



# One Step Ahead

Resource Planning for People  
with Disabilities Who Rely on  
Supplemental Security Income  
and Medicaid

Attorney Roy Froemming

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# ***ONE STEP AHEAD***

## ***Resource Planning for People with Disabilities Who Rely on Supplemental Security Income and Medical Assistance***

Attorney Roy Froemming

June 2025

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### Resource Planning for People with Disabilities Who Rely on Supplemental Security Income and Medicaid

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**FOURTH EDITION: June, 2025**

This Fourth Edition (2025) of *One Step Ahead* was prepared with financial assistance from the Elder Law and Special Needs Section of the State Bar of Wisconsin.



Elder Law and  
Special Needs Section

Research and editing assistance was provided by Kelsey Gunvalson.  
Production assistance for the Fourth Edition was provided by Wispact, Inc.

The First Edition (1995) and Second Edition (2005) of this publication were funded and published by the Wisconsin Board for People with Developmental Disabilities.

The Third Edition (2009) was funded in part by a grant from the School of Social Work, University of Wisconsin-Madison, and was published by the Wisconsin Board for People with Developmental Disabilities.

Any opinions expressed are those of the author and do not represent the positions of the Wisconsin Board for People with Developmental Disabilities, University of Wisconsin School of Social Work, State Bar of Wisconsin or Wispact, Inc.

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## LIST OF SOME ABBREVIATIONS AND COMMON TERMS USED IN THIS BOOK

**ADRC**—Aging and Disability Resource Centers.

**DHS**—The Wisconsin Department of Health Services, which administers and sets policy for the state Medicaid program, including the Home and Community-Based Waivers, and the state SSI supplement.

**DAC**—Disabled adult child, the term used by EBD Medicaid to refer to an adult who became disabled before age 22 and is receiving an SSDI benefit on the Social Security account of a parent. SSA uses the term adult child disability beneficiary.

**Disability determination**—A current determination by the Wisconsin Disability Determination Bureau (DDB) (or similar agency in another state) that a person meets the disability test for eligibility for SSI, SSDI or EBD Medicaid.

**EBD Medicaid**—The Medicaid program in Wisconsin that governs eligibility for people who qualify based on being elderly (age 65 or over), blind or disabled.

**HCBW**—Home and community-based waiver long-term support services (see [Part I.D](#)).

**IM agency**—Income maintenance agency. This is the state agency (county, tribe or consortium of counties) that makes eligibility and other determinations related to Medicaid, ForwardHealth, FoodShare and other benefits (see [Part I.C.3](#)). It handles EBD Medicaid applications for people not eligible through SSI, and the financial aspects of eligibility for HCBW services.

**MAPP**—the Medicaid Purchase Plan. MAPP is for people who are working and has more generous income and resource standards than other ways of qualifying for EBD Medicaid.

**Medicaid card services**—These are the Medicaid services you can receive without being found separately functionally eligible for long-term institutional or HCBW support services.

**SGA**—Substantial gainful activity (see [Part I.J](#)).

**SNT**—Supplemental Needs Trust. This is a trust which has a person with a disability as beneficiary and is written and created so that assets of the trust do not count as an asset for SSI and EBD Medicaid (see [Part X](#)).

**SSA**—The Social Security Administration, which administers and sets policy for the Supplemental Security Income and Social Security Disability Insurance programs.

**SSDI**—Social Security Disability Insurance (see [Part I.G](#)).

**SSI**—Supplemental Security Income (see [Part I.B](#)).

## A NOTE ON THE FOOTNOTES AND CROSS-REFERENCES

The footnotes and the meaning of the citations are discussed in [Part XII](#). The cross-references are to numbered headings of the book. Clicking on one should take you to the part referenced. A partial reference (e.g., just to "H" means that part of the section you are in.

## I. INTRODUCTION

### A. Who is this book meant to help, and how?

#### 1. Who is the “YOU” in this book?

When the word "you" is used in this book, it refers to a person who has a substantial, long-term disability of the kind that might qualify the person for EBD Medicaid and/or Supplemental Security Income (SSI) based on his or her disability, and who depends or may need to depend on EBD Medicaid for health care or long-term support services and/or on SSI for income, now or in the future.

People may also qualify for EBD Medicaid and/or SSI based on being age 65 or over. Much of the information on how income and assets are counted for EBD Medicaid and SSI will be useful to people who qualify based on being age 65 rather than disability, but some rules and policies are specific to people with disabilities, or to people under age 65.

» **NOTE: If you are over age 65 you may also have (or request) a disability determination** for some purposes (like being able to participate in **MAPP** (see [Part VII.I](#)) or fund a pooled trust account for yourself (see [Part X.F.3](#).)

#### 2. How is this book meant to help?

The main purpose of this book is to help you plan how you can own or benefit from money and other property (including a home) in ways that will not interfere with eligibility for EBD Medicaid or cause reduction of your SSI and Medicaid benefits. This book is also intended to be useful to a family member or friend who has financial resources they want to use for your benefit, to a creator or trustee of a trust for your benefit, and to people who advise and advocate for people with disabilities.

Property and money you own or receive over certain amounts may make you ineligible for benefits under SSI and EBD Medicaid, reduce your SSI payment, or increase the cost to you of getting Medicaid for long-term support services. Examples of events that may put benefits at risk include having an increase in income, saving money from your income, receiving money given directly to you by gift or in a will, winning the lottery, or getting an award for money in a court case. If you receive (or expect to receive) money or property that puts your benefits at risk, this book is intended to help you plan how to either use those funds to benefit yourself in the short-term future or set them aside for future use for your own benefit (e.g, through a trust or ABLE account that you fund yourself) without affecting your SSI and Medicaid benefits in ways you cannot afford.

Because of the restrictions that SSI and Medicaid put on what you can own or receive, relatives and other people who want to give you money or property may be discouraged from doing so by concern that you will lose benefits and the funds will be used for support and care that SSI and Medicaid would otherwise have paid for. This book will talk about ways that people can help you, by immediate assistance or by plans to set aside money or property for your future benefit, without causing you to lose needed SSI and Medicaid benefits.

Public benefit programs are not able to meet all the needs and wants of the people they serve. Getting the most out of your income and resources (and getting help from other people in the right ways) can help you live a fuller more independent life, fill gaps in public programs and make the programs more effective. SSI by itself (even with the maximum state supplement) provides an income that is well below poverty level. There are significant limits to Medicaid coverage, particularly of dental care and services to plan and provide support for you to live in your own home and community. People who want to help, or funds set aside for you in an ABLE account or trust, can fill program gaps by helping you to own or rent stable housing of your own choice, to pay for dental, medical and support equipment and services that you could not get otherwise because they are not covered by Medicaid or you cannot find a provider who takes Medicaid, or to pay for private case management or advocacy so that services better address your individual needs.

### 3. When may this book be less helpful to you?

This book will be less helpful to you if:

- **You are eligible or applying for BadgerCare Plus.** BadgerCare Plus is a Medicaid program but does not follow the rules and policies on how income and assets are treated for eligibility for SSI and EBD Medicaid. The eligibility rules for BadgerCare Plus and the overlap with EBD Medicaid are discussed briefly in [Part C.1](#).
- **You are looking for information on how to establish that you have a disability** that would make you eligible for SSI, Social Security, Medicare or EBD Medicaid. This book focuses on financial eligibility for SSI and EBD Medicaid, and assumes that you meet either the age, blindness or disability tests that apply to SSI and EBD Medicaid. The disability test is discussed briefly in [Part H](#).
- **Your goal is to preserve substantial resources for family members or others**, now or after your death. A full discussion of ways to transfer assets to others and ways for married couples to preserve assets and income are beyond the scope of this book.
- **You are looking for information about Foodshare, subsidized housing, VA benefits or other benefits programs.** The rules that govern how income and resources are treated for SSI and EBD Medicaid do not apply to other federal and state programs that have income and/or resource tests. A strategy that works to preserve SSI or EBD Medicaid may not work with other programs.
- **You have a disability that does not meet the disability test for SSI, EBD Medicaid or SSDI.** Some information may be helpful if you are planning for a future need for disability-based benefits. People may also be interested in use of trusts for purposes other than qualifying for benefits (see [Part X](#)).
- **You are on Social Security and Medicare, and are not on Medicaid**, unless you are planning for future need for Medicaid.
- **You are concerned about issues of citizenship or residence.** These may be issues for eligibility for SSI and Medicaid, but are beyond the scope of this book.

## **B. What is Supplemental Security Income (SSI) and who gets it?**

Supplemental Security Income (SSI)<sup>1</sup> is a federal program administered by the Social Security Administration (C) that is intended to provide a basic minimum cash income for you if (1) you either have reached age 65 or have a determination that you have a qualifying disability (see [Part H](#)) and (2) you meet the income and resource tests for the federal SSI program. To be eligible for SSI in a month, you must meet set limits on the value of property you receive in a month that SSA considers countable and available to you (countable income) and on the value of money or property you own at the beginning of the month that SSA considers countable and available to you (countable resources). If you are eligible, SSA then compares your countable income to the federal SSI payment level that applies to your situation and makes a payment to you to make up the difference. (Usually, the payment for the current month is based on your income two months before.)

