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Options For Achieving Medicaid Eligibility For Individuals With Developmental Disabilities

The Importance of Maintaining Medicaid Eligibility

The New Jersey Division of Developmental Disabilities (DDD) is the state agency responsible for funding services for adults, age 21 and over, with developmental disabilities such as autism, cerebral palsy, Down syndrome, epilepsy, intellectual disabilities and other related conditions.

DDD is taking the position that services will only be provided to individuals who are age 21 and older, and who are eligible for both DDD and Medicaid. For a comprehensive review of DDD's eligibility rules, visit our website at http://www.hinkle1.com/ddd-new-eligibility-rules/.

This means Medicaid eligibility is VITAL

DDD requires an individual to secure and maintain Medicaid eligibility in order to receive ANY service from DDD – respite care, day services, in-home supports, residential services and self-directed services. DDD also contends any loss of Medicaid eligibility can result in the interruption or termination of services. While this statement may be significantly overstated, it is best to be Medicaid eligible whenever possible. Therefore, it is vital families make sure they preserve Medicaid eligibility by ensuring their family member with a disability keeps assets and income below certain limits, spends down excess assets, and/or has a special needs trust. Now more than ever, it is imperative that individuals, parents, and guardians understand the Medicaid programs available and take the steps necessary to maintain eligibility.

This article provides a brief explanation of four ways an individual can become Medicaid eligible.

1. SUPPLEMENTAL SECURITY INCOME (SSI)

SSI is a federal program that provides monthly cash payments to eligible individuals in need. In New Jersey, individuals who are determined eligible for SSI are also eligible for Medicaid.

The criteria for SSI eligibility are:

- An individual who is at least 65 years old, blind, or disabled;
- A person is disabled under the Social Security Administration's rules if the person is unable to work. The Social Security Administration refers to work as "substantial gainful activity" (SGA). In 2019, SGA is defined as the ability to earn more than $1,220 per month.

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- The individual has income, whether earned or unearned, of no more than approximately $781 per month (in 2019); and
- The individual has resources of not more than $2,000 from all sources combined.

Most individuals with developmental disabilities will qualify for SSI at age 18 and, therefore, are eligible to receive Medicaid under this program.

2. DISABLED ADULT CHILD STATUS (DAC)

An individual with a disability is sometimes eligible for Social Security benefits based on the work history of his or her parent(s). This usually happens when a parent begins collecting his or her own Social Security benefits. Often, the amount provided to the individual with a disability is above the income limit for SSI; therefore, the individual loses both SSI and Medicaid benefits.

In some instances the individual with a disability may be eligible for continued Medicaid benefits as a Disabled Adult Child (DAC).

The criteria for DAC are:

- The individual with a disability is at least 18 years old;
- The disability manifested before age 22;
- The individual has been receiving SSI due to his or her own disability; and
- The individual lost SSI benefits because he or she started receiving Social Security benefits based on the work history of a parent or due to an increase in those benefits.

It is important to understand that DAC status protects the individual with a disability from losing Medicaid benefits based on having income over the allowable limit; however, it does not waive the resource limitation. Therefore, resources need to remain below $2,000.

3. COMMUNITY MEDICAID

This program provides Medicaid to individuals who are unable to afford the healthcare they need.

The criteria for Community Medicaid are:

- The individual is at least 65 years old or is blind or disabled;
- The individual is a resident of New Jersey;
- The individual has income, whether earned or unearned, of no more than $1,041 per month (in 2019);
- The individual has resources of not more than $4,000.

This program is available to individuals with a disability that do not qualify for SSI or who are unable to qualify for Medicaid as a DAC.

4. NEW JERSEY WORKABILITY

This program offers full New Jersey Medicaid health coverage to individuals with disabilities who are working. The individual is charged a small premium under this program.

The criteria for New Jersey Workability are:

- The individual is between the ages of 16 and 64;
- The individual is working either full or part time;
- The individual is determined to be disabled by either the Social Security Administration or the State of New Jersey;
- The individual has earned no more than approximately $60,000 per year (2019 limit);
- The individual has unearned income no more than $1,041 per month (2019 limit); and

What is Medicaid?

