



ICAN

Independent
Consumer Advocacy
Network

Using Medicaid Community Budgeting to Help Transition Nursing Home Residents

Kelly Ann Murray, Staff Attorney

**ICAN / Evelyn Frank Legal Resources Program -
NYLAG**

**Community
Service
Society** | Fighting Poverty
Strengthening
New York

NYLAG
NEW YORK LEGAL ASSISTANCE GROUP

Agenda

- **Strategies for Nursing Home Residents to deal with the NAMI**
 - Chronic Budgeting v. Community Budgeting
 - Spousal Impoverishment / Spousal Refusal
- **Discharge from NH – Budgeting Options**
 - Housing Expenses – Special Income Standard
 - Supplemental Needs Trust
 - MBI-WPD
- **Questions**

Medicaid Income Budgeting for Nursing Home

Refresher – some concepts

Most of this presentation focuses on eligibility for a Medicaid category called **DAB, standing for Disabled, Aged 65+ or Blind**. This is similar to SSI category except that they may have higher resources and/or income than the low amounts allowed under SSI.

Most “DAB” people are NON-MAGI as they did not qualify for the enhanced Medicaid “MAGI” eligibility rules under the Affordable Care Act. Anyone on Medicare is not MAGI, unless they are living with and caring for a young relative > 18 or > 19 in school.

Most people going into Nursing Homes are DAB, but some MAGI individuals may need Nursing Home care and may be eligible. Those rules will not be discussed here.

Overview

Community Medicaid can pay for up to 29 days of nursing home or rehab care, without doing a lookback (5 years of assets).

For Medicaid to pay after the 29 days, must submit 5 years of asset records. (Application can be filed within 3 months, since can be retroactive). Medicaid looking for transfers of assets in the 5 years.

Income Budgeting “Post Eligibility” – If you make it past the lookback, with no transfers, income is budgeted differently than in community.

Presumed Permanently Placed

The Medicaid application system presumes that because you are admitted to a Nursing Home, you are staying there permanently and not expected to return home.

18 NY Code of Rules & Regulations § 360-1.4(k) provides:

Permanent Absence status means an individual is not expected to return home. Unless overcome by adequate medical evidence, it will be presumed that an individual will not return home if:

- (1) a person enters a skilled nursing or intermediate care facility;*
- (2) a person is initially admitted to acute care and is then transferred to an alternative level of care, pending placement in a residential health care facility (RHCF); or*
- (3) a person having no community spouse remains in an acute care hospital for more than six calendar months.*

Adequate medical evidence may overcome the presumptions set forth in paragraphs (1) through (3) of this subdivision.

Two stages of budgeting

Stage 1 – Community Budgeting – If not admitted on the first of the month, then for partial month of the their permanent placement admission you would use “community budgeting

- Regular Community budgeting used (Income level \$842/mo. for singles, \$1,233 for married individuals (MRG 295).
 - Same deductions as in community - \$20 disregard + enough to pay health insurance premiums, pooled trust, etc. Regular Spend-down calculation.
- Community budgeting may be available – to be discussed later

Stage 2 – CHRONIC CARE BUDGETING.

- Placement presumed to be permanent, with no expenses to be paid to maintain a home. Hence ALL income except for a \$50 Personal Needs Allowance and enough to pay health insurance is considered available to pay for nursing home care. This is NAMI – Net Available Monthly Income.
- Not entitled to the \$20 Medicaid disregard
- Spousal Impoverishment budgeting part of chronic budgeting.

Chronic Care Budgeting in NH

Medicaid law presumes anyone entering a nursing home moves there permanently with no need to keep income to maintain a home.

- This is a rebuttable presumption - may be overcome by “adequate medical evidence” that the resident can return home*
- Archaic law in era of short-term rehab but still on the books.
- Permanent placement = CHRONIC CARE BUDGETING.
- Applicant keeps only \$50/month of income + enough to pay for Medigap or other health insurance (SSI keeps \$55) – the rest is NAMI = Net Available Monthly Income (same idea as spend-down)
- Deductions that apply in Community DO NOT WORK IN CHRONIC CARE BUDGETING, so may not deduct these:
 - Pooled Trust deposits of income
 - Earned Income disregard
 - \$20/month unearned income disregard
 - Interest & Dividends
- BUT DO EXCLUDE Veterans Aid & Attendance, Restitution
- Married individuals use spousal impoverishment budgeting

Community Budgeting (Single Person)



Applies to Month of Admission if not admitted on the 1st of the Month

COMMUNITY BUDGETING is same as how spend-down is calculated in Community.

