



Selfhelp Community Services, Inc.
 520 Eighth Avenue, 5th floor
 New York, NY 10018
 212.971.7600

Evelyn Frank Legal Resources Program
 Valerie J. Bogart, Director
 212.971.7658/ 7693
 legalresources@selfhelp.net
 Fax 212.947.8737

Revised December 7 2007, June 2, 2008

BASIC ELIGIBILITY FOR MEDICAID HOME CARE

This is basic general information about applying for Medicaid and home care, known as "home attendant" or "personal care." To receive Medicaid home care, you must be both financially and medically eligible.

Medicaid is different from Medicare. Medicare is also for people age 65 or older, or who are disabled. But eligibility is not based on financial need, so there are no financial income limits for Medicare. However, you must receive Social Security to get it, or pay a high premium. Also, the amount of Medicare home care is very limited compared to Medicaid. The Medicare maximum amount is 20-35 hours per week.

I. Financial eligibility is based on INCOME and RESOURCES

Some of the following rules apply ONLY if you are age 65 or older, blind or disabled. Different rules may apply if you are under age 21, pregnant, or a parent or a caretaker relative for a child under 21.

A. RESOURCES (including bank accounts, CDs, stock, etc.) -- The resource limit went up significantly on April 1, 2008:

SAVINGS & CHECKING (includes CDs, stocks, other liquid savings). Exceptions for IRA's, etc. are listed below.	Living Alone	Couple
1/1/08 – 3/31/08	\$ 4,350	\$ 6,400
4/1/08 – 12/31/08	\$13,050	\$19,200

BURIAL FUND and/or LIFE INSURANCE -- applicant and spouse may each have \$1500 in a separate account from your other savings. Open the account with a \$1500 deposit. Interest that accrues later will not count. The "cash surrender value" of life insurance counts toward the \$1500 burial fund limit. If your insurance is worth more, the excess can count toward your resource limit.

PRE-PAID NON-REFUNDABLE FUNERAL AGREEMENT – purchase this in any reasonable amount from a funeral home to cover costs of funeral, burial space, casket, etc. (This is allowed in addition to the \$1500 burial fund). But money leftover will go to Medicaid. Any dollar amount designated for a “non-burial space-related item” (such as flowers, religious services, transportation) will reduce the separate \$1500 burial fund.

HOUSE or co-op does not count if you live there – but if you are seeking home care services, and you do not have a spouse or minor or disabled child living in the home, the equity must be under \$750,000. If the equity is above that limit, you must take out a mortgage or reverse mortgage or transfer part of the ownership. Medicaid may *not* put a lien on a home as long as you or your spouse live in the home.

However, if you own a home, you should consult an elder law attorney to take steps to protect the home, since Medicaid may place a lien on the home if you later enter a nursing home (and if no spouse lives there), or if the home is part of your Estate when you die.

Transfers of the home can disqualify you from receiving nursing home care for up to five years after the transfer, and can trigger high income taxes on appreciation of the home. An experienced elder law attorney is needed to sort through these issues.

HOLOCAUST Reparations or other payments made based on your status as a Nazi victim are exempt. While it is best to separate the reparations from other funds going forward, one should still be eligible if, in the past, the reparations were combined with other funds, as long as the amount received can be documented. Interest on reparations is exempt as “income” after 7/1/04, but counts toward the resource limit if it is saved beyond the month received. More info at http://www.claimscon.org/index.asp?url=payments_benefits

YOUR IRA, KEOGH or retirement funds are exempt IF you are withdrawing periodic payments (called “required minimum distributions” at a rate that will deplete the funds within your life expectancy, according to actuarial tables. The withdrawals, though, are counted as “income.”

YOUR SPOUSE’S IRA, KEOGH, or PENSION Plan are exempt, if spouse is not applying for Medicaid, though disbursements are counted as “income.” Spouse’s IRA must be in “payment status,” meaning s/he is taking out the required minimum distributions.

