

# One Step Ahead

Resource Planning for People  
with Disabilities Who Rely on  
Supplemental Security Income  
and Medical Assistance

Attorney Roy Froemming



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# ***ONE STEP AHEAD***

## ***Resource Planning for People with Disabilities Who Rely on Supplemental Security Income and Medical Assistance***

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***Community Supported Living Series***

***Wisconsin Board for People with  
Developmental Disabilities***



WI BOARD FOR PEOPLE WITH  
DEVELOPMENTAL DISABILITIES

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◆ **COMMUNITY SUPPORTED LIVING SERIES** ◆

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## I. INTRODUCTION

### A. Who should use this book, and why?

This book is meant to help people with substantial, long-term disabilities plan how they can own or benefit from money, homes and other property in ways that will not hurt their chances of getting and keeping Supplemental Security Income (SSI) and Medicaid benefits. When the word *you* is used, it refers to a person who has a severe, long-term disability, and who may need to depend on SSI or Medicaid benefits, now or in the future. This book is also intended to be useful to family members and friends of a person with disabilities, and to advisers and advocates.

Resources or income over certain set amounts may make you ineligible for benefits under SSI and Medicaid, reduce your SSI payment, or increase the cost of getting Medicaid. Events that may put benefits at risk include saving money from wages or other income, receiving money given directly to you in a will or remainder designation, or getting a judgment in a court case. If you receive (or expect to receive) money or property that puts your benefits at risk this book is intended to help you plan how to use those funds, or how to have them set aside for future use for your benefit.

Because of the restrictions on SSI and Medicaid, relatives and other people who want to give you money or property may be discouraged from doing so by concern that you will lose benefits and the funds will be used up for support and care that SSI and Medicaid would have paid for. This book will talk about ways that people can help you without causing you to lose SSI and Medicaid benefits that you need to meet basic needs.

Public benefit programs are not able to meet all the needs and hopes of the people they serve. Good financial planning can help you live a fuller life, fill gaps in public programs and help to make those programs more effective. For example:

- SSI generally provides an income that is below poverty level. A good plan can help by pay for expenses in ways that do not affect your benefits, buying things for you that you otherwise could not afford, and leaving you with more money from your own income and earnings to meet your other needs.
- A good plan can help you own or rent stable housing of your own choice.
- A good plan can help pay for medical and support services that you could not get otherwise. For example, there are significant limits to Medicaid coverage of dental care, medical equipment, home health and other services. A good plan can help pay for items Medicaid does not cover, supplement services beyond Medicaid limits, or allow you to use providers who do not accept Medicaid.
- A good plan can help you think about and plan for future changes. (See Part II.)

The information in this book will not be useful for you if you are applying for BadgerCare+ Medicaid. BadgerCare+ programs do not require that you have a disability or be age 65 or over, and have their own income and resource rules. (See Part I.C., below.)

## B. What is Supplemental Security Income (SSI) and who gets it?

Supplemental Security Income (SSI)<sup>1</sup>, is intended to provide a basic minimum cash income for you if you (1) either have reached age 65 or have a disability that severely limits your ability to work and (2) do not have other income or resources to meet your basic needs. To be eligible for SSI, you must meet set limits on the value of money or other property you receive in a month (*countable income*) and on the value of money or property you own from one month to the next (*countable resources*). If you are eligible, SSI compares your *countable income* for a month to the SSI payment level that applies to your situation, and gives you enough money to make up the difference.

In Wisconsin, there is both a federal SSI program and a state SSI supplement. If you meet the federal SSI income limit, you can apply for and receive SSI benefits through the Social Security Administration (SSA). SSA will then inform the state that you are eligible and you will automatically get a state check. You may be eligible for an increased state benefit, called “SSI-E,” if you need support services to live in your home or community. See Part V.B., for more information on SSI payment levels and on how to qualify for the state supplement and the special needs supplement.

Under current state law, you can only get a state SSI payment if you are getting a federal SSI payment. However, a few people who have too much income to get a federal SSI payment still get a state SSI payment because they were getting state SSI by itself before the law changed in 1996. (See Part V.B.)

## C. What is Medicaid and who gets it?

Medicaid<sup>2</sup> is a joint program of the federal and state government that provides payment for health-related services for people who fall into certain categories and who meet program requirements for financial eligibility. In Wisconsin, Medicaid is part of a collection of programs called ForwardHealth, and is divided into two major programs:

- **Medicaid or “EBD” Medicaid.** Elderly, Blind, Disabled (EBD) Medicaid, usually just called Medicaid in Wisconsin, pays for medical, rehabilitation and support services for people (1) who are over age 65 or meet the disability or blindness tests for SSI, and (2) who meet limits on income and resources. **When the word Medicaid is used in this book below, it refers to EBD Medicaid, not BadgerCare+.**
- **BadgerCare+.** BadgerCare+ provides coverage for a broader population of children, families with children, and pregnant women. Beginning in 2009, some single adults and couples who do not have children can also be eligible for BadgerCare+. BadgerCare+ does not require that you have a disability to be eligible, but some people who have disabilities may be eligible for BadgerCare+. BadgerCare+ uses an income test that is higher than some of the income tests for EBD Medicaid, and it does not require that the person or family meet a resource test.<sup>3</sup> Services covered by BadgerCare+ may be more limited than the services covered by EBD Medicaid. Go to <http://dhs.wisconsin.gov/badgercareplus/> for more information.

If you are getting Medicaid you will have a ForwardHealth card. If you get SSI, you will automatically get Medicaid without filing a separate application. If you do not get SSI, you may still get Medicaid, but you must usually apply for it through the economic support agency at your county Human Services Department. (See Part VI.E. and F. for exceptions.) Wisconsin's Medicaid program, like those in most states, must follow the same rules for Medicaid as SSI uses in deciding whether income and resources are counted, unless the state has decided to adopt less restrictive rules.<sup>4</sup> One way in which Wisconsin's Medicaid program is less restrictive than SSI is that Wisconsin's Medicaid program does not count gifts of food and shelter as income. (See Part V.E.)

Medicaid is more than a health insurance program: it provides coverage not only for medical services, drugs, habilitative and rehabilitative therapies and some dental services, but also for many services that people need to remain in their homes and communities and to function independently. Because many Medicaid services are not covered by private health insurance, you may want to plan to be able to keep Medicaid even if you otherwise have an income that can meet your needs for food and shelter, and even if you have access to private health insurance. EBD Medicaid services are divided into two categories:

- **Medicaid card services.** Some services are covered for anyone who has a Medicaid ("Forward") card. These services are often called Medicaid *card services*, and the state is not allowed to have waiting lists for these services. Card services include most medical and rehabilitation services, hospital care, supplies and medications, but also include some long-term care services, including nursing home care, home health care, private duty nursing, personal care services, and community support program and community psychosocial rehabilitative services for people with mental illness.<sup>5</sup>
- **Family Care/HCB waiver programs.** These, programs, discussed in the next section, pay for a broad range of flexible individualized services to support people to live and work in the community and be part of community life.

The services for people with mental illness that are covered as Medicaid card services are unusual in some important ways:

- **Institutional services.** Federal Medicaid law does not allow Medical Assistance funding for people who are between the ages of 21 and 65 and who are in institutions that primarily serve people with mental illness, such as the state Mental Health Institutes. Nursing home services are generally not covered where the primary need for service is active treatment for mental illness.
- **Community Support Programs and Community Psychosocial and Rehabilitative Services.** These programs provide case management, medication management and other support and rehabilitation services to people with mental illness living in community residential settings and in their own homes. Although funded as Medicaid card services, the state share of funding for these programs (about 41% of the total) must come from mental health service funding managed by county human service agencies, who act as contractors or providers for local

programs. Because county mental health service funding is limited, counties restrict access to community support services, e.g., through use of waiting lists.

#### **D. What are the Family Care, HCB waiver and other Medicaid community long-term support programs?**

Federal Medicaid law allows states to cover a wide range of long-term support services in community settings under *home and community-based (HCB) waiver* and under *managed-care long-term support waiver* programs, like Family Care. Because Medicaid financial eligibility under HCB waiver programs and managed-care long-term support programs is basically the same, this book sometimes refers to these programs together as *Family Care/HCB waivers*. Unlike Medicaid card services, the state is allowed to cap the number of people served under an HCB waiver, and to have waiting lists for HCB waiver services. One goal of Family Care is to eliminate waiting lists in the counties where it is in full operation, while at the same time controlling costs through managed care.

The HCB waivers were originally designed to provide an alternative to nursing home care. Because funding for services for people in nursing homes with primary diagnoses of mental illness was limited under Medicaid, the Family Care/HCB waiver programs also are limited in their ability to serve people with mental illness, unless they are dually diagnosed with other disabilities. However, in 2007 the state received the Community Opportunities and Recovery Waiver, which is specifically designed to serve people with mental illness in participating counties.

Family Care/HCB waiver services include residential support services in people's homes and in small residential settings, vocational support services, and other services needed to help the person remain in his or her community and participate in community life. If you are served under a Family Care/HCB waiver, you will have a case manager (sometimes called a service coordinator or support broker), an assessment of your individual support needs, and an individual support plan that is supposed to be individually designed by your support team to meet your needs.

To be eligible for Family Care/HCB waiver services, it is not enough to just meet the usual disability or age requirement. You must also have a need for support services similar to the needs of someone who could have been served in a nursing home or intermediate care facility. Because of the restrictions on Medicaid coverage of institutional care for adults under age 65, this test excludes many adults under age 65, whose support needs arise primarily from mental illness, from benefiting from Family Care/HCB waivers. Level of care need is now determined by an assessment of functional support needs called the "functional screen."

You may be eligible for a Family Care/HCB waiver program even if your income is above the usual eligibility level for SSI and Medicaid. However, you may also have to pay a "cost-share" for services. In many counties, there are long waiting lists for HCB waiver services. Eligibility and cost-share for Family Care/HCB waivers are discussed in Part VI.D. NOTE: It is possible to be eligible for services under the non-Medicaid Community Options Program, based on a likelihood of becoming Medicaid-eligible over time, or on need for a service that cannot be funded with Medicaid waiver funds.<sup>6</sup> Non-Medicaid

COP, for example, can serve younger adults whose needs arise primarily from mental illness. However, lack of funding and waiting lists have made this an increasingly rare event.

The HCB waiver programs cover only community-based long-term support services that are not covered as Medicaid card services. The home and community-based (HCB) waiver programs include:

- The Community Options Program Waiver (COP-W) and the Community Integration Program II (CIP-II) for people who have physical disabilities or are over age 65.
- The Community Integration Program I (CIP-1a and CIP-1b), for people with developmental disabilities.
- The Brain Injury Waiver, for people with brain injury who are coming out of facility-based rehabilitation programs.
- The Community Opportunities and Recovery (COR) Waiver, for people with mental illness who are relocated from nursing homes to community services.
- The Children's Long-Term Support (CLST) Waivers, which provide services to children with autism receiving intensive in-home therapy services, and to a more limited number of other children with developmental disabilities, children with physical disabilities and children with severe mental illnesses.
- The Include, Respect, I Self-Direct Waiver, which is an optional program that provides more freedom for individuals to design and manage their own support services, working within a monthly budget allocation.

The largest managed long-term support program is Family Care, which is expected to be implemented in up to 59 counties by July, 2011, and to become statewide by 2012.<sup>7</sup> Family Care programs are administered by managed care organizations, which may be private agencies. The managed care organization receives a capitated rate for each person served, and is responsible for delivering not only long-term support services that were provided under the old HCB service waiver programs, but also other long-term support services that were covered as Medicaid card services, including personal care services, home health services and nursing home care. Family Care is intended to eliminate waiting lists for services in the counties where it is implemented. In participating counties, Family care takes the place of the HCB waivers for people who are elderly and adults with physical and developmental disabilities. However, IRIS is available as an option for people in Family Care counties who want a more self-directed option, and the COR waiver continues to be available for people with mental illness in Family Care counties.

Other managed long-term support programs are the Wisconsin Partnership Program and the Program of All-Inclusive Care for the Elderly (PACE), which provide managed care for Medicaid-funded medical care as well as for long-term support services. These operate in limited geographic areas.

### **E. What if you are getting Social Security and Medicare?**

Social Security Retirement, Survivors and Disability Insurance and Medicare do not require that a person have low income or resources to be eligible. You would not need to use the planning suggestions in this book to qualify for those programs by themselves.

You may be eligible for Social Security Disability Insurance based on having a disability if (1) you meet the test for having worked and paid Social Security taxes, you are now unable to work due to a disability (see next section), and you have completed a 5-month waiting period; (2) you are an adult child of a parent who paid Social Security taxes, your parent is now disabled, retired or deceased, and you have a disability that began before age 22 (See Part II.A.); or (3) you are over age 50, you were married to someone who worked and paid Social Security taxes who has now died, and your disability began no later than seven years after your spouse (or former spouse) died.

Social Security pays monthly benefits that are not affected by your unearned income. However, you may lose Social Security disability benefits if you work at a level that indicates that you do not meet the test for disability. In 2010, gross wages of \$1000 per month (after deductions for work expenses that are related to your disability) create a presumption that you are not disabled. This amount goes up every year with inflation. There is a more generous test, and more deductible work expenses, if you are blind.

You will become eligible for Medicare 24 months after you start receiving a Social Security Disability benefit. Medicare provides health insurance, but coverage is much more limited than that provided by Medicaid, particularly for long-term support services. Medicare also requires you to pay substantial premiums, deductibles and copayments. You can also buy private “Medicare Supplement” insurance to help pay the deductibles and copayments.

Even though you qualify for Social Security and Medicare, you may still qualify for SSI and Medicaid if your countable income and resources are within eligibility limits. If you plan to combine Social Security and Medicare with SSI and Medicaid, the planning suggestions in this book can be as useful for you as for SSI and Medicaid recipients who do not get Social Security. If your income or resources are too high to get regular Medicaid, but your income is still within certain income limits, you may be eligible for limited programs under which Medicaid pays your Medicare premiums.<sup>8</sup>

### **F. What is the disability test for SSI and Medicaid?**

This book is primarily about financial eligibility requirements, and not about how disability is defined and established. However, it is important in deciding whether to plan around financial eligibility issues to determine whether you are likely to qualify for Medicaid and SSI based on disability, and whether you will continue to qualify in future. If you are not currently determined to have a disability, or if you think your condition may change in future, you should consult an expert about whether you have a disability that meets the Medicaid and SSI test, and will continue to do so, before arranging your finances around the Medicaid and SSI financial tests. See Part II.C. for discussion of continuing disability reviews.

The disability test for Medicaid and SSI is strict.<sup>9</sup> It requires that you have a severe disability that is expected to be permanent or to result in death. The disability must not only prevent you from working in any past work you may have done, but must also severely restrict your ability to work in any other type of work. This is true even if the kinds of jobs you can do are not available in your local area, and even if there is high unemployment for those jobs.

Except during a Trial Work Period, the disability test for Social Security Disability Insurance requires that you not be working at what Social Security considers to be a substantial level. (See last section.) This is also true when you first apply for SSI and Medicaid, but under SSI and Medicaid work incentives, it is now possible to go to work after you are on SSI and Medicaid and to earn a substantial income from work, without losing continued eligibility for SSI and Medicaid. See Part II.B. It is also possible for a person with a disability who is working, and not getting SSI, to pay a premium to buy in to Medicaid. See Part VI.G.

### **G. Do you really need to rely on SSI and Medicaid?**

Most of the planning ideas in this book involve restrictions on the way you own or benefit from income and resources. These restrictions can limit your ability to get the full benefit from income and resources, can limit your freedom of choice, can cost time and money to plan and carry out, and can tie up money after the restrictions no longer serve any purpose. For these reasons, it is important to decide whether you are really likely to need SSI and Medicaid, now or in future, and whether getting those programs is worth the restrictions.

Sometimes, the amount of money that is being put into a trust or other restricted plan for your benefit would actually be enough to make you independent of SSI/Medicaid, in combination with Social Security benefits or your earnings from work, Medicare, health insurance and other resources. In those cases, particularly where you do not have a lot of long-term health or personal care needs, it may make sense to rely on personal income and resources and private health insurance. Often, you can get a wider choice of providers and service options by paying privately.

You may be a person who hopes to work and not rely on benefits, but also want to plan for the possibility that you will need benefits in future, if you lose your job or your disability is one that may get more severe over time, or result in periods of more severe disability. In that case, you may want a plan that is flexible enough to work for you both at times when you do rely on benefits and for times when you do not.

