



## ADMINISTRATIVE RULES OF MONTANA



### **37.82.1320 POST-ELIGIBILITY APPLICATION OF PATIENT INCOME TO COST OF CARE**

- (1) After the nonfinancial and resource eligibility criteria are met, the income of individuals in a residential medical institution will be applied toward the cost of care as provided in this section. This provision applies to all covered groups in this subchapter, except:
  - (a) individuals under age 19 who continue to receive AFDC even though they are in a medical institution or intermediate care facility, as provided in ARM 37.82.1305(1)(a); and
  - (b) individuals receiving supplemental security income on the basis of the supplemental security income standard for institutional individuals, as provided in ARM 37.82.1306(1)(a).
- (2) Amounts will be deducted from a single individual's gross income in the following order to determine the amount applicable toward his cost of care:
  - (a) up to \$65 of gross earned income;
  - (b) a personal needs allowance of \$50;
  - (c) a home maintenance allowance, when applicable, determined in accordance with (7); and
  - (d) medical or remedial care expenses of the institutionalized individual as defined in (8).
- (3) During any month in which an institutionalized spouse is in the institution, no income of the community spouse may be deemed available to the institutionalized spouse except as specifically provided in this section.
  - (a) In determining whether any income, including income from a trust or from any other source, is income of the institutionalized or community spouse after the institutionalized spouse has been determined eligible for medical assistance, the following rules shall apply regardless of state law regarding the division of marital property to the contrary:
    - (i) income from a trust or other written agreement shall be considered available according to the terms of the trust or agreement; or
    - (ii) if there is no trust or written agreement making provision for distribution of income, the income shall be considered available according to the manner in which it is distributed.
  - (b) The rules in (3) shall not apply, unless otherwise made applicable under state or federal law, to determinations of an individual's interest in any income or resource under any public assistance or medical assistance program to individuals who are not institutionalized or community spouses.

- (4) The following amounts will be deducted monthly in the following order from the gross income of an institutionalized spouse to determine the amount applicable toward the cost of care:
  - (a) up to \$65 of gross earned income;
  - (b) \$50 personal needs allowance for the institutionalized spouse;
  - (c) a monthly income allowance for the community spouse determined in accordance with (9);
  - (d) a family allowance for each family member equal to one-third of the difference between the basic needs standard, as determined under (9)(b)(i)(A) through (C) of this rule, and the family member's gross monthly income;
  - (e) incurred medical or remedial care expenses of the institutionalized spouse as defined in (8); and
  - (f) Regardless of any other provision of this section, the community spouse's monthly income allowance as defined in (9) of this rule shall not be less than the amount of any monthly support which an institutionalized spouse has been ordered by a court to pay to the community spouse.
- (5) The institutionalized spouse or his representative is responsible to report to the department any changes to his own and the community spouse's income within ten days of the change.
- (6) Unless the institutionalized spouse specifically objects, a community spouse monthly income allowance will be deducted from the institutionalized spouse's monthly income and must be provided to the community spouse.
- (7) The home maintenance allowance for purposes of (2)(c) of this rule shall consist of:
  - (a) the medically needy income level for one as defined in ARM 37.82.1106 if the client:
    - (i) entered the facility from a community living arrangement after the first day of the month; or
    - (ii) leaves the facility into a community living arrangement on or before the last day of the month; and
  - (b) for a maximum of six months, the medically needy income level for one as defined in ARM 37.82.1106 when a physician certifies that the individual is likely to return to the home within six months.
- (8) Medical or remedial care expenses of the institutionalized individual for purposes of (2)(d) and (4)(e) of this rule include:
  - (a) Medicare and other health insurance premiums, deductibles or coinsurance;
  - (b) for three months or until paid in full, whichever comes first, medical or remedial care expenses which:
    - (i) were incurred during the three months immediately prior to application for Medicaid coverage of institutional care or were incurred more than three months immediately prior to application for Medicaid coverage of institutional care if actual payments are currently being made on the expenses, and only in the amount of the payment currently being made;
    - (ii) were unpaid at the time of application for Medicaid coverage of institutional care;

- (iii) are recognized and regulated by state law as medical services, supplies, or equipment;
    - (iv) are not payable by Medicaid or a third party; and
    - (v) are expenses that have not been applied to another month's incurment or post-eligibility treatment of income.
  - (c) no deduction is allowed for medical and remedial care expenses that were incurred during a penalty period imposed due to an uncompensated transfer of assets.
- (9) A monthly income allowance for the community spouse for purposes of (4)(c) of this rule shall consist of the lesser of:
- (a) \$1,500 minus the community spouse's own gross monthly income. Effective January 1 of each calendar year after 1989 the \$1,500 limit will increase by a percentage equal to the increase in the consumer price index for all urban consumers which occurred between September of the calendar year for which the increase is being made and September of the preceding year; or
  - (b) the total of:
    - (i) a basic needs standard which is equal to:
      - (A) 1/12 of 122% of the federal poverty level for a family unit of two persons effective through June 30, 1991;
      - (B) 1/12 of 133% of the federal poverty level for a family unit of two persons from July 1, 1991 through June 30, 1992;
      - (C) 1/12 of 150% of the federal poverty level for a family unit of two persons beginning July 1, 1992; plus
    - (ii) shelter expenses as defined in ARM 37.82.1330 which exceed 30% of the amount determined under (9)(b)(i); minus
    - (iii) the amount of gross monthly income otherwise available to the community spouse, without regard to the community spouse's monthly income allowance.

**Authorizing statute(s):** 53-6-113, MCA

**Implementing statute(s):** 53-6-101, 53-6-131, MCA

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**History:** NEW, 1982 MAR p. 729, Eff. 4/16/82; AMD, 1990 MAR p. 543, Eff. 3/16/90; AMD, 1991 MAR p. 54, Eff. 1/18/91; AMD, 1992 MAR p. 673, Eff. 3/27/92; TRANS, from SRS, 2000 MAR p. 476; AMD, 2011 MAR p. 1823, Eff. 9/9/11.