

**Identifying Means Tested Public Assistance Programs**

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So, you're questioning your client about what public assistance she receives. Your client casually says, "I get Social Security and Medicaid."

You get that little feeling in your stomach because you know these public benefits issues are malpractice traps. You know the answer to the next question before you ask, but you ask anyway.

"What kind of Social Security and Medicaid?"

"I don't know," she answers, with a curious look in her eyes.

The trap is set. You can't walk away from the knowledge that the benefits she receives may be eliminated by the actions you take in her case.

I've been practicing elder and special needs law for many years. I know all about Social Security and Medicaid. I know all about section 8. I know about the Supplemental Nutrition Assistance Program ("food stamps"). But when I asked my clients, "What kind of Social Security and Medicaid do you get?" And they say, "I don't know," I get same feeling in my stomach.

Often, clients only know that a check comes once a month from the Social Security Administration. They are well aware that some government program is paying for a portion of their healthcare. They get health care cards in the mail and have talked to caseworkers about how to navigate the system. They may even have some notion that their income and property have a relationship to the benefits they receive.

The Social Security Act<sup>1</sup> (which encompasses not only Social Security but Medicaid also) and its regulations are of such "labyrinthine complexity" that they are "almost unintelligible to the uninitiated."<sup>2</sup> I cannot in this article tell you everything you need to know about the Social Security Act. My hope is that I give you information enough to for you to determine when you need to stop and investigate the type of benefits your client receives. .

**MEANS TESTING**

No discussion of public benefits can start without a fundamental understanding of the concept of "means testing" or, "needs-based." Simply put, if one has the means to pay for their own health care, housing, food, or other necessities of life, then they do not need public assistance to pay for those things. The question next is how much does one have to have before they have the means to pay for their necessities themselves?

Means testing is separated into two categories; income testing and resource testing. It's enough for our purposes here to say that income is money one receives each month. Resources are everything else one owns. If income is retained beyond the calendar month of receipt, it becomes a resource. Once income and resources are identified, they are divided into those that are "countable" and "non-countable."<sup>3</sup>

Thus, one has the means to pay for necessities of life if their countable income and countable resources exceed certain thresholds. If they are below the thresholds, means tested public assistance programs fill in the gaps.

But, there are many programs that are not means tested. To make matters worse, many of the programs that are not means tested look and feel like the ones that are. Your decisions will have no impact on the former but may greatly impact the latter. No wonder we get that feeling in our stomachs!

## **THE "BIG FOUR" MEANS TESTED PROGRAMS**

Government agencies at all levels have programs designed to help people who don't have the means to help themselves. No one I know can identify all the programs that someone with little or no money is entitled to receive. By far, most of the cases you encounter involve one of four programs. One bad decision involving these programs can result in a great loss to your client

### Medicaid

You will encounter Medicaid most often. It is also the most confusing. Much of the confusion is because there are two major types of Medicaid.<sup>4</sup> One program pays for long-term care support services like nursing home care. This Medicaid is commonly called Aged (65), Blind or Disabled (ABD) Medicaid. The loss of ABD Medicaid can be devastating. The other Medicaid program pays for routine health care. This is the program most people understand to be the healthcare provider for people living in poverty. It is often called "community" Medicaid. Under the Affordable Care Act (ACA or "Obamacare"), you will hear this program called MAGI ("modified adjusted gross income") Medicaid. Under the ACA's Medicaid expansion, most people receiving community Medicaid are enrolled in MAGI Medicaid.<sup>5</sup>

For ABD Medicaid, there is both an income limit and a resource limit. The monthly income limit is \$643.00 (2015) and the resource limit for an individual is \$1500.00.<sup>6</sup> There are a number of income and resource rules and exclusions to guide the state in making eligibility determinations.

To make things more confusing, ABD Medicaid has a companion program known as Waiver Medicaid. The term "waiver" simply means that the federal government has waived the rules resulting in Medicaid services provided only in an institution. People on waivers can receive ABD Medicaid while living in the community. An example of a waiver program is the PASSPORT program for the elderly. The income limit for waiver Medicaid is \$2199.00 (2015). The resource limit is the remains \$1500.00.<sup>7</sup>

For MAGI Medicaid, the income limit is 138% of the federal adjusted gross income. It is important to note the definition of income for MAGI Medicaid is the federal income tax definition. If whatever income one receives is not gross income, it does not count towards the income limit calculation. Additionally, the ACA eliminated the resource limitation for people receiving MAGI Medicaid.<sup>8</sup>

People who are on ABD and waiver Medicaid will automatically receive community or MAGI Medicaid. However, people on community Medicaid will not automatically receive ABD Medicaid.