## **II. PLANNING AHEAD FOR FUTURE CHANGES**

### **A. Will you lose SSI benefits in the future because you will be eligible for a Social Security Disability benefit on the account of your parent, or on the account of a spouse who has died?**

If you get SSI based on a disability that began before you reached age 22, and if your mother or father has worked and paid FICA taxes, you will probably become eligible for a

Social Security *Disabled Adult Child* benefit when your parent retires, becomes disabled, or dies. You do not have a choice under SSI rules: you must apply for and accept the benefit, even if it puts you over the ordinary income limits for SSI and Medicaid.

The Disabled Adult Child benefit may also increase after you start getting it if the number of people drawing benefits on the same Social Security account changes. For example, you may get one benefit payment when your parent retires, and a bigger payment when your parent dies, because your parent will no longer be getting a benefit from the account. You will also get annual cost-of-living adjustments to your benefit.

If your Disabled Adult Child benefit puts your countable income over the federal SSI payment level, you will lose your federal and state SSI benefits. The Disabled Adult Child benefit can actually have the effect of reducing your total income and making it more complicated for you to continue to get Medical Assistance. (See Part VI.B.) You or your parent should be able to get an estimate at any time of the amount of your likely benefit by requesting a benefit calculation from the Social Security Administration. Getting this estimate may help you know whether you need to plan for loss of SSI.

If you receive a Disabled Adult Child benefit, you will become eligible for Medicare benefits 24 months after your Disabled Adult Child benefit begins. This may help pay some of your health care costs, but by itself will not take the place of Medicaid, especially if you need substantial long-term support services.

Your eligibility for Disabled Adult Child and Medicare benefits does not depend on having low income and resources, so you do not need to restrict your income and resources to stay eligible. Often, however, you will want to plan to either continue Medicaid benefits, or to get them back if you need them in future. Fortunately, if you lose SSI because you begin receiving a Disabled Adult Child (DAC) benefit, or because your DAC benefit goes up, federal law requires the state to ignore all or part of your DAC benefit for purposes of Medicaid. (See Part VI.B.) Because all or part of your income from your Disabled Adult Child benefit is not counted for Medicaid purposes, it may be possible for people to give you more direct help with your income than usual even if you still need Medicaid. This may be especially important if your income is reduced when your Disabled Adult Child benefit begins or increases.

If you are a widow or widower with a disability, and are over 50 years old, you might be eligible for a Social Security benefit on the account of your deceased spouse. If you are, and you lose SSI because of the Social Security benefit, the increase in your Social Security benefit that caused you to lose SSI will not be counted in determining whether you are eligible for Medicaid. (See Part VI.B.)

### **B. How will working affect your access to benefits, while you work and after you retire?**

The SSI and Medicaid programs both include policies intended to encourage people to work without losing essential benefits. Some ways that SSI and Medicaid try to support people who try working include:



- For both programs, over half of your earnings from work are ordinarily not counted when deciding if you are eligible, and in figuring the amount of benefits. (See Part V.A.) (One exception to this is the special income test for eligibility for Family Care/HCB waivers. See Part VI.D.)
- Once you are eligible, Medicaid or SSI will not stop your benefits just because you are working at a substantial level. Even if you earn too much income to get an SSI payment, Social Security may continue to treat you as an SSI recipient for purposes of getting Medicaid, if you continue to be eligible for SSI in all other ways. (See Part VI.F.)
- The Medicaid Purchase Plan (MAPP) may allow you to get Medicaid by paying a premium if you work, even if you have earnings and resources above the usual SSI and Medicaid limits. If you meet the MAPP disability test, MAPP is available regardless of whether you are currently working above the substantial gainful activity level, and regardless of whether you have ever received SSI or Social Security benefits. (See Part VI.G.)

The details of these policies, and of other Social Security, SSI and Medicaid work incentives, are beyond the scope of this book. More information on ways people can work and still get Social Security and SSI, and resources to help you, is available in Social Security's *Red Book*, available from Social Security offices or on-line at: [www.ssa.gov/work/](http://www.ssa.gov/work/). Counseling on the effects of work on SSI and Medicaid eligibility is available in many parts of the state through the state Pathways program<sup>10</sup> the Social Security Work Incentive Planning and Assistance program, and from Disability Rights Wisconsin.<sup>11</sup>

NOTE: Working at a substantial gainful activity level beyond a trial work period of 9 months may still result in loss of Social Security Disability Insurance benefits, including a Disabled Adult Child benefit. Work beyond a short-term unsuccessful work attempt may also be considered as evidence of medical recovery in some circumstances. See Part II.C., below.

The work protections of Medicaid and SSI are far from perfect. Even under the MAPP program, the total income and resources you are allowed to have are limited, and working may result in having unearned income or resources that affect you after you leave MAPP (see Part VI.G.). If you can earn a living wage and get good health insurance, you may decide to get along without public benefits, and the restrictions on income and resources that go with them, especially if you have other resources. On the other hand, even if you are working you may continue to need Medicaid to supplement your health insurance or to pay for long-term support and therapy services that your health insurance does not cover. You may also need Medicaid in the future, if you stop working or retire, or if your support needs increase. It is important not only to think about the effect on your benefits when you first go to work, but also the effect that working will have on your benefits over time, and on your access to benefits when you stop working. Ideally, a financial plan to use resources to help you will be flexible enough to both help you both if you are working and not relying on benefits, and if you are partially or fully relying on public benefits.

One effect of working at more than a minimal level is that you start building a Social Security account based on your own work record. The more you work and earn, the higher the Social Security benefit that you can draw on your own account. If you are disabled, but not working at the level Social Security considers “substantial,” you may be drawing a Social Security benefit while you work. This benefit will increase as your work record gets longer and your earnings get higher. It is important to watch this increase to make sure you do not affect your ongoing eligibility for SSI or Medicaid in ways that you are not expecting and planning for.

If you are not getting a Social Security benefit while you work, your earnings from work will still affect the Social Security Disability (or Retirement) benefit that you will get when you stop working, or cut your work back. You also may be putting money into private retirement accounts, and/or becoming eligible for pension benefits. Some of the effects you may not expect include:

- Often pension benefits are not available to you while you work for an employer, but become available if you stop working or change jobs. In the past, these have counted as resources, if available to you as a lump-sum. Under the state budget effective July 1, 2009, MAPP independence accounts and retirement benefits that were earned while you are on Medicaid will not be counted as resources, at least for some types of Medicaid eligibility.<sup>12</sup>
- Even if you were getting SSI before you started working, the increase in your Social Security benefit will often mean that you will have too much income to get federal SSI (and the state supplement) when you stop working or cut your work back.
- Prior to July 1, 2009, if a person worked enough to stay on MAPP, but started taking Social Security and pension benefits, his or her MAPP premium increased substantially, because retirement benefits were treated as “unearned” income. It is not yet clear whether the change discussed in the first bullet also cures this problem. (See Part VI.G.)
- If you do not work enough to stay on MAPP, the special resource and income provisions that apply to MAPP will end. This means you will have to again meet the regular Medicaid resource limit, except that, as noted above, independence accounts and some retirement benefits may be excluded. You will also have to meet one of the other income tests for Medicaid discussed in Part VI.
- If you have a pension that pays out over time, it may count as income. If you will need Family Care/HCB waiver services, it is particularly important to consider whether your income after you retire will be over the special income limit that applies to the Family Care/HCB waiver. (See Part VI.D.) If it is, you may end up having to use the Medicaid deductible as the only way to get Medicaid. This can leave you with usable income that is below what you would get as an SSI recipient. If you have a choice, you may be better off taking a lump-sum retirement benefit, rather than a long-term pension that will affect your eligibility, or that will largely be used up by your cost-share. The lump-sum can then be put in trust for your

benefit, or used in other ways. (See Parts VII and VII.) Again, this problem may be at least partly fixed by the new exclusions described in the first bullet.

- **NOTE:** At the time this is written, the extent of the new exclusions described in the first bullet is not clear because no implementing policy has been issued. If this issue is important to you, check with an employment counselor, or look for updates to One Step Ahead at [www.wcdd.org](http://www.wcdd.org).

These concerns do not mean that you should not work, or that you will be worse off if you work, but they do mean that you should get good advice on the effects of working on your particular situation so that you are not surprised later. Hopefully, the policies that are intended to help people work will continue to be improved over time.

### **C. How might medical recovery affect your benefits, if there is a review of whether you continue to have a disability?**

After you have established a disability, Social Security may periodically review whether you continue to have a condition that meets their definition of disability. This is called the *continuing disability review* process. Reviews are supposed to happen every seven years, but a review may happen sooner if Social Security expects your condition to change.

You may be reluctant to work, or to demonstrate successful rehabilitation in other ways, because of a concern that you will lose benefits because you are no longer considered to have a disability. This may be particularly true if you had to go through a long appeals process in the first place. This is often a particular concern for people with mental illness, both because of the anxiety related to this issue, and because there is a real history of Social Security discontinuing benefits to people with mental illness following continuing disability reviews. In response to this concern, the law and rules now provide some protection from arbitrary action by Social Security:<sup>13</sup>

- Social Security may only reopen the question of whether you have a disability if there is substantial evidence that one of the following circumstances exists:
  - There has been a medical improvement in your condition that is related to your ability to work.
  - You have benefited from advances in medical or vocational therapy related to your ability to work; or
  - There was a mistake in the prior determination that you have a disability.
- If you go back to work, Social Security may not use this alone as a reason to schedule a continuing disability review. If there is a continuing disability review, your work activity while you are on SSI should not be considered as adding to your work experience, if that is relevant to your disability determination. Work activity beyond a trial work period can, in some circumstances, be considered in determining whether there has been medical improvement in your condition. The exceptions, under which work may not be considered in a review of disability status,

are complicated. It is a good idea to seek counseling, if you are concerned that work may cause you to lose your status as a person with a disability.

### III. DEFINING YOUR INCOME AND RESOURCES

#### A. What is a resource, what is income and how are they different?

Generally, *resources* in a particular month include money or other property that you owned **at the beginning of a month** and that you could use to provide yourself with food or shelter<sup>14</sup>. *Income* includes money, property or benefits **you receive during the month**, and that you could use to provide yourself with food or shelter<sup>15</sup>.

EXCEPTION: Wisconsin Medicaid treats lump-sum payments (like inheritances) as a resource in the month received, and not as income.<sup>16</sup> This can be good, as it means the lump-sum should not be included as income in that month in figuring cost-sharing for Family Care/HCB waiver programs, the premium for MAPP, or the Medicaid deductible. (See Part VI.D., G., and H, and Part VII.)

In any particular month, property is either a resource or income; it cannot count as both. Income you do not spend or use in a month usually becomes a resource if you hold it at the beginning of the next month. There are some exceptions: for example, retroactive Social Security and SSI payments can be held for nine months before they become a resource.<sup>17</sup>

In figuring eligibility and benefits, SSI and Medicaid do not count all property that meets the basic definitions of resources and income. The items that are counted are referred to as *countable resources* and *countable income*; other items are referred to as *excluded* or *disregarded* income and resources. (See Parts IV.C. and V.)

**Note:** The *value* of a resource for SSI and Medicaid is what it could be sold for, less anything you owe that is secured by the property.<sup>18</sup> Most things you own will be worth a lot less used than the amount you paid when you bought them.

#### B. When are resources and income of your spouse or parent(s) counted in determining whether you are eligible for SSI and Medicaid?

If you are married (or say you are married) to someone you live with, and you are both disabled or over age 65, your income and resources will be counted together for SSI purposes and compared to the SSI income and resource limits for a couple. If you stop living together,<sup>19</sup> only things that are in your name or that your spouse actually gives you count as your income and resources. These rules also apply to eligibility for Medicaid, unless you are receiving or applying for Family Care/HCB waiver services, or nursing home services.<sup>20</sup> (See Parts I. D. and VI.D.)

If you are married and living with a spouse who is not over age 65 or disabled, or with your parent(s) if you are under age 18, some of their income and resources may be counted as if they were yours--this is called *deeming*.<sup>21</sup> Not all resources and income are deemed to you. For example, if you live with one parent, \$2000 of his or her countable resources would be reserved for him or her, and only resources over that amount would be deemed to be yours. Similarly, some of your spouse's or parent's income will be protected for his or

her support. Deeming of income and resources only applies in months when you live with your parent(s) or spouse. In months when you do not live with a parent or spouse, only income or resources that he or she actually gives to you are counted. (Note: A spouse or parent you do not live with may be legally required under other laws to contribute to your support, and this may be enforced through a court action.) There are two major exceptions to the usual deeming rules:

- If you are a child with substantial long-term support needs who is ineligible for SSI because your parents have too many resources or too much income, you may still be able to get Medicaid under the **Katie Beckett** program. (See Part VI.E.)
- If you are married and are applying for services under a Family Care/HCB waiver, or if you are in a nursing home, the resources of you and your spouse will be counted together in determining your eligibility when you first apply. However, “**spousal impoverishment**” provisions protect your spouse from having to spend all the resources you own as a couple before you can get Family Care/HCB waiver or nursing home services, and may allow you to give some of your income to support your spouse. (See Parts I.D. and VI.D.)

#### IV. RESOURCES

##### A. How do resources affect SSI?

If the resources that SSI counts are over the SSI resource limit when the month begins, you will not be eligible for SSI at all in that month.<sup>22</sup> In 2010, the SSI limits on countable resources<sup>23</sup> (which have not changed since 1986) are:

- \$2000, if you are not married, or if you are married to a person who is not disabled or over age 65.
- \$3000 for you and your spouse together, if you are married to a person who also has a disability or is over age 65, and you live together.

##### B. How do resources affect Medicaid if you are not on SSI?

Unlike SSI, you can be eligible for Medicaid in a month even if you had too many resources on the first day of the month, if you reduce your assets below the eligibility limit before the end of the month. If you do not already have a Forward card, you have too many resources at the time you receive a medical service, and you do not reduce your resources to an amount below the eligibility level by the end of the month, you will not be eligible for Medicaid to pay for that service, no matter how much the service costs.<sup>24</sup> **Even \$1 in excess countable resources can make you ineligible for Medicaid coverage of an expensive hospitalization.** It is very important, if you need a medical service and want Medicaid to pay for it (or to count it toward your Medicaid deductible), to make sure you are below resource limits before the end of the month when you get the service. (You may be able to make a payment to your county Economic Support Agency in order to become eligible for Medicaid. This may make sense as a way to quickly become eligible for an expensive service.<sup>25</sup>)

You can be eligible for Medicaid coverage of services you received in a month up to three months before the month you apply, if you were otherwise eligible in the prior month. You can get Medicaid coverage for a service (or count the cost toward the Medicaid deductible) if you apply before the end of three full calendar months after you get the service, but only if you were below the asset limit by the end of the month during which you got the service.<sup>26</sup>

The resource tests for Medicaid without SSI are the same as for SSI, with two big exceptions:

- If you are working and buy in to Medicaid through the Medicaid Purchase Plan (MAPP), MAPP allows you to have up to \$15,000 in countable resources when you apply, and to save additional resources from earnings after you are eligible, in retirement or other accounts that the county has recognized as “independence” accounts. (See Part VI.G.)
- If you are married and apply for Family Care/HCB waiver or nursing home services, the resources of you and your spouse are treated under special rules. (See Part VI.D.)

### C. What resources can you own without affecting SSI or Medicaid?

Some things that you own are not considered resources because you cannot sell them for cash that you can use to support yourself.<sup>27</sup> For example, if you own land that you are legally prevented from selling, it is not a resource. If you own something but it will take time to sell, you may be eligible during a period of time when you are trying to sell it.<sup>28</sup>

Other things that SSI and Medicaid do not consider to be resources or do not count:

- A **home** that you own<sup>29</sup> and live in. This is potentially the most valuable resource exclusion, because of the long-term benefits it can provide in terms of personal control, stability and lowered long-term housing costs. (See Part IX.) For card-service Medicaid, the home and land are excluded no matter how much they are worth. Starting in January, 2009, there is a \$750,000 limit on the amount of equity in a home that can be excluded, for purposes of eligibility for nursing home and Family Care/HCB waiver services. This limit does not apply if a spouse or a minor or disabled child lives in your home. It also does not apply if you were already getting long-term support services on January 1, 2009, and you remain continuously eligible.
- **Household goods, clothing and personal effects, furnishings and equipment** up to any value.<sup>30</sup> This includes furniture, household equipment, medical equipment, musical instruments, and jewelry that you wear or that has family significance. It does not include something valuable that you own as an investment, or simply as a way of storing wealth.
- One **car or van** of any value, if it is used to provide you with transportation, whether or not you actually drive it.<sup>31</sup> (If a family has a second car, SSA or the

county should evaluate whether it can be excluded as property of a trade or business (see next paragraph) or property that is part of a plan to achieve self-support.)