Income	\$1500.00
Part B Premium	- \$134.00
Medigap Premium	- \$278.00
Medicaid Disregard	- \$20.00
Net Medicaid Income	\$1068.00
Medicaid Income for 1	- \$842
NAMI – Net Available Monthly Income	\$226.00

Married individual uses Spousal Impoverishment Budgeting / Spousal Refusal couple income limit (\$1233) and both spouses' income.

Example of Chronic Care Budgeting (Single person)



Gross Monthly Income	\$1,500.00
Part B Premium	- \$134.00
Medigap Premium	- \$278.00
Net Medicaid Income	\$1088.00
Personal Needs Allowance	- \$50.00
NAMI – Net Available Monthly Income	\$1038.00

- **NAMI** must go to nursing home to contribute to cost. Medicaid pays the rest.
- Applies to first FULL MONTH and afterward, UNLESS community budgeting requested (*)
- No deduction allowed for pooled trust/individual SNT

This is for single. Married couples use Spousal Impoverishment Budget (will be discussed later)

How to Overcome the Presumption

The presumption may be overcome by “adequate medical evidence” that the resident expects to return home.

- Need not guarantee – only an expectation
- In NYC – have form that treating physician certifies the resident is planning to return to community living, specifying an anticipated discharge date (up to 6 months – which can be renewed)
- Or a physician’s statement should be adequate to show individual expects to go home

Nursing Home must inform Medicaid that the individual expects to return home and submit the “adequate proof”

How to Request Community Budgeting

Must file request with Institutional Medicaid application.

On Supplemental A – Do You Intend to Go Home? YES

In NYC, the nursing home should file a form called a **Discharge Alert - Non-Chronic Care Budget (MAP259d)** on which the *treating physician certifies that the resident is planning to return to community, specifying an anticipated discharge date*. Related forms:

- MAP-259e - Cancellation or Change in Discharge Plan
- MAP259f - Discharge Notice - to notify that individual was discharged

All of these forms are posted online in one PDF at

<http://www.wnyc.com/health/download/132/>

See more at <http://www.wnyc.com/health/entry/117/>

6-month Renewals of Community Budgeting

Medicaid initially authorizes Community Budgeting for 6 months.

- But may be renewed for another 6 months (new forms/documents may be needed to show that you should still be considered temporarily absent and continue with community budgeting)

DOH clarified in January 2016 that there is no durational limit for community budgeting. TRANSITION OF NURSING HOME POPULATIONS AND BENEFITS TO MEDICAID MANAGED CARE FAQ Jan. 2016, Question 2.*

- *Debunk the myth of a 6-month limit. Use this to advocate for a 6 month extension.*

http://www.health.ny.gov/health_care/medicaid/redesign/2016-jan_rev_nh_transition_faqs.htm#eligibility

Discharge from Nursing Home to Home with Home Care

Permanent Placement does not mean that the patient does not have the option to be discharged home.

If deemed safe discharge (individual or can appoint someone to direct care) and person not enrolled in MLTC Plan:

1. Request Conflict Free Evaluation from NY State (1-855-222-8350) or request Immediate Need Home Care from County (with medical documentation and attestation)
2. Request community budget due to intent to go home (need to have cooperation of Nursing Home)
3. After CFEEC – contact plans for evaluation and care plan of hours

Budgeting Options for Individuals Being Discharged Home

Budgeting Options for Individuals Being Discharged Home

- Spousal Impoverishment
- Spousal Refusal
- Housing Expenses – Special Income Standard
- Pooled Income Trust
- Medicaid Buy-In Program for Working People with Disabilities

Spousal Impoverishment

What is spousal impoverishment budgeting?

- It began as (and remains) an exception to spousal deeming of income and resources for the spouses of nursing home residents.
 - When one spouse moved into a nursing home, most of the couples' income would go to the NAMI, leaving the **community spouse** impoverished
- But spousal impoverishment budgeting is now also available to three additional groups:
 - 1915 waiver participants (i.e., TBI or NHTD)
 - MLTC enrollees
 - Immediate-Need PCS/CDPAS recipients

Spousal Impoverishment available

Consider using Spousal Impoverishment budgeting:

- Where **only one spouse** needs Medicaid and in a Nursing home or needs home care;
- Where couples' **combined income is under \$3, 140 (for NH) and \$3,481 (with except group)** after deducting Medicare Part B & Medigap premiums;¹ AND
- Where couples' **combined countable assets are under \$89,970** (applicant may have standard \$15,150, spouse may have \$74,820 or half of combined assets up to \$123,600).

