

## 907 KAR 20:040. Relative responsibility requirements for Medicaid.

RELATES TO: KRS 205.520(3)

STATUTORY AUTHORITY: KRS 194A.030(3), 194A.050(1), 205.520(3), 42 C.F.R. 435 Subparts G, H, I

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes resource and income considerations regarding relatives by which Medicaid eligibility is determined, except for individuals whose eligibility is determined based on modified gross adjusted income or former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid benefits.

Section 1. Treatment of Income and Resources for a Parent, Dependent Child, ABD Applicant, or Recipient. (1) A married individual shall be considered responsible for that person's spouse.

(2) A parent shall be considered responsible for a dependent minor child.

(3) Excluding a child who is at least eighteen (18) years of age and who is blind or disabled and for purposes of deeming income and resources, an individual under age twenty-one (21) years living with a parent shall be considered a dependent minor even if the individual is emancipated under state law.

(4) Responsibility regarding income and resources shall be determined as established in this subsection.

(a)1. For an ABD applicant or a recipient living with a spouse who is eligible for Medicaid, total resources and adjusted income of the couple shall be considered in relation to the resource and income limitations for a family size of two (2) unless a dependent lives with the couple.

2. If any dependent lives with a couple, the appropriate family size shall include any dependent living with the couple.

(b) For an ABD applicant or a recipient living with an ineligible spouse, income from the ineligible spouse shall be deemed as available to the eligible spouse as outlined in this paragraph.

1. Determine the potential spend-down amount of the eligible individual by comparing the countable income, as determined in accordance with 907 KAR 20:020, to the income level for one (1) as shown in 907 KAR 20:020, Section 1(1).

2. Allocate to other dependents in the household from the ineligible spouse's income an amount equal to one-half (1/2) of the MNIL for a family size of one (1) for each dependent.

3.a. If the ineligible spouse's income is more than the difference between the MNIL for one (1) and MNIL for two (2), combine the income of the ineligible spouse with that of the eligible individual and compare that figure with the MNIL for one (1) to determine continuing eligibility or the spend-down amount in accordance with clause b. of this subparagraph.

b. If the ineligible spouse's income is less than the difference between MNIL for one (1) and MNIL for two (2), the income shall be disregarded and the income of the eligible individual shall be compared with the MNIL for a family size of one (1).

4. Compare the amount resulting from subparagraph 1 of this paragraph with the result of subparagraph 3 of this paragraph and determine eligibility using the spend-down amount, if any, which is greater.

5. Resources shall be considered in the same manner as for an eligible spouse.

(c)1. For an ABD couple living apart for any reason and both of whom are concurrently applying for or receiving Medicaid only, income and resources shall be considered in relation to resource and income limitations for a family size of one (1) after the month of separation, or if any other de-

pendent lives with either spouse, the family size shall include any dependent in the month following the month of separation.

2. Eligibility shall be determined on a couple basis for the month of separation.

(d) For an ABD individual living apart from a spouse who is not a recipient of Medicaid only, eligibility shall be determined on a couple basis for the month of separation and on an individual basis after the month of separation.

(e) The following shall be considered a resource for an individual considered to be single in accordance with paragraphs (c) or (d) of this section and who has a jointly-held checking or savings account with his or her spouse:

1. The entire jointly-held checking or savings account if it may be accessed independently of the spouse; or

2. One-half (1/2) of the jointly-held checking or savings account if it shall not be accessed independently of the spouse.

(f) Resources and income of an SSI essential person, spouse or nonspouse, whose Medicaid eligibility is not based on inclusion in the SSI case shall be considered.

(g) For a child who is blind or disabled and under eighteen (18) years of age living with a parent (including a stepparent, if applicable), total resources and adjusted income of the parent shall be related to limitations for family size, including the applicant or recipient child and any other dependent child of the parent using the adult scale.

(h)1. For comparison with the resource and income limitations, a child's individual resources and income shall be considered in relation to a family size of one (1).

2. The following criteria shall be used to determine whether an AFDC-related Medicaid child who has been living with a parent and is institutionalized in a psychiatric facility (mental hospital or psychiatric residential treatment facility) shall be considered as living apart from his or her parents:

a. Unless he or she has been in a psychiatric facility for thirty (30) or more days, a child shall be considered as living with a parent. Beginning with the 31st day in a facility, a child shall be considered living apart from his or her parent.

b. A child who is institutionalized in a psychiatric facility but is legally committed to or in the custody of the Cabinet for Health and Family Services shall not be considered as living with a parent.

(i) Excluding a child, if an AFDC-related Medicaid recipient has income and resources considered in relation to family size and enters a nursing facility, his or her income and resources shall be considered in the case for up to one (1) year with the individual allowed the basic maintenance standard as established in 907 KAR 20:035, Section 3(2).

(j)1. If a child in an AFDC-related Medicaid case is in a nursing facility, eligibility of the child shall continue in the case for up to a year but his or her liability for the cost of care shall be determined by:

a. Allowing to the child from his or her own income the basic maintenance standard as established in 907 KAR 20:035, Section 3(2); and

b. Considering the remainder available for the cost of care.

2. A welfare payment made to a child under subparagraph 1 of this paragraph shall be disregarded when determining liability for cost of care.

3. The eligibility of the child, with regard to income and resources, shall be determined on the basis of living apart from the other family members if it becomes apparent that the separation will last for more than one (1) year.

Section 2. Companion Cases. (1) If a spouse or parent and child living in the same household apply separately for assistance, relative responsibility shall be taken into consideration.

(2) For a spouse, income and resources of both spouses shall be combined and compared against the medically-needy income and resources limits for a family size of two (2) even though a

separate determination of eligibility shall be made for each individual.

(3) Income disregards, and needs of siblings in the other case may also be included in budgeting for the spend-down case if that works to the advantage of the technically excluded child for whom eligibility is being determined in the spend-down case.

Section 3. Applicability. The provisions and requirements of this administrative regulation shall not apply to:

- (1) A qualified Medicare beneficiary;
- (2) A qualified disabled and working individual;
- (3) A Medicare qualified individual group 1 (QI-1) individual;
- (4) A specified low-income Medicare beneficiary; or
- (5) An individual whose Medicaid eligibility is determined:
  - (a) Using the modified adjusted gross income standard pursuant to 907 KAR 20:100; or
  - (b) Pursuant to 907 KAR 20:075.

Section 4. Appeals. An appeal of a negative action taken by the Department for Medicaid Services regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560. (21 Ky.R. 2885; 22 Ky.R. 300; eff. 7-26-95; 28 Ky.R. 2103; 2353; eff. 4-30-2002; Recodified from 907 KAR 1:660, 9-30-2013; 40 Ky.R. 1183; 1786; 2170; eff. 4-4-2014; Crt eff. 12-6-2019.)