use of Supplemental Needs Trusts, but can never be stricter than SSI. This is why Medicaid recipients in "DAB" category have the same earned income disregards, rules on IRAs, the $20/month disregard, etc. that apply in the SSI program. For more DAB disregards see these charts.
4. **IRA's** -- People in the "DAB" (Disabled/Aged 65+ Category) may keep an IRA as an asset, if it is in "payment status," meaning they are taking distributions. The IRA does not count as an asset if it is in payout status.
5. **Treatment of earned income.** To encourage "DAB" category people (disabled/Aged 65+/Blind) to work, the Medicaid program has work incentives, allowing them to earn income that far exceeds the income limits and still be eligible for Medicaid. These incentives apply to wages or self-employment income. As in SSI, the first $65 and then half of the remaining gross monthly income is "disregarded" or not counted. Significantly, even if the person in the "DAB" category is not working, these work incentives apply to reduce a working spouse's countable income.

    a. **Medicaid Buy-In for Working People with Disabilities** --This program is an even greater work incentive, allowing people with disabilities under age 65 who have any earned income -whether from wages or self-employment -- to have income up to 250% of the Federal Poverty Level (Box 6 on HRA Chart). The same SSI earned income disregards apply ($65 + half of the remaining gross monthly income). Even working just an hour or two a month can qualify someone for this program.
6. **Burial arrangements** -- "DAB" category individuals may pre-pay for more expensive and extensive funeral arrangements for themselves and certain family members than may Singles/Childless Couples. (See this article)
7. These **rules on budgeting** are explained in NYLAG's 2023 webinar on the 2023 Medicaid DAB eligibility increases:

    - **View the recorded webinar here** (no CLE credit for viewing recording)
    - **PowerPoint from Jan. 18, 2023 webinar**
    - **Appendix of references, forms, and case examples from webinar** (with **updated** HRA Chart of Medicaid levels updated Jan. 24, 2023 and **updated MAP-3190 form** (1-10-23) to request rebudgeting)
    - **Excel Template to estimate Medicaid eligibility and spenddown (**using 2023 FPLs - not that as of 1/25/23, NYS levels are based on 2022 FPLS, and guidance is expected soon updating to 2023 FPLS)

These rules include calculating the household size, which is needed to use the Medicaid eligibility chart to determine the maximum allowed income or resources.

C. Continuation of Medicaid After SSI is Terminated in Some Special Cases

See this article for information about these special Medicaid categories for former SSI recipients.

1. **1619(b)** - continues Medicaid if SSI terminated because of new or increased income
2. **Disabled Adult Child -- (DAC)** individuals age 18+ who lose SSI eligibility because of the receipt of Social Security Disabled Adult Child (DAC) benefits, or because of an increase in the amount of these benefits are eligible for Medicaid if certain criteria are met.
3. **Disabled Widows/Widowers** - If lost SSI because one became entitled to Social Security widows/widowers benefits at age 50 or more.
4. **Pickle people** - People who received concurrent Social Security Retirement Survivors and Disability Insurance (RSDI) and SSI benefits, and lost SSI. Would have still been eligible for SSI if deduct the cost of living increases received in Social Security benefits since they were last eligible for and receiving RSDI and SSI benefits concurrently, See here.

D. If the individual's public cash assistance is terminated and individual is not disabled or age 65+, may be eligible for MAGi Medicaid.

1. If reason for termination is increased earned income, and individual has a child living in the household, then individual may be eligible for **Transitional Medical Assistance (TMA)** for 12 months. Eligibility of parent/caretaker relative or child must have been based on "LIF" category, which is one of the Medicaid categories for families with children. For more information see DOH Medicaid Reference Guide at pp. 97 and GIS 09/ 023.