- **Property of a trade or business, or required by an employer** such as tools of a trade, farm equipment, a building used as a store, a computer that you use as part of your work or business, and funds that you need to run your business, is excluded up to any value.<sup>32</sup> Other **property essential to self support** that is not used as part of a trade or business is excluded only if it actually produces income for you (including food for your own consumption), and then only up to a value of \$6000.
- **Life insurance** with a total face value of \$1500.<sup>33</sup> (Face value is what the policy says it will pay if you die. A policy may actually be worth more or less than its face value.) If face value is greater than \$1500, Social Security will count the full cash value as a resource. Life insurance that has no cash value (term life insurance) is not a resource, and insurance on your life that someone else owns is not your resource because it does not belong to you.
- A **burial space**, and prepaid improvements such as a vault, marker, burial container, and a contract for opening and closing the gravesite.<sup>34</sup>
- Up to \$1500 plus accrued interest that you have set aside in a **separate account for burial expenses**.<sup>35</sup> The set-aside does not have to be irrevocable, but the amount of the exclusion is reduced by the face value of any whole life insurance and by any irrevocable burial trust you have. (See Part VIII.G.)
- Money or property that is part of a **plan to achieve self-support (PASS)**.<sup>36</sup> A PASS is a plan to achieve an occupational goal, such as getting a job or starting a business that will reduce your reliance on SSI. For example, you can set resources aside to pay for special training or to buy tools or equipment you need. The plan must show how the resources will be used towards your goal, and must be approved by Social Security. A PASS must be for a set time-period, usually no more than four years, but may be extended for further six-month periods. If you are on Medicaid, but not SSI, you can work with your county to develop a similar plan for Medicaid called a *self-support plan*.<sup>37</sup>
- Money from a **grant, scholarship or other gift that you set aside for educational purposes** (other than room and board costs). Under an SSI rule change effective in 2008, you can hold the funds received for up to 9 months without having the funds count as a resource.<sup>38</sup> The funds also should not count as income when received. However, using the funds for any purpose other than educational expenses will count as income in the month you use the funds. (This change should apply to people who are not on SSI but do get Wisconsin Medicaid, but as of October, 2009, this change had not yet been included in the *Medicaid Eligibility Handbook*.)

#### **D. When can Medical Assistance put a lien on your home or recover benefits from your estate?**

You or others may be concerned about putting substantial resources (such as ownership of a home) in your name because of the possibility that Medicaid may try to recover payments it makes for services by putting a lien on your home or making a claim against your estate after you die.<sup>39</sup>

The **Medicaid lien law** applies only to Medicaid payments made on behalf of nursing home residents. If you become a nursing home resident, the only property subject to the lien would be a home that you own and used to live in. The lien may not be placed on the home if you reasonably expect to return to live in it, or if any of the following relatives lives in the home: your spouse, your child who either is under age 21 or has a disability, or your sister or brother who shares ownership of the home and lived there for one year before you entered the nursing home.

If a lien is placed on the home, the state may not **collect** on the lien as long as you have a living spouse, or a child who is under 21 or disabled, whether they live in the house or not. The state also may not collect on the lien at the time of your death if you have an adult child who is living in the home and who lived with you for two years and provided care for you that delayed your admission to a nursing home, or if your brother or sister lives in the home, if he or she lived there for at least 12 months before you were admitted to the nursing home.

Under the Medicaid **estate recovery law**, the state has a potential claim against your estate after you die for two categories of Medicaid benefits:

- Any benefits paid on your behalf after October 1, 1991, during any period when you were a nursing home resident, regardless of your age when you received the service.
- Medicaid benefits paid on your behalf since July 1, 1995, but only after you reach the age of 55, for: home health services; private duty nursing; services under a Family Care/HCB waiver program (see Part I.D.); and hospital admissions and legend drugs provided to you while you were receiving Family Care/HCB waiver services.

For purposes of Medicaid estate recovery, the state may only try to recover from the part of your estate that passes through probate, or that passes to another person in a joint or “pay on death” bank account. Estate recovery does not apply to other assets that will not be part of your estate, such as proceeds of life insurance or a home which you owned as a joint tenant or as the holder of a life estate. The state may not recover anything from your estate if you are survived by a spouse or a child who is either under age 21 or disabled.

For more information on Medicaid liens and estate recovery, order *Overview of Medical Assistance Lien Law & Estate Recovery Program*, from the Elder Law Center of the Coalition of Wisconsin Aging Groups. Tel.: (608) 224-0660, or go to [www.cwag.org](http://www.cwag.org).



## V. INCOME

### A. What kinds of income are there, and how are they counted for SSI and Medicaid?

See Part III, above, for information on the difference between *income* and *resources* under SSI and Medicaid, and for information on when income of a spouse or parent may be considered to be your income.

Income can be in the form of *cash* (money or financial investments, like stock or savings bonds) or it can be *in-kind*. *In-kind income* is something other than cash that you receive as a gift or buy for less than its fair value and that you could sell for cash, or use to provide your needs for food and shelter. In-kind income counts for SSI purposes. Receiving an exempt resource does not count as income, unless it is in the form of food or shelter.

*Example.* Marv gets SSI. Marv's father sells him a car for \$500. The car has a market value of \$3000. If Marv does not own a car, this is a gift of an exempt resource, and is not counted as income. If Marv already owns a car worth \$4000, the second car is not an exempt resource, and the \$2500 difference between what he paid and what it was worth counts as income in the month Marv bought the car. (If he keeps it, the car will count as a resource starting the first day of the next month.)

If you get Medicaid but are not on SSI or the 1619(b) program, Medicaid does not count things you receive in-kind as income at all, unless you get it as payment for work you do. However, whether you pay your own shelter costs may affect Medicaid in other ways. (See Part V.E.) SSI counts in-kind income whether it is earned or unearned. SSI has special rules that apply to how it counts gifts of food and shelter, which it calls *in-kind support and maintenance*. (See Part V.E.)

SSI and Medicaid treat income differently depending on whether it is earned or unearned. *Earned income*<sup>40</sup> includes wages or in-kind income that you get for working for someone else and profits you get from working in your own trade or business. *Unearned income*<sup>41</sup> includes other income you get, such as Social Security payments and countable gifts.

Every dollar that you receive in countable *unearned income* counts towards your SSI and Medicaid eligibility. Unearned income that is not countable includes the first \$20 of unearned income, certain types of payments or benefits that you may receive because you have limited income (such as food stamps and government rent subsidies)<sup>42</sup> and amounts you have put into a plan for self-support (see below). Medicaid also deducts some payments that you make to support your dependents and for court-ordered costs of guardianship. (See Part V.C.)

*Earned income* is treated more generously. SSI and Medicaid do not count the first \$65 of earned income in a month (or \$85 if you have no unearned income), and only counts half of earned income that you have above \$65.<sup>43</sup> In addition, SSI and Medicaid will deduct *impairment related work expenses* and *blind work expenses*<sup>44</sup> from earned income that is still countable after this exclusion. These can include costs that you pay yourself for goods

or services you need because of your disability to enable you to work, such as costs of specialized transportation and attendant care. If you are blind, they also include other expenses reasonably needed for you to work. These exclusions and deductions means that helping you get earned income is often more helpful to you than just giving you unearned income.

If you want to use some of your income to pay for education, transportation, tools, etc., in order to increase your ability to support yourself, you can make an agreement with Social Security or the county to place the income into an *SSI Plan to Achieve Self-Support (PASS)* or Medicaid *self-support plan*.<sup>45</sup> SSI and Medicaid will then the money you set aside and use under the plan from your countable income. This can be used to decrease your countable income, which may increase your SSI payment, help you become eligible for SSI and Medicaid in the first place, or reduce your Medicaid deductible, MAPP premium or Family Care/HCB waiver cost-share expense. A PASS plan is usually for a period of not more than four years.

### **B. How does countable income affect federal and state SSI?**

People on SSI generally receive both a federal SSI payment and a separate state SSI “supplement.” (See below for an exception.) See the table on the next page for SSI payment levels in effect in 2010. The federal payment level varies depending on whether you are married and living with a person who is also eligible for SSI, and on whether you are considered to be “living in the household of another.” See Part V.E. The state supplement<sup>46</sup> also varies, and a special increased state supplement level called SSI-E is available for people who need 40 or more hours per month of supportive home care, daily living skills training or community support services, or who live in certain residential facilities. To get this increased payment level, you must apply for certification by your county.

To be eligible for federal SSI in a month, the total amount of your income that SSI counts must be less than the federal SSI payment level that applies to you. The more income that you have that SSI counts, the lower your federal SSI payment will be. This is because SSI works by giving you enough money so that your countable income plus your federal SSI check equals your federal SSI payment level. Usually, income in a month affects eligibility for that month, but affects the amount of the SSI benefit two months later<sup>47</sup>.

Since a change in state law that went into effect in January, 1996, the state SSI supplement is calculated and paid separately by the state. You should get a state supplement check automatically if you are getting a federal SSI check. If you are a new applicant for SSI and your countable income is higher than the federal payment level, you can no longer become eligible for either a federal or a state supplement payment. If you are an ongoing federal SSI recipient and your countable income goes over the federal payment level, you will lose both your federal and state supplement benefits, even if that leaves you worse off. If your income, apart from SSI, is close to the federal payment level, you need to be especially careful about getting additional countable income that might actually leave you with less total income.

## SSI Payment Rates Effective January 1, 2010-December 31, 2010

Living Arrangement	Federal Benefit	State Supplement	Total Payment
A. Own Household			
INDIVIDUAL	674.00	83.78	757.78
COUPLE	1011.00	132.05	1,143.05
B. Household of Another			
INDIVIDUAL	449.34	83.78	533.12
COUPLE	674.00	132.05	806.05
C. Married Individual in Own Household with Ineligible Spouse	674.00	130.43	804.43
D. Married Individual in Household of Another with Ineligible Spouse	449.34	135.05	584.39
E. Exceptional Expense Supplement			
INDIVIDUAL	674.00	179.77	853.77
COUPLE	1011.00	477.41	1488.41
F. SSI Caretaker Supplement	\$250 for the first eligible child and \$150 for each additional eligible child.		

*Example.* Paul was receiving a full federal SSI-E benefit (\$674 per month in 2010) and a state SSI-E supplement (\$179.77), for a total monthly benefit of \$853.77 per month. In 2010, his father died and he became eligible for a Disabled Adult Child benefit of \$740 per month. This was over the federal SSI payment level and made him ineligible for any federal SSI payment. By state law, Paul was also ineligible for the state SSI supplement. His total income was reduced to the \$740 Disabled Adult Child benefit.

If you do lose all SSI, you may still be eligible for Medicaid if your countable income is below the total of the federal payment level plus the state SSI supplement, or if you are in another special income group for Medicaid purposes. (See Parts V.C. and VI.) In the example, Paul can get Medicaid as someone who lost SSI because of an increase in a Disabled Adult Child benefit.

- **EXCEPTION:** You may get a state SSI check but no federal SSI check if you (1) were *not* eligible for a federal SSI payment for December, 1995; and (2) *were* eligible for a state supplement payment for December, 1995.<sup>48</sup> If you are part of this group of “grandfathered” state SSI recipients, you will be asked every year to report your income and resources. You may lose eligibility if your income is over the total of the federal payment level plus the state SSI supplement, or if you are over the resource limits. It is not clear if you can get the state SSI benefit again under this exception if you once become ineligible, so it is important to maintain continuous eligibility.

### C. How does countable income affect Medicaid if you do not get SSI?

Part VI discusses several different ways that you can be eligible for Medicaid if you do not get SSI. There are almost as many different income tests, and ways of counting income, as there are ways of getting Medicaid. You will need to look at the particular ways that you may qualify for Medicaid to decide how additional income will be counted, and how it will affect you.

The general rule is that the state is required to use the same methods for its Medicaid program as SSI uses to determine countable income for eligibility purposes, unless the state decides to be more generous.<sup>49</sup> However, this is not always true for Medicaid Family Care/HCB waivers, and Medicaid also has different ways of counting income for purposes other than eligibility, such as the Medicaid Purchase Plan (MAPP) premium and the Family Care/HCB waiver services cost-share.

Some of the major ways in which Medicaid and SSI are different in their treatment of income include:

- Several Medicaid income tests (but not all) are all-or–nothing tests. Under these tests, if your countable income is below the income limit, you are eligible for Medicaid. That means that someone can give you money that counts as income without affecting eligibility, as long as you are still under the income limit. However, the increase in income may still affect how much you must pay as a cost-share or MAPP premium.
- Medicaid does not generally count unearned in-kind income as income. However, under several income tests it does consider how much you pay for shelter costs, so you may still need to be careful about getting help from someone else with shelter costs.
- For most income tests, Medicaid deducts certain payments you make to support your spouse and minor children, and certain court-ordered guardianship costs.<sup>50</sup>
- Medicaid does not apply any exclusions and deductions to the special income limit for people receiving Family Care/HCB waiver services. All of your gross earned and unearned income counts.
- For the Medicaid deductible, Medicaid deducts from your income the amount of health and long-term support costs that you are responsible to pay yourself. These

expenses can also reduce your premium for the MAPP program, and the amount of your cost-share for Family Care/HCB waiver services.

#### **D. How can people (or trusts) buy things for you without affecting your SSI/Medicaid?**

Gifts are income and, except for small, occasional gifts, are counted as income for SSI and Medicaid. Because regular or frequent gifts of money reduce federal SSI on a dollar-for-dollar basis, they do not help you if you get federal SSI. Gifts of cash may or may not affect you if you get Medicaid but do not get SSI; see Part VI. In-kind gifts of food and shelter can reduce SSI (see Part V.E.), and reduced shelter costs may affect your Medicaid eligibility and Family Care/HCB waiver cost-share (See Part VI.A., B. and D.) Fortunately, there are other ways that people can help you without making countable gifts. This is done by providing assistance in a form that is not considered income at all, because it cannot be used for food or shelter, or that is excluded (not counted) in determining income for SSI/Medicaid.

Examples of things that people can pay for on your behalf without affecting either your SSI or Medicaid eligibility or benefits include:

- Any payment someone else makes for **services** that you receive is not income, because you cannot use a service you receive to get money to pay for food or shelter. Examples include paying for a haircut, a lawn-mowing service, a housekeeper, a travel companion, a lawyer, a plumber, a babysitter, appliance repair, etc.
- **Medical and supportive services, supplies and equipment.**<sup>51</sup> Someone could help you by paying for medical, social or supportive goods or services, such as medications, dental services, personal care or supportive home care, the expenses of an advocate or guardian, the cost of service dogs and dog food, modifications to an accessible van, etc. This can fill gaps in Medicaid coverage, or give wider choice of provider or form of service.
- **Vocational or other training.** Paying for school tuition,<sup>52</sup> the cost of a job coach, or for other learning opportunities is not income, except to the extent the person is paying for your room and board.
- **Loans.** Money you borrow or money you receive as repayment of a loan is not income<sup>53</sup> (but it may be a resource in the next month). Low or no-interest loans can be useful if you have to pay lump sums that are hard to save for because of the \$2000 limit on resources, such as property tax bills and major home repairs. You can borrow the money to pay the expense, and then repay the loan over time. A secured, deferred-payment loans can also be a way to turn something you own into money you can use, e.g., by a reverse mortgage on your home.
  - NOTE: Paying back a loan you were never obligated to pay, or making a loan that you do not expect the borrower to pay back regularly during your lifetime, may be considered divestment. See Part VII.B.

