



Rhode Island Executive Office of Health and Human Services  
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April 10, 2015

Docket # 15-54  
Hearing Date: February 23, 2015



### **ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you upon a de novo review of the full record of hearing. During the course of the proceeding, the following issue(s) and statutes, and regulation(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)**  
**R.I. MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**  
**SECTION 0351: Overview of MA**  
**SECTION 0362: Income Generally**  
**SECTION 0366: SSI-Related Deeming of Income**  
**SECTION 0372: Special Treatment Coverage Groups**

**UNITED STATES CODES**  
**42 U.S.C. § 1396a et seq. - Title XIX of the Social Security Act**

**CODE OF FEDERAL REGULATIONS**  
**20 CFR 416.120; 20 CFR 416.1101; 20 CFR 416.1163; 20 CFR 416.1801; and**  
**20 CFR 416.1802**

The facts of your case, the pertinent statutes, rules, and regulations, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the appellant in C/o your Attorney), and Agency representatives Diane Wilson, Kristen Grosso, Betty Perez, and Denise Tatro

Present at the hearing were: You, your Attorney, your husband, and Agency representative Kristen Grosso.

**ISSUE:** Is the appellant ineligible for the Medicare Premium Payment (MPP) Program (QMB, SLMB, QI-1) because at the time of application in November 2014, her countable monthly income of \$1,460.00 exceeded the MPP program's income standards for an individual?

**Statutes, Rules, and Regulations:**

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services (EOHHS) Medicaid Code of Administrative Rules (MCAR), the United States Code (USC), and the Code of Federal Regulations (CFRs).

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**DISCUSSION OF THE EVIDENCE:**

**The Agency representative testified:**

- Per policy number 0372.05.25, for eligibility of Medicare Part B premium payment to exist, an individual or member of a couple must meet the non-financial requirements of citizenship, alienage, residency, enumeration, and third party resource requirements, must be enrolled in Part A, and meet income and resource limits.
- The Medicare Part B premium program enables the State of R.I. to pay a person's Part B premium, which is the \$104.90.
- In order to be eligible you have to be considered to be part of the filing unit, so you either have to have income or resources, and more importantly you have to be receiving Medicare Part B.
- Unfortunately, the appellant's spouse does not meet any of those criteria, so he is not part of the filing unit and instead of looking at the case as a couple's unit, the Agency can only look at the case as a single person filing, which dramatically changes the income and resource limits.
- A couple could have income up to \$1,769.63 and a single person can have income up to \$1,312.88.
- The appellant's monthly gross income at the time of her November 2014 application was \$1,506.30. She gets a \$20.00 disregard so her countable income was \$1460.00.

- Since the appellant's income exceeds that income limit for a single person, she is not eligible for the Medicare Part B premium program.
- The appellant would have been eligible for the MPP program if her income had been compared to the couple standard.
- It is not a deeming case because the spouse does not have any income.
- The State Medicaid regulations do not define family size but state that those who have income or resources are in the filing unit.
- The Agency looked at the MA standard for one when determining the appellant's flex amount and when determining her MPP eligibility.

**The appellant, with the assistance of her Attorney, testified:**

- She is married and living with her husband.
- She has been married for 34 years.
- She receives Social Security and Medicare benefits.
- She has both Medicare Part A and B.
- She currently receives a 2015 Social Security benefit of \$1,506.30.
- At the time of application in 2014, her gross Social Security benefit was \$1,480.00.
- She has no other income.
- He husband is not disabled, does not have Medicare, and has no income.
- Her husband is not pending Social Security and does not qualify for retirement
- Her husband was laid off in 2011 [REDACTED] A couple of years later he worked for [REDACTED]
- Her husband's unemployment benefits ran out and he has not had any income for two years.

- Her husband's minor brother also lives in the household.
- She, her husband, and her husband's brother are all living on her monthly Social Security benefit.

**The appellant's Attorney presented:**

- There is no dispute as to how countable income is calculated for the MPP program. The SSI methodology is used.
- Using the SSI methodology, the appellant's countable income is \$1,460.00, which is her gross income minus the standard \$20.00 disregard.
- The appellant's spouse has no income so this is not a deeming case.
- Per the POMS (Program Operations Manual System) for Social Security, which are basically the SSI program rules, you cannot deem income if the applicant's income is too high for Social Security. The POMS make it clear that this is not a deeming case, and the Agency agrees that this is not a deeming case.
- The income level for the Medicare Premium Payment (MPP) Program is basically up to 135% of the Federal Poverty Level (FPL).
- The issue is whether the appellant's countable income should be compared to the FPL for a family of one or a family of two when determining her eligibility for the MPP program.
- When the Agency did the appellant's flex calculation, they looked at the MA standard for one but the Flex rules do not require the Agency to compare the Federal Poverty guidelines for appropriate family size. The MPP rules do.
- The Federal statutes require that countable income be compared to the FPL applicable to a family of the size involved.
- Per State regulation 372.05.35.10, income limits are based on the Federal Poverty guidelines for the appropriate family size, not filing unit.
- Once the Agency determines the countable income, per the MPP rules, they must compare that income to the appropriate family size.

- They are a single economic unit; they are all dependent upon her income so her countable income should be compared against a standard of two.
- Common sense and the plain language say that they are unquestionably a family of two, not one.
- She knows of no definition of family in the State regulations.
- If you go with the Agency's interpretation of family size, you get very weird and arbitrary results. Since all the income is the appellant's and her spouse has no income, they are called a family of one and income is compared it to the standard of one. If all the income had been her spouse's, the Agency would have considered them to be a family of two. If the appellant and her husband both had Medicare and they both applied for MPP then they would have been compared to the couple standard.
- At least two U.S. State courts have ruled on these same facts and same issue, where one spouse applies and the other has no income. They have ruled that for MPP purposes, family is a husband and wife living together. They have rejected the State argument that they cannot be a couple unless both of them are Medicare eligible or unless the spouse has enough income to deem.
- A R.I. Superior Court decision goes the other way but in that case the judge never addressed whether the State Agency policy complied with the Federal Medicaid statute that requires the income be compared against the FPL for the family size involved.
- Family size for MPP purposes should not involve whether the spouse is eligible for Medicare or whether the income is his or hers. They are a family of two so the FPL for a family of 2 should be looked at.
- The appellant's countable income does not exceed 135% of the FPL for a couple so if the appellant's 2014 income had been compared to a couple's standard, she would have been eligible for the MPP program.

#### **FINDINGS OF FACT:**

- The appellant applied for Medical Assistance in November 2014.
- The appellant was sent a notice dated December 4, 2014 informing her that she was ineligible for the Medicare Premium Payment Program because her income of

\$1,460.00 exceeded the qualified standard of \$1,312.88. The notice also informed her that she was ineligible for R.I. Medical Assistance because her countable monthly income of \$1,460.00 was more than the SSI-related monthly income standard/medically needy income standard of \$858.00 for a family of one, and explained the process of obtaining Medicaid through the flex process.

- The appellant filed a request for hearing to appeal the denial of Medicaid. That appeal request was received by the Agency on December 24, 2014.
- The appellant, through her Attorney, filed a supplemental hearing request to appeal her denial of the Medicare Premium Payment Program. That appeal was received by the Agency on January 5, 2015.
- An Administrative Appeal Hearing was convened on February 23, 2015.
- On March 27, 2015, the appellant's Attorney was provided with a copy of a February 18, 2010 State Medicaid Director letter and was given the opportunity to accept an offer from the Appeals Officer before the close of business on April 2, 2015, to respond and/or submit additional arguments.
- On March 30, 2015, the appellant's attorney submitted a letter of response to the Appeals Officer.
- On April 2, 2015, the Appeals Officer offered the Agency the same opportunity to submit a response and/or additional argument and the Agency declined the offer.
- The appellant is married.
- The appellant resides with her husband and her husband's minor brother.
- At the time of her November 2014 application for Medicaid, the appellant was receiving a gross monthly Social Security benefit of \$1,480.00.
- The appellant's husband has no income.
- For the purposes of Medicaid, in November 2014 the appellant had countable monthly income of \$1,460.00.
- The appellant's husband does not receive Medicare
- The appellant's husband does not have any SSI-related characteristic.

