MO HealthNet & Nursing Home Eligibility: Real Life Scenarios

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Question #1: Division of Assets and Calculation of the CSRA

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Fact Pattern
Husband and wife are married, own a home, a car, a joint checking account, and a 401(k) owned solely by the wife with her husband as the beneficiary. Husband is admitted to a nursing home. The wife comes to you for advice, as she is worried about the extraordinary cost of the nursing home. What assets, and how much, would the wife be able to keep as the Community Spouse when doing a division of assets for a Medicaid application?

Division of Assets
Division of Assets law is located at Income Maintenance Manual (IMM) §1030.035.00
- This is a policy that allows a spouse who remains in the community to keep a portion of the assets of the couple while the other spouse qualifies for MO HealthNet
- There must be an institutionalized spouse to complete the division of assets
- Couples must be legally married and living together as husband and wife
- If a couple is separated and living apart, they will be considered single

Institutionalized Spouse is the spouse that resides in the hospital or nursing home
Community Spouse is the spouse that resides in the community outside of a hospital or nursing home
What Assets Can Be Divided?

There is a difference between exempt and non-exempt assets

- Exempt assets can be allocated to the community spouse
- Non-exempt assets will be divided and used to calculate the Community Spouse Resource Allowance (CSRA)

Exempt Assets
- Home (principal place of residence)
- One Car
- $1,500.00 per person cash value in life insurance OR
- Pre-paid burial plans/plots for each spouse
- Personal property
- Income producing business property

Non-Exempt Assets = Everything else

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What Date Should We Use?

The division of assets occurs at the beginning of the first continuous period of institutionalization which is defined as a stay in a hospital or nursing home and is expected to last for 30 days or more – see 42 USC §1396r-5(c)(1); Mo Code Regs Ann tit 13 §40-2.030(13)(B)(2)

- The date of institutionalization is used as the date when the value of assets is calculated
- The date of institutionalization is the first date of the “continuous period of institutionalization”
- If the Institutionalized Spouse leaves a facility and later returns, MO HealthNet will use the assessment completed for the beginning of the first period of continuous period of institutionalization or use the value of assets on that date – see IMM §1030.035.10
What Assets Can the Community Spouse Keep (CSRA)?

Calculation of the Community Spouse Resource Allowance (CSRA)
- Minimum CSRA = $23,448
- Maximum CSRA = $117,240.00

Formula to Determine the CSRA
- Step 1 – Add Countable (Non-Exempt) Assets
- Step 2 – X = 1/2 of Countable Assets
- Step 3 – Determine the CSRA
  - If X is greater than or equal to Max CSRA, then CSRA = Max Amount
  - If X is less than or equal to Min CSRA, then CSRA = either Min CSRA or the amount of assets
  - If X is between Min and Max CSRA, then CSRA = X

Once the CSRA is determined and the Institutionalized Spouse is approved for MO HealthNet, the Institutionalized Spouse’s name must be removed from all assets over $999.99 within 90 days of approval.

Spending Down to the CSRA

Convert Countable Assets to Non-Countable Assets
- Make home improvements
- Pay off the mortgage
- Pay off other debts
- Buy a more expensive vehicle
- Buy a more expensive home
- Pay attorney fees for planning
- Pre-paying burial plans/plots for each spouse
- Buy personal property for the Institutionalized Spouse or Community Spouse

Convert countable assets to income
- Medicaid compliant annuities

Reduce the value of countable assets
- Front loaded mutual funds
- Taking out loans against insurance policies
Can the Community Spouse Keep Income?

Community Spouse is not required to spend his/her income for the care of the Institutionalized Spouse

Community Spouse may keep some of the Institutionalized Spouse’s income in certain situations

- Minimum monthly maintenance needs allowance (MMNA) = $1,967.00
- Look at Community’s spouse’s gross income, and if under minimum MMNA, they will be allocated a portion of the Institutionalized Spouse’s available income
  - Available income is the amount remaining after deductions for the Institutionalized Spouse’s personal needs allowance of $45.00 and medical insurance

Can the Community Spouse Keep Income?

- Minimum MMNA is automatic
- The Maximum MMNA is $2,931.00
  - If the Community Spouse has shelter costs that exceed $590.00 per month, these can be used to increase the MMNA
  - Shelter costs include rent, mortgage, insurance, property taxes, assessment, and a utility allowance of $318.00
Fact Pattern Twist #1
Husband and wife are married, own a home, a car, a joint checking account worth $10,000.00, and a 401(k) worth $20,000.00 owned solely by the wife with her husband as the beneficiary. Husband is admitted to a nursing home. The wife comes to you for advice, as she is worried about the extraordinary cost of the nursing home. What assets, and how much, would the wife be able to keep as the Community Spouse when doing a division of assets for a Medicaid application?