IF YOU HAVE EXCESS RESOURCES, over the limits above, you can become eligible for Medicaid in two ways:

1. One way is to *spend* the excess down on:
 - (a) medical care or private home care, or
 - (b) household items or expenses, or purchase a house, or
 - (c) burial agreement and/or burial fund – see above
2. Alternately, if you *transfer* the excess money to a family member or other trusted person, and show Medicaid that the money was actually transferred (show canceled check or bankbook of family member with deposit of amount withdrawn from your account), then you will be eligible for community Medicaid and most home care as of the next month after the transfer.

WARNING – HOW TRANSFERS AFFECT NURSING HOME ELIGIBILITY:

Though you may receive Medicaid home care now despite having transferred assets, if you later need nursing home care, however, there are penalties for transferring assets, which delay your eligibility for Medicaid coverage for nursing home or waiver care for a period of time that depends on the amount transferred. (Divide the amount transferred by \$9,636 (NYC - 2008) to calculate the number of months of the penalty. The penalty works differently depending on when the transfer was made.

Transfers made BEFORE February 8, 2006 – the penalty began on the first day of the month after the transfer. So for a transfer made in January 2006 of \$18,750, the penalty would be two months and would have expired by April 1, 2006. The transfer would not affect nursing home eligibility after that date. A transfer of \$187,500 in January 2006 would have a 20-month penalty, disqualifying you from Medicaid nursing home or waiver care until Nov. 1, 2007.

Transfers made AFTER Feb. 8, 2006 – the penalty is in the same amount as for transfers before Feb. 8, 2006, but the penalty period is delayed. It begins when you have been admitted to a nursing home or a Lombardi or waiver program, you apply for Medicaid, and are otherwise eligible for Medicaid nursing home or waiver care. The penalty will delay your eligibility for Medicaid to pay the nursing home or for the waiver care, unless you wait at least 5 years to apply for Medicaid for nursing home care after you made the transfer, OR unless the transfer qualifies for an “exception.” For example, there is no penalty for transfers to a spouse, to a disabled child of any age – directly or to a supplemental needs trust, or to a supplemental needs trust for oneself if you are under 65.

For more information on these rules and the exceptions, see <http://tinyurl.com/vehac>.

If you have old but viable unpaid medical bills, present them with your Medicaid application. These can offset the amount of your excess resources or spend-down.

B. INCOME – is the amount you receive each month or less regularly – from Social Security, pensions, interest on savings, gifts, distributions from IRAs or annuities.

1. **“In-kind” income**, which is direct payments to the vendor for rent, phone bills, or other expenses are NOT counted as income, if made by persons who are not “legally responsible” for the client. (So a husband’s payment of his wife’s rent IS “income,” but an adult daughter’s payment to the landlord of her mother’s rent is NOT income).
2. Some other income is not counted, such as German or Austrian War Reparations (or other payments based on status as a Nazi victim), reverse mortgage payments, and loans.
3. Medicaid counts the income left after you deduct \$20 off the top, then deduct the Medicare Part B premium if it is taken out of your Social Security check (\$96.40/mo. in 2008 , and any other health insurance premium. If the amount left is under the following limits, you are eligible for FULL Medicaid, with no "spend-down" or deductible.

\$725/month -- Living alone \$1067/month -- Couple

4. **SURPLUS INCOME PROGRAM:** If your income is more than this amount, you can still be eligible for Medicaid with a "spend-down" or "surplus." EXAMPLE: Anne lives alone with \$ 1013.50 Social Security each month, before her Part B is deducted. Her "surplus" or spend-down is \$200.

Here is the budget calculation (2008):

Social Security (gross)	\$ 1013.50
– Medicare Part B premium	96.40
– \$20 income deduction (for aged, blind, disabled)	20.00
<hr/>	
MEDICAID INCOME	897.10
Medicaid standard for one	– 725.00
<hr/>	
Medicaid SURPLUS or SPEND-DOWN	172.10

NOTE: She is eligible for a Medicare Savings Program (MSP) to pay her Part B premium, since her gross income is under the SLIMB level of \$1,060 (2008). However, her spend-down will increase by \$96.40 to \$268.50 if she joins SLIMB. It is her choice. For more on MSPs, see <http://tinyurl.com/w393p>.