**CONCLUSION:**

The Agency notified the appellant per a notice dated December 4, 2014, that her November 2014 application for Rhode Island Medical Assistance had been denied. The notice specifically informed her that she was ineligible for Medicaid because her countable monthly income of \$1,460 exceeded the SSI-related monthly income standard of \$858.00 for a family size of one. The notice also informed her that she was ineligible for the Medicare Premium Payment (MPP) Program, including QMB, SLMB, and QI-1, because her monthly income exceeded the qualified standard of \$1,312.88, which is the standard for an individual. Despite the appellant filing an initial appeal on December 24, 2014 to dispute the denial of Medicaid, at hearing the appellant's attorney concedes that the appellant's countable income and her flex spend down amount was calculated correctly and that the denial of Medicaid due to not meeting the SSI-related income standard for a family of one was no longer in dispute. On January 5, 2015, the appellant's Attorney filed a supplemental appeal to dispute the denial of the MPP program. It is this appeal that was heard at the Administrative Hearing convened on February 23, 2015.

The issue to be decided is whether the appellant is ineligible for the Medicare Premium Payment (MPP) Program (QMB, SLMB, QI-1) because at the time of application in November 2014, her countable monthly income of \$1,460.00 exceeded the MPP program's income standard for an individual of \$1,312.88.

The record establishes that the appellant is married and living with her husband. At the time of application in November 2014, the appellant was receiving a gross monthly Social Security benefit of \$1,480.00 and was in receipt of Medicare. The appellant's husband was unemployed, had no income, and was not receiving Medicare.

The Agency argues that because the appellant's spouse is not aged, blind or disabled, has no income, and does not receive Medicare, he is not considered part of the filing unit and the appellant's countable income is thereby compared to the income limits for an individual.

The appellant's attorney argues that when determining the appellant's eligibility for the MPP program, the appellant's countable income should have been compared to the income standard for a couple, thereby rendering her eligible for the MPP program. In addition to testimony offered by the appellant, the appellant's Attorney submitted the following evidence to support that argument:

- Copy of State Medicaid regulations section 0372 titled Special Treatment Coverage Groups.

- Copy of Social Security Program Operations Manual System (POMS) SI 01320.400 titled Deeming of income from an Ineligible Spouse; and SI 01310.110 titled Deeming Concept-Allocation.
- Copy of 2015 Categorically Needy Net Monthly Income Limits for Agency, Blind, or Disabled Individuals/Couples from EOHHS Medicaid Manual section 0362.05
- Copy of parts of 42 USCS 1396d
- Copy of EOHHS Medicaid manual section 0366 titled SSI-Related Deeming of Income
- Copy of *Winick v. Dep't of Children & Family Servs.*, 2014 Fla.
- Copy of *Skaliotis v. R.I. Dep't of Human Servs.*, 1996 R.I.
- Copy of *Martin v. N.C. HHS*, 194 N.C. App. 716
- Post hearing letter dated March 30, 2015.

The statutory foundations of the Rhode Island Medicaid program are Title XIX of the Social Security Act (42 U.S.C. § 1396a et seq.), Rhode Island General Laws 40-8, and Rhode Island General Laws 42-7.2. The Office of Health and Human Services (OHHS) is the State Agency responsible for administering the State's Medicaid program and the Medicaid Code of Administrative Rules (MCAR) is the OHHS's official code of rules, regulations and procedures for the Medicaid program.

Per the MCAR, Medicaid applicants who are aged, blind or disabled are considered SSI-related cases. Medicaid eligibility for SSI-related individuals and/or couples living in a community setting is determined in accordance with the rules and regulations outlined in sections 0350 through 0372 of the MCAR. Eligibility criteria for the MPP program is outlined in section 0372 titled Special Treatment Coverage Group. The MPP program is a limited Medicaid program authorized by Title XIX which helps eligible low-income Medicare beneficiaries pay for some or all of their out-of-pocket Medicare expenses. There are several categories of the MPP program, all of which have different eligibility requirements and different benefits. Per the MCAR, for all categories of MPP, the Agency determines the applicant's countable income using the SSI-related methodology and then compares that income to the appropriate income limit for the specific MPP category based on Federal Poverty Level (FPL) Guideline for the appropriate family size.

The appellant's Attorney does not dispute that the SSI-related income methodology should be utilized to determine the appellant's countable income for the MPP program,

but maintains that per the Federal Statutes pertaining to the MPP program, specifically 42 USC 1396d(p), countable income must then be compared to the FPL guidelines applicable to a family of the size involved to determine eligibility. The appellant's attorney argues that "family" is not defined in the State MCAR and while she concedes that "family" is also not defined in the Federal statute cited, she argues that the plain meaning of the word "family" clearly includes a married couple living together and that since the appellant and her husband reside together as one financial unit being supported solely by the appellant's income, such should be considered when comparing her income to the eligibility income standards for MPP. The appellant's Attorney further argues that the courts in *Martin v. N.C. HHS*, and *Winick v. Dep't of Children & Family Services*, have accepted this definition and/or interpretation of "family" in relation to the MPP program. The appellant maintains that had her countable income been compared to the FPL for a couple she would have been found eligible for the MPP program. The Agency agrees that the appellant would be eligible for the MPP program if her income was compared to the FPL for a couple. The Agency utilized the SSI-methodology to determine both the appellant's countable income as well as her family size for comparison to FPL guidelines.

A review of 42 USC 1396d finds that it provides definitions for Title XIX Medicaid. A review of 42 USC 1396d(p) titled "Qualified medicare beneficiary; medicare cost-sharing", specifically 42 USC 1396 d(p)(2)(A), finds that it does stipulate that income levels for the MPP program are a percentage of the FPL "applicable to the family of the size involved" but does not provide a definition of "family" or "family size". The Court in *Martin v. N.C. HHS* in essence concluded that while the SSI-methodology is to be utilized in determining countable income for the MPP program, the SSI methodology which defines a couple as requiring an eligible spouse, is not to be utilized when determining the standard by which to compare the countable income for eligibility purposes, but instead was to be compared to "family of the size involved". The Court further concluded that since "family size" was not clearly defined in the Federal statute pertaining to the MPP program, the Court considered the Federal definition of "family size" provided relative to 42 USC 1395w-114(a)(1) pertaining to the Medicare Part D Low Income Subsidy (LIS) as it was similar to the Court's understanding of the plain meaning of "family of the size involved". The Court in *Winick v. Dep't of Children & Family Services* relied heavily on the findings in *Martin v. N.C. HHS*, and made a similar conclusion as to how income standard or family size should be determined for the MPP program. It should be noted, utilizing the Part D LIS definition of "family" could result in additional individuals, in addition to the spouse, being included in the family size if such individuals are dependent on the applicant's income for a certain level of financial support. It should also be noted, while the appellant claims that she alone provides financial support for her husband's minor brother who resides with them, and her attorney argues that "family size" implies the number of persons living in the household as one financial unit being supported by the appellant's one income, she argues that the appellant's income should be compared to the FPL for a couple as opposed to a family of three.

While the appellant's attorney argues that the Superior Court of R.I. in *Skaliotis v. R.I. Dep't of Human Services* did not address whether R.I.'s Medicaid rules complied with the Federal Medicaid statute that requires the income be compared against the FPL for the family size involved, a review finds that it was addressed. The Court concluded that the R.I. Medicaid Agency had determined applicable family size for the MPP program in accordance with the SSI income methodology rules, including SSI deeming rules which not only determine countable income but also determine which income level standard, individual or couple, is utilized. The Court further concluded that the State had utilized the correct income determination methodology and that the State's regulations relative to income eligibility for the MPP program were consistent with the Federal regulations.