WHEN is Spousal Impoverishment budgeting available?

- If applied for Medicaid only, not “Immediate Need” personal care, then you may not request this budgeting until AFTER enrolled into a MLTC Plan.
- Since this budgeting is available for initial applicants ONLY with Immediate Need applications, married applicants may want to use Immediate Need Medicaid application procedure rather than regular Medicaid application and direct enrollment into MLTC.

Spousal Impoverishment Budgeting

Spousal Impoverishment Budgeting includes (in addition to the Medicaid Insurance Premiums) a deduction for:

- **Community Spouse Monthly Income Allowance (CSMIA)**
- **Family Member Allowance (FMA)**
- **Personal Needs Allowance (PNA)**

Spousal Impoverishment Budgeting Terminology

- **Community Spouse (CS)** – Spouse that is not in need of MLTC (Here, Chris) 
- **MLTC Spouse** – (Morgan) 
- **Minimum Monthly Maintenance Needs Allowance (MMMNA)** - Maximum income the community spouse may keep, net of health insurance (\$3,090 in 2018)
- **Community Spouse Monthly Income Allowance (CSMIA)** – Amount the MLTC spouse may shift to the community spouse to bring CS income up to MMMNA
- **Personal Needs Allowance (PNA)** – Amount the MLTC Spouse may keep (\$391)

Spousal Impoverishment (Chronic Care Budgeting – Basic Rules)

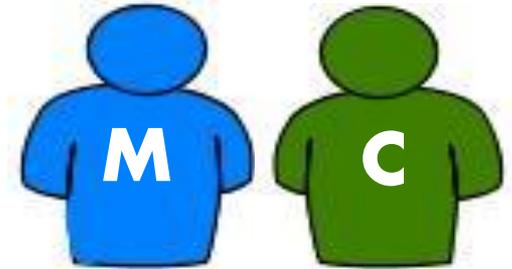
INCOME – Community Spouse may keep income of NH spouse –

- Normally couple can keep **only \$1233/month** COMBINED income The rest is the spend-down.
- With Spousal impoverishment budgeting, the couple can keep up to:
 - \$3090/mo. Monthly Minimum Maintenance Income Allowance
 - \$ 50/mo. PNA for NH Resident (if in community \$391 MLTC/Immed Need)
 - **\$3,140/mo. Total combined income (NH) or \$3481 MLTC/Immed Need PLUS**
 - \$ 686 /mo. family member allowance- for each financially dependent child (including adult child), parent, or sibling of either spouse living with them (maximum 3 people)

ASSETS – Instead of usual \$22,200 for a couple --

- Spouse may keep greater of \$74,820 of assets or half of assets up to \$123,600
- Plus Nursing Home spouse may have \$15,150 assets.

Case Scenario: Morgan & Chris



- Morgan and Chris are married
- Morgan receives Social Security Disability (SSD) & Chris gets SS Retirement. Both receive Medicare.
- Morgan needs Home Care Services (MLTC). Since he receives SSD and Medicare and has no children, “Disabled, Aged, Blind” (DAB or “SSI-related”) budgeting is used at application

	Morgan – Needs MLTC	Chris – Spouse
Income	\$2,000	\$1,500
Medicare Part B premium	\$134	\$134
Net Medicaid Income	\$1866	\$1366

Step 1: Determine Max CSMIA

$$\text{CSMIA} = \text{MMMNA} - \text{CS's Net Income}$$

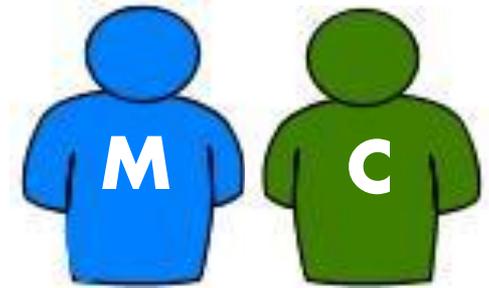
How much of Morgan's income can be allocated to Chris?