(a) *Expenses that Count as Credit Against your Spend-down:*

- (i) If you have old but viable unpaid medical bills, present them with your Medicaid application. These *offset* the amount of your surplus income.

- (ii) If you have medical expenses that Medicaid or other insurance does not pay for, such as over-the-counter items, send proof of the cost, and a note from your physician stating that the items are medically necessary, to the CASA to get credit toward paying your surplus.
- (iii) If you used EPIC to buy prescriptions in the 3 months before applying for Medicaid, request a printout of the amount EPIC paid for your prescriptions in those months. (Write to EPIC at POB 15018, Albany, NY 12212). The amount EPIC paid, not just your co-payment, counts as a credit or offset of your surplus income.
- (iv) You may enroll in a *Supplemental Needs Trust* to deposit your “excess” income monthly. If you are over 65 the trust must be a “pooled” trust run by a non-profit. The trust will pay bills you designate out of your income. Money put into the trust is exempt from Medicaid, so your spend-down is reduced or eliminated. CONTACT: NYSARC (800) 735-8924 about their pooled trust. An initial deposit of one extra month’s spenddown amount, of which \$200 is nonrefundable, plus a monthly fee of at least \$25/month, is charged. See http://onlineresources.wnyc.net/healthcare/docs/SNTShort_5%202008_%20FINAL.pdf

(b) *How You Pay the Surplus or Spend-down - Logistics:*

- (i) If you receive Medicaid home attendant care, the home care vendor will bill you for the amount of your "surplus" each month. You are obligated to pay this bill. If you do not pay all or part of the bill, however, the vendor agency may not stop your home care services, and Medicaid may not stop your Medicaid coverage or home care.
- (ii) If you apply for Medicaid but not for home attendant care, and you have a "surplus," it is more difficult to get Medicaid each month. Each month you will not receive Medicaid until you bring to the Medicaid office medical bills you incurred in that month that cost the same amount as your "surplus." You only have to incur the bills, not pay them to get credit for Medicaid. Some certified home health agencies will do the paperwork for you and send your “incurred” bills to Medicaid.
- (iii) THE PAY-IN PROGRAM: You also have the option of the "pay-in" program, in which you pre-pay your surplus to the Human Resources Administration up to 6 months at a time, in order to get continuing Medicaid coverage. This option is worthwhile if you know the monthly cost of your prescriptions or other medical bills is always more than your surplus amount, OR if your surplus amount is very low.

C. IF YOU ARE MARRIED – Medicaid counts the resources and income of the “well spouse,” even if only the “sick spouse” is applying for Medicaid. The “well spouse” may submit a “spousal refusal,” stating that she or he will not contribute his or her own resources or income to the sick spouse. In that case, Medicaid will count only the sick

spouse's income and resources, as though he or she is single. But Medicaid then has the right to sue the well spouse for failing to contribute. In New York City, HRA has been sending dunning letters to clients. If your combined income is under \$2,610/month and combined resources are under \$104,400, a lawsuit is unlikely. (Those are amounts that Medicaid allows a spouse to keep in 2008 if the other spouse goes to a nursing home).

II. MEDICAL ELIGIBILITY FOR HOME CARE AND HOW TO APPLY –

- A. Medicaid can authorize “home attendant” also known as “personal care” services anywhere from only 12 hours per week to a maximum of 24-hours/day, 7 days a week. There are 2 types of 24-hour care:
1. “Sleep-in” care is 24-hour given by one aide each day who sleeps at the client’s home, but is off duty at night, and present at night only for emergencies or to give very limited assistance, such as help with medications or toileting once or twice in the 12-hour night period.
 2. “Split-shift” care is 24-hour care given by two aides each day in two 12-hour shifts, or “uninterrupted care by more than one person.” To qualify for “split-shift” care, the individual must need “total assistance with toileting and/or walking and/or transferring and/or feeding at unscheduled times during the day and night.” 18 NYCRR § 505.14(a)(3). As a general rule, if the client needs help with one of these tasks three or more times during the twelve hours at night, she qualifies.
- B. ABILITY TO “DIRECT” CARE – If the person needing home care is not “self-directing,” or cannot manage and direct the home attendant because of Alzheimer’s disease or another mental impairment, then a family member or someone else must perform this function. This person need not live with the client, but should be closely in touch – call daily, be available in an emergency, and visit at least weekly.
- C. **Consumer-Directed Personal Assistance Program (CDPAP)** If you (or your family if you are not “self-directing”) would like to select your own aides, rather than have your home care provided by aides hired by a vendor agency that contracts with the City, joining this program gives you the right to select, hire, train and schedule your own aides. BUT YOU must make sure you have coverage if the aides get sick or take vacation. The CASA authorizes you for a fixed number of hours per week, as in other personal care cases, but you arrange the schedule. Two vendors provide CDPAP in NYC - CONCEPTS & Chinese-American Planning Council. They issue paychecks and manage the aide’s health insurance and other benefits.