As the decision in *Skaliotis v. R.I. Dep't of Human Services* was rendered prior to the Florida and North Carolina decisions cited by the appellant's attorney, further review of State and Federal regulations pertaining to both the MPP and the Medicare Part D programs was conducted to compare the two programs in an attempt to determine if the Federal definition of "family" and/or "family size" for the Medicare Part D Low Income Subsidy(LIS) was intended to be utilized for the Medicare Savings Programs (MSP).

Social Security POMS HI00815.023 titled Medicare Savings Programs Income Limits lists the income limits for all categories of MSP only in terms of individual or couple standards, thereby indicating that the "family size" for the MPP program never pertains to a family size larger than two and thereby does not pertain to the number of individuals in a family as defined by the Medicare Part D LIS program. Further review of the R.I. MCAR pertaining to the R.I.'s MSPs, known as the MPP program, specifically at 0372.05.30 and 0372.05.35.05, does find some overlap of the two programs though per implementation of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). In essence, the MIPPA requires States to utilize the Medicare Part D LIS resource limits when determining financial eligibility for the MPP program. The MCAR makes no mention of utilizing any other Medicare Part D LIS eligibility criteria. As part of the state-federal partnership in administering the Medicaid Program, the Centers for Medicare and Medicaid Services (CMS) issues State Medicaid Director Letters (SMDL) to provide Federal policy guidance and/or clarification on current information and/or statutory changes pertaining to Medicaid. CMS issued SMDL #10-003 on February 18, 2010 relative to the MIPPA. While that letter speaks to the application of the Medicare Part D LIS resource limits to the MSPs, it also speaks to the definition of "family size". In the letter, CMS explains the definition of a "family of the size involved" that is utilized for determining eligibility for the LIS program and which was referenced in both *Martin V. N.C. HHS* and *Winick v. Dep't of Children & Family Services*, but the CMS letter also clearly explains that States are not bound by this definition for their MSPs. The letter explains that for their MSPs, States can define "family of the size involved" as they choose and further reports that most States follow the SSI approach, which uses the standard for an individual or the standard for a couple. This explanation offered by CMS

relative to the meaning of family size for the R.I. MPP program conflicts with the findings in *Martin v. N.C. HHS* which implied that the Federal interpretation or definition of "family" utilized in the Medicare Part D LIS program should be utilized for the MPP programs.

In response to the SMDL #10-003, the Appellant's attorney argues that regardless of having the option for defining "family of the size involved", R.I. Medicaid has failed to define "family" or "family size" for the purposes of their MPP program. She further argues that counting a married couple living together as a family of one instead of as a couple is contrary to SSI deeming rules. Further review of the State's MPP regulations find that while the MCAR does not specifically define "family" or "family size" for the MPP program, the R.I. MCAR does indicate that R.I. has chosen to follow the approach of the SSI program which utilizes and/or defines a "family of the size involved" in terms of an individual or a couple. MCAR section 0372.05.35 stipulates that SSI-related income evaluations are utilized to determine countable income for the MPP program and section 0372.05.35.10 stipulates that MPP income limits are based on the FPL guidelines for the appropriate family size. The MCAR further stipulates in section 0372.05.35 that the income evaluation methods outlined in section 0362 for SSI-related individuals are to be utilized for the MPP program. A review of section 0362 finds that it reflects the fact that the only income standards available under the SSI-income methodology are the individual or couple standard, thereby offering an explanation as to why a definition of "family" was not included in the State MPP regulations. Section 0362.10.10 also stipulates that deemed income is part of the SSI income methodology. SSI-related deeming of income is further explained in MCAR section 0366, a review of which finds that SSI-related deeming rules determine not only how much if any of a spouse's income is considered countable for a MPP applicant, but the SSI-related deeming rules also determine the standard by which that countable income is compared to determine eligibility. Per the MCAR, when no income is deemed from an ineligible spouse, the applicant's income alone is compared to the standard for an individual. Review of the Federal SSI regulations finds consistency with R.I.'s interpretation. While the SSI rules do not specifically define "family" they do define "couple". Per 20 CFR 416.1101 a "spouse" is defined as someone living with another individual as their husband or wife and defines a "couple" as an "eligible individual" and his/her "eligible spouse". 20 CFR 416.120 also defines a "couple" as an "eligible individual" and his/her "eligible spouse" and defines an "eligible spouse" as someone who is aged, blind, or disabled (has a SSI-related characteristic) and is married to and living with another individual with a SSI-related characteristic. In essence, per the SSI definitions, two individuals who are married and living together are considered each other's spouse but are not always considered a "couple" by SSI definitions. 20 CFR 416.1802 further explains the effects that marriage has on SSI eligibility and refers to 20 CFR 416.1163 for rules for an individual with an "ineligible spouse". Per 416.1163(d), when determining eligibility for SSI when an "ineligible spouse" has no income to deem, the SSI applicant's countable income is compared to the standard for an individual to determine eligibility. POMS SI01320.400 cited by the appellant's attorney and titled Deeming of Income from an

Ineligible Spouse also stipulates at B1c that when there is no income to deem from an ineligible spouse, the applicant's own countable income is compared to the individual standard to determine SSI eligibility.

In summary, R.I. can choose for the MPP program how it defines the term "family of the size involved". R.I. has chosen to define the term utilizing the SSI program rules which define a "family of the size involved" as either an individual or a couple. Per the SSI rules, regardless of the number of persons actually in the family, family size is either an individual or a couple based on whether an applicant's spouse is eligible or ineligible and whether any spousal income deeming occurs. As the appellant's spouse does not have a SSI-related characteristic, he is considered an "ineligible spouse" and the appellant and her husband are not considered a "couple" under the SSI rules. Additionally, as the appellant's spouse has no income, no income is deemed to the appellant and per the SSI deeming rules, the appellant's own income must thereby be compared to the standard for an individual when determining her eligibility for the MPP program.

In conclusion, aged, blind, or disabled adults applying for R.I. Medicaid, including the MPP program, are considered to have an SSI-related characteristic and are subject to the SSI-related income rules, including SSI income-deeming rules, when determining Medicaid eligibility, including MPP eligibility. The appellant has an SSI-related characteristic and her income eligibility for the MPP program was determined in accordance with the SSI-related income rules, including the SSI spousal income deeming rules and the SSI definitions of "individual" and "couple". The appellant is by definition an "eligible individual" and her husband is an "ineligible spouse". As such, the appellant and her husband are not a "couple" by SSI rules/definition despite the fact that they are married and living together. The appellant's income must thereby be compared to the income standard for an individual or family size of one, as opposed to a couple or a family size of two.

After a careful review of State and Federal regulations, as well as the evidence and testimony presented, this Appeals Officer finds that the appellant is ineligible for the MPP program as of November 1, 2014 because her countable monthly income exceeded the MPP income standard for an individual. The appellant's request for relief is thereby denied.



Debra L. DeStefano  
Appeals Officer

**APPENDIX**

## **MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**

(Pertinent excerpts)

### **0351 OVERVIEW OF MA**

#### **0351.05 MANUAL ORGANIZATION**

**REV:04/1998**

The basic policies and procedures to determine eligibility for Aged, Blind, or Disabled individuals or couples (SSI-Related cases) are set forth in this section. Categorically Needy and Medically Needy SSI-Related cases are subject to the income and resource methodologies and limits set forth within this section.

Each determination of eligibility (new, reopening or redetermination) requires a review of resources and income. Resources and income are also reviewed at the time of a reported change, or when information is received which indicates a change has occurred, or that unreported resources may exist. Certain information must be verified by a review of documentation, with copies of the documentation kept for the case file.

Sections 0350 through 0372 which follow set forth the policies and procedures which govern Medical Assistance eligibility for SSI-Related individuals and couples living in community settings.