In Wisconsin, there is a state SSI supplement program that will make a payment to you for any month when you are eligible for a federal SSI benefit. If SSA informs the state that you are eligible for a federal benefit in a month, then the state will make the supplement payment. You do not have to apply for the basic state supplement, but you do have to apply if you want to qualify for the increased state benefit, called SSI-E that is paid to people who need certain kinds of support services or for the supplement paid if you who care for a child.

See [Parts VI.C](#) and [VI.D](#), for more information on federal SSI payment levels and on how to qualify for the state supplement and SSI-E.

## **C. What is EBD Medicaid, who does it serve and how is it different from BadgerCare Plus?**

### **1. Introduction**

Medicaid<sup>2</sup> is a joint program of the federal and state government that pays for medical, health care and long-term support services for people with low incomes. The federal government provides a share of funding, if the state operates the program under federal law, rules and policy. The state administers the program, provides a share of the funding, and has its own set of laws, rules, and policies. In order to get federal funding, the state must follow federal rules as well as its own rules and policy. Wisconsin has two Medicaid programs, EBD Medicaid and BadgerCare Plus. Both EBD Medicaid and BadgerCare Plus are part of a group of programs Wisconsin calls ForwardHealth (along with FoodShare and some other nutrition and health care programs). EBD Medicaid and BadgerCare Plus differ in terms of the eligibility groups they serve and the income and resource rules that apply, but generally pay for the same package of services. If you are in either program, you will get a ForwardHealth card, and you will often get notices about your eligibility that will refer to both programs. It is important to read each notice carefully, to see what program is meant (for example, a finding of ineligibility for BadgerCare Plus does not mean you are ineligible for EBD Medicaid, and vice versa.)

This book focuses on the rules for financial eligibility for EBD Medicaid, which is often just called “Medicaid” in Wisconsin. (“EBD” stands for “elderly, blind, disabled.”) You will only be eligible for EBD Medicaid if you are age 65 or over, if you are blind (as defined for SSI), or if you have disabilities of the kind that would allow you to qualify for SSI or under the special rules that apply to the Medicaid Purchase Plan.

<sup>1</sup> See [Part XII.A](#) for sources of the laws, rules and policies governing SSI.

<sup>2</sup> See [Part XII.A](#) for sources of the laws, rules and policies governing Medicaid.

**BadgerCare Plus** provides coverage for children who have not been determined to be disabled, their parents and caretakers, and adults between the ages of 19 and 64 who are not eligible for Medicare and have not been determined to be disabled. BadgerCare Plus requires people to meet tests for having low income but, unlike EBD Medicaid, BadgerCare Plus has no resource test, and it uses a very different way of counting income (much more like the way income is counted for income taxes).<sup>3</sup> Income tests are different for different eligibility groups.

Despite the distinctions between the two programs, there are circumstances under which **you may be eligible for Medicaid-funded services through BadgerCare Plus even though you are a person with disabilities or are age 65 or over. Some examples of when this may happen are:**

- You are a child age 18 or younger and do not have a disability determination. (See Part H for information about disability determinations. See [Part VII.M](#) on Katie Beckett and [Part VII.L](#) on the children's long-term support waiver. Both of those programs require that you have a need for long-term support but do not require a disability determination.)
- You are the parent, grandparent or caretaker of a child who is eligible for Medicaid.
- You are age 65 or over but qualify for BadgerCare Plus because you are the parent or eligible caretaker of a child who lives with you.
- You are an adult age 19-64, and you are not eligible for Medicare.

## **2. How do the SSI and EBD Medicaid programs fit together?**

EBD Medicaid is sometimes called “SSI-Related” Medicaid because the two programs serve similar populations and share many eligibility rules. The definition of disability is the same (except for the special definition that applies to people who are working and in the Medicaid Purchase Plan). If you get SSI, you will automatically get EBD Medicaid without having to file a separate application. However, many people who do not get SSI for financial or employment reasons may qualify for Medicaid in other ways (see [Part VII](#)).

Wisconsin's Medicaid program must follow the same rules for EBD Medicaid as SSI uses in deciding whether income and resources are counted, unless the state has decided to adopt less restrictive policies.<sup>4</sup> Wisconsin policies are less restrictive than SSI in some ways. For example, in-kind shelter does not count as income for EBD Medicaid (see [Part VI.G.4](#)).

## **3. How do you apply for Medicaid if you are not getting SSI?**

If you are getting SSI, you do not need to apply for EBD Medicaid card services. However, you will need to apply for HCBW long-term support services (see [Part D](#).) If you were on SSI, but lost SSI because you have too much earned income, Social Security may continue to treat you as eligible under the 1619(b) program, and you will not have to apply for EBD Medicaid (see [Parts III.C.2](#) and [VII.A](#))

<sup>3</sup> For BadgerCare Plus eligibility see BadgerCare + Eligibility Handbook, <http://emhandbooks.wi.gov/bcplus/>.

<sup>4</sup> EBD Medicaid and SSI comparability: 42 U.S.C. §1396a and 42 CFR §§ 435.601(b)(2) & (d), 435.831(b)(2) & 435.845(b).

If you are not eligible for SSI or treated as eligible for SSI through 1619(b), you may still get EBD Medicaid but you must apply for it in one of several ways. These include:

- You can apply online at [access.wisconsin.gov](http://access.wisconsin.gov).
- You can complete the Medicaid for the Elderly, Blind, or Disabled Application Packet (F-10101)<sup>5</sup> and then fax or email it to the tribal or county agency for your place of residence, or to the ForwardHealth consortium for your area.
- You can use the paper or online application available through the Federally-Facilitated Marketplace (FFM), or make a telephone application to the FFM. If you apply for Affordable Care Act coverage, and are considered eligible for EBD Medicaid, your application will start the process of applying for Medicaid but you will need to respond to follow-up questions from the consortium.
- You can ask for a telephone or face-to-face interview with someone from the tribal or county agency for your area.

Each county (other than Milwaukee) is part of a consortium with other county agencies that allows them to cooperate in handling applications. However you choose to apply, most of your calls and correspondence will be with the consortium for your area.<sup>6</sup> This book refers to the agency that is handling your Medicaid application as the “income maintenance agency” or IM agency.

#### 4. What health care and long-term support services are covered by Medicaid?

Medicaid is more than a health insurance program. It provides coverage for a wide range of medical services, drugs, habilitative and rehabilitative therapies, vision and dental services, often including services not covered by private insurance or Medicare. Medicaid also provides coverage for the long-term costs of support services that people need to remain in their homes and communities, assisted living, and nursing homes—again often including services not covered by either standard health insurance or Medicare. Because many Medicaid services are not covered by private health insurance or Medicare, you may want to plan to be able to keep Medicaid even if you have access to private health insurance, an Affordable Care Act policy or Medicare.

Medicaid services can be divided into several categories:

- **“Medicaid card services.”** Some services, often called “card services” are covered for anyone who has a Medicaid ForwardHealth card and meets the standard of need for the particular service set by Medicaid policies, without the need to establish eligibility for home and community based waiver (HCBW) long-term support services. Card services include most medical and rehabilitation services, therapies, hospital care, nursing home care, medical equipment, supplies, medications, dental care and visual care. In some cases, providers must establish that you have a need for the service or get prior authorization from the state or county before the item or service can be provided. This applies to nursing home care, longer-term home health care, personal care and therapies, medical equipment and community support and psychosocial rehabilitative services. Some card services (like nursing home, home health and personal care) may not be separately covered if you get home and community-based waiver services because they are considered to be part of the package of services provided under the HCB waiver.

<sup>5</sup> The application forms are available online at: [www.dhs.wisconsin.gov/library/collection/f-10101](http://www.dhs.wisconsin.gov/library/collection/f-10101).

<sup>6</sup> You can find the county or tribal agency or ForwardHealth consortium for your area or tribe by going to: [www.dhs.wisconsin.gov/forwardhealth/imagency/index.htm](http://www.dhs.wisconsin.gov/forwardhealth/imagency/index.htm).



- **Home and community-based waiver (HCBW) services**, including Family Care, IRIS and the Children’s Long-Term Support (CLTS) waiver program. These programs, discussed in [Part D](#), pay for a broad range of individualized services to support people to live and work in the community and be part of community life. They require a separate application process to determine functional eligibility, on top of the usual Medicaid application process. HCBW services may be available to people with income substantially higher than the usual EBD Medicaid income limit, if cost of long-term support services exceeds countable income. (See [Part VII.J](#).)
- **Nursing home and institutional services.** Nursing home services are available only if you have a condition that requires a nursing home level of care. If you are in a hospital and/or nursing home for a period of more than 30 days you may be eligible for EBD Medicaid if the cost of your care is more than your countable income and you meet the Medicaid asset test. (See [Part VII.K](#).)
- **Community services for people with mental illness and substance use disorders.** These programs (Community Support, Comprehensive Community Services, and Community Recovery Services) are administered and partly funded by counties. Like the HCB waiver programs, they require you to meet a separate functional eligibility test, determined by use of a functional screen. (See [Part 5](#).)

## 5. What are the “functional screens”?

You will only be eligible for HCBW services and community mental health programs if the state finds that you have physical and/or mental conditions that result in a need for the services to help you function in your home and community. This requirement is separate from the requirement that you have a disability determination (required for adults under age 65). The state determines functional eligibility by the use of a set of evaluation tools called functional screens. Each functional screen consists of a set of questions about things you are able to do for yourself and things with which you need help. Eligibility is determined by the state’s computerized evaluation of your answers. In the IRIS program, the screen also determines the expected cost of services. In most of your life, you probably want to emphasize how much you are able to do for yourself. In answering functional questions it is important to say accurately how much help you need, either from other people or from assistive equipment, so that the evaluation of your support needs is as accurate as possible.