What issues do you see and what are some possible solutions?
What additional facts do you need to advise this family?

Fact Pattern Twist #2
Husband and wife are married, own a home, a car, a joint checking account worth $10,000.00, and a 401(k) worth $300,000 owned solely by the wife with her husband as the beneficiary. Husband is admitted to a nursing home. The wife comes to you for advice, as she is worried about the extraordinary cost of the nursing home. What assets, and how much, would the wife be able to keep as the Community Spouse when doing a division of assets for a Medicaid application?

What issues do you see and what are some possible solutions?
What additional facts do you need to advise this family?
Fact Pattern

A man has just entered a nursing home after a sudden stroke. He has been widowed for over ten years. After discussing his financial situation, it is clear he will be eligible for Medicaid, but has gotten rid of most of his property in various ways which include the following:

• In 2012, he sold his 2005 Buick Lacrosse to his son for $20,000. The FMV for that car at the time was $22,500.

• In 2010, he gave his granddaughter $14,000 towards her college tuition, he was told by a financial planner that he could gift up to $14,000 with no tax penalties.

• In 2008, he transferred his lake house to his girlfriend through a quit claim deed.
Gifting Issues

Definition of a Gift – Transfer of an asset for less than FMV in the proceeding 5 years of applying for Vendor Medicaid for the purpose of qualifying for Vendor Medicaid.

Was the car a gift? If so, how can we remedy the transfer?
- Cure the Gift.
- Can pay the difference of $2,250
- Is son on SSDI
- Argue that its not a gift or it is FMV

More Gifting Issues:

$14,000 toward granddaughter's tuition
- Is it a gift? 5 years? Purpose?
- If so, can granddaughter give it back
- Can anyone else repay it for granddaughter

Lake House – The transfer was made in 2008 so it is beyond the 5 year look back period.
Penalty For Gifting:

If the $14,000 cannot be cured then we must advise our client that he may incur a penalty.

How to calculate the Penalty Period:
- Penalty Period – the period of time the applicant must private pay in the nursing home.
- Penalty = $14,000 / $4,744.00; 2.95 months private pay in the NH

How will dad pay through Penalty Period?

Exempt Assets

If son gives car back, car is an exempt asset for dad.
- Home
- Personal Property
- Burial Plot
- Irrevocable Burial Plan
- Income Producing Business Property
What Assets are Countable?

If granddaughter gives $14,000 back then we have a spend down because this will put him over the $999.00.

Spend down options
- pre-paid burial plans.
- Attorney Fees
- Debt
- Upgrade Vehicle
- Buy a Vehicle
- Needs of Individual
- Medicaid Compliant Annuity Option

Question #3: Calculation of Surplus Amount
Fact Pattern
You are helping Francis apply for Medicaid. Francis has no assets, she has spent it all on her nursing home bills for the past few months. Each month she receives $1,240.90 in Social Security and $97.50 as a government pension from her employment as a postal worker. Francis has expenses each month of $104.90 for Medicare Parts A and B, $78.00 for a supplemental insurance policy and $27.50 for a third-party prescription plan. How much must Francis pay to the nursing home each month?

Vendor Surplus Computation
42 CFR 435.733 – applicant must pay to the SNF their “surplus” amount.
Start with gross income
Subtract income exclusions
Subtract allowable deductions
The total is the applicant’s surplus to be paid each month to the SNF
Income Exclusions

All income exclusions in IMM 0805.015.10

Income from sheltered workshop or income as a patient worker at sub-minimum wages in an institution

VA Pension, an amount up to $90/month

Payment by relatives for non-covered services
  ◦ Newspaper, telephone, cable TV, etc.
  ◦ Cover the difference between private and semi-private room.

Allowable Deductions

Personal Needs Allowance – 0815.030.10.05

Allotments – 0815.030.10.10

Medical Deductions (health insurance premiums) – 0815.030.10.15

Child Support – 0815.030.10.05.05

Other Allowable Deductions – 0815.030.10.20
Personal Needs Allowance

Currently, $45.00 per month.
◦ If applicant is receiving VA A&A, this is in additional to the $90.00/month from VA.
◦ Reduced to $30.00 per month if applicant is receiving SSI.

Allotments

Allotments may be made to:
◦ The community spouse
◦ Minor children
◦ Dependent children living with community spouse
◦ Dependent parents living with community spouse
◦ Dependent siblings living with community spouse

Maintenance $1,967 min./$2,931 max.
Shelter Standard $590
Utility Standard $318
Telephone Standard $29
Medical Deductions (Health Insurance Premiums)

Monthly amount of any hospital/medical insurance premiums paid by participant. Includes:

◦ Health Insurance
  ◦ Any insurance policy that is designated to assist with nursing care costs while a person is a patient in a medical institution
◦ Medicare Supplemental policies
◦ Part D and Part C premiums
◦ Cancer Insurance
◦ Nursing Care
◦ Dental and Vision Policies

Insurance Premiums Not Allowed

Wage or Income Replacement policies
Accident Policies
Life insurance policies
Combination life and accident
Disability policies
Burial insurance policies
Effective Date of Surplus

Effective date is always the first day of a month.