- **Airline and other transportation tickets**<sup>54</sup> are not counted, as long as you do not sell them for cash. People can also help you by paying the costs of a **travel companion**, by paying for **tickets to shows and attractions**, and by paying for **lodging and meals**. (Payments for lodging and meals while you are away from your home are not considered in-kind income.)
- Payment of **bills**,<sup>55</sup> but the value of things you receive as a result of the payment may be in-kind income if they can be used for food or shelter or sold for cash. Examples of things that are not in-kind income are **telephone, cable TV and Internet** bills and **insurance premiums** for renter's insurance, auto insurance, health insurance<sup>56</sup> and term life insurance (that is, life insurance that has no cash value).
- Purchase of an **excluded resource as a gift** for you (other than a home or food).<sup>57</sup> Examples of gifts that would not count as income include: **clothing, furniture and appliances for your home, a car or van, gas for your car, property that you will use in a trade or business, and personal care items**. See Part IV.C. for a more complete list of excluded resources.
- Gifts to a **Plan to Achieve Self-Support** that has been approved by Social Security or a self-support plan approved for Medicaid by the county.<sup>58</sup>
- Money from a **gift that you set aside for educational purposes** (other than room and board costs). Under an SSI rule change effective in 2008, you can hold the funds received for up to 9 months without having the funds count as a resource.<sup>59</sup> However, using the funds for any purpose other than educational expenses will count as income in the month you use the funds. (This change should apply to people who are not on SSI but do get Wisconsin Medicaid, but as of October, 2009, this change had not yet been included in the *Medicaid Eligibility Handbook*.)
- Money you receive **because you sell or mortgage a resource** you already own. For example, if you sell a house, car or piece of furniture, the money you get is not income, but may be counted as a resource if you keep it until the next month.
- **Infrequent or irregular gifts of cash**. A provision that went into effect in September, 2006, gives people more flexibility to give you small cash gifts, without affecting your SSI benefits.<sup>60</sup> A gift of cash that is considered *infrequent* or *irregular* does not count as income if the total value of gifts you receive in a calendar quarter adds up to no more than \$60. A gift will be considered "infrequent" if the same person did not make another gift in the same calendar quarter, or in the month before or the month after the gift. The gift should be considered "irregular" if you had no reason to expect that it would be made.

**E. In-Kind Income: What if someone gives you food, shelter or other kinds of property for less than market value?**

If someone gives you food or shelter for free or charges you less than it worth, SSI counts the benefit to you as in-kind support and maintenance.<sup>61</sup> (See below for the effect

on Medicaid.) There are some exceptions, including things you get from government programs, like rent subsidy and home energy assistance programs, things you get from private charities, like a food bank, and food or shelter you get when you are traveling away from home. If you are under age 18 living with your parent or if you are married living with your spouse, food or shelter provided by your parent or spouse is not counted as income. See Part III.B.

Even though in-kind food and shelter are income for SSI, you may sometimes benefit by getting these things free or at a reduced cost. This is because SSI will only count the value of in-kind maintenance up to a *presumed maximum value (PMV)*, and because of a special rule that applies to reduced rent. The PMV is calculated by taking one-third of the federal SSI payment and adding \$20 (\$244.66 per month for a single person in 2010)<sup>62</sup>. If you prove the actual market value is less than the PMV, only the actual value will be considered. If the value of what you are getting is more than the PMV, you will benefit from the difference. For example, if someone lets you live for free in an apartment they own and could rent out for \$400 per month, the free shelter will be considered income, but only up to the maximum value of (\$244.66 per month in 2010). If someone else gives you food in the same month, the value of the food will not count as income because you are already over the maximum amount of in-kind support income that can be counted.

Under a court case that applies to Wisconsin,<sup>63</sup> if someone rents a home or apartment to you and you are paying an amount in rent that is at least as much as the PMV, Social Security does not count the difference between market rent and what you are paying as income. (The logic of this case would also apply to other kinds of shelter costs, for example, if someone else helps you pay for costs of home ownership and you are paying the presumed maximum value towards these costs, or if someone other than your landlord helps pay your rent, but this is not recognized in Social Security's rules.)

*Example.* Marge lives by herself in a condominium owned by her aunt. She pays her aunt \$280 per month, although the condo would be worth \$800 per month on the local rental market. Social Security will not count the difference between actual and market rent as income, because Marge is spending more than the PMV on rent.

- **NOTE:** Social Security takes the position that you cannot be treated as a renter if you are renting from a trust that is established for your benefit, because they consider that as a trust beneficiary you have an ownership interest in the home. See Part IX.J.

If you live in a home that is owned or rented by another person who lives with you, you may be treated as being in a special category called *living in the household of another*. You may be in this category if the person you live with owns or rents the place where you live, and you do not have an ownership interest in the house or a direct responsibility to the landlord for rent. If you are considered to be living in the household of another, your SSI payment will be reduced by one-third of the federal SSI payment level (\$224.66 per month for a single person in 2010), no matter what the real value of the food and shelter you receive.<sup>64</sup> This can be a problem if the reduction is more than the real value of the housing, or makes you ineligible for SSI. On the other hand, it can be a protection if the value of the food and shelter you get is actually more than the set amount. If you are

subject to the reduction for living in the household of another, no other in-kind food or shelter you receive should be counted as income. The person you live with could charge you no rent at all and buy all your food for you, and the total reduction in your SSI would still be only one-third of the federal SSI payment level.

Even though you live with another person who owns or rents your home, you can avoid the reduction for living in the household of another in several different ways, including:

- **By paying your fair share of household expenses.** Average household expenses are divided by the number of people in the home to determine “fair share.” Social Security only considers the following to be household expenses: costs of food, mortgage (including property insurance required by the mortgage holder), real property taxes, rent, heating fuel, gas, electricity, water, sewer, and garbage removal.<sup>65</sup> You will not get credit for contributing to other costs, like the phone bill. A catch is that you must be paying your fair share before your SSI can be increased. If you cannot pay your fair share on your current SSI but could if you got the regular SSI rate, it may help to borrow money so that you can start paying your fair share and apply to get the regular SSI rate.
- **Getting an ownership interest in the home**, e.g., as co-owner of a life estate. However, even then you still may have in-kind income if you do not pay your fair share of expenses. See Part IX.
- **Having a rental agreement with the person who owns or rents the home, under which you pay a flat payment for room and board.** Both you and your landlord must say that you are in a separate households. To be a separate household, you must be a separate “economic unit,” e.g., because you (or your representative payee) keep and manage your funds separately, and make separate payments for your bills, or your share of bills.<sup>66</sup>

If you do not get SSI and you are not on the 1619(b) program (See Part VI.F.), and you apply for Medicaid through the county, Medicaid does not count things you receive in-kind as income at all, unless you get it as payment for work you do.<sup>67</sup> If you get Medicaid through the county, this means that people can usually give you food and shelter without affecting your Medicaid benefits. As usual, there are important exceptions, including:

- If you get Medicaid because your countable income is below the combined state and federal SSI payment levels that would apply to you if you got SSI, the state may reduce the income test if you do not pay at least one-third of the federal payment level towards your shelter costs. (See Part VI.A.)
- If you get community-waiver services, having someone else pay your shelter costs may increase the amount of your cost-share. See (Part VI.D.)



## VI. MEDICAID ELIBIGIBILITY IF YOU ARE INELIGIBLE FOR SSI

### A. Getting Medicaid if you are below the combined state and federal SSI payment level that would apply to you if you got SSI.

If you have countable income that is above the federal SSI payment level, but below the total state and federal SSI payment you would receive if you were eligible for SSI and had zero countable income, you can be eligible for Medicaid as a *categorically needy* person. You must still meet the \$2000 limit on countable resources. You must apply for Medicaid through your county economic support agency, which will decide whether you are eligible based on state rules and policy.

In deciding whether you are eligible, the county should compare your countable income to the *categorically needy Medicaid* income test. This test is the same as the combined federal SSI and regular state SSI payment levels (\$757.78 for an individual in 2010).<sup>68</sup> The county should exclude from your income the disregards and exclusions discussed in the section on income for SSI and Medicaid (see Part V. A. and C., above). No unearned in-kind income will count as income, but the payment level used may be reduced if you do not pay at least one-third of the federal SSI payment level towards your shelter costs (\$224.66 in 2010). If people or trusts are providing you with help, they should do it in a way so that you are still paying at least this amount towards your rent or other shelter costs out of your own funds.

### B. Getting Medicaid if you lost SSI because of an increase in your Social Security Disabled Adult Child benefit or Disabled Widow(er)s benefit.

If you have been disabled since before you were 22, you may be eligible for a Social Security benefit as the child of one of your parents who worked, if your parent retires, becomes disabled, or dies. This benefit is called a “disabled adult child” (DAC) benefit. (See Part II.A.) If you get a DAC benefit because your parent is retired or disabled, it may increase if that parent dies, a brother or sister reaches adulthood, or your other parent retires or dies.

Your Medicaid eligibility is protected by a special law if (1) you began receiving a DAC benefit after July, 1986; (2) you were eligible for SSI, but your DAC benefit (or a later increase in it) made you ineligible for SSI, and (3) you would still be eligible for SSI if all the increases in your DAC benefit that have occurred since the last month in which you were eligible for SSI were subtracted from your income.<sup>69</sup>

If you meet those tests, your federal and/or state SSI will be terminated because of your income. Instead of getting Medicaid automatically, as a person who gets SSI, you will have to apply to the county economic support agency for Medicaid. The resource and income tests, and the method of determining countable income, are the same as for categorical eligibility under Part VI.A., except that the county will also deduct the amount of the increase in Social Security that caused you to become ineligible for SSI, and any cost-of-living or other increase in the DAC benefit that has occurred since you last received SSI. If you were receiving SSI-E before you lost SSI, the county will also deduct the amount of the SSI-E supplement from your income.

Your Medicaid eligibility is protected in a similar way if you lose SSI because you start receiving a Social Security *disabled widow(er)'s benefit*,<sup>70</sup> paid to you because you (1) have a disability; (2) are over age 50; and (3) were married to someone who paid into the Social Security system and who has now died. (If you were divorced from your spouse before he or she died, the marriage must have lasted at least 10 years.)

Being in this situation often means that a large part of your income is not counted, and there is therefore much more room than usual for other people or a trust to give you money without affecting your Medicaid eligibility.

*Example.* Until March, 2010, Mary had been eligible for full federal and state SSI benefits. After her father's death in that month, she started receiving a Social Security Disabled Adult Child (DAC) benefit of \$900 per month. As a result she lost SSI. A trust set up by her father pays her \$300 in cash each month. She pays rent of \$400 per month. Her resources are below \$2000. To be eligible, her countable income, not including the DAC benefit, must be below the categorical eligibility limit (\$757.78 in 2010). When she applies for Medicaid through the county, her DAC benefit is not counted as income for eligibility purposes. Her countable income for Medicaid purposes is the \$300 payment from the trust, less the standard \$20 disregard, leaving \$280. The income level for eligibility is \$757.78. Mary remains eligible for Medicaid. The payment from the trust does not affect her, even though it is in cash.

**C. “§ 503” eligibility: Getting Medicaid if you can no longer qualify for SSI because of a cost-of-living adjustment (COLA) to your Social Security benefit.**

You can still be eligible for Medicaid if you (1) used to get both SSI and a Social Security benefit for the same months (even if the Social Security benefit was paid retroactively), and (2) would be eligible for Medicaid if all of the cost-of-living increases in Social Security benefits that have occurred since the last month in which you were eligible for SSI are not counted as part of your income.<sup>71</sup> You have to apply to your county Economic Support Agency for this status, called “§ 503” eligibility. The resource and income tests, and the method of determining countable income, are the same as for categorical eligibility under Part VI.A., except that the county will also deduct the amount of the increase in Social Security that caused you to become ineligible for SSI, and any cost-of-living increases since you last received SSI and Social Security for the same month.

If you were receiving SSI-E before you lost SSI, the county will also deduct the amount of the SSI-E supplement from your income.

**D. Getting Medicaid if you do not get SSI but you can get services under a Family Care/HCB Waiver.**

See Part I.D. for an explanation of the Family Care, the Home and Community-Based Services waivers, Partnership and PACE. These programs use the same eligibility test for Medicaid-funded services, and for simplicity this section will just refer to all of the programs as “Family Care/HCB waivers.”

If you are not getting SSI, and are not eligible for Medicaid in some other way (such as 1619(b), MAPP, or through the DAC disregard), but you are eligible for services available

under a Family Care/HCB waiver program, you may be eligible for Medicaid under separate income and resource rules that only apply to the Family Care/HCB waivers. These rules only apply if you are getting Family Care/HCB waiver services, or the county says that it has funds and will serve you under a Family Care/HCB waiver. Being on a waiting list is not enough.

If you are not getting SSI or Medicaid, but are receiving (or have been offered) Family Care/HCB waiver services, you may be eligible for Medicaid if your countable income is below a special income test. This test (called “Group B”) is the federal SSI payment for an individual in that year multiplied by 3 (\$2022 in 2010).<sup>72</sup> Unlike other income tests for SSI and Medicaid, the Group B test is based on total gross earned and unearned income, without any disregards or exemptions, any deduction for Social Security increases, and before taxes or Medicare premiums are taken out. Only your income counts towards the Group B test; any income of your spouse is ignored. (The usual \$2000 resource test applies to you for Group B, but if you are married substantial resources may be protected for your spouse—see below.)

If you are not eligible for Medicaid in some other way, but are eligible for Medicaid and Family Care/HCB waiver services under the Group B income test, you may have to make a *cost-share* payment for part of the costs of the Family Care/HCB waiver services you receive.<sup>73</sup> The cost-share calculation is complicated. The amount depends on your countable income, and on what you pay for housing costs. The cost-share can be quite high (up to about \$1168 per month in 2010), especially if you have high unearned income, few deductions, and low housing costs. Deductions from income include most of the usual deductions from income (see Part V.A. and C.). In addition, you can deduct amounts you pay for health insurance and *medical-remedial expenses* (See Part VI.G.), and, under some circumstances, funds allocated for the support of your spouse.

If you are eligible under the Group B income test, and your income is below the test level, you may be able to receive additional income as gifts from other people without affecting your eligibility for Medicaid, as long as your income stays below the Group B test level. However, if you are paying a cost-share, or are close to the income level where a cost-share would be required, a gift of cash may just end up increasing your cost-share payment. You should consult your case manager to determine if additional income will actually improve your situation (a case manager is assigned to every waiver participant).

If Family Care/HCB waiver services are available for you, but your income is above the Group B income test, and you are not eligible for Medicaid in some other way, then you will have to establish Medicaid eligibility through a special type of Medicaid deductible called Group C (see Part VI.H). Unlike the regular Medicaid deductible, excess income and offsetting expenses are figured on a monthly basis rather than over a six-month period. The deductible can include an estimated share of the costs of Family Care/HCB waiver services that you will have to pay for yourself. Because the medically needy standard (\$591.67 in 2010) is below the combined state and federal SSI payment levels, this will leave you worse off than a person on SSI in terms of income that you can use for your other needs. Some source of outside help will be especially important for you.

If you are married and receiving Family Care/HCB waiver services, special rules, **called *Spousal Impoverishment Protections***, may protect some of your income and resources for your spouse.<sup>74</sup> (These rules apply only if you get Medicaid and do not get SSI. If you live with your spouse and get SSI, deeming rules may still apply to you.) The protections include:

- **Income.** Under the spousal impoverishment provisions, none of your spouse's income is deemed to you, for purposes of Medicaid eligibility. Part of your income can be given to your spouse to bring his or her income up to an amount that the state considers will meet his or her minimum maintenance needs are met. (At least \$2,333 in 2009, but this amount can be increased based on actual needs.)
- Your spouse can keep half of the total resources you and your spouse own (up to \$109,560 in 2009; this number increases with inflation), or \$50,000, if that is more. Your spouse can get the maximum if you have \$219,120 or more in countable assets when you first apply for Family Care HCB Waiver services, so it is a good idea to apply before reducing your assets.
- In addition to other Medicaid resource exemptions, your spouse's retirement accounts, and money the two of you have set aside for burial expenses, are also exempt. In some cases, your spouse may be allowed to keep more than the minimum resource amount, because he or she needs the resources to produce more income, even after an allowance from your income is made to your spouse.

For more information, order *Spousal Impoverishment Protections Under The Wisconsin Medical Assistance Program* from the Elder Law Center of the Coalition of Wisconsin Aging Groups. Tel.: (608) 224-0660, or go to [www.cwag.org](http://www.cwag.org) and look for this title under Publications.

**E. Katie Beckett Program: Getting Medicaid if you are a child living with parents who have too much income or resources for you to get SSI.**

You may be eligible for Medicaid under a special program (called “Katie Beckett” after the girl who inspired it) if you meet all of the following tests:<sup>75</sup>

- You are under age 18, live with your parent(s), and are ineligible for SSI because of your parent's income and resources.
- You meet the SSI test for having a disability;
- You have functional support needs that would qualify you for Family Care/HCB waiver services or nursing home services. (See Part III.)
- You are eligible for Medicaid if only your own income and resources are considered. For this purpose, you can use the special income test that would apply if you received Family Care/HCB waiver or nursing home services. (See Part VI.D.)

For more information about Katie Beckett, look for contact information for the Katie Beckett consultant for your area on-line <http://dhs.wisconsin.gov/bdds/kbp/kbpcons.htm>, or contact the Bureau of Long-Term Support at (608) 266-3236.