Currently (April, 2025) Wisconsin’s functional screens<sup>7</sup> and the programs they affect are:

- The Adult Long Term Care Functional Screen determines functional eligibility for the Family Care, Partnership, PACE and IRIS programs.
- The Children’s Long-Term Support Program Functional Screen determines functional eligibility for the Children’s Long-Term Support Program and the Children’s Community Options Program (discussed in [Part E](#)).
- The Mental Health and Substance Use Disorder Functional Screen determines functional eligibility for Community Support Programs, Comprehensive Community Services and Community Recovery Services, discussed in [Part 4](#).

<sup>7</sup> <https://www.dhs.wisconsin.gov/functionalscreen/index.htm>



## D. What are the Home and Community-Based Service Waiver Programs for adults (Family Care, IRIS, CLTS, PACE and Partnership) and how do you apply?

### 1. Background and application process.

Federal Medicaid law allows states to cover a wide range of home and community-based long-term support services under programs that operate under plans submitted by the state and approved by the federal government. These programs were originally designed to provide an alternative to nursing home and institutional care. The programs waive certain federal Medicaid requirements that ordinarily apply to Medicaid, and for that reason are often called home and community-based waiver (HCBW) *programs*. To be eligible for HCBW services, you must have a functional need for services as shown by the functional screen (see [Part C.5](#)).

If you are found functionally eligible for an HCBW services program, and meet the asset test for EBD Medicaid, you may be eligible for EBD Medicaid and HCBW services **even if your income is far above the usual eligibility limit for Medicaid**. Depending on your income and how you qualify for Medicaid, you may have to pay part of the costs of HCBW services. Financial eligibility and cost-sharing for HCBW services are discussed in [Part VII.J](#).

The process of getting information about Wisconsin's HCBW programs for adults starts at the Aging and Disability Resource Center (ADRC) that serves your county or tribe (see [Part F](#)). The ADRC will provide information on how the different waiver programs work, what kinds of services are covered, the choice between different managed care organizations for Family Care, the choice between Family Care and the Partnership/PACE programs, and the choice between those programs and IRIS. The ADRC's role is to provide information, not to advise you on what choice is best for you, so you may also want to talk to other individuals or agencies with experience with the programs. The ADRC completes the initial functional screen to determine functional eligibility, if you decide to proceed with an application. This booklet provides only a brief summary of the different programs and is not intended to substitute for the information provided by the ADRC (See [Part XII](#) for contact information for ADRCs).

HCBW services include support services to help you live in your own home and in certain group residential settings. They also include other services you need to participate in community life and to work. Common examples of services are supportive home care, personal care, supported work, adult family home and assisted living. A complete list of Family Care services is online at [Family Care: Benefits | Wisconsin Department of Health Services](#).

### 2. Family Care.

Family Care is a managed-care program. Services are planned and funded through Managed Care Organizations (MCOs) that are private agencies acting under contracts with the state.<sup>8</sup> If you are eligible for HCB Waiver services and choose the Family Care option, you will also need to choose an MCO that serves your county. The MCO will assign a case manager, who is responsible for coordinating an assessment of your needs and personal goals, and for creating an individualized, "person-centered" support plan that is supposed to be individually designed to meet your needs and goals. There are several factors that limit how close MCOs come to actually carrying out this promise:

<sup>8</sup> For more information, see [Family Care, Family Care Partnership, and PACE: Managed Care Organizations | Wisconsin Department of Health Services](#) on the DHS website.

- Case managers have high caseloads, a high turnover rate and, often, will not know you or the resources in your community very well. They will mostly be trying to fit you into services the MCO already contracts for. (But see the self-directed Family Care option described below, and IRIS).
- An MCO receives a set monthly payment from the state for each person it serves. It may spend more or less than that amount on services for particular people, depending on their needs and goals, but overall it must pay its administrative costs, serve all of its participants and make whatever allowed profit it seeks within the total funds it gets from the state.
- MCOs do not provide direct services. Instead, they contract with outside providers to deliver services, supplies and equipment included in your plan. The MCO will want you to use its contract providers, unless it has no provider available to deliver the service you need. This may mean, for example, an offer of residential services outside your home community. Contract providers may limit the number of Family Care participants they serve. Assisted living facilities often limit services to people who have paid privately for services for a period of time before getting Family Care.
- Contract providers often have staffing problems and limited funding for training and quality control which limit the effectiveness of services. Because of budget limitations, MCOs may not take responsibility for fixing those problems and the state may not push MCOs to do so.

Within Family Care there is a **self-determination option**, under which individuals continue to receive case management from the MCO but have a wider ability to choose providers and forms of assistance outside the MCO provider network, e.g., by recruiting, hiring and firing their own personal care and supportive home care workers, who are then paid through an agency called a “fiscal intermediary” that ensures that legal requirements for payroll taxes, unemployment and workers compensation insurance are met.

### **3. Family Care Partnership and PACE Programs**

The Family Care Partnership and PACE Programs are similar to Family Care and, like Family Care, are operated through Managed Care Organizations. However, Partnership and PACE provide managed care for a participant’s medical and health care as well as the long-term support services provided by Family Care. In 2024, Family Care Partnership is available to people 18 and over in 18 counties. PACE is only an option for people who are age 55 or over in Kenosha, Milwaukee, Racine, and Waukesha counties. Contact your ADRC if you want more information or want to apply for either program

### **4. IRIS (Include, Respect, I Self-Direct).**

The Include, Respect, I Self-Direct Waiver, commonly known as “IRIS”, is an optional program that is intended to allow you to design and manage your own support services and control how the funds available for your long-term support are used. In IRIS, you will not have an MCO or case manager and will not be limited to Family Care service definitions or to the providers in an MCO provider network. You have to work within a budget, but you decide how to spend the funds.

You start the process of applying for IRIS at your ADRC, as described in [Part 1](#). To be eligible, you must be a person with a developmental or physical disability, or a person age 65 or over and you have to be functionally eligible. Whether you meet these tests is determined by the Adult Long-Term Care Functional Screen. The functional screen also determines the initial budget amount that you will be able to use to plan and purchase services under IRIS.

If you choose to explore IRIS as an option, you will choose an IRIS consultant agency and a person from that agency to be your IRIS consultant. This is a person who understands how IRIS works and how it can be used to buy services, and who knows about services and resources in your area. You will also pick a fiscal employer agent who can help you screen workers you hire and will manage payroll, including paying payroll taxes and meeting unemployment and workers compensation requirements. You have the option of taking on employer authority for workers, or of contracting with an agency that employs workers for you. Personal care services are budgeted separately, again with a choice of acting as employer through self-directed personal care or of getting personal care services from an agency that acts as the employer.

You will work with your IRIS consultant to develop a service plan. If the initial IRIS budget estimate and personal care budget is not enough to pay for all the services in your plan, the consultant may help you to identify other resources or to seek a budget amendment increasing the IRIS funds available to you.

#### **E. What are the Children’s Long-Term Support Waiver (CLTS) and the Children’s Community Options Program (CCOP) and what is the application process?**

The Children’s Long-Term Support (CLTS) Program is a Medicaid-funded HCB waiver program that provides services for children and young adults. To be eligible, you must be under age 22, be eligible for Medicaid, have a significant developmental, physical, or emotional disability, and be functionally eligible. Membership in one of the disability categories, and functional eligibility, are determined through the Children’s Long-Term Support Program Functional Screen.

CLTS provides supports, services, supplies and equipment to help you remain in your home and community. It also provides support to your family or other caregivers to help them continue to provide support for you, including respite care and counseling. You and your family will develop a plan for services with a support and service coordinator (SSC) assigned to you through the local county human services agency.

The Children’s Community Options Program (CCOP) is a separate program that covers a flexible range of services to help children with disabilities and their caregivers. CCOP is able to provide more flexible services than can be provided under CLTS service definitions. To be eligible, you must be under age 22, live in a home with family or in a foster home, have a disability and have a need for support services as shown by the CLTS functional screen. CCOP is not a Medicaid program and you do not need to be eligible for Medicaid in order for you and your family to get CCOP. If you are not eligible for Medicaid there may be a charge to parents for CCOP services, depending on family income and the cost of services.

Application for CLTS and CCOP is made through the county health and human service agency. A list of county contacts and more information on eligibility and services can be found by following the links from the CLTS and CCOP home pages on [dhs.wisconsin.gov](https://dhs.wisconsin.gov).<sup>9</sup>

More information on IRIS can be found by looking for the IRIS home page on the DHS

<sup>9</sup> <https://www.dhs.wisconsin.gov/clts/index.htm>; [Children’s Community Options Program](#) | Wisconsin Department of Health Services

website. There is very little about IRIS in state statute or rule. The main sources of policy governing IRIS are the waiver document by which IRIS is authorized,<sup>10</sup> and the state's policy manual,<sup>11</sup> which can be reached by clicking on Resources and Reports.