SPECIAL BENEFIT OF CDPAP In addition to giving you autonomy, aides in the CDPAP program are permitted to do tasks that may otherwise only be performed by licensed nurses or family members, such as put pills in your mouth, administer eyedrops or injections, operate a ventilator or oxygen tank, suction tracheostomies, etc. If you have these needs, this is a very important program.

HOW TO JOIN: Apply in the same way you apply for home attendant services, with the M11q, as described below. But on the M11q and in your cover letter, state that you want CDPAP or CONCEPTS. Later, ask your CASA worker for an application (or call Brian Evans at HRA at 212-360-5460/5455). Medicaid will screen you to make sure you or your family are prepared to undertake this responsibility. If your application is denied, you may request a hearing.

- D. To apply for a home attendant or consumer-directed personal assistance program, have your doctor fill out the form called an "M11q" – <http://tinyurl.com/2nh6co>. Complete one for each person applying (one for each spouse if both are eligible and need care). Be sure it is filled out completely. The doctor must sign the form, and it must be filed with the Medicaid office, within 30 days after the latest exam of the client. Be sure the doctor puts the date of the examination on page 1.

HOW TO FILL OUT M11q – Please see "Q-TIPS" for a page-by-page guide to this form at <http://tinyurl.com/y8ngma>. A doctor must sign the form, but anyone familiar with the client's condition can help the doctor complete the form. Doctors often are not familiar with the program's requirements, or lack the time needed to complete the form thoroughly, so need an advocate's help to advise them about what information must be stated about the client's needs.

1. **MEDICATIONS** – Keep in mind that home attendants are not nurses, so are not allowed to put medications in your mouth, give injections, and do some other "skilled" tasks. They can remind you it is time to take the pill, bring it to you with a glass of water, and put it in your hand. If you are "self-directing," the aide may remove the pill from the pill container at your direction. If you are not self-directing (because of dementia, for example), you need a family member or someone else to pre-package your medications each week in a medication box.
 2. **NUMBER OF HOURS OF HOME CARE YOU NEED** – A settlement in a lawsuit called Mayer requires that the Medicaid program consider the span of time during which the aide's help is needed. The doctor should specify the *span of time* and why help is needed during this time, especially for 12- or 24-hour care. The doctor should specify any *frequent* or *unscheduled* tasks, such as help needed with toileting, transfer, or ambulating and explain the frequency and type of help needed – hands-on physical assistance, "cueing or prompting" for persons with dementia, or "contact guarding" to ensure safe performance of a task.
- E. Mail the signed M11q *return receipt requested* to a CASA – see list at <http://tinyurl.com/32tsbb>. ATTENTION: INTAKE UNIT. Write the Medicaid case number, if any, on top of page 1.

If you do not already have Medicaid, you can either include a note requesting the CASA worker to come see you and fill out the Medicaid application OR you can include a signed and completed Medicaid application.

<http://www.otda.state.ny.us/otda/apps/2921.pdf>.

If you will be seeking reimbursement for private home care or other out of pocket costs incurred in the 3 months before the month of application, say “yes” on Questions 1 and 8 of page 10 of the Application, indicating that you have paid or unpaid medical bills within 3 months before the month of application. Otherwise, Medicaid will not determine your eligibility during those retroactive months, and won’t set the “effective date” of eligibility back to a retroactive month. For more information on reimbursement see <http://tinyurl.com/3amwnq>.