1. Determine Community Spouse's Net Income – deduct health insurance premiums, actual incapacitated adult/ child care expenses; court-ordered support payments;
2. Subtract Community Spouse's Net Income from MMMNA

1. Chris's Net Income	
SSD	\$1,500
Part B	-\$134
Net Income	\$1366

2. Chris's CSMIA	
MMMNA	\$3090
Net income	-\$1366
CSMIA	\$1724

Step 2: Apply CSMIA & PNA

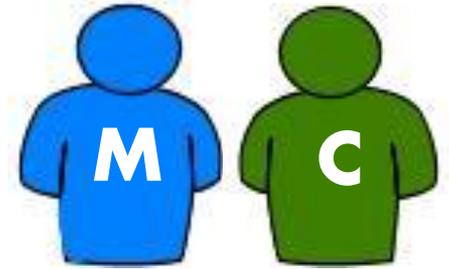


- Morgan & Chris keep **all of their income** (\$3238)
- Chris gets less than the max CSMIA of \$1724 because the couple's income is not high
- Morgan has no spend-down, but could if either of their income were higher

	Morgan	Chris
Net Income	\$1866	\$1,366
PNA (amount Morgan keeps)	-\$391	
CSMIA ("transferred" to Chris)	-\$1,475	\$1,475
Excess Income/Spenddown	\$0	

Budgeting based on a single person

Budgeting Based on a Single Person



What if Spousal Impoverishment doesn't help? Different facts -

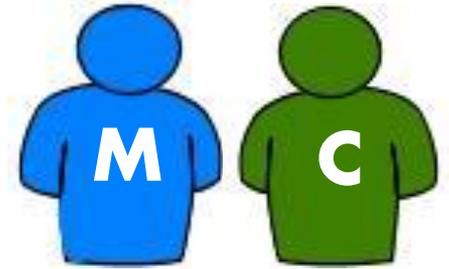
- Morgan's Income = \$3500
- Chris' Income = \$ 1500

Chris is not entitled to CSMIA from Morgan because income too high.

1. Chris's Net Income	
SSD	\$3,500
Part B	-\$134
Net Income	\$3,366

2. Chris's CSMIA	
MMMNA	\$3,090
Net income	-\$3,366
CSMIA	\$0

Budgeting Based on a Single Person



Under [GIS 12 MA/013](#), individuals with “community spouse” must have eligibility determined under spousal impoverishment budgeting with post-eligibility rules, **unless it is more advantageous to budget only the waiver participant’s total net Medicaid countable income and compare it to the Medicaid income level of one**

In both situations, spousal impoverishment rules for treatment of resources including community spouse resources allowance, apply.

SSI-Budgeting for Household of 1

- Use SSI-Budgeting for a Household of 1 if:

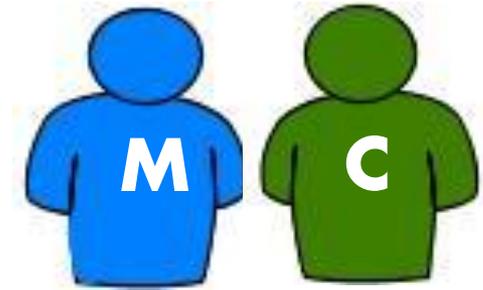
$$\text{PNA} + \text{CSMIA} < = \text{Household of 1 Income Guideline} + \$20$$

Chris & Morgan's Budget:

$$\$391 \text{ (PNA)} + \$0 \text{ (CSMIA)} = \$391 \text{ which is less than } \$862$$

- Under [GIS 12 MA/013](#), may select most favorable budgeting – budget as SINGLE or use Spousal Impoverishment.
- Here, more favorable to budget as ONE, disregarding Community Spouse's income. Applicant may use pooled trust to reduce own income.
- Spousal refusal not necessary (so no lawsuit by county)! See budget next slide

Morgan's MLTC Medicaid Budget



Single Budget based only on Morgan's Income

	Morgan
Income	\$1,500
Part B	- \$134
Income disregard	- \$20
<i>Net Countable Income</i>	\$1346
Medicaid standard (single)	- \$842
<i>Excess Income/Spenddown</i>	*\$504

DOH GIS 14 MA/025, reinstating DOH GIS 12 MA/013 (April 16, 2012); & NYS DOH GIS 13 MA/018, N.Y. Dep't of Health, MEDICAID REFERENCE GUIDE: INCOME at 278-282 (June 2010).

