

Superseded 5/12/2015

26-18-3.6 Income and resources from institutionalized spouses.

- (1) As used in this section:
 - (a) "Community spouse" means the spouse of an institutionalized spouse.
 - (b)
 - (i) "Community spouse monthly income allowance" means an amount by which the minimum monthly maintenance needs allowance for the spouse exceeds the amount of monthly income otherwise available to the community spouse, determined without regard to the allowance, except as provided in Subsection (1)(b)(ii).
 - (ii) If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse may not be less than the amount of the monthly income so ordered.
 - (c) "Community spouse resource allowance" is an amount by which the greatest of the following exceeds the amount of the resources otherwise available to the community spouse:
 - (i) \$15,804;
 - (ii) the lesser of the spousal share computed under Subsection (4) or \$76,740;
 - (iii) the amount established in a hearing held under Subsection (11); or
 - (iv) the amount transferred by court order under Subsection (11)(c).
 - (d) "Excess shelter allowance" for a community spouse means the amount by which the sum of the spouse's expense for rent or mortgage payment, taxes, and insurance, and in the case of condominium or cooperative, required maintenance charge, for the community spouse's principal residence and the spouse's actual expenses for electricity, natural gas, and water utilities or, at the discretion of the department, the federal standard utility allowance under SNAP as defined in Section 35A-1-102, exceeds 30% of the amount described in Subsection (9).
 - (e) "Family member" means a minor dependent child, dependent parents, or dependent sibling of the institutionalized spouse or community spouse who are residing with the community spouse.
 - (f)
 - (i) "Institutionalized spouse" means a person who is residing in a nursing facility and is married to a spouse who is not in a nursing facility.
 - (ii) An "institutionalized spouse" does not include a person who is not likely to reside in a nursing facility for at least 30 consecutive days.
 - (g) "Nursing care facility" is defined in Section 26-21-2.
- (2) The division shall comply with this section when determining eligibility for medical assistance for an institutionalized spouse.
- (3) For services furnished during a calendar year beginning on or after January 1, 1999, the dollar amounts specified in Subsections (1)(c)(i), (1)(c)(ii), and (10)(b) shall be increased by the division by the amount as determined annually by the federal Health Care Financing Administration.
- (4) The division shall compute, as of the beginning of the first continuous period of institutionalization of the institutionalized spouse:
 - (a) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest; and
 - (b) a spousal share, which is 1/2 of the resources described in Subsection (4)(a).
- (5) At the request of an institutionalized spouse or a community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse and upon the receipt of relevant documentation of resources, the division shall promptly assess and document the

- total value described in Subsection (4)(a) and shall provide a copy of that assessment and documentation to each spouse and shall retain a copy of the assessment. When the division provides a copy of the assessment, it shall include a notice stating that the spouse may request a hearing under Subsection (11).
- (6) When determining eligibility for medical assistance under this chapter:
- (a) Except as provided in Subsection (6)(b), all the resources held by either the institutionalized spouse, community spouse, or both, are considered to be available to the institutionalized spouse.
 - (b) Resources are considered to be available to the institutionalized spouse only to the extent that the amount of those resources exceeds the amounts specified in Subsections (1)(c)(i) through (iv) at the time of application for medical assistance under this chapter.
- (7) The division may not find an institutionalized spouse to be ineligible for medical assistance by reason of resources determined under Subsection (5) to be available for the cost of care when:
- (a) the institutionalized spouse has assigned to the state any rights to support from the community spouse;
 - (b)
 - (i) except as provided in Subsection (7)(b)(ii), the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment;
 - (ii) Subsection (7)(b)(i) does not prevent the division from seeking a court order seeking an assignment of support; or
 - (c) the division determines that denial of medical assistance would cause an undue burden.
- (8) During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is eligible for medical assistance, the resources of the community spouse may not be considered to be available to the institutionalized spouse.
- (9) When an institutionalized spouse is determined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly for the cost of care in the nursing care facility, the division shall deduct from the spouse's monthly income the following amounts in the following order:
- (a) a personal needs allowance, the amount of which is determined by the division;
 - (b) a community spouse monthly income allowance, but only to the extent that the income of the institutionalized spouse is made available to, or for the benefit of, the community spouse;
 - (c) a family allowance for each family member, equal to at least 1/3 of the amount that the amount described in Subsection (10)(a)(i) exceeds the amount of monthly income of that family member; and
 - (d) amounts for incurred expenses for the medical or remedial care for the institutionalized spouse.
- (10)
- (a) Except as provided in Subsection (10)(b), the division shall establish a minimum monthly maintenance needs allowance for each community spouse which is not less than the sum of:
 - (i) 150% of the current poverty guideline for a two-person family unit that applies to this state as established by the United States Department of Health and Human Services; and
 - (ii) an excess shelter allowance.
 - (b) The amount provided in Subsection (10)(a) may not exceed \$1,976, unless a court order establishes a higher amount.
- (11)
- (a) An institutionalized spouse or a community spouse may request a hearing with respect to the determinations described in Subsections (11)(e)(i) through (v) if an application for medical assistance has been made on behalf of the institutionalized spouse.

- (b) A hearing under this subsection regarding the community spouse resource allowance shall be held by the division within 90 days from the date of the request for the hearing.
 - (c) If either spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance provided under Subsection (10), an amount adequate to provide additional income as is necessary.
 - (d) If either spouse establishes that the community spouse resource allowance, in relation to the amount of income generated by the allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance, an amount adequate to provide a minimum monthly maintenance needs allowance.
 - (e) A hearing may be held under this subsection if either the institutionalized spouse or community spouse is dissatisfied with a determination of:
 - (i) the community spouse monthly income allowance;
 - (ii) the amount of monthly income otherwise available to the community spouse;
 - (iii) the computation of the spousal share of resources under Subsection (4);
 - (iv) the attribution of resources under Subsection (6); or
 - (v) the determination of the community spouse resource allocation.
- (12)
- (a) An institutionalized spouse may transfer an amount equal to the community spouse resource allowance, but only to the extent the resources of the institutionalized spouse are transferred to or for the sole benefit of the community spouse.
 - (b) The transfer under Subsection (12)(a) shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account the time necessary to obtain a court order under Subsection (12)(c).
 - (c) Chapter 19, Medical Benefits Recovery Act, does not apply if a court has entered an order against an institutionalized spouse for the support of the community spouse.