II. PROCEDURES for transition to Medicaid-only from public assistance or SSI

A. The Rosenberg and Stenson Cases Requiring Medicaid Program to Continue Medicaid While Re-determining whether a Former SSI/PA Recipient is Eligible for Medicaid

Since Medicaid is an entitlement, Medicaid cannot be terminated without a determination that a Medicaid recipient is ineligible. An individual may no longer be eligible for one "category" of Medicaid, i.e. Medicaid that automatically is provided to an SSI recipient or to someone who was poor enough to qualify for cash assistance, but still may qualify under another category of eligibility. A local Medicaid program must continue Medicaid as

originally authorized with SSI or cash assistance while it determines whether an individual continues to be eligible for Medicaid-only when a change of circumstances occurs, such as a change in income or resources, or in the "category" of eligibility. This procedure is sometimes called the *Stenson* or *Rosenberg* procedure after two federal court cases.

- *Stenson v Blum*, 476 F.Supp. 1331 (S.D.N.Y. 1979), *affd*. 628 F.2d 1345 (2d Cir. 1980), *cert denied sub nom*. *Blum v Stenson*, 449 U.S. 885, 101 S.Ct. 239, 66 L.Ed.2d 111 (1980) requires an *ex parte* redetermination of continued Medicaid eligibility when SSI benefits are terminated [or suspended]. See 80 ADM-19 and 80 ADM-84, DOH GIS 97-MA-005 (SSI terminations based on elimination of eligibility for drug and alcohol abuse)
- *Rosenberg v The City of New York*, 80 Civ. 6198, Partial Final Judgment and Stipulation of Consent to Partial Final Judgment (S.D.N.Y. December 10, 1981) requires a separate determination of initial or continued Medicaid eligibility when Public Assistance is denied or discontinued. See 82 ADM-5

This rule is in federal and state regulations. 42 CFR Â§ 435.930(b) ["The agency must . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible"]; 18 NYCRR Â§ 360-2.6(b) ["If a recipient's ADC, HR [Safey Net Assistance], SSI, or Title IV-E case is discontinued, MA will be continued until the social services district determines the recipient to be ineligible for MA. The district must determine the recipient's continuing eligibility no later than the end of the calendar month following the month in which the recipient was determined ineligible for ADC, HR, SSI, or Title IV-E"]. *See also* 18 NYCRR Â§ 360-2.2(a)(2) ["Persons determined to be ineligible for ADC or HR will have their MA eligibility determined separately, unless they have stated in writing that they do not want their MA eligibility determined."]

The federal Medicaid agency, the Centers for Medicare & Medicaid Services (CMS), has reiterated the applicability of *Stenson* as requiring *ex parte* determinations of Medicaid eligibility when cash assistance or SSI is terminated. See Letter to State Medicaid Directors dated April 22, 1997 and Continuing the Progress: Enrolling and Retaining Low-Income Families and Children in Health Care Coverage which provides, in pertinent part:

Exhaust All Possible Avenues of Coverage. Similar to the rules relating to initial eligibility determinations, States may not terminate Medicaid eligibility unless they have affirmatively explored and exhausted all possible avenues to Medicaid eligibility. States may not determine eligibility for some categories and require families to reapply in order to determine eligibility for other categories. ...

The extent to which and the manner in which a State must explore other possible categories will depend on the circumstances of the case and the information available to the State. For example, if the State has information in its Medicaid files (or other available program files) suggesting an individual is no longer eligible under the poverty-level category but potentially may be eligible on some other basis (e.g., on the basis of disability or pregnancy), the State must consider eligibility under that category on an ex parte basis

without requiring the family to reapply.

If the *ex parte* review (i.e., a review based on information available to the State) does not establish eligibility under any category, the State must provide the family or individual a reasonable opportunity to provide information to establish the potential bases for ongoing Medicaid eligibility, including disability or pregnancy. A State does not have to maintain coverage unless the individual has provided some reasonable indication that he or she may be eligible under some other basis.

B. How it Works in Practice - Transition from PA or SSI to Medicaid-Only

The requirement for continuation of Medicaid until a separate redetermination is made after cash assistance or SSI is terminated is in the NYS Dept. of Health Medicaid Reference Guide, in the Categorical Factors section at pp. 47-48.

1. *Rosenberg* Notice and Procedure - cash public assistance

Before Medicaid is terminated, a person losing cash assistance should receive THREE NOTICES.