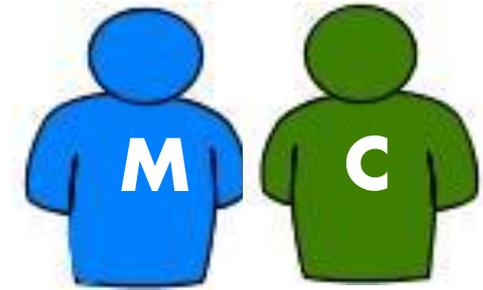
Converting to Spousal Impoverishment Budgeting

- Enrolling in MLTC doesn't automatically change the budgeting to spousal impoverishment!
- As soon as applicant is enrolled in an MLTC → submit DOH Request for Spousal Impoverishment Assessment Form to LDSS / HRA
 - HRA and some other counties prefer MLTC Plan, not Member, submit this request
- Form available at page 9 of www.health.ny.gov/health_care/medicaid/program/update/2014/mar14_mu.pdf
- HRA: use Consumer Change Info form MAP-751k (2012)

Spousal Refusal

- Medicaid eligibility must be determined just based on the applying spouse's income and resources if the other spouse refuses to make his/her own resources and income available or does not live with the applicant. Soc. Serv. L. § 366.3(a)
- 2018-19 NYS Budget survived the 29th attempt to repeal that statute. Would have required deeming of spouse's income and resources if spouse lives with applicant.
- Spousal Refusal NYC Form – MAP-2161 Spousal Refusal Form <http://www.wnyc.com/health/download/66/>
 - Can be used as a template in other counties
- Downside: county can sue refusing spouse for failure to support

Morgan's MLTC Medicaid Budget



Single Budget based only on Morgan's Income

	Morgan
Income	\$1,500
Part B	- \$134
Income disregard	- \$20
<i>Net Countable Income</i>	\$1346
Medicaid standard (single)	- \$842
<i>Excess Income/Spenddown</i>	*\$504

DOH GIS 14 MA/025, reinstating DOH GIS 12 MA/013 (April 16, 2012); & NYS DOH GIS 13 MA/018, N.Y. Dep't of Health, MEDICAID REFERENCE GUIDE: INCOME at 278-282 (June 2010).

Housing Expenses – Special Income Standard

Only After Discharge from Nursing
Home or Adult Home

MLTC Housing Allowance

- Income disregard for people discharged to the community with MLTC from:
 - A **nursing home**, or
 - An **adult home** - [GIS 14/MA-017](#)
- If married, can't use spousal impoverishment protections and MLTC Housing Allowance – must pick which budgeting is better

INFO: [NYS DOH 12 OHIP/ADM-5](#), [GIS 16 MA/018 - 2017 Medicaid Levels and Other Updates](#)

MLTC Housing Allowance Requirements

1. Nursing Home or Adult Home stay
 - Nursing Home for at least 30 days prior to day of dischargeOR
 - Adult Home stay prior to discharge
2. Medicaid paid for nursing home or adult home
3. Must have a housing expense

** As per 12 OHIP/Adm-5 :

To be eligible for the special income standard for housing, **an individual must have a housing expense. This includes rent, a mortgage, or room and board.** The individual may attest to the amount of the housing expense; documentation of the amount or type of the expense is not required.

MLTC Housing Allowance (2018) GIS 17 MA/020

Region	Counties	Deduction
Central	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	\$417
Long Island	Nassau, Suffolk	\$1274
NYC	Bronx, Kings, Manhattan, Queens, Richmond	\$1305
Northeastern	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	\$467
Northern Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	\$935
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	\$424
Western	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	\$365



Housing Allowance

Applying the housing allowance lowers Morgan's spend-down

	Morgan
Income	\$1,500
Part B premium	- \$134
Income disregard	- \$20
Housing allowance (Albany)	-\$467
<i>Net Countable Income</i>	\$879
Medicaid standard (single)	- \$842
Excess Income	\$37

(Advocates interpret guidance as permitting application of the housing allowance to a married person budgeted as single)

Obtaining the shelter allowance

- As with spousal impoverishment, it is not automatic.
- MLTC plans are responsible for notifying LDSS of member's potential eligibility (they typically do not), but consumer can submit to LDSS directly if they prefer.
- Must submit the following (NYC forms; other counties should adapt):
 - MAP-3057 – Attestation of Housing Expense
 - Don't need proof of housing expense, but wouldn't hurt
 - MAP-259D – Discharge Notice [filed by Nursing Home]
 - Cover letter requesting rebudgeting, along with guidance