When you submit the M11q, be sure to identify the family member who is “directing” care for the applicant if s/he has dementia, and say you want this person to be notified of any home visits so that they can be present. If you don't hear from the CASA soon, call the Intake Supervisor of the CASA. For other problems, call the Director or Fair Hearing liaison of the CASA.

F. If Medicaid denies your Application, or does not approve enough hours, do TWO things at the same time:

1. Submit a new “M11q” if the last one submitted was not thorough, or if you have had a change in your needs or condition. Use the “Q-TIPS” as a guide. When the CASA receives a new M11q, it MUST process it by having a nurse and social worker and sometimes a doctor visit and evaluate your needs.

2. Request a fair hearing by:

PHONE 212-344-0055 or 212-417-6550 fax 518-473-6735

WRITE OTDA Fair Hearings, POB 1930, Albany, NY 12201-1930

ONLINE <http://www.otda.state.ny.us/oah/default.asp>

At the hearing, submit the new M11q that you also submitted to the CASA. Also, before the hearing, ask the CASA worker (or the CASA fair hearing liaison) for a copy of all the documents used in evaluating your case (you need these in advance so you can have your doctor or other witnesses submit a letter explaining the errors in the City’s evaluations. You can ask that the hearing be expedited.

For representation at a hearing, see contact list on the next page.

G. Medicaid applications for people who do not want Home Attendant care –

Do not apply at the CASA offices. Instead, apply at the regular Medicaid offices. See list at http://www.nyc.gov/html/hra/downloads/pdf/medicaid_offices.pdf. Use the same application described on page 7 above.

See lots of forms and information on the WNYLC/Selfhelp Health Care Resources Page at http://onlineresources.wnyc.net/healthcare/health_care.asp

THIS DOCUMENT STATES GENERAL INFORMATION AND IS NOT LEGAL ADVICE.

Medicaid eligibility rules are complex. For more information or help with the Medicaid application or for other questions about long term care, you can contact:

New York City Department for the Aging
Alzheimers and Long Term Care Resource Center
2 Lafayette Street, 15th Floor, New York, NY 10007 (212) 442-3086

CSS Public Benefit Resource Center
Retired Senior Volunteer Program – RSVP - ACES
115 E. 22nd St., 8th fl., New York, NY (212) 614-5552

Western New York Law Center / Selfhelp / Empire Justice Center
Online Healthcare Resources Page
http://onlineresources.wnylc.net/healthcare/health_care.asp

For legal advice or representation, contact:

NYC Bar Association Lawyers Referral Service (212) 626-7373

National Academy of Elder Law Attorneys - online locator <http://www.naela.org>

New York Legal Assistance Group (city-wide)
450 W. 33 St. 11th fl, New York, NY 10001-2603 (212) 750-0800

Bet Tzedek Legal Services, Cardozo Law School (city-wide)
55 Fifth Avenue, New York, NY 10013 (212) 790-0240

The Legal Aid Society Health Law Unit (city-wide)
199 Water Street, 3d Floor NY, NY 10038-3500 (212) 577-3575

Legal Aid Society Brooklyn Office for the Aging (Brooklyn only)
111 Livingston Street, Brooklyn, NY 11201 (718) 645-3111

JASA/ Queens Legal Services for the Elderly (Queens only)
97-77 Queens Blvd. Suite 600, Rego Park, NY 11374 (718) 286-1500

Bronx Legal Services for the Elderly (Bronx only)
2605 Grand Concourse, Bronx, NY 10468 (718) 220-0030

Manhattan Legal Aid for Seniors Project (Manhattan only)

* Above 110th Street – Northern Manhattan Improvement Corp. (212) 822-8300

* Below 110th St – MFY Legal Services –
Senior Intake Line Wed. 2 - 4:30 PM (212) 417-3880

LSNY Staten Island (718) 233-6480

MEDICARE RIGHTS CENTER – Medicare issues 800-333-4114 or (212) 869-3850