#### F. Advocacy assistance for participants in HCB Waivers, CLTS and CCOP

The ADRC has information and assistance specialists who can answer questions and try to connect you with resources. If you have an issue with eligibility for services, they may be able to help or can refer you to a benefit specialist.

The Ombudsman Program at the Board on Aging and Long-Term Care<sup>12</sup> provides advocacy for persons age 60 or over who receive home and community-based services through Family Care or IRIS who have issues with a Managed Care Organization or service provider. Disability Rights Wisconsin<sup>13</sup> provides similar Ombudsman services for people ages 18-59. See [Part XII](#) for more information on these programs.

#### G. What if you are getting Social Security and Medicare?

Your eligibility for Social Security Retirement, Survivors and Disability Insurance (RSDI) and Medicare and the amount of benefits you receive are not affected by the value of your assets (what you own), or by your income unless the income is wages or profit from work. Gifts and other forms of help from other people do not affect your RSDI or Medicare. However, if you also want to qualify for EBD Medicaid or SSI you will need to meet the asset and income tests that apply to those programs, discussed in [Parts V](#) and [VI](#) of this book.

If you meet the disability test for RSDI you may be eligible for a benefit in one of several ways:

- **You are a worker or past worker drawing on your own Social Security account.** You can draw disability benefits on your own account if you have worked and paid Social Security taxes for enough months to be considered insured for disability benefits and you meet the disability test (See [Part H](#)). Benefits can begin 5 months after the month in which you first meet the disability test, but can only be retroactive for 12 months before the application.
- **You are an adult child of a parent who worked and is (or was) insured for Social Security.** You can draw a Social Security benefit on the account of your insured parent if the parent is now disabled, retired or deceased, and you have a disability that met the disability test before you reached age 22 and is continuing. (See [Part H](#)).
- **You are a widow or widower over age 50.** You can draw a benefit on the account of your deceased spouse, if the spouse worked and was insured for Social Security, you are disabled, and your disability began no later than seven years after your spouse (or former spouse) died.

» **NOTE:** RSDI and Medicare benefits **where no disability determination is required** are beyond the scope of this book. You may be eligible for an **RSDI benefit based on age** if you are an insured worker age 62 or over. Your age and current work may affect your benefits. You may be eligible for a **child or spouse's RSDI benefit** if you are a minor child, spouse or divorced spouse of

<sup>10</sup> [Application for 1915\(c\) HCBS Waiver: WI.0484.R03.00 - Jan 01, 2021 \(wisconsin.gov\)](#).

<sup>11</sup> [IRIS Policy Manual \(wisconsin.gov\)](#).

<sup>12</sup> BOALTC can be reached at 1-800-815-0015 and has a website, [BOALTC@wisconsin.gov](mailto:BOALTC@wisconsin.gov).

<sup>13</sup> DRW can be reached at 1-800-928-8778 and has a website <https://disabilityrightswi.org/>.

an insured worker who is drawing a retirement or disability benefit or has died. You may qualify for **Medicare based on age** at age 65 or over if you are an insured worker or the spouse of an insured worker.

Social Security pays monthly benefits. If you are drawing an SSDI benefit on your own account, the amount of an SSDI benefit is based on your earnings record. If you are drawing on the account of your parent or spouse, the amount of your benefit is based on the earnings record of the parent or spouse, and on the number of people who are drawing on the same account.

You will become eligible for Medicare 24 months after the month you start receiving a Social Security Disability benefit. Part A of Medicare is automatic, but Part B (most covered health care expenses outside hospitals) and Part D (drug coverage) require separate premiums. Failure to enroll in Parts B and D when you first become eligible can result in delays and penalties if you later decide that you want to enroll. You can also choose to enroll in Medicare Advantage instead of Original Medicare.

Medicare coverage is more limited than that provided by Medicaid. Medicare coverage of long-term care and support is very limited, except for short-term skilled services provided after a hospitalization. Original Medicare generally does not cover dental care, hearing aids or eyeglasses. Medicare also requires participants to pay substantial premiums, deductibles and copayments. You can buy private Medicare Supplement insurance to help pay the deductibles and copayments. (Medicare Advantage is managed-care insurance from a private company and may provide broader coverage and lower out-of-pocket expenses but also may restrict choice of provider and require prior authorization of some services.<sup>14</sup> Discussion of the choice between original Medicare and Medicare Advantage is beyond the scope of this paper.)

Even though you qualify for Social Security and Medicare, **you may still qualify for SSI and/or Medicaid if your countable income and assets are within the eligibility limits for those programs.** SSI can raise your countable income (see [Part VI.C](#)). Medicaid can provide coverage of the things Medicare does not cover and pay the Medicare deductibles and copayments so that you will not need Medicare supplement insurance. Depending on your income, Medicaid may also pay the Part B and D Medicare premiums. If your income or assets are too high to get full EBD Medicaid, but your income is still within certain income limits, you may be eligible for limited programs under which Medicaid pays the Medicare premiums for people who do not get Medicaid.<sup>15</sup>

## H. What is the disability test for SSI and Medicaid?

This book is mainly about financial eligibility requirements, and not about how disability is defined and established. However, it is important to determine whether you are likely to meet the disability tests for Medicaid and SSI before you decide to plan around the EBD Medicaid and SSI financial eligibility requirements. It is also important to think about whether your condition or level of work may change in future so that you are likely to gain or lose disability status. (See [Part II.D](#) and [I](#) and [Part III](#). for the introductions to the effects of medical improvement and working on disability status.)

The disability test for EBD Medicaid and SSI is strict.<sup>16</sup> You must have a serious, **medically-diagnosed impairment or combination of impairments that is expected to last 12**

<sup>14</sup> <https://www.medicare.gov/publications/12026-understanding-medicare-advantage-plans.pdf>.

<sup>15</sup> See [Medicare Savings Programs](#) and Part 32 of the *Medicaid Eligibility Handbook*.

<sup>16</sup> The SSI test for disability is in 42 U.S.C. § 1382c(a)(3)(A)-(C).

months or more or to result in death.

**Disability test for adults.** If you are an adult (age 18 or over), the impairment(s) must prevent you from working in past work you have done over the five years before your application, and from other types of work that Social Security thinks you are able to do. SSA may consider a type of job even if it is not available in your local area, and even if there is high unemployment for that kind of job. If you apply for a disability determination, the agency making the determination will go through several steps in deciding whether you meet the Social Security disability test. These include:

- **Are you currently working at a level Social Security considers to be substantial gainful activity (SGA)?** If you are a new applicant and are working above the SGA level (see [Part I](#)), you will not meet the disability test for Social Security, SSI or any of the EBD Medicaid subprograms other than the Medicaid Purchase Plan (MAPP). You can qualify for MAPP if your condition otherwise meets the disability test apart from your level of work. (MAPP also has more generous income and resource tests than what usually apply for EBD Medicaid eligibility, see [Part VII.I](#).) If you are already getting SSI, you will not lose disability status for SSI and EBD Medicaid just because you are working at the SGA level (See [Part III.C.2](#)). For SSDI benefits, there are periods of time when you will be able to work without losing benefits, or to return to benefits if you stop working. The length of time and amount of income allowed varies with different programs (see [Part III](#)). If you are getting EBD Medicaid benefits and SSDI benefits, and lose SSDI because of working at the SGA level, the state will continue your Medicaid while it reviews whether you are eligible for MAPP.<sup>17</sup>
- **Do you have a condition that meets or equals one of the Social Security’s listings of impairments?** Social Security rules include a list of impairments that it considers meet the disability test for an adult.<sup>18</sup> It is important to ask your health care providers whether you have one of the conditions described, or have a condition that results in the same level of impairment.
- **Can you work in substantial gainful activity, given your age, education, work experience and what you are still mentally and physically able to do?** If you do not have a condition that meets or equals one of the listed conditions, Social Security must still decide whether your impairment meets the disability test, given your other circumstances.

**Disability test for children.** If you are 17 or younger, you must meet a different disability test that applies to children in order to be eligible for SSI. You may also need to meet this test to qualify for Medicaid, depending on your circumstances. There is a separate list of impairments for children that SSA considers to be disabling. Your impairment(s) must meet a listing or result in a similar level of functional limitations in order to meet the children’s disability test.<sup>19</sup>

For both children and adults, the determination can be based on a combination of medical and professional opinions, the opinion of a vocational expert and on reports from family, teachers, coworkers and others who can report on your functioning at home, in school, at work and in other settings.

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<sup>17</sup> MEH § 5.7.2.

<sup>18</sup> [Listing of Impairments - Adult Listings \(Part A\)](#).

<sup>19</sup> [Listing of Impairments - Child Listings \(Part B\)](#).



More information on the evaluation process can be found at <https://www.ssa.gov/disability/professionals/bluebook/index.htm>. Many initial applications for disability determinations are denied. While you can appeal a denial, the process has long delays. It is important for your initial application to be as complete and accurate as possible. Disability benefit specialists at the ADRC are a source of help for people age 18 to 59 in completing an application for a disability determination (see Part [XII.B](#)).

### **I. How does Social Security decide whether you are working in substantial gainful activity (SGA)?**

If you are working, SSA will look at the amount of earnings or profit you make from work to decide whether work is SGA. In 2025, gross earnings of \$1620 per month (after deductions for work expenses that SSA treats as related to your disability) create a presumption that you are engaged in SGA. If you are blind, the test is more generous, allowing gross wages of \$2,700 (after deductions for a broader set of work expenses allowed for people who are blind). These dollar amounts are adjusted every year for cost-of-living changes. It is sometimes possible to show that work producing earnings at the set levels is not SGA, e.g., because you did not really work at a level that earned the amount you were paid or because you needed a high level of support from others to be able to do the work.