**F. 1619(b) Program: Getting Medicaid if you are a former SSI recipient who now has too much income from your work to get SSI.**

You will remain eligible for Medicaid under the “1619(b)” program if you meet all of the following tests:<sup>76</sup>

- You are working.
- You used to get SSI, and you would still be eligible for SSI if Social Security ignored all of your earnings from work. You must still meet the usual \$2000 SSI resource limit.
- Even with your earnings and health insurance from work, you cannot afford to pay for health insurance and support services that would give you coverage equivalent to Medicaid.

“1619(b),” named after the statute that created it, is designed to allow people who get SSI to go to work and earn a living wage, without losing their Medicaid benefits. If you are eligible under 1619(b), you will continue to have your eligibility determined by the Social Security Administration, which will treat you as if you were an SSI recipient. If your income falls below the federal SSI payment level, you can again start to get SSI.

If you are working, you may also be able to use the MAPP program (see Part VI.G.) to get Medicaid, instead of 1619(b). MAPP may require you to pay a premium but also allows you to have more resources without losing benefits. If you are off both SSI and 1619(b) for 12 months straight, for example because you have too many resources, you may not be able to get back on the SSI or 1619(b) program while you are working above the “substantial gainful activity” level.

One effect of the way 1619(b) works is that, if you have low unearned income, other people or a trust can give you additional cash and in-kind income without affecting your eligibility for Medicaid, as long as your countable unearned income remains under the federal SSI payment level (\$674 in 2010).

*Example.* John received a combination of SSI and DAC benefits until 2010, when he went to work earning \$3000 per month. As a result of working, he has lost all SSI and Social Security Disability benefits. His parents give him \$400 per month. This is his only countable income for purposes of 1619(b), and he continues to be eligible for Medicaid as long as he has countable resources under \$2000.

If you were receiving a state SSI supplement, but not a federal SSI payment, and you lose your state SSI because of earnings from work, state policy provides that the state will continue your eligibility for Medicaid.<sup>77</sup> This should happen automatically when you report your increased earnings to the state.

See the discussion in II.B., above, about the potential impact on future benefits of working, of increased Social Security benefits that can result from work, and of retirement assets and pension benefits that may count as resources or income when you leave work.

**G. Medical Assistance Purchase Plan (MAPP): Getting Medicaid if you have a disability, work, and are not eligible for SSI because of your income, resources or level of work.**

The Medical Assistance (Medicaid) Purchase Plan (MAPP) provides a way for people with disabilities who work and do not get SSI to become eligible for Medicaid.<sup>78</sup> If you have a disability of the kind that would qualify you for SSI but you are working, you can buy in to Medicaid by paying a premium. You can do this whether or not you are working at the level Social Security would consider to be “substantial gainful activity” and whether or not you have ever gotten SSI. You do not have to be working full-time. Application for MAPP is made through the county economic support unit.

To participate in MAPP, your income must be no more than 250% of the poverty level for your family size. (250% of the poverty level for an individual living alone is \$2256 per month in 2009.) In fact, you can have a much higher gross income, because countable income for MAPP is your income AFTER taking the standard deductions from income allowed by SSI and Medicaid (see Part V.A. and C.). This includes the disregard of Social Security DAC benefits and COLAs described in Part VI.B. or C., if you are a former SSI recipient and one of those sections applies to you.

You can have countable resources of up to \$15,000 when you apply and be eligible for MAPP. In addition, once you are eligible you can save more than that by establishing one or more “*Independence Accounts*.” These are accounts established and funded after you become eligible for MAPP, that you have asked the county to approve as Independence Accounts. (A retirement account that was established before you were on MAPP can be designated as an Independence account after you are on MAPP, but only the money you put in after the account is approved is exempt from being counted towards the \$15,000 limit.) There is no restriction on how you use the money in an Independence Account, but there may be a penalty if you receive Family Care/HCB waiver services and give the funds to someone else for less than fair market value.

The premium you pay for MAPP is based on your income. MAPP has its own way of counting income in calculating the premium.<sup>79</sup> Very little earned income (3% at most) is counted, but unearned income (such as Social Security benefits) over a set living allowance (\$777 in 2009, after certain allowed deductions) will result in almost a dollar-for-dollar increase in the premium. Social Security benefits, including DAC and COLA increases for past SSI recipients, count as income. Deductions that can be used to reduce countable unearned income include expenses of a self-support plan, impairment-related work expenses, and some support and court-ordered expenses you pay. In addition, *medical and remedial expenses*<sup>80</sup> that you pay yourself are deducted from your income. These include premiums, deductibles and copayments for health insurance and Medicare, and costs you pay for health care, disability-related therapy, equipment, supplies and support services.

See the discussion in II.B., above, about the potential impact on future benefits of working, of increased Social Security and pension benefits that can result from work, and of treatment of retirement assets, independence accounts and pension benefits as resources or income if you change jobs, reduce your level of work, or leave the MAPP program completely.

**H. Medicaid Deductible: Getting Medicaid if you have too much income to get SSI, but you have costs for medical and support services that offset your income.**

If you have a disability, are under the \$2000 resource test, but you have too much countable income to be eligible for SSI, and cannot participate in the 1619(b) program or MAPP, you may still be eligible for Medicaid if you have health-related bills which offset part of your income (*Medicaid deductible*).<sup>81</sup> You must apply through the county economic support agency.

The Medicaid deductible is the most complicated way to get Medicaid, and the one that leaves you with the least income to use for your other living expenses. Countable income is determined by using the standard income disregards and deductions (see Part V.A. and C.) This is then compared to the *medically needy* income standard (\$591.67 in 2010). Income that you have above the income standard is added up over a six-month period to determine your “deductible.” When you have incurred enough medical expenses (including costs of therapy and support services you need because of your disability) to offset the deductible, you can be eligible for Medicaid for the balance of the six-month period. (See Part V.D. for how the Medicaid deductible works if you receive Family Care/HCB waiver services.)

**VII. LUMP-SUM PAYMENTS AND OTHER EXCESS RESOURCE ISSUES**

**A. How do inheritances and lump-sum payments affect SSI and Medicaid?**

Sometimes, you may not be able to avoid receiving money in your own name. For example, a relative may leave you money or property in a will directly, instead of putting it into a trust or in the form of excluded resources, you may receive a back payment of Social Security benefits, or you may leave work and receive retirement benefits in a lump sum. If you just say “no” to something you have a right to get, SSI and Medicaid may treat it as income or a resource anyway (because it is available to you), and may treat your refusal as giving away assets, which can also cause loss of some benefits (see Part VII.B).

If you get SSI, money that comes to you as a lump sum (other than back SSI payments) will usually count as income for SSI in the month you receive it, and result in the loss of your federal benefit two months later. If you keep it as money into the next month after the month you receive it, it will be a resource, and cause you to lose your SSI benefit, and the automatic state SSI, for months that your resources remain over the limit. You may have to pay back SSI benefits you received for months when you were not eligible.

Wisconsin Medicaid does not count a lump-sum payment as income, but does count it as a resource in the month you receive it. If you are on Medicaid, and the lump sum puts you over the resource limit that applies to you at the end of the month, you are not eligible

for Medicaid. However, in practice it can take up to two months for your Medicaid benefits to stop, because the state or county has to send out a notice that your benefits are being stopped, and give you time to appeal. You will not have to pay back benefits you receive while this process is going on, unless you have failed to make a timely and accurate report about the resources.

You can keep certain payments that you receive for 9 months after the month you get them, without having those payments count as income. The most common payments in this category are **retroactive Social Security and SSI payments**<sup>82</sup> (for example, a payment you get for past months because of a delay in determining eligibility). Other payments with nine-month exclusion periods include: **tax refunds due to the child tax credit and earned income tax credit, grants and loans for educational tuition and fees, and federal emergency relief payments.**<sup>83</sup> (The *MEH* does not reflect all of these exemptions. For example, it does not mention the child tax credit, and only exempts the earned income tax credits for the month of receipt and the following month.)

Because of the short timelines on dealing with most lump sums you receive, it is best to have a plan for how to deal with them before you actually get them, so that they are not a countable resource in the next month. Options for dealing with your resources include:

- **Pay off debts.** If you owe any money to anyone, this is a good chance to pay off debts. If you have a mortgage on your house, you can usually prepay all or part of the principal, so that the lump sum is turned into increased equity in your home.
- **Spend it.** There are no limits on how you can spend your resources, as long as you do not give them away or pay more for things than they are really worth (see Part VII.B.).
- **Use it to buy other excluded resources.** You can use funds to buy any of the resources listed in Part IV.C. This is a chance to replace your furniture or car, or buy local or out-of-town **transportation** tickets for future use.
- **Live on it until it runs out.** You may want to live for awhile without the limitations that come with SSI and Medicaid. This may not be an option if you get Family Care/HCB waiver services, because you will not want to give up your place in the waiver and face a waiting list when you again need benefits, and because it may be difficult to keep your services going on a private-pay basis. You will also need a plan to become eligible for Medicaid if you are facing a major health expense not covered by Medicare or health insurance you have. If you are off SSI for more than 12 months straight, you may have to do a whole new application and your benefits may be delayed.
- **Consider switching to the Medicaid Purchase Plan (MAPP).** MAPP allows people who are working and who pay a premium to get Medicaid (but not SSI) and still have \$15,000 in resources, instead of \$2000, and to build up more savings. (See Part VI.G.)



- **Use it to buy or improve a home, or pay off your mortgage.** Use of resources to purchase a home is discussed in Part IX. If you have a mortgage, pay it off. If your home needs repairs or improvements, now is a good time to get the work done.
- **Put it into education, a business or a PASS plan.** Getting more education, or investing in something you can use in a business, can raise your income in the long term. Putting resources into a Plan to Achieve Self Support allows you to keep funds in the plan and use them over time. SSI law now allows you to set aside money for educational expenses, and not have it be counted as a resource. (See Part IV.C.)
- **Spend it on unmet health, dental or equipment needs.** You cannot always get the dentist or dental services you want just using Medicaid. A lump-sum can be a chance to get your teeth fixed. You may also want to buy equipment or medical supplies that Medicaid will not cover.
- **Prepay for rent or other expenses.** If a person or company who provides something you need (like your landlord) is willing to take a prepayment towards future goods or services, that can be a way to reduce your resources.<sup>84</sup> To avoid the issue of whether you are able to get the money back just by asking for it, it may be a good idea for the agreement to say that you can only demand the money back if the supplier fails to deliver what you paid for.
- **Put it in a supplemental trust for your sole benefit during your life.** There are important limits on how a trust funded with your own assets can be set up and used. See (VIII.F.)
- **Consider buying an annuity.** An *annuity* is an investment that pays you a long-term, steady income, usually for the rest of your life. It is potentially a way to turn a countable resource into countable income. This is not usually helpful if you get SSI, but *may* be if you get Medicaid without SSI. This depends on your income and how you qualify for Medicaid. (See Part VI.) Annuities may also be a way of protecting income of your spouse, or of increasing his or her income, if you need nursing home or Family Care/HCB waiver services. **The Medicaid laws and rules on purchase of an annuity by either you or your spouse are complicated, strict and full of traps.**<sup>85</sup> Buying an annuity that does not meet strict rules may be considered a divestment, and result in a period of time when you are not eligible for Medicaid long-term support services (see next section). In some cases, the state may continue to treat the supposed cash value of the annuity as a resource. You should consult a professional who is an expert on Medicaid law and policy before (1) deciding whether an annuity will help you, (2) trying to buy one, or (3) making any kind of change to an annuity you already own.
- **Consider loaning the money to someone, in exchange for a promissory note.** Like annuities, promissory notes must meet strict requirements.<sup>86</sup> For example, the note must require that you will be paid back all of the money loaned, with interest, during your life expectancy, and must provide for even payments.

## B. What if you give your assets away, or sell them for less than they are worth?

Giving *assets* (resources or income) away, or selling them for less than they are really worth, in order to qualify for SSI and Medicaid is often called *divestment*. Divestment can include giving away your rights to something you never received (for example, giving up the right to an inheritance before it comes to you).

Divestment can result in a penalty period during which you will not be eligible for SSI, and a penalty period during which you will not be eligible for Medicaid *long term care* services, which for this purpose include *nursing home care, home and community-based waiver services (CIP, COP-W, and Brain Trauma and Children's Waivers), Family Care, Partnership* and similar programs. Divestment does not affect coverage of Medicaid "card" services. (See Part I.D.)

Effective on January 1, 2009, the Wisconsin Department of Health Services (DHS) made several changes to its policies on the way penalties for giving away assets are determined and applied for Medicaid long-term care.<sup>87</sup> These changes implemented federal laws passed in 2006. The old policy that existed before the changes continues to apply to any transfer of property that you made before January 1, 2009.

The new laws and policies make it much more difficult and risky for you to give away resources that you own, if you may need Medicaid-funded long-term care within the next five years. Under the new policy:

- The Medicaid program will ask about and consider any gift, or transfer for less than market value, that you made after January 1, 2009, and **within 5 years before the application** for Medicaid long-term support services. This is called the **look-back period**. (The old look-back period was only 3 years for most transfers.)
- If you made a gift or transfer for less than market value during the look-back period, as a way of becoming eligible for Medicaid, the Medicaid program will impose a **penalty period**. During the penalty period, you will be ineligible to get Medicaid payment for long-term care. The length of the penalty period is based on the total value of the gifts that you made during the look-back period. In 2009, every \$209.16 that you gave away during the look-back period would add one day to the penalty period. (The old law calculated penalties in months, rather than days, and did not impose a penalty for a period of time that was less than a month.)
- The most important change is that the **start date for the period of ineligibility** that results from a transfer that happens after January 1, 2009 will be **the first date on which you would have otherwise been eligible for Medicaid long-term care**. (The old policy started the penalty period in the month the transfer was made.) The new policy means that you will have to make an application for Medicaid long-term care, be financially eligible, in terms of income and resources, and be accepted for services, before the penalty period will start to run. The penalty period if you are seeking nursing home care only begins to run if you are actually in the nursing home and eligible in every other way for Medicaid coverage of long-term care. For Family Care/HCB Waivers, you must make an application and be eligible for care,

but the penalty period can begin to run even if the you are still on a waiting list for services.

- Transfers you make while you are already receiving Medicaid long-term care are also supposed to be reported, and may result in a penalty period during which you will be ineligible for Medicaid long-term care services. **It is to the advantage of ongoing recipients of long-term care to report transfers promptly**, because, if reporting requirements are met, the Medicaid program will not try to recover benefits for parts of the penalty period that have started to run before the person's change in benefit status can be implemented.

The new rules also treat some other transactions as divestments, even though they may be financial arrangements that do not involve a gift. For example, purchase of annuities and making of loans in exchange for promissory notes may now be divestments if they do not meet strict requirements. (See Part VII.A., above.)

The divestment restrictions do not apply in all cases. Some of the exceptions are:

- Transfers of a home to a spouse, minor child, child who is disabled, or certain other relatives who lived in the home before the transfer.
- Transfers to a spouse or to a child who is disabled.
- Transfers to a trust established solely for the benefit of your child who is blind or disabled, or for the benefit of another person (not your child) who is under age 65 and is disabled.
- A gift or transfer that the county finds to have been made **exclusively for a purpose other than qualifying for Medicaid long-term care**. This *intent exception* is much broader than it was under the old policies, but some transfers made for legitimate purposes (like helping relatives) may still result in penalty periods.

The state may also decide that a penalty period should not be imposed because it would result in an *undue hardship*, meaning deprivation of needed medical care, food or shelter, but this exception is very narrow and can only be applied for when the penalty is about to begin, or has already begun.

Under the divestment laws and rules for SSI,<sup>88</sup> only transfers within the previous 36 months result in a penalty period. The penalty period is the number of months you get by dividing the amount you gave away by the federal SSI payment level. This means a much smaller gift can result in a penalty period, and the penalty period for a gift will be longer for SSI than for Medicaid. However, the penalty period for SSI starts to run in the month in which the transfer is made, even if you have not yet applied for SSI and are not eligible for SSI in that month.

This book cannot cover all the details about divestment. Because of the severity of the new Medicaid penalties, it is more important than ever to get advice from an expert before giving things away, or transferring them for less than they are worth. If you are considering transferring resources for less than they are worth, using your money to help

another person, or giving up rights to property, consult an attorney who knows the current laws and rules.

## VIII. USE OF TRUSTS

### A. What is a trust and how can it help?

One option for parents or others who want to help you is to establish and fund a *trust* for you. Under a trust, resources or income are given (directly or by will) to a person called the *trustee*, who must use the resources only for purposes set out by the person creating the trust. For example, your parents can leave resources to a trustee to use for your benefit (your parents are then called the *settlers* or *grantors* and you are the *beneficiary*).

