❖ELDER LAW REVIEW™❖

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RONALD FATOULLAH & ASSOCIATES
Great Neck Office: 60 Cutter Mill Road, Suite 507, Great Neck, NY 11021 **(516)-466-4422**
Toll Free: 1-877-ELDER LAW *or* 1-877-ESTATES

7 Penn Plaza-Suite 1602	100-15 Queens Blvd.	1861 86th Street	466 Central Ave.
New York, NY 10001	Forest Hills, NY 11375	Brooklyn, NY 11214	Cedarhurst, NY 11516
(212) 751-7600	**(718) 261-1700**	**(718) 621-5300**	**(516) 466-7068**

DETERMINING INCOME WHEN APPLYING FOR MEDICAID

In our last edition of the Elder Law Review™ entitled "Applying for Medicaid While Owning A Business", we explained that Medicaid is a means-tested program for individuals with limited resources and that upon application, the Medicaid agency will review an applicant's available assets and income in order to make a determination for eligibility.

When reviewing an applicant's income, the Medicaid caseworker will consider the amount and the type of available income. Income can come from any source. It can include payments of money, goods, or services made on a one-time basis or on a recurring basis. In addition, it may include both earned and unearned income. Income received by a Medicaid applicant/recipient is counted in the month in which it is received when determining eligibility. Resources, however, may be retained from month to month up to the levels exempted. For 2018, the New York State resource allowance is $15,150, with no more than $862 in monthly income in order to be deemed eligible for community-based Medicaid. Please keep in mind that for nursing home Medicaid, all income less a $50 personal allowance is turned over to the facility unless the community spouse has been budgeted a portion or all of the applicant/recipient's income.

All earned and unearned income received during the month will be considered by Medicaid. In determining the amount of earned and unearned income, allowable business expenses will be deducted. Earned income is income received as a result of working. Earned income includes, but is not limited to, wages, salaries, tips, commissions, bonuses and income from self-employment or a small business. Unearned income is income that is not received as compensation for work performed. Unearned income includes, but is not limited to, pensions, benefits, dividends, interest, insurance compensation and rental income.

Medicaid will deduct certain types of "in-kind" income, i.e. income not received directly by the Medicaid applicant but used on his or her behalf. In-kind income is income received in goods or services rather than in money. In-kind income (based on the current value of the goods or services received) received from anyone other than a spouse, is considered available income *only if it is earned income*. Gifts and one-time contributions are not considered available income, regardless of the source. Examples of this would be clothing, furniture, an automobile or perhaps a pre-paid trip.

Income from a person's self-employment or from a small business owned and operated by the individual, after allowable business expenses are deducted, is considered available earned income. The following allowable business expenses may generally be deducted: rental of quarters and equipment; salaries and fringe benefits of employees; cost of goods for resale; business taxes, licenses and permits; cost of tools, supplies and raw materials; insurance for the business; lights, heat, water, sewage and telephone charges; advertising and travel; taxes and carrying charges on any property used in the business (other than payments on the principal of a mortgage); for aged, certified blind, or certified disabled applicants/recipients, depreciation costs for buildings, equipment and materials necessary for and directly related to the operation of the business; and, any other expense necessary for and directly related to the operation of the business.

As noted above, income received from the rental of an individual's real or personal property, after allowable expenses are deducted, is considered available income of the person. For people 65 years of age or older, certified blind, or certified disabled, such income will be considered unearned income. The following expenses are deductible from rental income: property, school, water and sewer taxes; the cost of utilities if they are included in the rent; interest payments on mortgages for the property (but not payments on the principal of the mortgage); the cost of essential repairs on the property (but not the cost of improvements to the property); wages paid to employees for maintaining the property; and any other expenses necessary for the maintenance of the property. A person renting out a portion of his/her homestead may deduct these expenses *to the extent that they are attributable to the rented portion of the property*.

A portion of the spouse's (legally responsible relative's) income and resources, if he/she is of *sufficient financial ability*, will be considered available to the applicant/recipient. "Sufficient financial ability" means that the spouse has income and assets that exceed the statutory levels (for 2018, $3,090 monthly income and $74,820 in available resources). With respect to applicants/recipients who are 65 years of age or older, certified blind, or certified disabled, the amount of a spouse's income, if any, to be deemed available to the applicant/recipient will be determined in accordance with laws regarding the Minimum Monthly Maintenance Needs Allowance for the spouse ($3,090 in 2018). If the spouse has in excess of $3,090, he/she will be asked to contribute 25% of the excess income above that number.

It must be noted that the spouse has the right to refuse to contribute his/her excess income and resources toward the Medicaid applicant's care. This is known as a "spousal refusal". Medicaid eligibility will not be denied to the applicant if the spouse refuses or fails to contribute assets/income. However, Medicaid has the right to recover from the spouse the cost of any Medicaid benefits provided. Please also note that there are some types of income that are exempt from Medicaid, such as Veteran's aide and attendance, but this is beyond the scope of this month's Elder Law Review™.

Many people applying for Medicaid services are well above the aforementioned thresholds for income and resources; however, there are options available which will help ensure that upon submitting an application, the applicant has properly divested herself or himself of assets and or resources. With regard to Community Medicaid, an applicant over the age of 65 or deemed disabled, has the option of contributing his or her excess income (over $862.00/month) to an approved New York State Pooled Income Trust for Persons With Disabilities. A Pooled Trust allows the Medicaid recipient to have his or her non-medical bills paid out of the trust each month. And, of course, as described above, the option of spousal impoverishment budgeting for applicants with a spouse in the community may also be available.