

Allocation of Marital Assets for Purposes of Medicaid Eligibility

Medicaid eligibility for nursing home payments – limits an individual to no more than \$2,000 in resources – excess resources must be spent down in order for the individual to be Medicaid eligible - income above the amount allowed for the personal needs allowance (\$50) will be applied to the cost of care (patient liability amount)

Marital Assets – When the institutionalized individual is married, Medicaid law provides for the allocation of marital assets between the two spouses for purposes of determining Medicaid eligibility of the institutionalized spouse (IS) and the amount of his / her patient liability – this allocation is done according to the Medicare Catastrophic Coverage Act (MCCA), 42 USC § 1396r-5

MCCA – Intended to balance two competing interests – (1) Prevent couples applying for Medicaid on behalf of an institutionalized spouse from having to deplete their assets entirely to qualify for Medicaid, thereby impoverishing the community spouse (CS) and (2) Prevent an IS from qualifying for Medicaid by simply transferring all of his or her assets to the CS

Resources – By default, the CS will be allocated half of all the marital assets, or no less than \$21,912 and no more than \$109,560 – all assets of the parties are included in the allocation whether separately or jointly owned

Income – Each spouse is allocated his / her own income in full – By default, the CS will also be allocated additional income from the IS to the extent that the CS's own income is less than \$1822 [the minimum monthly maintenance needs allowance (MMMNA)]– If the collective income of both spouses is insufficient to reach the \$1822, and the resources already allocated to the CS are not sufficient to cover the income deficiency, then additional resources above the default allocation can be transferred from the IS to the CS – the amount of the additional resources to be transferred from the IS to the CS in order to reach the \$1822 will be determined in reference to the purchase of a single premium annuity - *Johnson v. Lodge*, 673 F.Supp.2d 613 (M.D. Tenn. 2009)

Increase in CS Income / Resource Allocation — In order to exceed the \$1822, through an additional allocation to the CS of either income or resources, there must be a showing of “exceptional circumstances resulting in significant financial duress”

– This additional allocation must be done either judicially or through an administrative fair hearing – by operation of state law, the standard is the same in either forum – Tenn. Code Ann. § 71-5-121 requires application of Medicaid eligibility criteria when transferring either income or resources from the IS to the CS, notwithstanding other state laws pertaining to community property or the division of marital property

– Because an increase in the default allocation of income / resources to the CS would decrease the income / resources available to the IS for payment of nursing home expenses and, therefore, increase the amount that would be paid by Medicaid for nursing home care, the State is a necessary and indispensable party in these proceedings

– Although notice to the State of a judicial action to allocate income / resources between spouses for purposes of Medicaid eligibility is not expressly required in state or federal law, adequate representation of the State's interests requires notice to the State and an opportunity to intervene

– Without the necessary notice, the State is at liberty to file a Rule 60 motion to request that the allocation order be vacated – *Blumberg v. Tennessee Dept. of Human Services*, 2000 WL 1586454 (Tenn. Ct. App.)