Trusts can be helpful in several ways. First, a trust allows the person who sets it up to appoint the trustee to manage the investment and use of the funds for your benefit. This can be helpful if you are not good at managing money, or do not like doing it. Second, the trust can be written to protect the property in the trust from anyone you may owe money to, including creditors, someone who sues you, your spouse or ex-spouse, and public benefits programs. Third, the person who creates it can indicate how the funds should be used for your particular needs, but can also leave flexibility to meet your changing circumstances. Finally, the trust can be written so that you can benefit from property in the trust while not having it count as a resource for SSI or Medicaid.

➤ **NOTE:** This discussion is primarily focused on use of supplemental needs trusts as a way of protecting your eligibility for SSI and Medicaid. Trusts are also used for other purposes, e.g., to give you an income without giving you direct ownership, to limit the risk that funds will be lost due to mismanagement or exploitation, or as a way to provide you with some decision-making support in management of major resources.

If property is in a trust, you do not have the control of direct ownership. The person creating the trust should consider carefully whether there are ways of allowing you to have direct ownership, or to receive direct distributions from the trust. (See Part VIII.B.) They should also consider ways that your circumstances may change over time.

Once a trust is created, other people who want to help you can add money or property to it by gift or will. The person who creates the trust can say what will happen to any funds left in the trust when you die, or can give someone else (including you) the power to make that decision. As long as the money was not yours before it went into the trust, it can be left to other people or organizations after your death.

### B. When will property in a trust not be considered a resource for SSI and Medicaid?

SSI and Medicaid will not count the property in a trust as your resource, even though you are a beneficiary, as long as (1) you did not own the property in the trust before it went into the trust, and (2) you do not have any legal right to require that the trust pay you money, or spend money to support you.<sup>89</sup> If you have a right to require the trustee to make payments from the trust that you can then use for food or shelter, the part you have a right to get counts as a resource for SSI and Medicaid, even if you do not ask for the money.

New funding put in a trust, where you have a right to demand that the funds be paid to you, may also count as income.

If you rely on SSI and Medicaid a trust to benefit you will typically avoid this problem by saying that is up to the trustee whether to use the funds to benefit you. The trust provides guidelines, but you cannot force the trustee to use the funds in a particular way. In addition, the trust will usually say that its main purpose is to supplement the support and services you get from public benefits. Finally, the trust will say that you cannot sell or give away your rights under the trust to anyone else. Trusts designed to work in this way are commonly called *supplemental needs trusts*.

Some supplemental needs trusts are written so that the trustee may never do anything that would result in a loss or replacement of government benefits, and can never give you cash or provide basic support for you. At least under Wisconsin law, as long as a trust leaves use of the funds up to the discretion of the trustee, this kind of strict restriction is not necessary, and may make the trust less useful. This is an issue you should discuss with the lawyer drafting the trust. For example:

- It may make sense for the trust to buy something of better quality than public benefits would pay for, such as more appropriate dental care or better medical equipment, or to pay privately when there is no provider willing to accept public benefits payments.
- It may make sense to make a large purchase for you that results in a small, short-term loss of public benefits. Examples could include purchase of a home or annual payment of real estate taxes. Trusts should include language that all available government benefits be used for basic support, medical care and social services, that the trust is intended to supplement rather than replace public benefits and that the trustee has the discretion to refuse to make any payment that would reduce government assistance, but trusts should not necessarily close the door on any payment that would reduce benefits.
- It may make sense for the trustee to have the flexibility to give you cash, during times when that does not affect your eligibility or Medicaid cost-share, or when you are working and not relying on Medicaid and SSI at all.

### **C. How can trust funds help you without being counted as income?**

Obviously, a trust is not much good to you unless the funds can be used for your benefit. However, if the trustee makes payments to you in cash, that may affect your payment amount for SSI, your eligibility for SSI and Medicaid, your cost-share for Medicaid long-term support services, or your premium for MAPP. If you are on SSI and the trust pays for food or shelter for you, the payments may reduce or eliminate your SSI payment for that month.

There are still lots of things a trust can pay for to help you, and these are not limited to luxuries or vacations. Trusts, like individuals, can pay for any of the things that are listed in Part V.D., without having the distributions count as income. The key is for the trust to

pay the provider of goods or services directly, or through an agent other than you, rather than giving you the money to buy what you need or want. In giving directions to a trustee, the settlor should look at the list in Part V.D. and think about what kinds of things you may need and can get without affecting SSI/Medicaid. It helps to give the trustee both general and specific ideas, without necessarily restricting his or her ability to adjust to your changing wants and needs. The trustee will need a lot of discretion, some imagination, and current knowledge about you and your needs.

#### **D. Who should be chosen as trustee(s)?**

In a supplemental needs trust, the grantor must rely on the trustee to both manage the resources of the trust and put them to use. The trustee needs to know how to invest and manage money and pay the taxes, but also needs to actively work to identify and meet your needs, and to involve you and people who know you well in decision-making. The grantor can be the trustee while he or she is alive, but needs a long-term plan to ensure that there will be an appropriate trustee as long as the trust exists.

A trustee can be an individual or a financial institution (a bank or trust company). Financial institutions usually charge fees based on the size of the trust, but with minimum fees for smaller trusts that may make it uneconomical to use a bank for a trust funded at smaller levels. A bank also may or may not have expertise on its staff on how to use funds to benefit a person with a disability. One option, if the trustee is primarily a money manager, is to require the trustee to consult with an advisor, such as a relative, advocate or service provider who knows you well, as a way to identify your needs.

It is important to consider whether a trustee has a conflict of interest. For example, a person who is in line to receive the assets of the trust at your death may be less motivated to use the assets for your benefit while you are alive. If you are a minor child, and your parent is trustee, there may be a conflict of interest between your parent's duty to support you, and his or her decisions to use the trust assets for your benefit, or there may be a conflict if payments by the trust for your benefit also incidentally help your parent. Some people feel that a guardian should not also be a trustee, because of the possible confusion between the guardian's role of holding assets that belong directly to you, as guardian, and holding assets that belong to the trust, as trustee. If there is a conflict of interest, the grantor may be able to reduce a potential negative effect by appointing a co-trustee, or by appointing an advisor who has authority to monitor the management and use of the trust.

Some organizations have sponsored *community trusts* that reduce fees by allowing individuals to place money in accounts, all of which are governed by a single trust. The funds are invested and managed in common, but separate accounts are kept of individual investments and payments. A person establishing an account for you adopts the single trust document, but can also appoint an advisor, state wishes on how the funds should be spent, and designate where funds go after you die. Nonprofit organizations sponsoring these kinds of trusts include WisPACT, Inc., ARC Milwaukee County, and the Association for the Rights of Citizens with Handicaps in Waukesha County.<sup>90</sup> These organizations not only oversee the trustee's actions, but also help develop plans for how to use the funds to benefit individual beneficiaries. Movin' Out, Inc., in Madison, operates a trust specifically

designed to hold and manage homes for people with disabilities, called the WISH Trust. Unlike other family-funded trusts, the WISH Trust requires that homes and property placed in the trust remain in the trust to benefit other people with disabilities.

### **E. How can a trust be created and funded?**

Trusts are complicated legal documents, and an attorney should be consulted in drafting a trust or adopting a community or pooled trust. If possible, the grantor should seek an attorney who is familiar both with the needs of people with disabilities and with the requirements of public benefits programs. It may be useful for the grantor (and you) to look at *Provisions: Sample Language for Supplemental Needs Trusts*, available from WCDD, to get some ideas about the issues covered in drafting a supplemental needs trust.

Trusts can be created either while the grantor is still living or by will. Setting up and funding a trust while the grantor is still living can give greater certainty that the trust will be funded and allows the grantor to demonstrate appropriate use of the trust by acting as trustee. It is also useful because once the trust exists other people who want to help you can make gifts to it or leave money to it by will, without having to create separate trusts. Funding a trust entirely by will can be risky because of the uncertainty about whether the grantor will have funds left at that point that will pass under his or her will. There can also be delays while the will is probated, when there may be no funds available to help you. If the grantor may need Medicaid for health care or long-term care services, a transfer to a trust for a person with a disability is allowed without any divestment penalty, if the beneficiary of the trust is either a child of the grantor, or a person who is under age 65.

An option for grantors to consider is funding a trust by directing that the proceeds of their life insurance be paid to the trust. This can ensure a relatively prompt and certain source of substantial funding if the grantors are no longer around to provide help directly. However, if this method is used it is important to have a plan in place to ensure that premiums will be paid as long as the grantor lives.

Another important planning tool for the grantor to have is a *durable power of attorney*, that appoints someone as the grantor's agent if the grantor becomes incapacitated. If the power of attorney gives the agent the right powers, the agent can fund the trust to ensure that the trust can help you during a period when the grantor is incapacitated and unable to provide help himself or herself, and may also be able to ensure that the trust is funded before the grantor's funds are all spent.

### **F. Can you put your own resources or income into a trust?**

So far, this Part has discussed a trust funded by someone else with his or her money. With the exceptions discussed below, if assets (income or resources) that belong to you or your spouse are put into a trust, by you or someone acting on your behalf, the assets will be considered to be your resource under the SSI and Medicaid programs if there are any circumstances under which a payment could be made for your benefit out of the assets.<sup>91</sup> If payments are made for your benefit, they will count as income. If assets that belong to you are put into a trust that cannot benefit you, or are used to make payments for the benefit of someone else, they will be treated as if you gave the property away and may affect your

future eligibility for SSI and for coverage of Family Care/HCB waiver and nursing home services under Medicaid. (See VII.B.)

There are two important **exceptions**, when a trust that has your assets in it will not be considered a resource, and transfers to the trust will not be considered divestment. Under both of these exceptions, **the trust must be established so that, during your lifetime, it will benefit no one except you, and it must be irrevocable.** *Irrevocable* means that no one has the power to end the trust, or to pull the property out of the trust to benefit anyone except you, during your life. In addition, the trust must fit one of the two exceptions:

- **Medicaid Payback Trusts.** The first exception applies if (1) you are disabled, (2) you are under age 65 when the trust is funded, (3) the trust provides that when you die the trust will use any remaining funds to pay the state back for Medicaid payments made on your behalf, and (4) the trust is established by your parent, grandparent, a legal guardian of your property with authority from the court, or by a court. A court in a legal action has the authority to put an award, property settlement or inheritance for you into a trust if that is for your benefit. If you have a guardian or conservator, he or she can get authority from the court to establish a trust and transfer all or some of your property into a supplemental needs trust, if that is in your best interests.<sup>92</sup> It is very important that the trust be drafted by someone who knows the rules and policies well, and that whoever moves your money into the trust have clear legal authority to make the transfer. (These are areas where good legal advice is essential.) Under this exception, the person creating the trust may choose a private person or trust company as trustee.
- **Pooled Trusts.** The second exception applies only to *pooled trusts*, defined as trusts managed by a nonprofit organization under an arrangement where a separate account is set up for your benefit alone but funds are pooled with those of other people for investment. You must be disabled to be a beneficiary of a pooled trust. (If you are over 65 when the account is funded, funds in the account are not counted as a resource for you, but the transfer of property to the trust may be considered a divestment and may result in a period of ineligibility.<sup>93</sup> (See Part VII.B.) An account for your benefit in a pooled trust can be established and funded by you directly, or by someone appointed to be your agent, as well as by a parent, grandparent, guardian, conservator or court. Funds or other property left in the account at your death can be used by the trust to help other people with disabilities. As of October, 2009, at least three Wisconsin trusts have been recognized by Social Security as pooled trusts: the WisPACT Trust I, managed by WisPACT, Inc., the WISH Trust, managed by Movin' Out, Inc., and the ARC Milwaukee community trust. Contacts for the pooled trusts are: WisPACT, Inc. (608) 268-6006 or [www.wispact.org](http://www.wispact.org); Movin' Out, Inc. (608) 251-4446; ARC Milwaukee, (414) 774-6255.

The restrictions on a trust funded with your property mean that those funds will not go to other family members after your death, at least if you use Medicaid services at a substantial level. The goal of the trust should be to benefit you (and only you) during your lifetime.



As interpreted by the Social Security Administration, if a Medicaid payback or pooled trust is established by your parent or grandparent, he or she must fund the trust with some of his or her own money before any other money or property goes into the trust. This can be a small amount, like \$10. Whoever puts your money into the trust must have clear legal authority to do so. For example, if the money is transferred by an agent under a power of attorney, the agent must have authority to make the transfer. A guardian needs court permission to make this kind of transfer.

### **G. What is the effect on SSI/Medicaid of an irrevocable burial trust?**

You can put up to \$3000 that you own in your own name in an irrevocable burial trust account, under which money is set aside in a savings institution for burial and funeral expenses.<sup>94</sup> Any interest that accumulates in the account is also protected. This is usually arranged through a funeral home. The money in the trust is not counted as a resource, because you can never change your mind (“revoke”) and get your money back. (It is possible to set aside larger amounts of money using a life insurance-funded burial trust. Consult a knowledgeable funeral home or attorney if you are interested in this option.)

The need for these accounts has been reduced by the ability to earmark other accounts for burial expenses (See Part IV.C.). Note also that burial spaces, markers, etc. are exempt resources and you can own them in addition to a burial trust or burial account. Possible advantages of an irrevocable burial trust are: the larger amount involved; the ability to combine it with life insurance; the protection from creditors; and the opportunity to make prior choices about service providers and arrangements.

### **H. Do you or the trustee have to report that a trust exists?**

If you receive federal SSI, you must tell Social Security about trusts that make you the beneficiary. Social Security will usually ask to see the document that creates the trust, to determine if the funds in the trust are assets to you. Similarly, if you get Medicaid, Wisconsin law requires the trustee to notify the county about the existence of a discretionary trust for a person with a disability, even if the trust is funded by a third party, in order to avoid claims against the trust for benefits.<sup>95</sup>

### **I. What are the tax effects of a trust?**

The tax impact of trusts is too big a subject to be covered in this book. Gifts and bequests to a trust can be subject to gift taxes and estate taxes, and the gift tax exemption for gifts to an individual (\$13,000 per year in 2009) usually does not apply to gifts to supplemental needs trusts. Depending on how it is written, tax on trust income may have to be paid by the person(s) who gave the property to the trust (a “grantor” trust), or by the (a “nongrantor” trust). If the trust is a nongrantor trust, the beneficiary will usually have to pay taxes on income distributed for his or her benefit, which will usually mean a lower tax bracket. Also, if the trust is a nongrantor trust and meets special standards for a *qualified disability trust*, it will be allowed to a certain amount of exempt income (\$3500 in 2008), but only if the income is kept in the trust or is otherwise taxable as income of the trust.<sup>96</sup> This can be a way of building up money in a supplemental needs trust tax-free for future use. People concerned with gift, estate or income tax consequences should consult an

attorney or tax advisor before setting up a trust, and in deciding how to allocate income from the trust after it is funded.

## **IX. OWNING A HOME**

### **A. What kind of resources can be excluded as a “home”?**

SSI and Medicaid will not count any interest you own in your home as a resource, as long as you live in it or consider it to be your primary home, and plan to come back to live in it. (If you receive long-term care, this exemption may be limited to equity of no more than \$750,000). A *home*<sup>97</sup> can be almost anything you live in, including a house, a condo, a mobile home, or a houseboat. Land connected to the home and related buildings on the land are part of the home and are not counted as resources. This includes land and buildings on a farm, even if a road separates parts of the land from each other.

Your interest in the home is not a countable resource, no matter what form it takes. For example, you can own the home all in your own name, share ownership with someone else, be in a cooperative, own just the right to live in the home for life, or have an interest as beneficiary of a trust.

### **B. What are some advantages of owning a home?**

Owning a home has several potential benefits:

- It may give you more control and stability than living in a home that belongs to someone else. If you rent, your landlord may decide to sell or rent your home to someone else. If you live in a home owned by a service provider, you may not get to choose where it is, how it is decorated, and who else lives there. You may have to move if you change service providers, or your needs do not match the services provided in the home.
- It may allow you to afford better housing than you could if you rented, especially if the home is largely paid for up-front, or you have loans that do not require payments while you live in the home. This can leave you with more of your SSI or other income to spend on other things.
- It may allow you to get SSI and Medicaid while still owning a substantial resource, which you may be able to preserve for future needs or for your estate. If you have a lot of money in your own name, buying a home (or paying off your mortgage) can turn the money into a resource that does not count for SSI and Medicaid and may give you a long-term benefit.
- It may be easier to get support services if you have good, stable housing, and/or can offer a nice place to live-in support staff, or to someone else who needs support services. You may also be able to reduce housing and service costs by sharing your home with someone else who needs services.
- You can individualize your home to meet your particular needs and preferences.