Supplemental Needs Trust

Refresher

Medicaid doesn't care about your living expenses

Gross monthly income \$1,500

Health insurance premiums (Medicare Part B) - 134
(Medigap) - 178

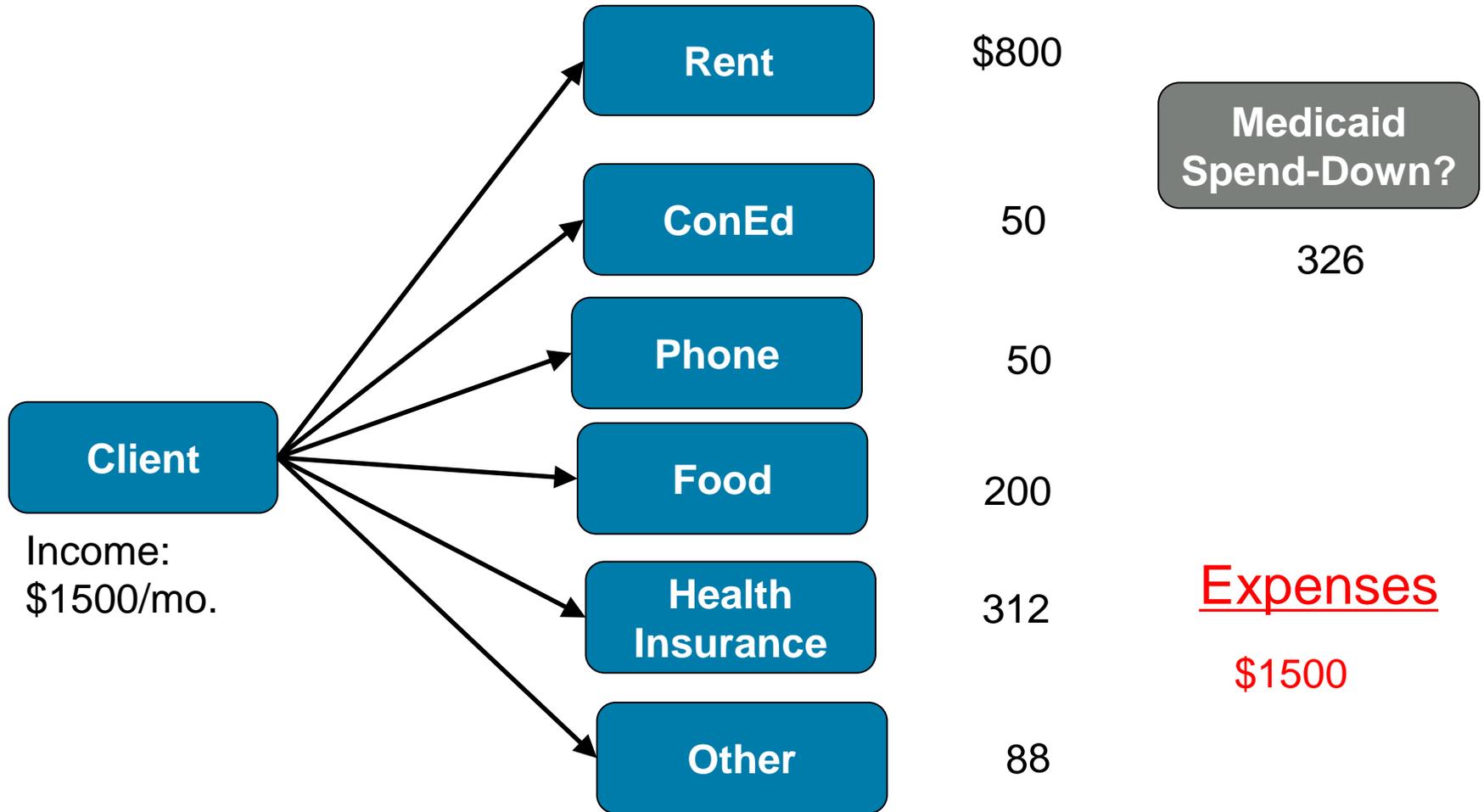
Unearned income disregard - 20

Net countable income **\$1168**

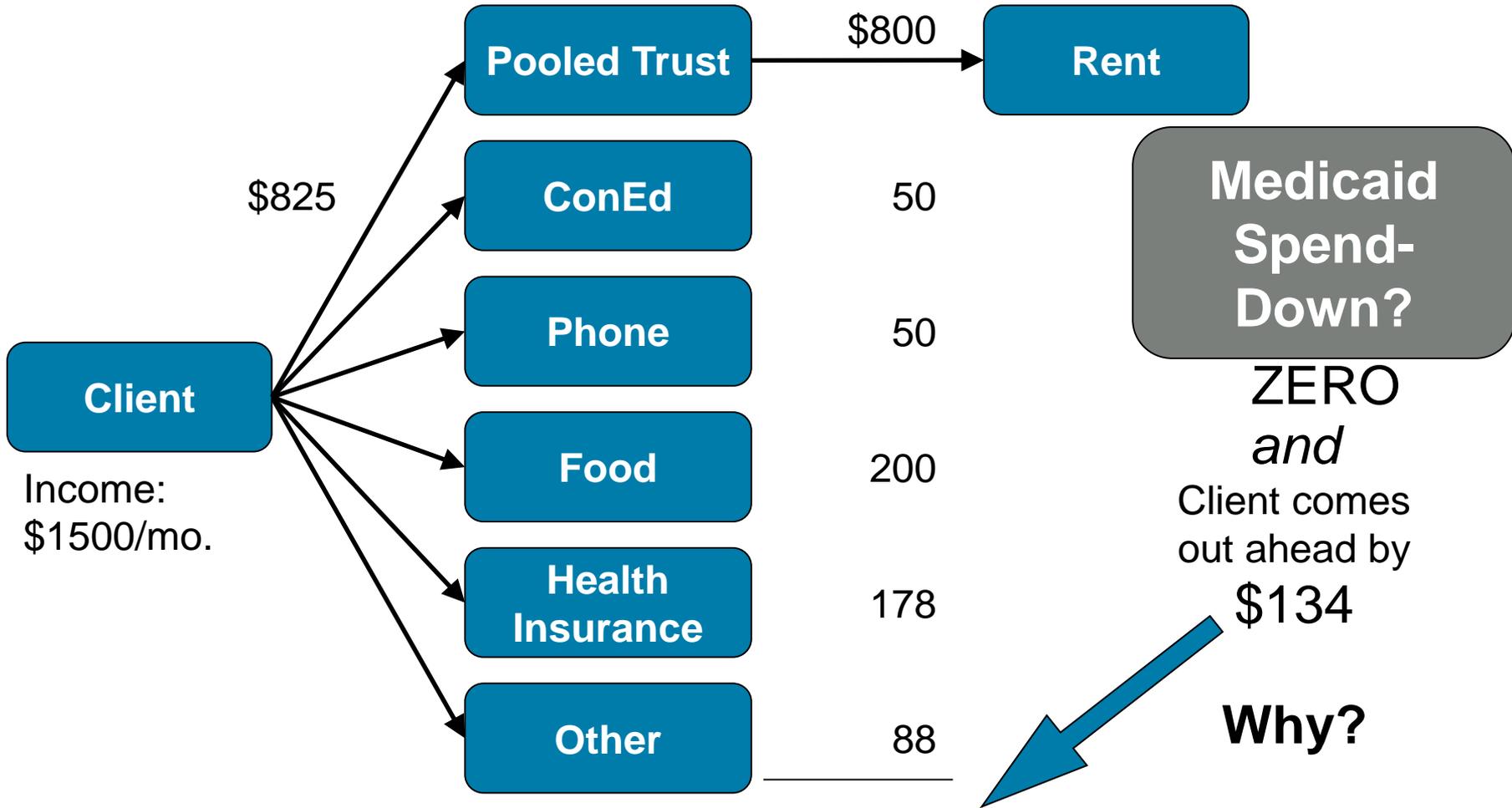
Income limit for single - \$842

Excess income **\$326**

Before the pooled trust



After the pooled trust



How can client come out ahead?

- An extra perk of the pooled trust is it can make you eligible for **Medicare Savings Program (MSP)**, which pays the Medicare Part B premium
- Thus, by using the pooled trust, you can get a \$134/mo. raise to your Social Security, in addition to eliminating your spend-down
- In most cases, this will cover the monthly cost of the trust, which is the fee charged by the pooled trust organization
 - In our example, the fee was \$20/mo. (client contributed \$860 so trust could pay \$800 rent after deduction of fee)
 - Medicare premium approximately \$134/mo.

Medicaid budget with pooled trust

Gross monthly income		\$1,500
Health insurance premiums	(Medigap)	- \$178
Unearned income disregard		- \$20
Contribution to pooled trust		- \$825
<i>Net countable income</i>		\$477
Income limit for single		- \$842
Excess income		\$0

Supplemental Needs Trust

An overview of pooled trusts can be found here <http://www.wnylc.com/health/entry/2/>

A step by step guide to enrolling in one can be found here <http://www.wnylc.com/health/entry/44/>

Pooled trusts are listed here and have different fees. <http://www.wnylc.com/health/entry/4/>

Medicaid Buy-In for Working People with Disabilities (MBI-WPD)

State directives compiled here

<http://www.wnylc.com/health/entry/59/>

Medicaid Buy-In for Working People with Disabilities (MBI-WPD)

- Uses higher Medicaid income / resource limits for working people with disabilities.