**Work you do that earns less than the earnings test** may be considered SGA if you are doing work that would typically be done to earn money and that involves a level of physical or mental activity that indicate that you are able to work. If you are **self-employed**, Social Security may look at the type of work you do and its value to the business, as well as whether your earnings after expenses are above the SGA level.

For more information, or to see the SGA earnings tests in years after 2025, see [Substantial Gainful Activity](#).

### **J. Do you really need (or want) to rely on SSI and Medicaid?**

Many of the planning ideas in this book place limits on what you can earn or own and on how much direct control you have over how and when the assets are used for you. They can also tie up assets even after the restrictions no longer serve any purpose. For these reasons, it is important to decide whether you are really likely to need (and want) SSI and Medicaid, now or in the future.

Sometimes the amount of money that is being put into a trust or other restricted plan for your benefit would be enough to make you independent of SSI/Medicaid, at least for a period of time, when you consider earnings from work, other benefits, private health insurance and assistance available to you from family and friends. Often, you can get a wider choice of long-term support providers and service options and better quality services by paying privately, even if you eventually have to rely on Medicaid.

If you decide that you do not want to apply for SSI or Medicaid now, or are not eligible now, there are still things you can do to plan for the possibility that you will need or want those benefits in the future if there are changes in your ability to work or in the amount of health care or support services you need (see [Part II.E](#)).

## **II. PLANNING AHEAD FOR FUTURE CHANGES**

### **A. Are you a person who will get an SSDI benefit or an increase in SSDI in the future?**

Under SSI rules, you must apply for and accept an SSDI benefit if you are eligible for it

even if it puts you over the ordinary income limits for SSI and Medicaid. SSA will treat your SSI application as an application for any SSDI for which you later become eligible.

**1. Are you a person who will get an SSDI benefit or an increase in SSDI on your own account because you are working?**

If you work and pay enough Social Security taxes to get insured status, you may build a work record that qualifies you for an SSDI benefit and (after 24 more months) for Medicare. This can happen even if you work below the SGA level at a time when you have disability status. If you get SSDI and continue to work your earnings record over time may result in SSDI increases. If you are on SSI, the SSDI payments can result in a reduction in SSI and, at some point, in loss of both federal SSI benefits and the state supplement (see [Part VI.C](#)). If that happens, you are likely to qualify for Medicaid in other ways (see [Part VII](#)). If you cannot afford the loss of the SSI state supplement, you may need to reduce the amounts you earn from work.

**2. Are you a person who will get an SSDI benefit or an increase in SSDI on the account of your parent, because you have a disability that began when you were under age 22?**

If you get SSI and/or Medicaid based on a disability that began before you reached age 22, and if you have a parent who has worked and is insured for Social Security, it is likely that you will at some point become eligible for a Social Security benefit on a parent's account as a disabled adult child disability beneficiary (DAC).<sup>20</sup> This can happen when your parent starts drawing a Social Security benefit based on retirement or disability, or if your parent dies. If you are already getting Social Security on your own account from your own work, but the DAC benefit is bigger, you will continue to get your own benefit and the difference will come to you as a second SSDI payment from your parent's account. You can become eligible for Medicare benefits 24 months after your SSDI benefit begins.

You will usually be ineligible for a DAC benefit if you marry, but there are some exceptions to this rule. For example, it does not apply if the person you marry receives a Social Security benefit based on having a disability.

In addition to the change in income when a DAC benefit starts, the amount of the DAC benefit may increase after you start getting it. For example, a DAC benefit you receive from the account of a retired parent will increase if the number of people drawing benefits on the account is reduced. This is most likely to happen when the parent dies but may also happen if there is a spouse or another child who stops drawing on the account.<sup>21</sup> You will also get annual cost-of-living adjustments to your benefit.

If your DAC benefit (plus your other countable income) leaves you below the federal SSI payment level, you can continue to get SSI and Medicaid. If your DAC benefit puts your countable income over the federal SSI payment level you will lose your federal and state SSI benefits, including the exceptional expense supplement. If the DAC benefit is higher than the federal SSI payment level but lower than the total federal and state SSI you were getting, this can lower your total income (see [Part VI.C](#) and [VI.D](#)) and require you to make a separate application for EBD Medicaid (see [Part B](#)). Your parent should be able to get an estimate at any time of

<sup>20</sup> Childhood disability benefit: POMS § RS 00203.080. SSA uses the term child disability beneficiary (CDB) to refer to this status, but EBD Medicaid still uses disabled adult child (DAC) and this book uses that term.

<sup>21</sup> Effect of death of parent: POMS § RS 00203.025.



the amount of your likely benefit by requesting a benefit calculation from the Social Security Administration. Getting this estimate may help you know whether you need to plan for loss of SSI.

If you have a disabling impairment that began before age 22 you can become eligible for a DAC benefit even if you did not get a disability determination before age 22 or have had a period of time after age 22 when you were not receiving SSI or Social Security because you were working. For example, you may never have applied for SSI as a child because you were not financially eligible, and/or you may have worked at the SGA level for a period of time as an adult. You will need to ask for a disability determination with an onset date before age 22. It can be difficult to establish that the disabling impairment began before age 22. It will be easier if you keep good records of impairments that you had before age 22, the effect of those impairments, and the sources of information that can support your claim.

**B. How and when is EBD Medicaid eligibility protected if you lose SSI because you get a disabled adult child (DAC) benefit, or because of a DAC benefit increase?**

If you lose eligibility for SSI because you begin receiving a DAC benefit, or because your DAC benefit goes up, federal law requires the state to subtract the DAC benefit (or increase in DAC benefit) that caused you to lose SSI from your countable income in deciding whether you are eligible for EBD Medicaid (see [Part VII.F](#)). Any future cost-of-living increases on the excluded amount are also excluded. You can be eligible with DAC status if your countable income and assets are otherwise below EBD Medicaid limits, even if your DAC benefit gives you an income much higher than usual Medicaid limits. DAC status is especially important if you expect to receive adult HCBW services now or in the future, because a person with DAC status does not have to pay a cost-share.

If you get SSI and are expecting that you will start receiving a DAC benefit (or a DAC benefit increase), it is very important to be otherwise eligible for SSI in the month when the DAC benefit or increase starts, so that you can show that the DAC benefit causes you to lose SSI. When you lose SSI, you will be given a period of time to apply to the state to continue Medicaid. **It is essential to make sure that the agency handling your Medicaid application knows you are applying for Medicaid as someone who lost SSI because of a DAC payment or increase.** Unfortunately, the state Medicaid agency in recent years has often failed to identify this status on its own, and this can have long-term negative effects.

*Example.* Sherry, age 30, has had a disabling impairment since birth and is receiving federal SSI, the state SSI-E supplement,<sup>22</sup> Medicaid and HCB Waiver services. As a person on SSI, she pays no cost-share for HCB waiver services. Her father starts drawing a Social Security retirement benefit in mid-2024 and she then becomes eligible for a DAC benefit of \$1,500 per month on her father's account. She loses SSI because of the DAC benefit and applies for EBD Medicaid.

The state IM agency should treat her as a person who lost SSI because of a DAC benefit and exclude the new \$1,500 Social Security benefit. Sherry will continue to be eligible for EBD Medicaid with no need to offset income with medical expenses and no cost-share for HCBW services. Her disposable income will go up from \$1,146.77 per month (SSI + SSI-E in 2025) to the \$1,500 she receives on her father's account.

If the IM agency does not identify Sherry as eligible for the DAC income exclusion,

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<sup>22</sup> See Part VI.C and VI.D for SSI payment levels.

it will find her eligible for EBD Medicaid based on the fact that she receives HCBW services and the cost of her services exceeds her income (see [Part VII.J](#)). While this means she will still be eligible for EBD Medicaid, it also means that she will have to pay a substantial cost-share for her HCBW services out of her SSDI payment.

**C. Are you a person who will get a Social Security disability benefit after you reach age 50 based on the account of a spouse who has died?**

If you are a widow or widower with a disability, and are over 50 years old, you might be eligible for a Social Security benefit on the account of your deceased spouse. If you were divorced, you may still be eligible if the marriage lasted 10 years. If you are, and you lose SSI because of the Social Security benefit, the increase in your Social Security benefit that caused you to lose SSI should not be counted in determining whether you are eligible for EBD Medicaid. (See [Part VII.G](#))

**D. Are you a person who may lose disability status because of medical improvement or advances in treatments or technology related to your condition?**

After you have established a disability, Social Security may periodically review whether you continue to have a condition that meets their definition of disability. This is called the continuing disability review process. Reviews are supposed to happen no more often than every seven years, unless SSA decides that it is likely that your condition will improve or has some other reason for reviewing your disability. After you have received SSDI for 24 months, SSA will not use your work activity as a reason to conduct a review.