### C. What are some risks of owning a home?

Owning a home has some difficulties and risks. These include:

- It is important to make sure you can pay the real costs. In figuring out whether you can afford a home, you need to think about maintenance and future repair costs, as well as regular monthly payments for your mortgage, taxes, insurance and utility bills. This is complicated by the resource limits on SSI and Medicaid, which make it difficult to save for future large lump-sum costs. See Part IX.G. for approaches to this problem.
- Owning a home requires a lot of work and management, to make sure the bills get paid, the house and yard are maintained, and repairs are made. You may not want to do this work, or you may need some training or help to do it.
- It may be hard for you to move if and when you want to, because you may need to sell your interest in order to be able to afford to move. If you do move out of the home, the value of your interest in the home may be counted as a resource and may make you ineligible for SSI and Medicaid. The value of your investment in the home (or that of other people who helped you buy it) may then have to be spent for your living expenses and medical or support services. See Part VII for ways of using large lump sums.
- Your interest in the home may be subject to liens for certain services provided by Medical Assistance, or your interest in the home may be subject to recovery by Medical Assistance from your estate after your death. (See Part IV.D.)
- If you get SSI, it may be harder for other people to help you pay monthly expenses than it would be if you rented from a family member or a trust. (See Part V.E.)

### D. How can other people (or a trust) help you become a home owner?

If someone else (including a trust for your benefit) wants to help you become a home owner, it is important to think about how this should be done to fit your particular situation. Some of the choices are:

- **Give you a home, or buy a home for you in your own name.** If the person or trust pays to the seller all or part of the cost of an interest in a home that you will own in your own name, or gives you an interest in a home directly, the gift will be considered in-kind income. Medicaid will not count this as income. SSI will count it as in-kind support in the month you get it, but only up to the presumed maximum value for in-kind support<sup>98</sup> (\$244.66 in 2010). (See Part V.E.) This means that you can get ownership and control of a large resource without a big effect on your benefits when you get it. It is important that you move into the home in the month you get it, so that it is not treated as a gift of a countable resource, or as a countable resource in the next month. Problems with helping you in this way include:

- If you move out or sell the home, and do not buy another one, you will have a large countable resource in your own name that may not be helpful to you, and may have to be spent or put into a “payback” trust. (See Part VII.)
- If you get long-term support services, Medicaid may end up taking your interest in the home through estate recovery when you die, so that an investment made by your family cannot go back to your family. (See Part IV.D.)
- You may be the only one with the job of managing and maintaining the home.
- **Lend you the money to buy an interest in a home.** Another way a person or trust can help you buy a home is to lend you the money, and take a mortgage on the home for the loan. A loan is not countable income for SSI and Medicaid, and the proceeds are not a countable resource if you invest them in a home before the beginning of the next month. The loan can be with or without interest, and could be written so that you only have to pay it if you sell the home. This means that the loan does not increase your costs of living in the home, but that if you sell the home the money you borrowed (plus any interest) goes back to the person or trust who loaned it to you. The money at that point is not yours, so it is not a resource for you, and is not subject to Medicaid estate recovery or liens.
- **Give or sell you a life estate in the home, and keep a remainder interest.** A *life estate* is the right to live in the home and control its use during your lifetime. Usually, if you own a life estate you are also responsible for any expenses during your life. Someone else owns the *remainder interest*, which means the right to full ownership of the house after you die. If you buy a home and only get a life estate, it is important that you know the value of the life estate, and not pay more than that value. Otherwise, you will be making a gift to the owners of the remainder interest that may affect SSI benefits or Medicaid long-term support. (See Part VII.B.) A life estate gives you almost all the rights of a full owner, but it protects the investment of the person or trust who buys or keeps the remainder interest in the home in several ways:
  - If you **sell** the home, you only get the value of the life estate paid to you. (This is a share of the full value of the home, based on your life expectancy, and goes down as you get older.) The owner of the remainder interest gets the rest.
  - If you **move** out and do not sell the home, Medicaid does not count the life estate as a resource and does not require that the house be sold. The full value of the home goes to the owner of the remainder interest when you die. This will mean that the ownership of the home may be tied up as long as you are alive, and you will have to find a way to pay the costs of owning it, e.g., by renting it out to someone. If they want, the owners of the remainder interest can rent it from you.
  - Because your whole interest in the home ends when you die, you do not own anything that can be subject to Medicaid estate recovery or a Medicaid lien.

- **NOTE:** If you purchase a life estate, the purchase may be considered a divestment, and result in a penalty period of ineligibility for some long-term support services, if you do not live in the home for a period of 12 consecutive months after the purchase.<sup>99</sup>
- **Share ownership with you as a joint tenant or tenant in common.** If another person or trust is paying part of the cost of a home, it may make sense for them to own an interest in the home equal to their investment. A joint tenant owns an equal share of the value of the home, and gets full ownership when the other joint tenant dies. A tenant in common can own an interest of any size, depending on how much of the purchase price he or she paid. (If you are joint tenant, you may become the full owner if the other owner dies first. Also, if a Medicaid lien is put on the home while you are alive, it can continue to affect the home after you die. See Part IV.D.) Someone who shares ownership with you is also responsible for part of the ownership costs (e.g., his or her share of taxes), which can reduce your shelter cost responsibility. If you have a housemate, it may also be easier for you if he or she is renting from your co-owner, so that you do not have to be a landlord, and the rent will not count as your income.
- **Own the home in the name of someone else, or of a trust, and rent it to you.** See Part IX.I. and J., below.

For more in-depth discussion of buying a house see *Threshold: A House Buying Guide for People with Disabilities*, part of the Community Supported Living Series published by the Wisconsin Council on Developmental Disabilities. See Part X.C.

### **E. What if you want to move out of a home that you own, or sell it?**

You can sell your home and use the money you get to buy another home somewhere else. The money you get for selling your house will not be counted as a resource if you use it to buy another house within three months after you get the money.<sup>100</sup>

Usually, if you move out of your home your interest in it becomes a resource in the month after you move out, if you can sell it. This can cause you to lose SSI/Medicaid and may force you to sell the home and use up the proceeds. Some exceptions are:

- If you leave your home temporarily, for example to go to a hospital or on a vacation, but intend to come back to it, it is not counted as a resource. If you are in a nursing home or other institution, the home is not counted if your spouse or another relative who is dependent on you continues to live in the home, even if you do not plan to return to the home.<sup>101</sup>
- If you share ownership of the home with another person and you move out, the home may not be counted as a resource if the sale would cause an undue hardship to a joint owner, due to loss of housing.<sup>102</sup>
- If you are making a reasonable effort to sell your home but have not yet been able to sell it, SSI and Medicaid will continue to exclude it as a resource. However, you may have to pay back some of the SSI benefits you get when the home is sold.<sup>103</sup>

### **F. What expenses of the home can others help you with?**

As discussed in Part V.E., if someone else pays part of your shelter costs for you, SSI may count all or part of the payment as in-kind support. This can reduce your SSI payment by an amount up to the presumed maximum value. If someone pays for future shelter costs in a lump-sum, the payment may not be counted as a single payment in the month it is received, but may be counted as in-kind income for all the months to which it applies.<sup>104</sup> Medicaid does not count shelter costs as income, but paying your own shelter costs, at least up to a set amount, may help you with eligibility as a categorically needy individual (See Parts VI.A. and B.), and may help reduce your Family Care/HCB waiver cost-share (see Part VI.D.).

If your benefits are affected by whether or not you pay your own shelter costs, it is better if people or trusts pay for things that are not considered shelter costs. Shelter costs for SSI include mortgage payments, cost of insurance required by your mortgage-holder, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.<sup>105</sup> Expenses that are not considered shelter costs, and that someone else can pay without affecting SSI, include: telephone, cable and internet bills; costs of maintenance services and repairs; replacement of furniture and equipment; insurance not required by a mortgage holder; condominium association fees; and purchase of household supplies.

### **G. How can you arrange to pay large, lump-sum expenses?**

Paying expenses of home ownership can be difficult on SSI income levels. A particular problem is paying property taxes and major repairs: money you save to pay lump-sum tax bills and future repair costs will count as a resource and may put you over resource limits. Possible options are:

- If you are not on SSI, and are working, you may want to consider being eligible under the MAPP program, which allows you save resources above the usual SSI and Medicaid limits. See Part VI.G.)
- Try to arrange payment of taxes with the municipality to allow you to prepay on a quarterly or monthly basis. (This often does not work.)
- Borrow the money for the taxes or repairs when they are due, and then pay the money back before tax time comes again. (A family member or trust created for you by someone else can be the lender, and does not have to charge interest.)
- If you are a co-owner with someone else, he or she may be responsible for part of the costs, e.g., his or her share of the taxes, and this can reduce your costs.
- If you have the kind of trust that allows you to put your own money into the trust, you may be able to use the trust to accumulate money to be used for future taxes or repairs. (See Part VIII.F. and IX.J.)

## **H. What happens if you rent out part of your home?**

If you rent out part of a home that you own or rent in your own name, any profit you make can be considered income.<sup>106</sup> In figuring income for SSI and Medicaid, you can subtract your necessary expenses from the rent, including the renter's share of mortgage interest, taxes, insurance, utility costs and maintenance costs. This means that renting can be a way to help you to share the costs of home ownership with someone else without a major effect on SSI/Medicaid. However, the fact that mortgage principal payments do not offset the rent can become a problem at the point when most of your mortgage payment is principal rather than interest.

If you are sharing your home equally with someone else, it is important to say in the sharing agreement that your housemate is renting not only a room, but also shared use of the rest of the home (other than your room). This provides a basis for saying that your housemate should pay half the expenses of the home, and not just the expenses for his or her room.

If someone else helps you buy your home, you may want them to keep an ownership interest in the home so that they can take on the role of being landlord to your housemate. For example, your parent could own a one-half interest in your home, and rent his or her interest to your housemate. That way, you do not have to be a landlord, and none of the profit from rent is your income.

## **I. When might it make more sense for another person or trust to own or lease a home and then rent it to you?**

If another person, or a trust, wants to use a home or money to provide a place for you to live, it may sometimes make more sense for the other person or trust to own or lease the home, and then rent it to you, rather than giving you an ownership interest. You will not be the direct owner, but a lease can be written to give you a lot of control, and you will at least have a landlord whose main concern is providing a home for you. Reasons why this might be a better solution for you may include:

- If you need help paying the full costs of living in the home, and you get SSI, it is clear that the owner of the home (other than a trust) can rent you the home for less than the real cost, as long as you are paying rent that is at least equal to the presumed maximum value. (See Part V.E.) In this situation, the person who is renting to you can pay all other costs of owning and maintaining the home without affecting your benefits. (See Part IX.J. for limitations on the ability of a trust to take on this role, if you are on SSI.)
- If you need help managing the home, the person or trust can provide management.
- If you need to share expenses with a housemate, the rent your housemate pays will not count as your income, because it goes to the owner of the home and not to you. This makes it easier to charge a fair rent without worrying about the SSI rules on what expenses can be used to offset rental income. (See Part IX.H.)

- If you move out, the person or trust who owns the home can sell it or rent it out and use the money to help you in some other way. This can include buying or renting another home for you, but could also include buying other things you need or want.
- It may be a better investment for the person helping you, so they may be more willing to help you. Any growth in the value of the home will go to the owner. Also, if you only have a rental agreement, you will not own anything that can be subject to a Medicaid lien or estate recovery, so the person helping you knows they will not lose their investment to Medicaid.

#### **J. Can a trust be used to help you own a home, or to provide you with housing?**

A trust is potentially a useful way to provide housing, either by helping you buy a home in your own name, loaning you funds to buy or maintain a home, or holding a home in trust for your use.<sup>107</sup> An advantage of ownership by a trust is that, if a home owned by a trust is sold, the money received will be added to trust assets, so they will be protected to be used only as the trust directs. Some special considerations that apply to home ownership by a trust include:

- Whoever sets up the trust should make sure that the trustee is willing and able to take on the responsibility of managing the home, or of hiring someone else to do property management. Not all trustees will do this work, and some may charge special fees.
- Under a policy interpretation made by Social Security that affects people on SSI, if you, as the beneficiary of a trust, are not able to pay the expenses of home ownership, the difference between the expenses paid by the trust and the amount the beneficiary pays can be counted as income of the beneficiary for SSI purposes, up to the presumed maximum value. This policy makes it less desirable for a trust to own a home for a person who receives SSI, unless the person can afford to pay enough rent to cover the expenses of owning the home, either by himself or including amounts paid by a housemate.
- It may be harder to get financing to buy a home that is owned by a trust. Check with lenders before deciding if this is a good ownership model for you.

### **X. LEARNING MORE; KEEPING UP WITH CHANGES;**

#### **A. Finding and applying program laws, rules and policies.**

The endnotes in this book give citations to laws, rules and policies about an issue. These often give more detail about an issue, and how it applies to different situations, than can be provided in a short book. Here are a few pointers about looking up and applying laws, rules and policies:

- The laws on SSI are in Title XVI of the Social Security Act, 42 United States Code (U.S.C.) §§ 1381-1383c. Federal rules are at 20 Code of Federal Regulations (CFR) Part 416. Policy followed by the Social Security Administration is contained in the *Program Operations Manual System* (POMS). The laws on Medical Assistance



(Medicaid or Medicaid) are in Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v. Federal rules on eligibility are at 42 CFR Part 435. State laws and rules on eligibility are at §§ 49.45-.47, Wis. Stats., and Ch. HFS 103, Wis. Admin. Code. State eligibility policy used by county income maintenance workers is contained in the state's *Medicaid Eligibility Handbook* (MEH).

- The policy manuals are easiest to read, have the most detail, and are usually the best place to start. However, it is important to remember that, if a policy manual conflicts with a law or rule, the law or rule controls.
- Rules are slow to change. Sometimes, the law has changed, but a rule has not been changed to catch up with the change in the law. In that case, the law controls, and the policy manual can follow the law and not the rule.
- In Medicaid, federal law and rules control over state law, rules and policy, but there may be a delay while federal law is adopted and implemented by the state.
- On issues of how to count resources and income to determine eligibility, the state Medicaid program is supposed to be no more restrictive than the SSI program. Generally, if the *Medicaid Eligibility Handbook* is more restrictive than SSI policy about whether something counts as income or a resource, SSI policy should control.

State laws and rules can often be found in local libraries, but the policy materials are available only on the internet, or by asking the agency involved to give you a copy. Here is where to find laws, rules and policies on the internet:

- The federal laws affecting Medicaid and SSI are in the Social Security Act, which is on Social Security's website (see below). Most of these laws are also in the U.S. Code, which uses a different numbering system. The U.S. Code can be found at <http://straylight.law.cornell.edu/uscode/>. All federal rules are compiled in the Code of Federal Regulations (CFR) at <http://www.gpoaccess.gov/cfr/index.html>. Rules that are too new to be in the CFR are in the Federal Register (FR) at <http://www.gpoaccess.gov/fr/index.html>.
- Social Security's website, [www.ssa.gov](http://www.ssa.gov), has a broad range of information about Social Security programs. Links to the laws and rules affecting Social Security and SSI, the Program Operations Manual System (POMS), and the *Social Security Handbook* can be found at <http://policy.ssa.gov/>. The POMS is the manual used by workers at Social Security in making most decisions about individual cases, and has the most detail. The *Social Security Handbook*, which has a link at that site, is a good plain-language description of Social Security programs.
- The website of the Centers for Medicare and Medicaid Services, <http://www.cms.hhs.gov/>, has information about federal law and policy governing Medicaid, as well as other information about these programs.
- The Wisconsin Statutes (state laws) and Wisconsin Administrative Code (state rules) are on the state legislature's website at [www.legis.state.wi.us/rsb](http://www.legis.state.wi.us/rsb).

- The state Department of Health Services (DHS) website, [www.dhs.state.wi.us](http://www.dhs.state.wi.us), has eligibility and coverage information about many of the programs mentioned in this book. Information about the state SSI supplement is on the site at <http://www.dfs.state.wi.us/ssi/index.htm>.
- The state *Medicaid Eligibility Handbook (MEH)* for people who are eligible based on being disabled or over 65 is at <http://www.emhandbooks.wi.gov/meh-ebd/>. This is the manual used by county workers in determining Medicaid eligibility. There is now a separate manual for BadgerCare+, the Medicaid program for people eligible because they are members of low income families with minor children. (As this is written in October, 2009, the divestment policy discussed in Part VII.B. is not yet in the *MEH*.)