### Supplemental Security Income (SSI)

SSI is a federal welfare program that provides a small amount of income for people. For 2016, that income was a maximum of \$733 per month. To be eligible for SSI a person must be age 65, blind, or disabled (ABD). Like Medicaid, there are both income and resource limits. Generally speaking, (based on how the monthly benefit is calculated) the maximum income one can receive and remain eligible for SSI is the maximum monthly benefit; \$733. The resource limit is \$2000. Like Medicaid, certain resources are not counted.

### Section 8 Housing<sup>9</sup>

Section 8 provides rent subsidies for low income individuals and families. Some Section 8 funding is project-based, meaning it is linked to a particular apartment building. On the other hand, Section 8 "vouchers" (called Housing Choice Vouchers), follow the tenant wherever that tenant lives in approved housing.<sup>10</sup> Section 8 assistance is administered by local housing authorities, (in Ohio these are often "metropolitan" housing authorities).

Section 8 is a means tested program. Resources are not counted, but the housing authority imputes income to some resources. Thus, only household income is evaluated to determine eligibility. Typically, Section 8 is only available to people with incomes that are at 30% of the area median income or below. For Columbus, Ohio, 30% of the area median income for a family of four is \$24,250 per year. If the household has income over that, they are not eligible for Section 8. Income is counted on an annualized basis. One month of income is spread out over the year. Notably, lump sum payments are not considered income.<sup>11</sup> However, any income that lump sum generates (e.g. interest in a bank account) counts. Tenants are required to pay 30% of their income towards rent.

### Supplemental Nutrition Assistance Program

SNAP, formerly known as "food stamps," is a means tested food assistance program funded with federal dollars and administered through local county departments of jobs and family services. Households receiving SSI are automatically eligible for SNAP. Other households must pass financial eligibility requirements.

Ohio considers resources in determining eligibility in some cases. Households with a member who is disabled need only meet the income limit test to be eligible for SNAP, which is 100% of the Federal Poverty Level; \$11,880 for a household of one.

## **MAJOR PROGRAMS THAT ARE NOT MEANS TESTED**

### Medicare

Medicare is a national health insurance plan. It is most notably different from Medicaid in that it is not a means tested program. Medicare provides for basic healthcare and prescription medicines. Medicare beneficiaries may pay a premium and medical co-payments similar to what you would expect in a private insurance plan. People age 65, blind, or disabled are eligible for Medicare. It is possible to be eligible for Medicare and Medicaid at the same time (called “dual eligible”). Medicare does not pay for long-term care at a skilled nursing facility (e.g. nursing home).

### SSDI

Social Security Disability Insurance (SSDI) is provided to people who are unable to work for longer than a year due to a disability. It is designed to replace lost income. SSDI is not means tested. Eligibility and the benefits level SSDI is calculated based on the length of time someone has worked and the amount they paid in payroll taxes. Once someone is on SSDI for two years, they qualify for Medicare. It is the primary health insurance provider for someone receiving SSDI.

### Child Disability Benefits (CBD)

CDB Benefits (sometimes called Disabled Adult Child benefits), are based on a parent’s work history. It is a Social Security program. The parent must be receiving Social Security retirement benefits. If the parent is alive, the individual will receive a monthly benefit equal to 50% of the amount the parent receives in retirement benefits. When the parent dies, the individual will receive a monthly benefit amount equal to 75% of the amount the parent received in retirement benefits. CDB Benefits are not means tested. Once someone has received CDB for two years, they will also begin receiving Medicare.

## **DISTINGUISHING MEANS TESTED PROGRAMS FROM THOSE THAT ARE NOT**

Even as an experienced special needs practitioner, I often find it difficult to identify the benefits my clients receive based on their descriptions alone. To be sure, the only sure way to determine the benefits received is to see the public agency determination letter the client received. Those letters are received upon initial approval of benefits and annually as benefits are recertified or adjusted. Without the letters in hand, I ask a series of questions that begin to narrow down my options. Here are a few of those questions. No one question will be dispositive. You may still have to dig a little more.