- o The remainder of this section, OVERVIEW OF MA, briefly summarizes eligibility requirements and lists coverage groups applicable to individuals and couples;
- o Section 0352, CHARACTERISTIC REQUIREMENTS, describes the SSI-related characteristic requirements for an individual or member of a couple and the process of verification;
- o Section 0354, RESOURCES GENERALLY, contains general provisions which apply to the evaluation of an applicant/recipient's resources -- resource limits, definitions, how resources are distinguished from income, and policies governing the reduction of excess resources;
- o Section 0356, EVALUATION OF RESOURCES, contains the First Moment of the Month (FOM) rule and the policies for evaluating specific types of resources;
- o Section 0358, SSI-RELATED DEEMING OF RESOURCES, defines resource deeming, and describes how deeming may impact the eligibility determination of a member of a couple and/or child;

- o Section 0360, RESOURCE TRANSFERS, defines resource transfers and the conditions under which a prohibited transfer may result in a period of ineligibility for MA payment of long term care;
- o Section 0362, INCOME GENERALLY, contains general provisions which apply to evaluation of an applicant/recipient's income -- income limits, definitions;
- o Section 0364, TREATMENT OF INCOME, contains the policies for evaluating specific types of earned and unearned income;
- o Section 0366, SSI-RELATED INCOME DEEMING, defines income deeming and describes how income deeming may impact the eligibility determination of a member of a couple and/or child;
- o Section 0368, FLEXIBLE TEST OF INCOME, contains the policies governing the spenddown of excess income to achieve Medically Needy MA eligibility;
- o Section 0370, Categorically Needy AND Medically Needy COVERAGE GROUPS, describes the eligibility requirements and other specific provisions for the SSI-related coverage groups;
- o Section 0372, SPECIAL TREATMENT COVERAGE GROUPS, describes the coverage provisions for Qualified Medicare Beneficiaries (QMB), Specified Low Income Medicare Beneficiaries (SLMB), Qualifying Individuals (QI-1 and QI-2), and Qualified Disabled Working Individuals (QDWI).

### **0372 Special Treatment Coverage Groups**

#### **0372.05 Medicare Premium Payment Program (MPPP)**

REV: 01/2014

Purpose: The Medicare Premium Payment Program helps elders 65 and older (and adults with disabilities) pay all or some of the costs of Medicare Part A and Part B premiums, deductibles and co-payments. Low income adults with disabilities who have Medicare coverage, may be eligible for the Medicare Premium Payment Program (MPPP). Medicare Part A is hospital insurance coverage and Medicare Part B is for physician services, durable medical equipment and outpatient services. A person's income and resource determine which type of Medicare premium assistance is available.

2. Medicare is the federal health insurance to which individuals who are insured under the Social Security system are entitled once they attain 65 years of age or reach the 25th month of a permanent and total disability. Medicare is also available to individuals who have permanent kidney failure and individuals who received a kidney transplant. Medicare has two parts:

a. Part A Medicare Insurance

- Pays for hospital services and limited skilled nursing facility services;
- Is available without charge to individuals who are insured under Social Security or Railroad Retirement systems and who have attained 65 years of age or have reached the 25th month of a permanent and total disability;
- Is available without charge to certain individuals who receive continuing dialysis for permanent kidney failure and certain individuals who have had a kidney transplant;
- Is also available to aged or disabled individuals who are not insured under the Social Security System for a premium amount determined by the Social Security Administration.

b. Part B Medicare Insurance

- Pays for physician services, durable medical equipment and other outpatient services;
- Is available to both "insured" and "uninsured" individuals who have attained 65 years of age or have reached the 25th month of a permanent and total disability upon payment of a monthly premium.
- The Part B premium as of January 1, 2014 is \$104.90/month for timely enrollees.

B. Enrollment

1. Individuals who receive Social Security or Railroad Retirement benefit payments are automatically enrolled in Medicare when they turn 65 or reach their 25th month of disability.

3. Individuals who need to apply for enrollment in Medicare include those who:

- a. Have not applied for Social Security or Railroad Retirement Benefits
- b. Were involved in certain government employment
- c. Have kidney failure/kidney transplant.

4. The initial enrollment period is a seven-month period that starts three (3) months before the individual first meets the requirements for Medicare. Individuals who do not enroll in the initial enrollment period may enroll in the general enrollment period, held each year from January 1 through March 31.

C. In accordance with federal law, limited Medicaid is provided to low-income Medicare beneficiaries. This limited coverage helps eligible individuals pay for some or all of their out-of-

pocket Medicare expenses. There are four (4) categories of Medicare Premium Payment Program Benefits:

1. Qualified Medicare Beneficiary (QMB)
2. Specified Low Income Medicare Beneficiary (SLMB)
3. Qualifying Individual-1 (QI-1)
4. Qualified Disabled Working Individual (QDWI)

### **0372.05.30 Application Process**

REV: August 2014

A. There are three distinct application processes for individuals and members of couples who are requesting Medicare Premium Payment Program benefits.

1. The Medicaid agency provides the following two application processes:

a. Combined Application (Forms DHS-1 and DHS-2) available at:

<http://www.eohhs.ri.gov/ReferenceCenter/FormsApplications/MedicaidApplication.aspx>

i. Individuals and couples applying for all covered Medicaid benefits complete the DHS-1 (Application) and DHS-2 (Statement of Need "Application for Assistance") forms.

ii. An applicant is entitled to have eligibility determined under any and all Medicaid coverage groups for which the applicant may qualify, including Medicare Premium Payment Program benefits.

iii. Information about the benefits available under each coverage group must be provided to the individual at the time of application.

iv. If an applicant does not voluntarily choose to apply for Medicaid coverage under a specific coverage group, eligibility is determined for all potential coverage groups, as specified.

b. Streamlined Application (Form MPP-1)

i. Individuals and couples applying only for Medicare Premium Payment Program benefits may complete the MPP-1 application form and mail it to the Medicaid agency office at the Hazard Building, 74 West Road, Cranston, Rhode Island 02920.

The application is available upon request and online at:

<http://www.eohhs.ri.gov/ReferenceCenter/FormsApplications/MedicaidApplication.aspx>

2. The Social Security Administration (SSA) provides the third application process:

a. The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), P.L. 110-275, section 113 states that the SSA must transmit data from the Medicare Part D Low-Income Subsidy (LIS) application, with the consent of the applicant, to the Medicaid agency for purposes of initiating an application for the MPPP.

b. MIPPA requires the Centers for Medicare and Medicaid Services (CMS) to make available to SSA and the States, model applications that can be provided to beneficiaries upon their request. The SSA has provided the CMS-designed model application in ten languages, other than English. If a state receives a model application in any language, it is treated as an application for the MPPP.

c. Upon receiving an application in the form of the LIS data transmission from SSA, the Medicaid agency acts upon it in the same manner, and in accordance with the same deadlines, as if the data were an application submitted directly by the applicant to agency.

i. The Medicaid agency is required to act on this data as an application for MPPP benefits, even if the LIS application was denied by SSA.

ii. The Medicaid agency is required to treat these as applications for the MPPP program even if it is an application not previously seen by staff at the Medicaid agency.

d. A finding of eligibility or ineligibility is made for each application, unless the individual withdraws the application or is deceased.

e. The date of electronic transmission of the LIS application from SSA to the Medicaid agency is the date of the MPPP application.

B. To reduce barriers to eligibility for Medicare Premium Payment Program applicants, required verification is obtained from the individual's Social Security record. The State Verification and Exchange System (SVES) is used whenever possible to verify the applicant's date of birth, residency, social security number, social security income, Medicare Claim Number and Medicare Enrollment. Citizenship/ immigration status is pre-determined by the Social Security Administration and that requirement is met with Medicare enrollment. This verification must be obtained before eligibility is approved.

C. Initial eligibility is not delayed while verification of income other than Social Security and resources is pending, providing that the information contained in the application does not conflict with other information provided by the applicant, information contained in other state agency applications, or other documented information known to the Medicaid agency.