You may be reluctant to attempt to work or otherwise demonstrate ability to work because of a concern that you will no longer be considered disabled. This may be particularly true if you had difficulty establishing disability in the first place. In response to this concern, the law and rules<sup>23</sup> now provide some protection from arbitrary action by Social Security:

- Social Security may only reopen the question of whether you have a disability if there is substantial evidence that one of the following circumstances exists:
  - There has been a medical improvement in your condition that is related to your ability to work.
  - You have benefited from advances in medical or vocational therapy related to your ability to work.
  - You have failed to cooperate in treatment that would be likely to improve your condition and enable you to work.
  - SSA finds there was a mistake in the prior determination that you have a disability.
- If you have been receiving SSDI benefits for at least 24 months, SSA does not use work activity by itself as a reason to schedule a continuing disability review. This time limit does not apply to SSI.
- SSA will not do a medical review while you are participating in the Ticket to Work Program and making progress toward your work goals. (See [Part III.E](#).)

The details of when work activity can be considered evidence that there has been medical

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<sup>23</sup> 20 CFR §§ 404.1579 & .1589 and §§ 416.986 & .994.

improvement in your condition is beyond the scope of this book. Seek counseling from a Work Incentives Benefit Specialist or disability-law attorney if you are considering work and are concerned that the work may cause you to lose your status as a person with a disability.

#### **E. How can you plan ahead for future mental incapacity or for a future need to apply for SSI or EBD Medicaid based on disability?**

Everyone is at risk of being mentally incapacitated in the future, so that they are unable to make some or all decisions and everyone should have a plan for supported or substituted decision-making. A guardianship can be established to make decisions for you if you are incapacitated, but that involves going to court and working within the guardianship laws. Even then there are some powers a court cannot give to a guardian. You can choose the people you want to make decisions for you, and give them more power and flexibility to act according to your wishes, by completing advance directives, including:<sup>24</sup>

- *A power of attorney for health care*,<sup>25</sup> so that you have an agent of your choice who can make health care decisions for you based on what you have told them about your wishes. A declaration to physicians (living will) can provide direction on specific end-of-life decisions.
- A durable financial power of attorney (DPOA), so that you have an agent of your choice who can manage your property for you based on what you have told them about your wishes.<sup>26</sup>
- A directive for disposition of your remains after you die. This can be combined with prefunding for disposition and funeral expenses through a special kind of trust (see [Part V.C.2](#)).

If you do not need EBD Medicaid now but may need to apply in future, you can work with a knowledgeable attorney to:

- Set up a self-funded trust or pooled trust for yourself (see [Part X.F](#)). This can be funded now, or you can authorize an agent to fund it with your property when it is needed at a time when you are incapacitated. (Property in the trust is subject to a possible claim for Medicaid benefits, but only if you actually get Medicaid benefits.)
- Authorize an agent to establish and fund a self-funded trust or pooled trust account for you if it is needed (see [Part X.I](#)).
- If you have a child with a disability, authorize an agent to transfer property to a trust for the child (see [Part X.E](#)).
- Fund an ABLE Account for yourself (see [Part IX](#)) or authorize an agent to do so.
- If you are married, there may be special planning you can do, through a marital property agreement or trust provisions for your spouse in your will.

### **III. HOW WILL WORKING AFFECT YOUR ACCESS TO BENEFITS, WHILE YOU WORK AND AFTER YOU STOP WORKING?**

#### **A. What is covered in this booklet and how can you get more information about the**

<sup>24</sup> State forms for powers of attorney and other advance directives are online at <https://www.dhs.wisconsin.gov/forms/advdirectives/index.htm>. State forms may not meet all needs, although you can add individualized provisions.

<sup>25</sup> Forms and advice on completing them are available from the State Bar [Wisbar Marketplace - Product](#) and from GWAAR [2005992](#), as well as other sources.

<sup>26</sup> Some general information about DPOAs is available on the State Bar website, [I Need Information](#).

## effects of working?

The SSDI, SSI and EBD Medicaid programs all include policies intended to encourage people to work while keeping all or part of their benefits. The details of the SSDI and SSI policies on work and earnings from work are beyond the scope of this book. This section is only intended to give you some ideas of where to look, and what to look for, if you decide to start working.

In some cases, the protections are time-limited or apply only up to a maximum earning level. The effect of work on SSDI is different from the effect on ongoing SSI and Medicaid recipients. In addition, the Medicaid Purchase Plan provides a different way to qualify for Medicaid if you are working, even if your income disqualifies you from both SSDI and SSI (see [Part VII.I](#)).

More information on ways people can work and still get Social Security and SSI, and resources to help you return to work while keeping the benefits you need, is available in Social Security's *Red Book: A Guide To Work Incentives and Employment Supports for People Who Have a Disability Under the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) Programs*, available from Social Security offices or [ssa.gov](http://ssa.gov) by searching for "Red Book." A shorter summary, with information on dollar amounts for the current year, is in another Social Security booklet, *Working While Disabled: How We Can Help*. Both booklets are available from the Social Security office or at [ssa.gov](http://ssa.gov).

You can get information about how earnings from work will affect you in your individual situation by working with a Work Incentives Benefit Specialist (WIBS). You can get access to a WIBS if you are receiving services from:<sup>27</sup>

- A Work Incentives Planning and Assistance (WIPA) program for your area. (See [Work Incentives Planning and Assistance | The Work Site | SSA](#).)
- The state Division of Vocational Rehabilitation, which can refer you for benefits counseling.
- Family Care, IRIS or Comprehensive Community Services. (WIBS services can be included as a service under an individual service plan.)

If you receive benefits based on disability, you may have three separate concerns about returning to work:

- First, will working result in a determination that you are engaged in substantial gainful activity, and does that mean you would have to go through the process of establishing disability if you stopped working and wanted to restart your benefits? That is discussed in [Part B](#).
- Second, will earnings from work result in loss of benefits because of your increased income, even if it does not affect your disability status? That is discussed in [Part C](#).
- Third, might the work activity result in a disability review, or in a finding that you have medically recovered from your disability? That is discussed in [Part II.D](#).

### **B. Will returning to work affect your status as a person with a disability determination because you are working at the substantial gainful activity level?**

You may lose eligibility for SSDI and Medicare benefits if you work and have earnings at or above the Substantial Gainful Activity level (see [Part I.I](#)). However, there are some policies

<sup>27</sup> <https://www.dhs.wisconsin.gov/medicaid/qdwi.htm> .

that allow periods of time when you can work while continuing to get SSDI or Medicare, or to be able to return to benefits without having to obtain a new disability determination. These include:

- **The trial work period (TWP)** allows you to work, no matter how much you earn in a month, but only until the TWP is used up. A trial work month is used if you have gross pay (or net profit from a business) over a set dollar amount. (That amount is adjusted for inflation every year. In 2025 it is \$1,160.) This amount is lower than the substantial gainful activity (SGA) level, so you can use up the entire trial work period without ever working at the SGA level. The TWP is used up whenever you have worked a total of 9 months at the TWP level, if those months fall within one 60 month period. The months of work do not have to be consecutive.
- **The extended period of eligibility (EPE)** begins the month after the trial work period is used up and lasts for the next 36 months. During the extended period of eligibility, you will not be eligible for an SSDI benefit in a month when you work at the substantial gainful activity level, but you will be eligible for an SSDI benefit for any month when you do not work at the SGA level. This lets you return to getting SSDI benefits when you are not working at SGA, without the need for a new disability application. You do not have to be working to use up the EPE months.
- **The expedited reinstatement period** begins if you lose SSDI because you are working at the SGA level. For the next five years after SSDI benefits stop, you can ask to have your SSDI benefit reinstated because you have stopped working at the SGA level and continue to have the same impairment(s), without the need for a new application to establish your disability.
- **Continuation of Medicare.** During a period that lasts for 93 months after your trial work period has ended, your Medicare Part A coverage will be continued even if your SSDI benefits have stopped because you are working at the SGA level, provided that you have not medically recovered from your disability. Medicare Part B will also continue if you pay the premiums.

If you are receiving **Supplemental Security Income (SSI)** and have not medically recovered from your disability, SSA will not stop your SSI benefits just because you are working at or above the SGA level. As discussed in [Part C.2](#), even if your earnings from work cause you to lose your federal SSI payment your status as an SSI-eligible person can continue for purposes of EBD Medicaid, as long as you are eligible for SSI in all other ways (your assets, unearned income and disability status).

Note that the difference between the SSDI and SSI programs on treatment of work in SGA means that if you are receiving both SSDI and SSI you may lose ongoing SSDI eligibility due to working at the SGA level but still retain treatment as an ongoing SSI and/or EBD Medicaid recipient (see next section).

### **C. Will earnings from work reduce your SSI benefit, or make you financially ineligible for SSI or EBD Medicaid benefits, even though you continue to have disability status?**

The effects of income on SSI and EBD Medicaid are discussed in more detail in [Part VI.B](#). Briefly, at least \$65 of the income you make from work in a month, plus half of your earnings over that amount, will not count as income for SSI and most EBD Medicaid subprograms (including MAPP). (But see next section if you are a student under age 22.)



If you receive SSI, this means that you will lose less than \$1 for every \$2 you have in gross earnings. On the other hand, you have to be aware that countable earnings from work combined with your unearned income (like SSDI) may increase your countable income above the federal payment level, so that you lose both any federal SSI payment and any state SSI supplement you get (See example in [Part VI.D.](#)).