Medicaid is an important government program that funds a wide array of medical and long-term care services. It is a healthcare program that is jointly funded by the state and federal governments but administered by each individual state. Medicaid was set up to fund and/or provide health insurance and health services to those with low income, those with low assets, and those who have disabilities. Although the benefits provided by Medicaid can vary from state to state, certain benefits are covered in every Medicaid program. Generally, the program covers doctor's services, such as laboratory and X-ray services, inpatient and outpatient hospital services, dental care, nursing care and prescription drugs, to name a few.

Additionally, states can apply to the federal government for a waiver to allow Medicaid funding for additional services. For example: initially, the only long term care services funded by Medicaid were those available in institutions; however, today Medicaid funds community-based long term care. In New Jersey, the Division of Developmental Disabilities depends on two waivers to provide community-based services to individuals with disabilities. Currently, residential services are provided under the Community Care Program and day services are provided under the Comprehensive Waiver.

- The individual has less than $20,000 in liquid assets (2019 limit) NOTE: Social Security Disability Benefits, Railroad Retirement System Benefits (based on the individuals account), qualified retirement accounts, the value of a car, and the value of the home in which the person resides are not counted toward this limit.

What if the individual with a disability has resources above the allowable limit for these programs? How can he or she become Medicaid eligible?

The resource limit is a cap on assets owned by the individual with a disability. This includes bank accounts, Uniform Gift to Minors Act (UGMA) or Uniform Trust to Minors Act (UTMA) accounts, stocks, bonds, or qualified retirement accounts (with the exception of the NJ Workability Program).

In each of these instances, the excess resources can be spent for the individual's needs, so long as the items purchased are for Fair Market Value. This process is often referred to as "spending down" resources. Examples of spending down include reimbursement of expenses paid by others, extra therapies, personal items, some forms of necessities, trips or vacations, and similar items. For instance, some families incur significant expenses providing therapies for an individual with a disability, such as speech therapy, physical therapy, occupational therapy, and behavior therapy. Spending down resources can include reimbursing family members for these expenses.

Spending down resources cannot be achieved by simply giving away funds to family members or transferring funds to other accounts. An individual with a disability may incur penalties and periods of ineligibility if funds are handled incorrectly. Careful thought should be given when planning to spend down the individual's assets. If you are unsure about how to go about this, consult a professional. The effort will be worthwhile and can help to avoid disastrous results.

Where the assets are substantial or the individual's needs are already being met, the assets can be placed in a Special Needs Trust (SNT). In most cases, because the assets belong to the individual seeking to establish or maintain Medicaid eligibility, the trust is required to have a "payback" provision. The payback provision requires the state Medicaid agency be repaid upon

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the death of the individual with a disability from the assets remaining in the trust (up to the amount that was spent by Medicaid for care during the individual's lifetime). This type of trust is sometimes referred to as a "payback" trust.

The Importance of Advanced Planning

It is vital for families of an individual with a disability to create an estate plan that includes a SNT. When a family plans ahead in this manner, the SNT created does not require a "payback" provision because the trust will be funded with assets belonging to the parents or other family members. This type of SNT is commonly referred to as a "third party" SNT. Absent proper estate planning, when the parents of the individual with a disability die, the individual with a disability may inherit assets that will jeopardize Medicaid eligibility. For more information on this topic, please visit our website at www.hinkle1.com/category/estate_planning/.

A Note On Residential Services and Supports

DDD states all residential services and supports in New Jersey must be funded through New Jersey's Community Care Program (CCP) (formerly the Community Care Waiver). This means that in order to receive residential services, an individual must apply for, and be deemed eligible for, services under the CCP.

The CCP is one of New Jersey's Medicaid waiver programs. The program has similar eligibility rules, but slightly higher income limits. This program has a long waiting list, which is maintained by DDD. The individual's name can be added to this waiting list when the youngest parent turns 55. There are exceptions to this rule that are based primarily on the behavioral needs of the individual, or the medical needs of the individual or caregivers. Families should make sure they get on the waiting list as soon as possible.

Hinkle Prior & Fischer is a multi-state law practice with offices in Lawrenceville, Cherry Hill, Florham Park, Paramus, and Wall, New Jersey. The attorneys lecture and write frequently on topics of elder law, estate planning, special needs trusts, guardianship, special education, Medicaid and accessing adult services. The attorneys are available to speak to groups in New Jersey and Pennsylvania at no charge.

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