### **B. Cost of Living Adjustments**

Many of the dollar amounts used in determining eligibility and benefits go up every year with changes in the cost of living. This change is called a *cost of living adjustment* or COLA. There are several sources that you can use to get up-to-date numbers for years after 2009. These include:

- Social Security's website gives the COLA to federal SSI and the numbers Social Security uses to decide if someone is working in substantial gainful activity. Go to <http://www.ssa.gov/cola/>, and look for the current year.
- The state's SSI website has a chart of both the current federal SSI benefit and the current state SSI benefit, for people in different living arrangements. Go to: [http://www.dhfs.state.wi.us/ssi/ssi\\_e\\_policy/appendixB.htm](http://www.dhfs.state.wi.us/ssi/ssi_e_policy/appendixB.htm).
- The *Medicaid Eligibility Handbook* is updated each year to include COLA adjustments in Medicaid, including the eligibility and cost-share limits for the home and community-based waiver programs, and amounts of income and resources protected by the spousal impoverishment program.
- Each year, the state Bureau of Aging and Long Term Care Resources, as part of its *COP Information* series, puts out a *Financial Eligibility and Rates Bulletin*. The bulletin includes SSI payment levels and most of the income and resource limits that apply to Medicaid, as well as rates for long-term care programs. To get a copy, send a request to BOALTC at P.O. Box 7851, Madison, WI 53707-7851, or go to: [http://dhs.wisconsin.gov/ltc\\_cop/COP\\_rates.htm](http://dhs.wisconsin.gov/ltc_cop/COP_rates.htm).

### **C. Other BPDD Publications in the Community Supported Living Series**

*One Step Ahead* is part of the Community Supported Living series of books published by the Wisconsin Board for People with Developmental Disabilities (WBPDD). For ordering information on other books in the series, to view those books online, or to get updates on this book in years after the date of publication, go to <http://www.wi-bpdd.org/publications/index.cfm> or call (608) 266-7826.

## XI. NOTES

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1. See Part X for sources of the laws, rules and policies governing SSI.
2. See Part X for sources of the laws, rules and policies governing Medicaid.
3. Family Medicaid: See the *BadgerCare + Eligibility Handbook*, online at <http://emhandbooks.wi.gov/bcplus/>.
4. Medicaid must use SSI methods: Social Security Act (SS Act), § 1902(r)(2)(A) [42 U.S.C. § 1396a(r)(2)(A)] and 42 CFR §§ 435.601, .831(b)(2) & .845(b).
5. Medicaid covered services: Wis. Stat. § 49.46(2).
6. Non-Medicaid COP: Wis. Stat. §§ 46.27(6u)(c)1.b.
7. Family care expansion: <http://dhs.wisconsin.gov/managedltc/>
8. Medicare Beneficiaries: *MEH* Part 32.
9. SSI test for disability: 42 U.S.C. § 1382c(a)(3)(A)-(C).
10. Pathways provides counseling in limited areas, to specific target groups. Go to: <http://dhfs.wisconsin.gov/WIpathways/index.htm>.
11. Social Security Work Incentive Planning and Assistance program, Riverfront, Inc. 608-784-9450; Disability Rights Wisconsin can be reached on its website, or at (608) 267-0214.
12. 49.47 (4) (b) (intro.), as affected by § 1327 of 2009 Wis. Act
13. Continuing disability reviews: 20 CFR §§ 404.1579 & .1589 and 416.986 & .994.
14. Resource defined: 20 CFR § 416.1201; POMS § SI 01120.010; *MEH* §.16.2.1. (Note: state Medicaid uses the term “assets.”)
15. Income defined: 20 CFR § 416.1102; POMS § SI 00810.005; *MEH* §15.1.1 (click on highlighted word “income”).
16. Medicaid treatment of lump sums: *MEH* § 15.4.12 and 16.7.11.
17. SSDI and SSI backpayment exemption: 29 CFR § 416.1233; POMS § SI 01130.600; *MEH* § 16.7.11.1.
18. Value of a resource: 20 CFR § 416.1201(c)(2); POMS § SI 01110.400.
19. Treatment as a couple: SS Act § 1614 (b) [42 U.S.C. § 1382c]; 20 CFR 416.1801 ff.
20. Treatment of a married person as an individual: *MEH* § 15.1.1.
21. Deeming: 20 CFR § 416.1160-.1169 and .1202-.1204a; POMS SI §§ 01300.000 ff.

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22. When in month resources are counted for SSI: 20 CFR § 416.1207(a); POMS SI § 01110.600;
  23. Resource limits: 20 CFR § 416.1205; SI § 01110.003.
  24. When in month resources are counted for Medicaid: *MEH* § 2.8.1-.2; § HFS 103.08(1), Wis. Admin. Code.
  25. Voluntary Recovery: *MEH* §§ 22.1.10 and 24.7.3.
  26. .Retroactive Medicaid: *MEH* 2.8.2; § HFS 103.08(1) and (2), Wis. Admin. Code.
  27. Resource availability rule : 20 CFR § 416.1201(a) ; POMS SI § 01110.115(A) ; *MEH* § 16.2.
  28. Conditional benefits (on sale of resource) : 20 CFR §§ 416.1240 - .1242; POMS SI §§ 01150.200 and .201; *MEH* § 16.2.1 and .2.
  29. Home exclusion : 20 CFR § 416.1212; POMS SI § 01130.100 ; Wis. Stat. § 49.47(4)(b) and (bc); *MEH* 16.8.1.2-.4.
  30. Household and personal effects exclusion: POMS SI § 01130.430; 20 CFR § 416.1216; *MEH* § 16.7.1.
  31. Motor vehicle exclusion: 20 CFR § 416.1218; POMS SI § 01130.200; *MEH* § 16.7.9.
  32. Property essential to self-support exclusion: POMS SI § 01130.501-.504; 20 CFR §§ 416.1220-.1224 (the rule is out of date in placing a \$6000 limit on value of property used in a trade or business); *MEH* § 15.6.3.1 and 16.9.
  33. Life insurance exclusion: 20 CFR § 416.1230; POMS SI § 01130.400; *MEH* § 16.7.5
  34. Burial space exclusion: 20 CFR § 416.1231(a); POMS SI § 01130.400; *MEH* § 16.5.4.
  35. Burial funds exclusion: 20 CFR 416.1231(b); POMS SI § 01130.410; *MEH* § 16.5.5.
  36. Plan to achieve self-support exclusion : 20 CFR §§ 416.1124(b)(13) and .1225 - .1227; POMS SI §§ 01130.510 and 00870.001 ff.
  37. Medicaid self-support plans: *MEH* §§ 15.7.2.2 and 16.7.19.
  38. Gifts set aside for educational costs: 20 CFR §§ 416.1124(b) and 416.1250; POMS §§ [SI 00830.455](#) and SI 01130.455.
  39. Liens and estate recovery: § 49.496, Wis. Stats., and § HFS 108.02(10)-(12), Wis. Admin. Code.

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40. Earned income defined: 20 CFR § 416.1110-1112; POMS SI § 00810.015; *MEH* § 15.5.
  41. Unearned income defined: 20 CFR § 416.1120-1123; POMS SI § 00810.015; *MEH* § 15.4.
  42. Unearned income exclusions: 20 CFR § 1124; POMS SI § 00830.050-.099; *MEH* § 15.4.
  43. Basic earned income exclusions: 20 CFR § 416.1112; POMS SI § 00820.500-.520; *MEH* § 15.7.5.
  44. IRWEs and BWEs: 20 CFR § 416.1112(6) and (8); POMS SI § 00820.530-.565; *MEH* § 15.7.4.
  45. Plans to achieve self-support: See Note 29.
  46. SSI State Supplement: § 49.77, Wis. Stats.; state administrative policy can be found at [www.dhfs.state.wi.us/ssi/index.htm](http://www.dhfs.state.wi.us/ssi/index.htm).
  47. SSI computation month: 20 CFR § 416.420; POMS SI § 02005.001.
  48. State SSI “grandfathering”: § 49.77(2)(a)3., Wis. Stats.
  49. Medicaid and SSI comparability: See Note 4.
  50. Special exempt income: *MEH* § 15.7.2.
  51. Medical and support services: 20 CFR § 416.1103(a) & (b); POMS SI § 00815.050.
  52. Education and training: 20 CFR § 416.1124(3).
  53. Loans: 20 CFR § 416.1103(f); POMS SI § 00815.350 ; *MEH* § 15.4.8.
  54. Transportation tickets: 20 CFR § 416.1124(c)(16); POMS SI § 00830.521; *MEH* § 15.3.25.
  55. Payment of bills: 20 CFR § 416.1103(g); POMS SI 00835.400.
  56. Health insurance costs: 20 CFR § 416.1103(a)(6).
  57. Gift of an excluded resource : 20 CFR § 416.1103(j); POMS SI § 00815.550.
  58. Gifts to a PASS plan and self-support plan: See notes 29 and 30.
  59. 20 CFR §§ 416.1124(b) and 416.1250; POMS §§ [SI 00830.455](#) and [SI 01130.455](#).
  60. 20 CFR § 416.1124(b); POMS § SI 00810.410.
  61. In-kind support and maintenance: 20 CFR §§ 415.1121(h) & .1130 - .1145; POMS SI § 00835.000 ff.

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62. Presumed maximum value: 20 CFR §§ 416.1140-.1141; POMS SI § 00835.300 ff.
  63. Rent at less than market value: *Jackson v. Schweiker*, 683 F.2d 1076 (7th Cir. 1982), implemented by 20 CFR § 416.113(b); POMS SI § 00835.380.C.2.
  64. Household of another: 20 CFR §§ 416.1131-.1133; POMS § POMS SI § 00835.200.
  65. Fair share calculation: 20 CFR § 416.1133; POMS § SI 00835.160, .465 and .475.
  66. Flat rent or room and board: SI 00835.120A.5. and E.
  67. Medicaid treatment of in-kind income: Wisconsin State Plan under Title XIX of the Social Security Act, Supplement 8a to Attachment 2.6-A, effective 10/1/91; § HFS 103.07(2)(c), Wis. Admin. Code.
  68. EBD Categorical Eligibility Income Limit: *MEH* § 39.4.1.
  69. Medicaid Disregard of Disabled Adult Child benefit: SS Act § 1634(c) [42 U.S.C. § 1383c(c)]; *MEH* § 25.2.2.
  70. Medicaid disregard of disabled widow(er) benefit: SS Act § 1634(d) [42 U.S.C. § 1383c]; *MEH* 25.3.
  71. Disregard of COLAs: § 503 of P.L. 94-566, 42 U.S.C. 1396a Note; *MEH* § 25.1.
  72. Group B Family Care/HCB waiver Test: § HFS 103.07(1), Wis. Admin. Code; *MEH* § 28.8.3 and 39.4.1
  73. Family Care/HCB waiver cost-share: *MEH* § 28.5.
  74. Spousal impoverishment: § 49.455, Wis. Stats.; § HFS 103.075, Wis. Admin. Code; *MEH* § 18.
  75. Katie Beckett Program: SS Act § 1902 (e)(3) [42 U.S.C. § 1396a(e)(3)]; § HFS 103.07(f), Wis. Admin. Code; *MEH* § 25.6.
  76. 1619(b) Program: SS Act, § 1619(b) [42 U.S.C. § 1382h(b)]
  77. State SSI Administration Policy, Part II, at:  
[http://www.dfs.state.wi.us/ssi/ssi\\_admin\\_policy/Part2a.htm#1619](http://www.dfs.state.wi.us/ssi/ssi_admin_policy/Part2a.htm#1619).
  78. MAPP: § 49.472, Wis. Stats.; § HFS 103.03(1)(g), 103.04(8) and 103.087, Wis. Admin. Code; *MEH* Part 26.
  79. MAPP Premium Calculation: *MEH* 26.5.1.
  80. Medical and remedial expenses: *MEH* § 15.7.3.
  81. Medicaid Deductible: §§ HFS 103.04(3) and 103.08(2), Wis. Admin. Code.; *MEH* Part 24.

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82. Social Security and SSI Back payment exclusion: SS Act § 1613(a)(7) [42 U.S.C. § 1382b(a)(7)]; POMS SI § 01130.600; *MEH* § 16.7.11.1.
  83. Tax credit exemptions: SS Act § 1613(a) [42 U.S.C. § 1382b(a)]; POMS § SI 01130.675; *MEH* § 16.7.7 and .8.
  84. Prepayment of shelter and/or food costs is discussed in POMS SI 00835.380, .480, and .710; an example of room and board prepayment is also given in POMS SI 01140.005.
  85. Annuities under Medicaid: Wis. Stat. § 49.453(4) and (4m); 42 U.S.C. § 1396p(c)(1)(J); Wis. DHS BEM/DFS Operations Memo 09-01 (1/9/09); and *MEH* § 16.7.4.
  86. Wis. Stat. § 49.453(4c); 42 U.S.C. § 1396p(c)(1)(I); Ops. Memo 09-01
  87. Divestment for Medicaid: 42 U.S.C. § 1396p(c); § 49.453, Wis. Stats.; *MEH* Part 17. The new state policy is in BEM/DFS Operations Memo 09-01, *Divestment and Other Medicaid Asset Policy Changes Required Under the Deficit Reduction Act of 2005*, available on the DHS website at <http://dhs.wisconsin.gov/em/ops-memos/2009/pdf/09-01.pdf>.
  88. Divestment for SSI: SS Act § 1613(c) [42 U.S.C. § 1382b(c)]; POMS SI §§ 01150.001-.111.
  89. Treatment of third-party-funded trusts: POMS SI § 01120.200.D.2.; *Richland County v. DHSS*, 183 Wis. 2d 61, 357 N.W.2d 7 (Ct. App. 1994); § 701.06(5m), Wis. Stats.; *MEH* § 16.6.4.1.
  90. WisPACT, (608) 268-6006 or [www.wispact.org](http://www.wispact.org); ARC Milwaukee, (414) 774-6255; ARCh Waukesha, (262) 542-9811.
  91. Self-funded trusts: Social Security Act § 1917(d) [42 U.S.C. § 1396p(d)]; POMS § SI 01120.201; § 49.454, Wis. Stats.; *MEH* § 16.6.4.2.
  92. Power of a court to authorize a guardian to transfer property to a supplemental needs trust: Wis. Stat. § 54.20(2)(c); *Marjorie A.G. v. Dodge Co. DHS*, 2003 WI App 52, 261 Wis. 2d 679, 659 N.W. 2d 438 (Ct App, 2003).
  93. Pooled trusts for people over 65: § 49.453(8), Wis. Stats.; SS Act § 1917(c)(2) [42 U.S.C. § 1396p(c)(2)].
  94. Irrevocable burial trust: § 445.125(1)(a)2., Wis. Stats.; *MEH* § 16.5.1 and .3.
  95. Notification to county about a trust: § 701.06(5m), Wis. Stats.
  96. Qualified disability trust: Internal Revenue Code § 642(b)(2)(C).
  97. Home exclusion: 20 CFR § 416.1212; POMS SI § 01130.100; *MEH* § 16.8.1.3.

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98. Gift of home and PMV rule: 20 CFR § 416.1103(j), Example 2.
  99. Wis. Stat. § 49.453(4m); 42 U.S.C. § 1396p(c)(1)(J); Ops. Memo 09-01.
  100. Roll-over of funds from sale of home : 20 CFR § 416.1212(d); POMS SI § 01130.110; *MEH* § 16.8.1.4.
  101. Exclusion of home during temporary absence: POMS § SI 01130.100.B.5. and D.; *MEH* § 16.8.1.3.
  102. Undue hardship to co-owner of home: 20 CFR § 416.1245(a); POMS SI 01130.130; § HFS 103.06(3)(b), Wis. Admin. Code; *MEH* § 16.2.2.
  103. Conditional benefits while home is being sold: 20 CFR §§ 416.1242 and .1245(b); POMS SI § 01130.140; *MEH* § 16.2.2.
  104. Prorating lump-sum ISM: POMS § SI 00835.360 and .474.
  105. Shelter costs for ISM: 20 CFR § 416.1130(b); POMS § SI 00835.020.B.36.
  106. Rent received as income: 20 CFR § 416.1121(d); POMS SI § 00830.505; § HFS 103.07(2)(e). Wis. Admin. Code; *MEH* § 15.5.3 and 15.6.2.2.
  107. Ownership of home in trust : POMS §§ SI 01110.515.C and 01130.100.B indicate that SSI will ordinarily treat your interest in a home held in trust for you as an “equitable” ownership interest.







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