In addition to the standard deductions from earned income, your “impairment related work expenses” (IRWEs) and “blind work expenses” can be deducted from countable income (see [Part VI.B.](#)) These are expenses you have to pay in order to work that SSA considers to be related to your disabling impairment or blindness. The Red Book has a chart of expenses typically allowed (and not allowed) as IRWEs and BWEs.

### 1. Student Earned Income Exclusion

Under the **Student Earned Income Exclusion**, if you are under age 22 and regularly attending school all of your earnings from work are excluded from being counted as your income for SSI, up to set maximum amount.<sup>28</sup> (The maximum amounts change each year with the cost of living. For 2025, the maximum excluded amounts are \$2,350 per month up to a maximum of \$9,460 for the year.) If you have earnings over those levels, the other SSI exclusions from earned income apply.

EBD Medicaid (MEH § 15.5.8) applies this exclusion only to people under age 19. This seems to violate the usual rule that the state must follow SSI law on income-counting.

### 2. 1619(a) and (b) and MAPP: When can SSI and EBD Medicaid Eligibility continue despite earnings from work?

If you are already receiving SSI, going to work at a level that causes you to lose your SSI payments or that is above the substantial gainful activity limit will not by itself result in loss of your status as an ongoing recipient of SSI and (up to a higher income limit) will not interrupt your EBD Medicaid. This is a result of two provisions “1619(a)” and “1619(b)”, that apply if your unearned income (e.g., from SSDI) and your countable assets are under SSI program eligibility limits, and there has been no finding that you have medically recovered from your disability.

- **Under § 1619(a)**, your status as an SSI recipient can continue, even if you are engaged in substantial gainful activity. This is true even if your earnings from work cause you to have too much income in some months to get an SSI payment. If your countable income falls below the SSI payment level in a month (e.g., because you are unemployed), you can get an SSI benefit for that month. You will need to inform SSA about changes in your income, but you will not need to reapply for SSI.
- **Under § 1619(b)** SSA will continue to treat you as an SSI recipient for purposes of automatic eligibility for EBD Medicaid, so long as you need Medicaid in order to work and your gross earnings do not give you enough income to be able to replace Medicaid. (In Wisconsin in 2025, if you have gross annual earnings of \$49,368 or more SSA may decide that you do not qualify for 1619(b) because you no longer need Medicaid. However, you can establish that you should have a higher income threshold based on your work expenses, attendant care expenses or medical expenses.) (See [Continued Medicaid Eligibility \(Section 1619\(B\)\) | Disability Research | SSA](#) for more information).

If you are covered by §1619(a) or (b) you do not have to separately apply for EBD Medicaid through a state IM agency. SSA should inform the state of your status and your Medicaid should continue as if you were getting SSI.

If you are working and your earnings are above the §1619(b) limit you may be eligible for EBD Medicaid by applying to the state IM agency for the MAPP program. MAPP does not require that you be a current or former recipient of SSI or Social Security, does not consider your current work in determining whether you are disabled, and has more generous income and resource tests than regular EBD Medicaid. MAPP requires payment of a premium, which is based on income and is far below the cost of private insurance. (See [Part VII.I](#)).

#### **D. How can a Plan to Achieve Self-Support (PASS) help a person on SSDI or SSI pursue a work goal?**

You can use a Plan to Achieve Self-Support (PASS) if you receive SSI or if you could qualify for SSI after setting aside income or resources to pursue a work goal, such as getting a job or starting a business, that you expect will reduce your reliance on SSI and/or SSDI after the plan is complete.

As part of a PASS plan you can set aside all or part of earnings from work, SSDI or other sources to pay for training, education, equipment or other things that will make it more possible for you to support yourself through work. Your countable income for SSI will then be reduced by the amount set aside, and your SSI will increase. You can also set aside assets you already own so that you meet the SSI asset test. The money you set aside from income or resources (e.g., to buy a car needed for you to be able to work) is not counted as an asset while the plan is in effect. A PASS must be approved by SSA and usually does not last more than 4 years.

If you are a person receiving SSDI but not SSI, you can use a PASS plan to reduce the amount of your SSDI that is countable as income so that you become eligible for SSI during the PASS plan period. The following *example* is given in the *Red Book*:

*“Maria wants to go to school and become a paralegal. She receives \$1,000 in SSDI benefits. The goal for Maria’s employment is to generate enough income to eliminate SSDI. (Have expected earnings over the SGA limit). Maria determines she needs \$980 per month for tuition, books, and school supplies. We can exclude up to \$980 per month in SSDI income. This represents the full amount of Maria’s SSDI payment after deduction of the SSI general exclusion. This will make Maria eligible for the full SSI payment. Maria must use the SSI payment for living expenses and use the PASS funds for approved plan expenses.”*

#### **E. How can the Ticket to Work program help you achieve your work goals?**

The Ticket to Work program is a free, voluntary program that can give you access to services to help you understand how work will affect your benefits, decide what kind of work you want, get needed training, get transportation to work, and find a job. Ticket to Work is federally funded but services are delivered through the state Division of Vocational Rehabilitation or through other service providers that have qualified to provide services. To be eligible, you must be age 18-64 and be a current recipient of SSDI or SSI.

Ticket to Work does not change how earnings from work affect your SSDI, SSI and Medicaid benefits, but it can be combined with other work incentives. For example, you can get

help in developing a Plan to Achieve Self-Support that will exempt some of your income and resources.

You can get more information at [Home | Choose Work! - Ticket to Work - Social Security \(ssa.gov\)](https://www.ssa.gov), call the Ticket to Work Help Line 1-866-968-7842 or 1-866-833-2967 (TTY), to confirm that you are eligible and get help identifying and choosing service providers that can help meet your goals.

#### IV. IDENTIFYING YOUR INCOME AND ASSETS (OR RESOURCES)

##### A. What is an *asset* (or *resource*), what is income and how are they different?

For SSI, resources in a particular month include money or other property that you owned **at the beginning of a month** that you could convert to cash that you could use to provide yourself with food or shelter.<sup>29</sup> SSI counts resources as of the first moment of the month. Income includes new money or property you receive during the month, and that you could use to provide yourself with food or shelter.<sup>30</sup> EBD Medicaid follows SSI rules, with some important differences:

- **ARE THINGS YOU OWN CALLED “ASSETS” OR “RESOURCES”? SSA** uses the term resources for money or things you own that are not income and that are available to be converted to cash. EBD Medicaid uses the term assets. **This book uses the term asset to refer to anything that is a resource for SSI and anything that is an asset for EBD Medicaid.**
- **THERE IS NO ASSET TEST FOR EBD MEDICAID IF YOU ARE UNDER AGE 19.**<sup>31</sup> This is true for any of the subprograms under which you might be eligible for EBD Medicaid when you are not getting SSI or covered by 1619(b). However, assets may still be a concern if you also want SSI or because you need to plan ahead for a continuing need for EBD Medicaid after you reach age 19.
- **IF YOU GET HELP WITH SHELTER COSTS SSI MAY COUNT PART OF THE HELP AS INCOME.** Income for SSI (but not for EBD Medicaid) can include part of shelter costs that are paid by other people, or shelter you get without paying at least a required minimum rent (see [Part VI.G](#)).
- **EBD MEDICAID TREATS LUMP-SUMS AS ASSETS (NOT INCOME) IN THE MONTH RECEIVED:** Wisconsin EBD Medicaid treats lump-sum payments (like inheritances) that you receive during a month as an asset for that month, and not as income.<sup>32</sup> This can be helpful, as it means the lump-sum is not included as income in that month in determining eligibility, cost-sharing for long-term support (like Family Care or IRIS), or the premium for MAPP. Because EBD Medicaid counts assets as of the end of the month (see next bullet), if you get a lump-sum it will not be counted as an asset if you spend it (or convert it into a form that is not countable) before the end of the month. (See [Part VIII](#) for ways to deal with lump-sums.)
- **MEDICAID COUNTS ASSETS AT THE END OF THE MONTH.** When SSI counts assets to determine eligibility for a month, it looks at what you own at the

<sup>29</sup> Resource is defined for SSI at 20 CFR § 416.1201(a) and POMS § SI 01120.010. EBD Medicaid does not define the term asset but must follow SSI unless its treatment is more liberal.

<sup>30</sup> Income is defined for SSI at 20 CFR § 416.1102 and POMS § SI 00810.005. EBD Medicaid does not define the term income but must follow SSI unless its treatment is more liberal.

<sup>31</sup> MEH § 16.1

<sup>32</sup> Wis. Admin Code 103.06(11); MEH 16.7.11



beginning of the month. Wisconsin's EBD Medicaid program waits until the end of the month to count assets, so you can reduce your assets for Medicaid for a month by spending part of the assets during the month. This does not mean that things you receive during the month (other than lump sums) are included as assets—they are still considered income for that month. You may need to point out what part of something you own (such as a bank account) was received during the month so that the IM agency does not count that part as an asset.

Note that assets and income become available to you when you in fact can use them. If you receive a check, it does not help you to hold the check without cashing it. It is income (or an asset, if it is payment for something you already owned) because you can cash it.

In any particular month, money or property you own is either an asset or income; it cannot count as both. Income you do not spend or use in a month becomes an asset in the next month if you hold it at the beginning of the next month. However, some assets (such as Social Security and SSI back payments and tax refunds) are excluded from being counted for a period of time after they are received (see [Part V.C.2](#)).