D. Income other than Social Security and resources are verified with the applicant's consent by EOHHS. As a condition of continued eligibility, the applicant/ beneficiary must cooperate in the verification process by either: providing verification of income and resources or consent to the Medicaid agency to obtain such verification.

E. Information and/or documentation obtained in the verification process is referred to the appropriate staff for any necessary action.

F. A decision on an application for Medicare Premium Payment Program benefits must be made within thirty (30) days of the receipt of the signed application form in the Medicaid agency office.

i. MPPP application received in the form of the LIS data transmission from SSA does not require a signature.

### **0372.05.35 Financial Requirements**

REV: 09/2010

The resource and income evaluation methods described in Sections 0356 and 0364 for SSI-related individuals are used to determine countable income and resources for Medicare Premium Payment Program applicants.

#### **0372.05.35.10 Income Limits**

REV: 09/2010

A. The income limits for the Medicare Premium Payment Program benefits, based on the Federal Poverty (FPL) Guidelines for the appropriate family size, are listed below.

1. QMB - less than or equal to one hundred (100%) percent of FPL;
2. SLMB - greater than one hundred (100%) percent FPL and less than or equal to one hundred twenty (120%) percent of FPL;

3. QI-1 - greater than one hundred twenty (120%) FPL and less than one hundred thirty five (135%) percent FPL;
4. QWDI - less than or equal to two hundred (200%) percent of FPL.

### **0362 Income Generally**

The provisions in this Section do not apply to the individuals and families in the Medicaid affordable coverage groups identified in MCAR Section 1301 that took effect on January 1, 2014. The rules governing the application process for the Medicaid affordable coverage groups included in MCAR Section 1301 are located in MCAR Section 1303. Accordingly, the provisions of this Section are applicable only to individuals and families who were enrolled and receiving Medicaid coverage prior to January 1, 2014, as specified.

#### **0362.05 Income Standards - Individual/Couple**

REV: April 2014

The following standards are used in the determination of an individual's or couple's income eligibility:

- 2014 Monthly Federal Benefit Rate (FBR);
- Categorically Needy Income Limits;
- Medically Needy Monthly Income Limits;
- 2014 Federal Poverty Level Income Guidelines (for Low Income Aged and Disabled Individuals, Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries and Qualified Disabled and Working Individuals).

#### **2014 Monthly Federal Benefit Rate (FBR)**

Individual - Own Home \$721.00

Couple - Own Home \$1,082.00

Individual - Home of Another \$480.44

Couple - Home of Another \$721.33

"DIFFERENCE BETWEEN"

Couple and Individual - Own Home \$361.00

Couple and Individual - Home of Another \$240.89

"DOUBLE THE FBR"

Individual - Own Home \$1,442.00

Individual - Home of Another \$960.88

Couple - Own Home \$2,164.00

Couple - Home of Another \$1,442.66

## **2014 FEDERAL POVERTY LEVEL MONTHLY INCOME GUIDELINES**

### **100% of Federal Poverty Level Income Guidelines for Qualified Medicare**

#### **Beneficiaries**

#### **(QMB's) and Low-Income Aged and Disabled**

Individual \$ 972.50

Couple \$ 1310.83

### **120% of Federal Poverty Level Income Guidelines for Specified Low-Income Medicare**

#### **Beneficiaries (SLMB's)**

Individual \$ 1,167.00

Couple \$ 1,573.00

### **135% of Federal Poverty Level Income Guidelines for Qualified Individuals (QI-1)**

Individual \$ 1,312.88

Couple \$ 1,769.63

### **200% of Federal Poverty Level Income Guidelines for Qualified Disabled and Working**

#### **Individuals (QDWI's)**

Individual \$ 1,945.00

Couple \$ 2,621.67

## **0362.10.10 Unearned Income**

REV: 06/1994

Unearned income is defined as all income that is not earned income whether cash or in-kind. Some types of unearned income are:

- Deemed income;
- Income from legally liable relatives;
- Workers' Compensation;
- Annuities, pensions, and other periodic payments;
- Alimony and support payments;
- Dividends, interests and royalties;
- Rents;
- Benefits received as the result of another's death to the extent that the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient;
- Prizes and awards;
- In-kind support and maintenance (ISM);
- Life insurance proceeds; and
- Gifts and inheritances.

## **0366 SSI-RELATED DEEMING OF INCOME**

### **0366.05 DEEMING DEFINED**

REV:06/1994

The term "deeming" is used to identify the process of considering another person's income to be the income of the Medical Assistance applicant/recipient. When the deeming rules apply, it does not matter whether the income of the other person (deemor) is actually available; the deeming rules are applied anyway.

There are two categories of individuals whose income may be deemed to a Medical Assistance applicant/recipient: Ineligible Spouse and Ineligible Parent.

INCOME IS DEEMED FROM THE "INELIGIBLE" TO THE "ELIGIBLE." The terms "eligible" and "ineligible" in this context refer to the individual's position in the deeming process. "Ineligible" refers to the spouse or parent WHOSE INCOME will be considered as belonging to the "eligible" spouse or child. The deemed income is then considered to be income of the Medical Assistance applicant/recipient and is used in determining the individual's financial eligibility for Medical Assistance. Final eligibility for Medical Assistance is contingent upon all financial and non-financial criteria of the program being met.

### **0366.10 DEEM FROM INELIG TO ELIG SPOUS**

REV:06/1994

When both members of a couple (spousal relationship and living together in the community) apply and both members of the couple have an SSI-related coverage group, the incomes of the couple are combined and tested against the Medical Assistance income standard for two. Each member's Medical Assistance eligibility is determined under his/her own particular coverage provision.

SPOUSE-TO-SPOUSE DEEMING OF INCOME IS INVOLVED IN THE ELIGIBILITY DETERMINATION WHEN ONLY ONE MEMBER OF A COUPLE APPLIES OR WHEN ONLY ONE MEMBER OF THE COUPLE IS POTENTIALLY ELIGIBLE FOR MEDICAL ASSISTANCE UNDER AN SSI-RELATED COVERAGE GROUP.

The applicant/recipient member of the couple is termed the "ELIGIBLE INDIVIDUAL". The "INELIGIBLE SPOUSE" means someone who lives with the eligible individual as that person's husband or wife, either through a ceremonial marriage or through a common-law marriage, and who is not eligible for Medical Assistance.

#### **0366.10.05 Income Deeming Spouse**

REV:06/1994

When an ineligible spouse lives in the same household as the eligible individual, these deeming rules are applied in the following order:  
**FIRST:** Determine the amount of the ineligible spouse's earned and unearned income, applying the appropriate income exclusions, in the computation month.

**SECOND:** Deduct an allocation for each ineligible child who lives

in the household. "Ineligible child" means the ineligible individual's natural or adopted child who is under the age of 21, lives in the same household, and is not eligible for Medical Assistance. EXCEPTION: No allocation is given for any children who are receiving cash assistance (AFDC, SSI, GPA):

- o The allocation for each ineligible child is the difference between the Federal Benefit Rate (FBR) for an eligible couple and the FBR for an eligible individual;
- o Each ineligible child's allocation is reduced by the amount of his or her own income (appropriate income exclusions applied); and,
- o The allocations for ineligible children are first deducted from the ineligible spouse's unearned income. If the ineligible spouse does not have enough unearned income to cover the allocations, the balance is deducted from the ineligible spouse's earned income.

THIRD: If the remaining income (both earned and unearned) of the ineligible spouse is EQUAL TO OR LESS THAN the difference between the FBR for an eligible couple and the FBR for an eligible individual, there is no income to deem to the eligible individual. IN THIS SITUATION, THE ELIGIBLE INDIVIDUAL'S OWN COUNTABLE INCOME IS SUBTRACTED FROM THE MA STANDARD FOR ONE TO DETERMINE ELIGIBILITY.