NOTICE 1 -- The Rosenberg Notice terminating cash public assistance benefits includes this statement, at page 3: "While we determine whether you are still eligible for Medical Assistance, we will continue Medical Assistance coverage unchanged for: [names of individuals]. .. We will soon write to you asking you for information we need to determine your continuing eligibility for Medical Assistance. If you do not respond when we write, your Medical Assistance may be closed at that time." See also DOH's Informational Letter "Medicaid Determinations When Public Assistance is Denied or Closed or the PA Application is Withdrawn"

- Note that this sample notice, dated June 25, 2009, tells the recipient that the public assistance case will close on July 6, 2009. The recipient does NOT have to request a hearing before July 6, 2009 (the aid continuing period) in order to keep Medicaid going (or Food Stamps - see p. 2 of Notice). The only reason to request a hearing is to challenge discontinuance of the cash assistance.
- If no hearing is requested, the Medicaid coverage continues while the local district DSS uses their available information to determine if the individual is still eliglble for Medicaid. This review should include a determination of whether the individual is eligible for Transitional Medical Assistance (TMU) for 6 months and up to 12 months. Eligibility of parent/caretaker relative or child must have been based on "LIF" category, which is one of the Medicaid categories for families with children. See DOH Medicaid Reference Guide at pp. 56-62.
- 2018-07-03 **"** - **Rosenberg" Medicaid Determinations after Public Assistance Discontinued** -- **Shifted to NYS of Health**

The "Rosenberg" procedure is used when public assistance cash benefits are terminated, to allow the individual to recertify and maintain Medicaid without disruption if they are still eligible. See more here. Initially this change applies to Singles and Childless Couples, and not to anyone in an MLTC plan or HARP plan. Those affected will receive a letter from HRA telling them they must renew their Medicaid online on NYS of Health. The Alert includes the form letter.

NOTICE TWO -- As the first notice -- the *Rosenberg* notice -- states, the local district is supposed to contact the recipient to ask for further information if necessary to make this determination. The written request for more information would have a deadline to submit the requested documentation. This notice will come from NYSofHealth for Singles and Childless Couples in NYC as of July 2018. See this Alert.

NOTICE THREE -- Same as for NOTICE THREE in the *Stenson* procedure described below.

2. STENSON NOTICE & PROCEDURE -- Continuing Medicaid after SSI is Terminated

A person whose SSI is discontinued will receive three notices - one from the Social Security Administration (SSA) and two from the Medicaid program.

NOTICE ONE from SSA - The SSA sends a notice of discontinuance of SSI, which states the right to request a reconsideration within ten days of receiving the notice. The recipient does not have to request a reconsideration with the SSA in order to continue receiving Medicaid.

NOTICE TWO -- "Stenson" Notice from MEDICAID PROGRAM -- This notice addressed to "***Dear Former SSI Beneficiary"*** instructs the recipient to complete an enclosed recertification form [NYC form W296-E can be downloaded as part of this document) and mail it in an enclosed self-addressed envelope *within 30 days,* with requested documentation, if the individual wants to continue receiving Medicaid. Documentation includes:

1. Proof of rent and where you live (utility bill)
2. Resources -- only most recent bank or investment company statement are necessary from all accounts. No 36-month or more lookback for community Medicaid. (Note -- it is possible to merely "attest" as to resources, and include no documentation of bank accounts, etc. However, an "attestor" cannot be eligible for any home care or other long-term care services, so it is recommended to document current resources.) See HRA Resource Attestation & Documentation Chart.
3. Lump sum - proof of lump sum received in last 12 months and where deposited. (Though there is no lookback or transfer penalty for community Medicaid (see rules for nursing homes), if you received a lump sum they may want proof that you no

longer have the funds within your possession, whether in your account or under your mattress. If the lump sum was a retroactive payment for SSD or SSI, see below.