*How much do you receive each month in Social Security benefits?*

If the client answers the exact amount that Social Security pays (i.e. \$733), I immediately suspect that they are receiving SSI. If it is more than \$733, it is likely that they are not receiving SSI. Caution should be taken if they are receiving \$733 or less. People can receive SSI and other Social Security benefits like SSDI at the same time. That total may add up to \$733 or less. If you look at the client's bank statements you should be able to see multiple Social Security payments.

*What does your Medicaid pay for?*

ABD Medicaid pays for skilled nursing services, skilled therapies and residential services. Community Medicaid pays for routine health care. If a client is receiving skilled services (especially if the services are being delivered to their home) you should immediately suspect ABD Medicaid. However, there are circumstances under which Medicare will pay for the same services for a period of time following a brief hospital stay. It is not enough to know that the client is receiving a monthly Medicaid card because people on ABD Medicaid will automatically qualify for community Medicaid.

*Do you ever have to recertify your income or resources to the county, the state, or the Social Security Administration?*

People receiving any of the big four means tested benefits are required to routinely recertify their financial eligibility with the agency administering their benefits. Typically this occurs annually, but may occur more frequently depending on the program or the client's circumstances.

*Do you get an EBT card? (Are you getting food stamps?)*

An Electronic Benefit Transfer (EBT) card is the way SNAP benefits are paid. We don't use the term "food stamps" any more. The EBT card is loaded each month by the state with the amount of money the family receives from SNAP. The EBT card is used like a debit card.

It is important to know if someone is receiving SNAP benefits. Receipt of SNAP benefits is an indicator that your client may be receiving other means tested benefits also. Public agencies often include SNAP applications with other program applications. For example, when you apply for Medicaid, you are asked if you want to apply for SNAP also.

*What day of the month is your Social Security payments received?*

Typically, SSI is deposited on the 1<sup>st</sup> of the month and SSDI on the 3<sup>rd</sup> of the month. Caution: I don't know why this is or whether that will suddenly change.

*Do you make co-payments for doctor visits or pay for all or a portion of your own medications?*

Typically, people receiving Medicaid contribute nothing to their health care costs. People on Medicare may. The challenge here is that some of this is sometimes done electronically without "out of pocket" costs to the patient.

## CONCLUSION

The public benefits legal landscape is complicated and fraught with peril. Regardless of your area of expertise, it is common knowledge that some benefits are means tested. I believe it is insufficient to operate with a "don't ask, don't tell" frame of mind. However, if you use some simple techniques to explore these benefits, you can avoid trouble, locate the information you need, and continue to make your client's life a little better.

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<sup>1</sup> 42 U.S.C. Chapter 7.

<sup>2</sup> Quoting, Judge Friendly in *Freidman v. Berger*, 547 F.2d 724 (2d Cir. 1976)

<sup>3</sup> There are number of exclusions to both resources and income. Among the rules for counting assets, see for example, Ohio Admin. Code § 5160:1-3-05.14 (resources) and §5160:1-3-03.11 (income).

<sup>4</sup> At the national and state level the Medicaid program has many more unique benefit programs.

<sup>5</sup> MAGI Medicaid and community Medicaid are the same programs. Upon implementation of the Medicaid expansion under the Affordable Care Act, some people were converted from community Medicaid to MAGI Medicaid. You may not always see the acronym MAGI when encountering community Medicaid.

<sup>6</sup> Ohio is changing its eligibility determinations in July 2016. The income limit will go to approximately \$733 per month and the resource limit will go to \$2000.

<sup>7</sup> There is an additional program that allows people with disabilities to "buy in" to the Medicaid program if they are working. This program has increased income and resource limitations and is known as the Medicaid Worker Buy In program.

<sup>8</sup> See, 42 CFR §435.603(g).

<sup>9</sup> The program is named for section 8 of the United States Housing Act, Am. See, 42 U.S.C Chapter 8.

<sup>10</sup> There are also many other housing assistance programs, some targeting vulnerable populations (like the 811 for people with disabilities). The income and resource rules are the same for all common federal rent-subsidy programs.

<sup>11</sup> There are a number of income exclusions. See, 24 C.F.R 5.609.