FOURTH: If the remaining income (both earned and unearned income) of the ineligible spouse is MORE THAN the difference between the FBR for an eligible couple and the FBR for an eligible individual, THE ELIGIBLE INDIVIDUAL AND THE INELIGIBLE SPOUSE ARE TREATED AS AN ELIGIBLE COUPLE:

- o The eligible individual and the ineligible spouse are treated as an eligible couple by combining the remainder (after allowable allocations) of the ineligible spouse's unearned income with the eligible individual's own unearned income, and the remainder of the ineligible spouse's earned income with the individual's earned income;
- o Apply all appropriate income exclusions, including the first \$20 of unearned income (if less than \$20 of unearned income in a month, any remaining portion of the \$20 exclusion is applied to any earned income in the month), \$65 of any earned income in the month, and one-half of remaining earned income in the month;

o Subtract the couple's countable income from the MA STANDARD FOR TWO.

FIFTH: If the couple's countable income is EQUAL TO OR LESS THAN the MA STANDARD FOR TWO in the computation month, the INDIVIDUAL IS ELIGIBLE FOR MA UNDER THE DEEMING RULES.

### **0366.35.05 Ineligible Spouse becomes Elig**

REV:06/1994

If an ineligible spouse becomes eligible, the individual and spouse are treated as an eligible couple effective with the month the spouse becomes eligible. MA eligibility and payment amount are based on the couple's income for that month.

## **UNITED STATES CODES (Pertinent parts)**

### **1396a. State plans for medical assistance**

(10)(E)(i) for making medical assistance available for medicare cost-sharing (as defined in section 1396d(p)(3) of this title) for qualified medicare beneficiaries described in section 1396d(p)(1) of this title;

(ii) for making medical assistance available for payment of medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title for qualified disabled and working individuals described in section 1396d(s) of this title;

(iii) for making medical assistance available for medicare cost sharing described in section 1396d(p)(3)(A)(ii) of this title subject to section 1396d(p)(4) of this title, for individuals who would be qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved; and

(iv) subject to sections 1396u-3 and 1396d(p)(4) of this title, for making medical assistance available (but only for premiums payable with respect to months during the period beginning with January 1998, and ending with March 2015) for medicare cost-sharing described in section 1396d(p)(3)(A)(ii) of this title for individuals who would be qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title and is at least 120 percent, but less than 135 percent, of the official poverty line (referred to in such section) for a family of the size involved and who are not otherwise eligible for medical assistance under the State plan;

**1396d. Definitions** For purposes of this subchapter-

**(p) Qualified medicare beneficiary; medicare cost-sharing**

(1) The term "qualified medicare beneficiary" means an individual-

(A) who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395i-2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i-2a of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program, except as provided in paragraph (2)(D)) does not exceed an income level established by the State consistent with paragraph (2), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program or, effective beginning with January 1, 2010, whose resources (as so determined) do not exceed the maximum resource level applied for the year under subparagraph (D) of section 1395w-114(a)(3) of this title (determined without regard to the life insurance policy exclusion provided under subparagraph (G) of such section) applicable to an individual or to the individual and the individual's spouse (as the case may be).

(2)(A) The income level established under paragraph (1)(B) shall be at least the percent provided under subparagraph (B) (but not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Except as provided in subparagraph (C), the percent provided under this clause, with respect to eligibility for medical assistance on or after-

- (i) January 1, 1989, is 85 percent,
- (ii) January 1, 1990, is 90 percent, and
- (iii) January 1, 1991, is 100 percent.

(C) In the case of a State which has elected treatment under section 1396a(f) of this title and which, as of January 1, 1987, used an income standard for individuals age 65 or older which was more restrictive than the income standard established under the supplemental security income program under subchapter XVI of this chapter, the percent provided under subparagraph (B), with respect to eligibility for medical assistance on or after-

- (i) January 1, 1989, is 80 percent,
- (ii) January 1, 1990, is 85 percent,
- (iii) January 1, 1991, is 95 percent, and
- (iv) January 1, 1992, is 100 percent.

(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under subchapter II of this chapter for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such subchapter which have occurred pursuant to section 415(i) of this title for benefits payable for months beginning with December of the previous year.

(ii) For purposes of clause (i), the term "transition month" means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.

(3) The term "medicare cost-sharing" means (subject to section 1396a(n)(2) of this title) the following costs incurred with respect to a qualified medicare beneficiary, without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan:

(A)(i) premiums under section 1395i-2 or 1395i-2a of this title, and

(ii) premiums under section 1395r of this title,<sup>4</sup>

(B) Coinsurance under subchapter XVIII of this chapter (including coinsurance described in section 1395e of this title).

(C) Deductibles established under subchapter XVIII of this chapter (including those described in section 1395e of this title and section 1395l(b) of this title).

(D) The difference between the amount that is paid under section 1395l(a) of this title and the amount that would be paid under such section if any reference to "80 percent" therein were deemed a reference to "100 percent".

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1395mm of this title.

(4) Notwithstanding any other provision of this subchapter, in the case of a State (other than the 50 States and the District of Columbia)-

(A) the requirement stated in section 1396a(a)(10)(E) of this title shall be optional, and

(B) for purposes of paragraph (2), the State may substitute for the percent provided under subparagraph (B)<sup>5</sup> or <sup>6</sup> 1396a(a)(10)(E)(iii) of this title of such paragraph <sup>5</sup> any percent.

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(5)(A) The Secretary shall develop and distribute to States a simplified application form for use by individuals (including both qualified medicare beneficiaries and specified low-income medicare beneficiaries) in applying for medical assistance for medicare cost-sharing under this subchapter in the States which elect to use such form. Such form shall be easily readable by applicants and uniform nationally. The Secretary shall provide for the translation of such application form into at least the 10 languages (other than English) that are most often used by individuals applying for hospital insurance benefits under section 426 or 426-1 of this title and shall make the translated forms available to the States and to the Commissioner of Social Security.

(B) In developing such form, the Secretary shall consult with beneficiary groups and the States.

(6) For provisions relating to outreach efforts to increase awareness of the availability of medicare cost-sharing, see section 1320b-14 of this title

## CODE OF FEDERAL REGULATIONS

### Part 416 Supplemental Security Income for the Aged, Blind, and Disabled § 416.120. General definitions and use of terms.

(a) *Terms relating to acts and regulations.* As used in this part:

(1) *The Act* means the Social Security Act as amended (42 U.S.C. Chap. 7).

(2) Wherever a title is referred to, it means such title of the Act.

(3) Vocational Rehabilitation Act means the act approved June 2, 1920 (41 Stat. 735), 29 U.S.C. 31-42, as amended, and as may be amended from time to time hereafter.

(b) *Commissioner; Appeals Council; defined.* As used in this part:

(1) *Commissioner* means the Commissioner of Social Security.

(2) *Appeals Council* means the Appeals Council of the Office of Hearings and Appeals in the Social Security Administration or such member or members thereof as may be designated by the Chairman.

(c) *Miscellaneous.* As used in this part unless otherwise indicated:

(1) *Supplemental security income benefit* means the amount to be paid to an eligible individual (or eligible individual and his eligible spouse) under title XVI of the Act.

(2) *Income* means the receipt by an individual of any property or service which he can apply, either directly or by sale or conversion, to meeting his basic needs (see subpart K of this part).

(3) *Resources* means cash or other liquid assets or any real or personal property that an individual owns and could convert to cash to be used for support and maintenance (see § 416.1201(a)).

(4) *Attainment of age.* An individual attains a given age on the first moment of the day preceding the anniversary of his birth corresponding to such age.

(5) *Couple* means an eligible individual and his eligible spouse.

(6) *Institution* (see § 416.201).

(7) *Public institution* (see § 416.201).

(8) *Resident of a public institution* (see § 416.201).

(9) *State*, unless otherwise indicated, means a State of the United States, the District of Columbia, or effective January 9, 1978, the Northern Mariana Islands.

(10) The term *United States* when used in a geographical sense means the 50 States, the District of Columbia, and effective January 9, 1978, the Northern Mariana Islands.