If the applicant was in the facility on the first day of the month, the surplus is effective on the first day of that month.

If the applicant was not in the facility on the first day of the month, the surplus is effective the first day of the following month.

Fact Pattern

You are helping Francis apply for Medicaid. Francis has no assets, she has spent it all on her nursing home bills for the past few months. Each month she receives $1,240.90 in Social Security and $97.50 as a government pension from her employment as a postal worker. Francis has expenses each month of $104.90 for Medicare Parts A and B, $78.00 for a supplemental insurance policy and $27.50 for a third-party prescription plan. How much must Francis pay to the nursing home each month?
Income & Expenses

Income = $1,338.40 Total
  ◦ Social Security = $1,240.90
  ◦ Government Pension = $97.50

Expenses = $210.40
  ◦ Medicare Parts A & B = $104.90
  ◦ Supplemental Insurance Policy = $78.00
  ◦ Third-Party Prescription Plan = $27.50

Issues to Address

What are her allowable deductions and income exclusions?

Is that the gross amount of Social Security or net?

Is anything being deducted from the pension?

Does it make sense to keep the supplemental policy?

Is the third party prescription plan allowed?
Medical Deductions

May keep payments for Medicare Part A & B premium

Good idea generally to keep supplemental Medicare policy

If eligible for Medicare and MO HealthNet, must be enrolled in a Medicare Part D plan.

Third-party prescription plan (not a Medicare plan) not allowed.

Surplus Calculation

$1,338.40 Gross Income

Minus $45.00 Personal Needs Allowance

Minus $182.90 Allowed Medical Deductions
  ◦ Medicare Parts A & B = $104.90
  ◦ Supplemental Insurance Policy = $78.00
  ◦ Medicare Part D premium???

Equals $1,110.50 Surplus
Question #4: Countable Resources

Fact Pattern
Carl, a bachelor with no children, had a mid-life crisis last year, sold his house in the suburbs and moved to the lake. He bought a ski boat, jet ski, a kayak, and a convertible. He put the rest of his savings into an IRA. Last week, Carl was in a jet ski accident and is not disabled. Carl’s sister calls you for help. Carl has no liquid case and the nursing home is asking her to pay his bills.

If Carl is applying for MOHealthNet benefits today, what will happen to the lake house, ski boat, jet ski, kayak and convertible? What about the IRA?
Lake House

An individual's home is defined as the person's principal place of residence. 13CSR Section 40-2.030(2). Section 208.010.9 RSMo. Considered as an exempt asset as long as "providing shelter to the applicant or recipient, or his or her spouse or dependent child". 208.010.9 RSMo.

- See 208.152.1(4) RSMo., limitation on equity in exempt home. IMM 1030.010.05 Homestead Exemption,
- Current limitation is $543,000 (January 1, 2014).
- Limitation does not apply if there is a spouse or dependent/disabled child living in the home.

Lake House would be considered exempt as long as less than $543,000 in equity in the home.

Issue Spotting

Considerations about the Exempt Home-
- Will the home be subject to a TEFRA lien or estate recovery at Carl's death?
- Who will pay the bills (taxes, insurance, minimal utilities) on the home when Carl is qualified for benefits?
- Does Carl still have his mental capacity to be able to sell the property?
- If not, does Carl have a Durable Power of Attorney document in place.
- Can the sister buy the home?
Ski Boat, Jet Ski and Kayak

Ski boat and the Jet ski have a title, and will not be considered exempt. See IMM Sections 1030.00.00 et seq.

Kayak could be considered exempt under the category of the "Applicant's personal belongings", See IMM section 1030.25.00

Convertible

One automobile or truck, regardless of its value, owned by the applicant/recipient or spouse is exempt: 13 CSR Section 40-2.030(10)(B); IMM Section 1030.025.00

Carl's convertible will be considered as an exempt asset and he can continue to own it, while qualified for benefits.
IRA

Pursuant to IMM 1030.005.00, all property that is not considered exempt is available.
Carl will not be able to qualify for MOHealthNet benefits while owning his IRA.

Issues to Consider

Who is your client?
What is the goal?
Do you have the requisite legal authority to proceed with a desired plan?
Is Sister personally responsible for Carl's bills?
Is there going to be a lawsuit concerning the jet ski accident?
Is it possible to set up a trust for Carl and transfer his assets to it? (d4a trust, pooled trust)
Are there other options available to Carl?
Questions???