Family Size	1	2
Monthly Income (250% FPL)	\$2350	\$3430
Resources	\$20,000	\$30,000

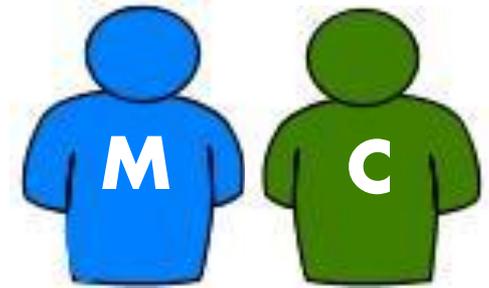
- Eligibility
 - Age 16-64
 - Certified disabled (including on SSD)
 - Working (no minimum number of hours and does not have to receive a tax form from employer)
 - Income & Resource under MBI-WPD program limits (IRA doesn't count even if not in distribution!)
- Not just for people on MLTC!

MBI-WPD Income & Resource Eligibility

- Use “Disabled-Aged-Blind” Medicaid income counting and deduction rules, including:
 - Unearned income: \$20 disregard
 - Earned income:
 - Subtract impairment related work expenses
 - Subtract \$65
 - 1/2 remainder

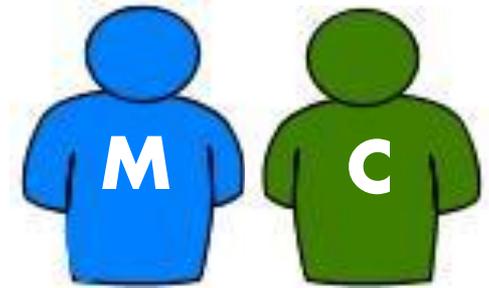
Resources – Does not require put IRA into distribution status in order to exempt principal.

Morgan's MBI-WPD Budget



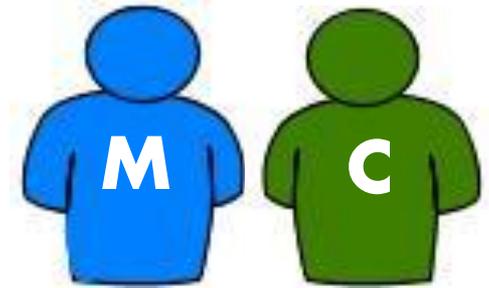
- Morgan gets a job that pays \$185/month
- Determine MBI-WPD Budget:
 1. Determine countable unearned income
 2. Determine countable earned income
 3. Apply MBI-WPD standard for a couple

Step 1: Morgan's Net Unearned Income



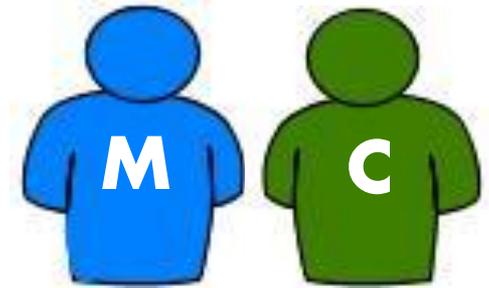
	Morgan	Chris
Unearned Income	\$1,500	\$2,000
Chris' Unearned Income	\$2,000	
Income disregard	- \$20	
Medicare Part B premium	\$268	\$134
<i>Net Unearned Income</i>	\$3238	

Step 2: Morgan's Net Earned Income



	Morgan	Chris
Earned Income	\$185	\$0
Income disregard	- \$65	
½ remainder	÷2	
<i>Net Earned Income</i>	\$60	

Step 3: Morgan's MBI-WPD Budget



	Morgan	Chris
Net Unearned Income	\$3,238	
Net Earned Income	\$60	
<i>Total Net Income</i>	\$3298	
MBI-WPD Standard (couple)	- \$3430	
<i>Excess Income</i>	\$0	

- Cannot spend down to the higher MBI-WPD level
- *Can* put income above MBI-WPD into a pooled trust. **GIS 15 MA/013**



QUESTIONS

Kelly Ann Murray

Staff Attorney

ICAN – Evelyn Frank Legal Resources Program

NYLAG

212-613-7358 / kmurray@nylag.org