(11) Masculine gender includes the feminine, unless otherwise indicated.

(12) *Section* means a section of the regulations in part 416 of this chapter unless the context indicates otherwise.

(13) *Eligible individual* means an aged, blind, or disabled individual who meets all the requirements for eligibility for benefits under the supplemental security income program.

(14) *Eligible spouse* means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who is living with that individual (see § 416.1801(c)).

(d) *Periods of limitation ending on nonwork days.* Pursuant to the Act, where any provision of title XVI, or any provision of another law of the United States (other than the Internal Revenue Code of 1954) relating to or changing the effect of title XVI, or any regulation of the Commissioner issued under title XVI, provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under title XVI or is necessary to establish or protect any rights under title XVI and such period ends on a Saturday, Sunday, or Federal legal holiday or on any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonworkday for Federal employees either by statute or Executive Order. For purposes of this paragraph, the day on which a period ends shall include the final day of any extended period where such extension is authorized by law or by the Commissioner pursuant to law. Such extension of any period of limitation does not apply to periods during which an application for benefits or payments may be accepted as such an application pursuant to subpart C of this part.

[39 FR 28625, Aug. 9, 1974, as amended at 43 FR 25091, June 9, 1978; 51 FR 11719, Apr. 7, 1986; 60 FR 16374, Mar. 30, 1995; 62 FR 38454, July 18, 1997]

### **§ 416.1101. Definition of terms.**

As used in this subpart—

*Calendar quarter* means a period of three full calendar months beginning with January, April, July, or October.

*Child* means someone who is not married, is not the head of a household, and is either under age 18 or is under age 22 and a student. (See § 416.1856)

*Couple* means an eligible individual and his or her eligible spouse.

*Current market value* means the price of an item on the open market in your locality.

*Federal benefit rate* means the monthly payment rate for an eligible individual or couple. It is the figure from which we subtract countable income to find out how much your Federal SSI benefit should be. The Federal benefit rate does not include the rate for any State supplement paid by us on behalf of a State.

*Institution* means an establishment which makes available some treatment or services beyond food and shelter to four or more persons who are not related to the proprietor. (See § 416.201)

*Spouse* means someone who lives with another person as that person's husband or wife. (See § 416.1806)

*We, Us, or Our* means the Social Security Administration.

*You or Your* means a person who is applying for, or already receiving, SSI benefits.

[45 FR 65547, Oct. 3, 1980, as amended at 50 FR 48573, Nov. 26, 1985; 51 FR 10616, Mar. 28, 1986; 60 FR 16375, Mar. 30, 1995]

### **§ 416.1163. How we deem income to you from your ineligible spouse.**

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. *Exception:* We do not allocate for ineligible children who are receiving public income-maintenance payments (see § 416.1142(a)).

(1) The allocation for each ineligible child is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to determine the amount of a benefit for a current month is based on the Federal benefit rate that applied in the second prior month unless one of the exceptions in § 416.1160(b)(2) applies.

(2) Each ineligible child's allocation is reduced by the amount of his or her own income as described in § 416.1161(c).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations we deduct the balance from your ineligible spouse's earned income.

(c) *Allocations for aliens sponsored by your ineligible spouse.* We also deduct an allocation for eligible aliens who have been sponsored by and who have income deemed from your ineligible spouse.

(1) The allocation for each alien who is sponsored by and who has income deemed from your ineligible spouse is the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual. The amount of the

allocation automatically increases whenever the Federal benefit rate increases. The amount of the allocation that we use to compute your benefit for a current month is based on the Federal benefit rate that applied in the second prior month (unless the current month is the first or second month of eligibility or re-eligibility as explained in § 416.420(a) and (b) (2) and (3)).

(2) Each alien's allocation is reduced by the amount of his or her own income as described in § 416.1161(d).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations, we deduct the balance from your ineligible spouse's earned income.

(d) *Determining your eligibility for SSI.* (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, there is no income to deem to you from your spouse. In this situation, we subtract only your own countable income from the Federal benefit rate for an individual to determine whether you are eligible for SSI benefits.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than the difference between the Federal benefit rate for an eligible couple and the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the couple's countable income from the Federal benefit rate for an eligible couple. (See § 416.2025(b) for determination of the State supplementary payment amount.)

(e) *Determining your SSI benefit.* (1) In determining your SSI benefit amount, we follow the procedure in paragraphs (a) through (d) of this section. However, we use your ineligible spouse's income in the second month prior to the current month. We vary this rule if any of the exceptions in § 416.1160(b)(2) applies (for example, if this is the first month you are eligible for payment of an SSI benefit or if you are again eligible after at least a month of being ineligible). In the first month of your eligibility for payment (or re-eligibility), we deem your ineligible spouse's income in the current month to determine both whether you are eligible for a benefit and the amount of your benefit. In the second month, we deem your ineligible spouse's income in that month to determine whether you are eligible for a benefit but we deem your ineligible spouse's income in the first month to determine the amount of your benefit.

(2) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the lesser of the amount computed under the rules in paragraph (d)(2) of this section or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate.

(f) *Special rules for couples when a change in status occurs.* We have special rules to determine how to deem your spouse's income to you when there is a change in your situation.

(1) *Ineligible spouse becomes eligible.* If your ineligible spouse becomes eligible for SSI benefits, we treat both of you as newly eligible. Therefore, your eligibility and benefit amount for the first month you are an eligible couple will be based on your income in that month. In the second month, your benefit amount will also be based on your income in the first month.

(2) *Spouses separate or divorce.* If you separate from your ineligible spouse or your marriage to an ineligible spouse ends by divorce, we do not deem your ineligible spouse's income to you to determine your eligibility for benefits beginning with the first month following the event. If you remain eligible, we determine your benefit amount by

following the rule in paragraph (e) of this section provided deeming from your spouse applied in the prior month.

(3) *Eligible individual begins living with an ineligible spouse.* If you begin to live with your ineligible spouse, we deem your ineligible spouse's income to you in the first month thereafter to determine whether you continue to be eligible for SSI benefits. If you continue to be eligible, we follow the rule in § 416.420(a) to determine your benefit amount.

(4) *Ineligible spouse dies.* If your ineligible spouse dies, we do not deem your spouse's income to you to determine your eligibility for SSI benefits beginning with the month following the month of death. In determining your benefit amount beginning with the month following the month of death, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(5) *You become subject to the \$30 Federal benefit rate.* If you become a resident of a medical care facility and the \$30 Federal benefit rate applies, we do not deem your ineligible spouse's income to you to determine your eligibility for SSI benefits beginning with the first month for which the \$30 Federal benefit rate applies. In determining your benefit amount beginning with the first month for which the \$30 Federal benefit rate applies, we use only your own countable income in a prior month, excluding any income deemed to you in that month from your ineligible spouse.

(g) *Examples.* These examples show how we deem income from an ineligible spouse to an eligible individual in cases which do not involve any of the exceptions in § 416.1160(b)(2). The income, the income exclusions, and the allocations are monthly amounts. The Federal benefit rates used are those effective January 1, 1986.

*Example 1.* In September 1986, Mr. Todd, an aged individual, lives with his ineligible spouse, Mrs. Todd, and their ineligible child, Mike. Mr. Todd has a Federal benefit rate of \$336 per month. Mrs. Todd receives \$252 unearned income per month. She has no earned income and Mike has no income at all. Before we deem any income, we allocate to Mike \$168 (the difference between the September Federal benefit rate for an eligible

couple and the September Federal benefit rate for an eligible individual). We subtract the \$168 allocation from Mrs. Todd's \$252 unearned income, leaving \$84. Since Mrs. Todd's \$84 remaining income is not more than \$168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we do not deem any income to Mr. Todd. Instead, we compare only Mr. Todd's own countable income with the Federal benefit rate for an eligible individual to determine whether he is eligible. If Mr. Todd's own countable income is less than his Federal benefit rate, he is eligible. To determine the amount of his benefit, we determine his countable income, including any income deemed from Mrs. Todd, in July and subtract this income from the appropriate Federal benefit rate for September.