4. Life insurance - proof of cash and face value. See rules in article on funeral agrements.
5. If a recipient has *not* been determined "disabled" by the SSA, and is under age 65, then he/she must submit the forms needed for the Medicaid program to determine whether he/she disabled. Same forms and procedures are used as for disability determination needed to enroll in a pooled trust.
6. Health insurance -- proof of amount of Medigap or other health insurance premium, which is a deduction from gross income. Can deduct Part B premium if not enrolling in the Medicare Savings Program.

7. Past unpaid medical bills -- Stenson and Rosenberg notices do not ask for these, but if client has income above the Medicaid limit (spend-down), be sure to attach any past unpaid medical bills, or recent paid medical bills. See spend-down tips below.

NOTICE THREE-A--Notice of Discontinuance for Failure to Renew/Recertify -- If the recipient does not comply with the deadline to return the renewal form in the S*tenson* or *Rosenberg* notice, then a *Notice of Discontinuance for Failure to Renew/Recertify* is sent. This notice must be sent at least 10 days before the closing date, with the right to receive Medicaid as "aid continuing" if a hearing is requested within that 10 days, and a right to a hearing without Medicaid aid continuing if the hearing is requested within 60 days but not within 10 days. The issue in a hearing requested on this notice would be whethe or not the individual recertified eligibility as required by the Stenson or Rosenberg notice.

NOTICE THREE-B -- MEDICAID APPROVAL with a Spend-down -- If recipient *does* timely complete the *Stenson* or *Rosenberg* recertification process, but now has income above the Medicaid limit, she will receive a Notice of Decision on Your Medical Assistance. In the sample notice, the recipient, who presumably formerly had no spend-down, is told that her Medicaid is being "discontinued" on a specified effective date, which is at least 10 days after the date of the Notice. The notice tells her the amount of her "excess income" (spend-down) and explains how it is calculated. The notice states that "If you have incurred or paid medical bills in an amount equal to or more than" the amount of the excess income, s/he must bring them to the Medicaid office before the effective date of the Notice. By submitting these bills, she would "meet" the spend-down and retain Medicaid coverage for that month. If she does not submit bills that meet the spend-down within the time stated on the Notice, or request a hearing before the effective date of the Notice, Medicaid will be discontinued. SEE Tips on Spend-down below.

C. Tips on keeping Medicaid when income of a former SSI or PA recipient is now above the Medicaid income limits, or when the procedures break down

1. **Spend-down** -- one can offset "excess" income by medical expenses to qualify for Medicaid, when income exceeds the Medicaid limit. A little known rule is that an

individual newly determined eligible for Medicaid with a spend-down may use not only current medical expenses, but **past unpaid medical bills** to meet the current spenddown. These bills can be years old as long as they are viable, generally considered six years. Also, **paid medical bills** can be used if the medical service was rendered and paid for in the three calendar months before recertiication form is filed. The difference between using past unpaid and paid bills is that unpaid medical bills may be carried forward to meet the spend-down indefinitely into the future until they are used up. The rules on spend-down are complicated. See this article and training materials.

EXAMPLE: Spend-down is $667/month. Client has an old hospital bill from four years ago before she was on Medicaid. It is $25,965. This bill can be submitted to obtain 49 months of Medicaid. Only six months will be authorized at a time, but then the "carryover" will be used to authorize six additional months until the bill is used up. See sample Notice for this very case, for a client who lost SSI when she was approved for SSD.

2. **ADVOCACY TIPS:**

During the Stenson and Rosenberg recertification processes, Medicaid notices and staff do not adequately inform the client that they may use past unpaid medical bills to meet their current spend-down. Also, many Medicaid workers still don't know about the Medicaid Buy-In for Working People with Disabilities or 1619(b) or DAC. See, e.g. Notice of Decision on Your Medical Assistance

a. RECERTIFICATION TIP: During the recertifications, if your client has a spend-down,

* SUBMIT all past unpaid bills, and recent paid bills, for them and their dependents, and explain how the bills meet the spend-down.

