

§3174-H. Availability of income between married couples in determination of eligibility

Notwithstanding this chapter, for the purpose of determining medical indigency and eligibility for assistance for an individual residing or about to reside in an institution eligible for Medicaid participation under this section, there shall be a presumption, rebuttable by either spouse, that each spouse has a marital property interest in 1/2 of the total monthly income of both spouses at the time of application for medical assistance. Only the 1/2 interest of the applicant spouse shall be considered available to the spouse in determining eligibility for medical indigency and eligibility for assistance. [PL 1989, c. 502, Pt. A, §72 (NEW).]

The marital property interest of the applicant spouse in the income of both spouses may be rebutted upon a showing of one of the following: [PL 1989, c. 502, Pt. A, §72 (NEW).]

1. Court order. A court order allocating marital income pursuant to alimony, spousal support, equitable division of marital property or disposition of marital property; [PL 1989, c. 502, Pt. A, §72 (NEW).]

2. Individual ownership. The establishing of sole individual ownership of income from current active employment; or [PL 1989, c. 502, Pt. A, §72 (NEW).]

3. Supplementary allocation of spousal income. By applying to the Department of Health and Human Services for a supplementary allocation of spousal income pursuant to this section. [PL 1989, c. 502, Pt. A, §72 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

The Department of Health and Human Services shall establish standards for the reasonable and adequate support of the community spouse and the community residence of the couple. The standards shall consider the cost of housing payments, property taxes, property insurance, utilities, food, medical expenses, transportation, other personal necessities and the presence of other dependent persons in the home. [PL 1989, c. 502, Pt. A, §72 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

The community spouse may apply to the Department of Health and Human Services for a determination pursuant to the standards that the community spouse requires a larger portion of the marital income. Therefore, a smaller portion of the marital income will be available to the applicant spouse in determining medical indigency and eligibility for assistance. [PL 1989, c. 502, Pt. A, §72 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

As soon as authorized by federal law, the department shall implement this section. [PL 1989, c. 502, Pt. A, §72 (NEW).]

SECTION HISTORY

PL 1989, c. 502, §A72 (NEW). PL 2003, c. 689, §B6 (REV).

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