*Example 2.* In September 1986, Mr. Jones, a disabled individual, lives with his ineligible spouse, Mrs. Jones, and ineligible child, Christine. Mr. Jones and Christine have no income. Mrs. Jones has earned income of \$401 a month and unearned income of \$252 a month. Before we deem any income, we allocate \$168 to Christine. We take the \$168 allocation from Mrs. Jones' \$252 unearned income, leaving \$84 in unearned income. Since Mrs. Jones' total remaining income (\$84 unearned plus \$401 earned) is more than \$168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we compute the combined countable income as we do for a couple. We apply the \$20 general income exclusion to the unearned income, reducing it further to \$64. We then apply the earned income exclusion (\$65 plus one-half the remainder) to Mrs. Jones' earned income of \$401, leaving \$168. We combine the \$64 countable unearned income and \$168 countable earned income, and compare it (\$232) with the \$504 September Federal benefit rate for a couple, and determine that Mr. Jones is eligible. Since Mr. Jones is eligible, we determine the amount of his benefit by subtracting his countable income in July (including any deemed from Mrs. Jones) from September's Federal benefit rate for a couple.

*Example 3.* In September 1986, Mr. Smith, a disabled individual, lives with his ineligible spouse, Mrs. Smith, who earns \$201 per month. Mr. Smith receives a pension (unearned income) of \$100 a month. Since Mrs. Smith's income is greater than \$168, which is the difference between the September Federal benefit rate for an eligible couple and the September Federal benefit rate for an eligible individual, we deem all of her income to be available to both Mr. and Mrs. Smith and compute the combined countable income for the couple. We apply the \$20 general income exclusion to Mr. Smith's \$100 unearned income, leaving \$80. Then we apply the earned income exclusion (\$65 plus one-half of the remainder) to Mrs. Smith's \$201, leaving \$68. This gives the couple total countable income of \$148. This is less than the \$504 September Federal benefit rate for a couple, so Mr. Smith is eligible based on deeming. Since he is eligible, we determine the amount of his benefit based on his income (including any deemed from Mrs. Smith) in July.

*Example 4.* In September 1986, Mr. Simon has a disabled spouse, Mrs. Simon, and has sponsored an eligible alien, Mr. Ollie. Mrs. Simon has monthly unearned income of \$100 and Mr. Simon has earned income of \$405. From Mr. Simon's earned income we allocate to Mr. Ollie \$168, which is the difference between the Federal benefit rate for an eligible couple and the rate for an eligible individual. Mr. Ollie has no other income. This reduces Mr. Simon's earned income from \$405 to \$237. Since \$237 is more than \$168 (the difference between the Federal benefit rate for an eligible couple and the rate for an eligible individual), we deem all of Mr. Simon's remaining income to be available to Mr. and Mrs. Simon and compute the combined countable income for the couple. We apply the \$20 general income exclusion to Mrs. Simon's unearned income, leaving \$80. Then we apply the general earned income exclusion (\$65 plus one-half the remainder) to Mr. Simon's \$237 earned income, leaving \$86. This gives the couple total income of \$166 (\$80+\$86.). The \$166 is less than the \$504 Federal benefit rate for a couple so Mrs. Simon would be eligible based on deeming. Since she is eligible, we determine the amount of her benefit based on her income (including any deemed from Mr. Simon) in July. For the way we deem Mr. Simon's income to Mr. Ollie, see the rules in § 416.1166a.

## Subpart R—Relationship

**AUTHORITY:** Secs. 702(a)(5), 1612(b), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382a(b), 1382c(b), (c), and (d) and 1383(d)(1) and (e)).

**SOURCE:** 45 FR 71795, Oct. 30, 1980, unless otherwise noted. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981.

### § 416.1801. Introduction.

(a) *What is in this subpart.* This subpart contains the basic rules for deciding for SSI purposes whether a person is considered married and, if so, to whom; whether a person is considered a child; and whether a person is considered another person's parent. It tells what information and evidence we need to decide these facts.

(b) *Related subparts.* Subpart D discusses how to determine the amount of a person's benefits; subpart G discusses what changes in a person's situation he or she must report to us; subpart K discusses how we count income; and subpart L discusses how we count resources (money and property). The questions of whether a person is married, to whom a person is married, whether a person is a child, and who is a person's parent must be answered in order to know which rules in subparts D, G, K, and L apply.

(c) *Definitions.* In this subpart—

*Eligible spouse* means a person—

- (1) Who is eligible for SSI,
- (2) Whom we consider the spouse of another person who is eligible for SSI, and
- (3) Who was living in the same household with that person on—

(i) The first day of the month following the date the application is filed (for the initial month of eligibility for payment based on that application);

(ii) The date a request for reinstatement of eligibility is filed (for the month of such request); or

(iii) The first day of the month, for all other months. An individual is considered to be living with an eligible spouse during temporary absences as defined in § 416.1149 and while receiving continued benefits under section 1611(e)(1) (E) or (G) of the Act.

*Spouse* means a person's husband or wife under the rules of §§ 416.1806 through 416.1835 of this part.

*We* and *us* mean the Social Security Administration.

*You* means a person who has applied for or has been receiving SSI benefits, or a person for whom someone else has applied for or has been receiving SSI benefits.

[45 FR 71795, Oct. 30, 1980. Redesignated at 46 FR 29211, May 29, 1981; 46 FR 42063, Aug. 19, 1981, as amended at 60 FR 16376, Mar. 30, 1995; 64 FR 31975, June 15, 1999; 65 FR 16815, Mar. 30, 2000]

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## WHO IS CONSIDERED YOUR SPOUSE

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### **§ 416.1802. Effects of marriage on eligibility and amount of benefits.**

(a) *If you have an ineligible spouse—(1) Counting income.* If you apply for or receive SSI benefits, and you are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we may count part of that person's income as yours. Counting part of that person's income as yours may reduce the amount of your benefits or even make you ineligible. Section 416.410 discusses the amount of benefits and § 416.1163 explains how we count income for an individual with an ineligible spouse.

(2) *Counting resources.* If you are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we will count the value of that person's resources (money and property), minus certain exclusions, as yours when

we determine your eligibility. Section 416.1202(a) gives a more detailed statement of how we count resources and § 416.1205(a) gives the limit of resources allowed for eligibility of a person with an ineligible spouse.

(b) *If you have an eligible spouse—(1) Counting income.* If you apply for or receive SSI benefits and have an eligible spouse as defined in § 416.1801(c), we will count your combined income and calculate the benefit amount for you as a couple. Section 416.412 gives a detailed statement of the amount of benefits and subpart K of this part explains how we count income for an eligible couple.

(2) *Counting resources.* If you have an eligible spouse as defined in § 416.1801(c), we will count the value of your combined resources (money and property), minus certain exclusions, and use the couple's resource limit when we determine your eligibility. Section 416.1205(b) gives a detailed statement of the resource limit for an eligible couple.

(c) *If you are married, we do not consider you a child.* The rules for counting income and resources are different for children than for adults. (Section 416.1851 discusses the effects of being considered a child on eligibility and amount of benefits.) Regardless of your age, if you are married we do not consider you to be a child.

(d)(1) *General rule:* Benefits depend on whether you are married or not married at the beginning of each month. If you get married, even on the first day of a month we will treat you as single until the next month. If your marriage ends, even on the first day of a month, we will treat you as married until the next month.

(2) *Exception: If you both meet eligibility requirements after your date of marriage or after your marriage ends.* If, in the month that you marry, each of you first meets all eligibility requirements after the date of your marriage, we will treat you as an eligible couple for that month. If, in the month that your marriage ends, each of you first meets all eligibility requirements after the date your marriage ends, we will treat you as eligible individuals. (See subparts D and E regarding how your benefits will be prorated.)

### **NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.