* If client is working, or can work even just an hour a month, advocate for eligibility for
Medicaid Buy-In for Working People with Disabilities
* If client is a Disabled Adult Child, advocate for Medicaid as above.

b. HEARING TIP: If client receives the above Notice of Decision finding her eligible with a spend-down, even if the spend-down calculation is correct, ASK FOR A HEARING if your client did not submit past unpaid or paid medical bills that could meet her spenddown. Claim that the Medicaid program failed to explain adequately her right to meet the spend-down with these bills. This is the claim made in the hearing for the client who received this sample Excess Income Program Decision -- this notice was issued by the Fair Hearing compliance unit after the hearing decision directed a redetermination of her eligibility.

c. **GLITCH TIP:** If Medicaid is discontinued without having received either the *Stenson or Rosenberg* notices (Notice 1) or Notice TWO, then request a hearing and ask for Aid Continuing. Aid continuing must be granted if no notice was provided. This will at least reinstate Medicaid coverage while you try to submit a re-determination package to the local

DSS --in NYC it's the Medicaid Separate Determination Unit or, if necessary, while you have client re-apply at a regular Medicaid office. The issue of the hearing would be failure to comply with the *Rosenberg* or *Stenson notices and* procedures and to give the opportunity to have Medicaid eligibility re-determined after public assistance or SSSi was terminated.

c. Supplemental Needs Trusts -- If client has no medical bills to meet the spenddown, or used them up, consider enrolling her in a pooled trust or setting up her own Supplemental Needs Trust if under age 65. A person determined to be "disabled" may deposit his or her spend-down into an SNT and eliminate the spend-down. See Overview - Supplemental Needs Trusts and Using a Pooled SNT to eliminate the Medicaid spend-down.

III. How does a retroactive lump sum SSD or SSI benefit affect Medicaid eligibility?

The SSD or SSI lump sum is disregarded (exempt) for **nine months** following the month of receipt. See Resource chart p. 6. When the recipient responds to the Stenson notice with bank statements that show that resources are now above the Medicaid limit and the recipient received an SSI/SSD lump sum in the last nine months, be sure to attach the SSA Award Letter awarding the lump sum, and explain that the nine months has not yet elapsed.

IV. Access to Prescription Drugs for Persons Losing Medicaid when PA or SSI are Terminated

A. **MEDICAID** prescription drug coverage continues if client is able to keep Medicaid as described through the procedures above. If client has too high a spend-down to keep Medicaid on an ongoing basis and is not financially able to join a pooled trust, here's how s/he can obtain help for cost of prescription drugs.

1. **If client has Medicare as well as Medicaid ("Dual eligible)"**-- Medicaid will assign her to a Medicare Part D drug plan, if she's not enrolled already. When Medicaid auto-assigns a client to a Medicare Part D plan, it is done at random. Hence, just because the client was autoenrolled in a Medicare Part D plan, does not necessarily mean that this is the plan that will cover all her medications with the least utilization management (restrictions). See How to choose a Medicare Part D Plan. Until this assignment is made, she can use Medicaid for her prescriptions. By having Medicaid, she will automatically be enrolled in "Extra Help," the subsidy that makes Part D somewhat affordable. See Pathways to Extra Help and Medicare Part D materials.

People with Medicare Part D who can obtain *even one month* of Medicaid coverage, using medical bills, will benefit. The "Extra Help" Part D subsidy will continue for the entire calendar year, and even for the following calendar year, if her Medicaid coverage was in August or later.

People who became eligible for Medicare Part D, while on Medicaid, will qualify for the "Extra Help" Part D subsidy either for that remaining year and/or the following calendar year even if their Medicaid is terminated.

2. **If client does not yet have Medicare and is in the 2-year waiting period and under age 65--** using past unpaid medical bills to qualify for Medicaid becomes even more important. The client described above, who received this sample notice, was able to obtain Medicaid, despite a high spenddown, for the entire 2-year waiting period, using past bills.

This article was authored by the Evelyn Frank Legal Resources Program of New York Legal Assistance Group.

Article ID: 85
Last updated: 27 Mar, 2023
Revision: 19
Medicaid -> Financial Eligibility -> Keeping Medicaid after Cash Public Assistance or SSI Benefits Are Terminated
http://health.wnylc.com/health/entry/85/