In figuring eligibility and benefits, SSI and EBD Medicaid do not count everything that meets the basic definitions of assets or income. The items that are counted are referred to as countable assets and countable income; other items are referred to as excluded or disregarded income and assets. (See [Parts V.C.2](#), [VI.B](#), and [VI.F.3](#).)

You may own some property that does not meet the definitions of assets or income because you are unable to convert it to cash that you can use for your shelter. Property of that kind is considered unavailable<sup>33</sup> and (at least sometimes) is not counted as an asset. This can include property that you do not have a legal right to sell and property that will take time to convert to cash (like real estate that is listed for sale) (see [Part V.C.1](#)).

The value of an item of property for SSI and EBD Medicaid is what it could be sold for, less anything you owe on a mortgage loan or lien.<sup>34</sup> Even if you just bought something (other than real estate) its resale value will usually be less than what you paid for it.

## **B. What is the effect on your SSI of being (or getting) married?**

In general if you live with another person who is considered to be your spouse you will get a smaller SSI benefit than you would get as a single person. A couple may be treated as married for SSI if they tell people they are married, even if they are not legally married.<sup>35</sup> This discourages marriage, whether with or without a marriage license. For SSI, if you are married but you do not live with your spouse you will be treated as a single individual and only things that are in your name or that your spouse actually gives you will count as your income and assets.

For SSI eligibility and federal payment amount, if you are treated as married under SSI rules and live with your spouse, and you are both people with disabilities and/or over age 64, your income and assets will be counted together and compared to the federal SSI income and asset limits for a couple. The SSI payment standard for a couple is only 1½ times the individual payment, so a married couple (both with disabilities or over 64) gets only ¾ the benefit that they would get as unmarried individuals. Similarly, the asset limit for a couple (\$3,000) is only 1½

<sup>33</sup> Availability is discussed in POMS § SI 01110.115 and in MEH § 16.2.

<sup>34</sup> Value of a resource: 20 CFR § 416.1201(c)(2); POMS § SI 01110.400.

<sup>35</sup> See 42 U.S.C. § 1382c(b) and (d), 20 CFR 416.1806 and POMS § SI 00501.150.

times the asset limit for an individual.

If you are married and living with a spouse who is not over age 64 and/or disabled, part of your spouse's income and assets may be "deemed" to be yours and reduce your benefit or make you ineligible. Deeming is too complicated to fully explain here. The following is a brief summary:

- **Deeming of income.**<sup>36</sup> Your spouse's countable income will be determined with the same disregards and exclusions that apply to an SSI applicant (see [Part VI](#)), plus a list of other exclusions specific to deeming situations.<sup>37</sup> An allocation of income (equal to half the federal payment standard for an individual) will be made for your spouse and each minor child. If your spouse has countable income left after the allocations, it is added to your income and subtracted from the income standard for a couple to determine your eligibility. If your spouse has no income left after the allocations, your income will be subtracted from the income standard for a single person to determine your eligibility.
- **Deeming of assets.**<sup>38</sup> Your spouse's countable assets are determined with the same exclusions that apply to an SSI applicant (see [Part V.C](#)). In addition, retirement accounts (things like IRAs, 401(k)s, pension plans and Keogh plans) that belong to your spouse are not included in countable assets.<sup>39</sup> Your spouse's countable assets are added to yours, and the total is tested against the asset limit for a couple.

### C. What is the effect on your EBD Medicaid of being (or getting) married ?

If you are legally married and not in MAPP, institutionalized or enrolled in a long-term care program:

- If you live with your spouse, the income and assets of you and your spouse will be counted together to determine your financial eligibility for EBD Medicaid. You will be financially eligible if the combined income and available assets (after Medicaid asset exclusions) of you and your spouse are below the EBD Medicaid income and asset standards for a couple (see [Part VII.D](#)). The asset and income limits for a couple are about 1½ times those for an individual, so marriage is a disadvantage.
- If you are not living with your spouse only things that you actually receive from your spouse are counted as your income, and then only if they are in the form of countable income (see [Part VI.F](#)).

The exceptions to the pattern described above include:

- **Medicaid Purchase Plan (MAPP).** If you are eligible or applying for EBD Medicaid through MAPP the total income of you and your spouse will be counted, MAPP income exclusions will apply, and the MAPP income limit for a family of two will apply. Only your assets will be counted for purposes of the asset test, and the MAPP asset limit that applies to a single individual will be used to test eligibility. (See [Part VII.I](#).)
- **Group B long-term care.** If you are getting or seeking Medicaid eligibility for

<sup>36</sup> POMS § SI 01320.400; 20 CFR § 416.1166.

<sup>37</sup> POMS § SI 01320.100-.200.

<sup>38</sup> POMS § SI 01330.120 and .160; 20 CFR § 416.1202(a).

<sup>39</sup> MEH § 1.1.3.2.

home and community-based waiver (HCBW) services under the special income limits that apply to Group B HCBW service recipients (see [Part VII.J](#)), and you are married to a person who is not eligible for Medicaid long-term care your income and asset eligibility will be determined under a special set of provisions, called *spousal impoverishment*. When you first apply, the combined assets of you and your spouse are counted together, but special asset tests are used that allow your spouse to keep certain assets without affecting your eligibility. You will be treated as a single individual for income purposes, except that you may be allowed to transfer some income to your spouse. (For more detail on spousal impoverishment provisions, see [Part VII.J.3](#)).

- **Institutional placement.** If you are in a nursing home or hospital for a placement that lasts more than 30 days, and your spouse is not eligible for EBD Medicaid long-term care, spousal impoverishment provisions will apply.

#### **D. How do your parents' income and assets affect your SSI or EBD Medicaid if you are a minor child?**

For purposes of SSI, if you are a minor child with a disability and you live with one or both of your parents, some of their assets and income may be counted as if they were yours. This is called parent-to-child deeming. Deeming is complex, and the following only gives a brief summary of some important things to know:

- Your parents' countable assets<sup>40</sup> are determined with the same exclusions that apply to an SSI applicant (see [Part V.C](#)). In addition, retirement accounts (things like IRAs, 401(k)s, pension plans and Keogh plans) that belong to your parents are not included as part of their countable assets. If you live with one parent, \$2,000 of their other countable assets is reserved for them. If you live with two parents, \$3000 of countable assets is reserved for them. Countable assets over that amount are counted as part of your assets towards the \$2,000 SSI asset limit.
- Your parents' countable income is determined with the same exclusions that apply to an SSI applicant (see [Part VI.B](#)) plus some additional exclusions specific to the deeming situation.<sup>41</sup> Some of your parents' income will be protected for their support and for the support of other minor children.

A parent you do not live with may be legally required under state law to contribute to your support, and this may be enforced through court action. Child support payments that are received are counted as part of your income for SSI, but one-third of the payments are excluded.<sup>42</sup>

For EBD Medicaid:

- **Assets.** If you are under the age of 19 you are not subject to an asset test for any category of EBD Medicaid.<sup>43</sup> Since assets do not affect eligibility, assets belonging to a parent do not affect you (except to the extent that the assets produce countable income for your parents).
- **Income.** If you are a minor (under age 18) or are age 18 but dependent on your

<sup>40</sup> POMS § SI 01330.220.

<sup>41</sup> POMS § SI 01320.100-.200,

<sup>42</sup> POMS § SI 00830.420.

<sup>43</sup> MEH § 16.1.

parents you will be treated as a single individual for EBD Medicaid eligibility and not as part of a larger family group.<sup>44</sup> However a part of your parent's income may be deemed to count as your income, in a way that is similar to the way income is deemed under the SSI program.<sup>45</sup> Deeming will not apply to you if you are:

- Eligible under the MAPP subprogram (see [Part VII.I](#))
- Eligible under the Katie Beckett subprogram for children in need of long-term care in home or community settings (see [Part VII.M](#)).

## V. ASSETS

### A. How do assets affect SSI?

If the assets that are considered available and countable by SSI are over the SSI asset limit at the moment when the month begins, you will not be eligible for SSI in that month.<sup>46</sup> In 2025, the SSI limits on countable assets<sup>47</sup> (which have not changed since 1989) are:

- \$2,000, if you are not married, or if you are married to a person who is not disabled or over age 64.
- \$3,000 for you and your spouse together, if you are treated as married to a person who lives with you and has a disability or is over age 65.

### B. How do assets affect EBD Medicaid if you are not on SSI?

The dollar limits on countable assets are the same for EBD Medicaid as they are for SSI, but with some important exceptions:

- **If you are under age 19**, you are not subject to an asset test for any category of EBD Medicaid.<sup>48</sup>
- **If you are working and are eligible through the Medicaid Purchase Plan (MAPP)**, MAPP allows you to have up to \$15,000 in countable assets when you apply, and to save part of income you earn into an account you have registered as an “independence account” (see [Part VII.I](#)).
- **If you are married and live with your spouse**, and are not participating in an HCBW program or MAPP, the dollar limit is \$3,000, whether or not your spouse is disabled or over age 64.
- **If you are married and apply for home and community-based waiver or nursing home services**, the total assets that you and your spouse can have are determined under special spousal impoverishment protection rules (see [Part VII.J.3](#)). These may apply even if you do not live with your spouse.
- **Unlike SSI, you can be considered eligible for EBD Medicaid as of the beginning of a month if you meet the asset test that applies to you by the end of that month.**<sup>49</sup> This means that you can be eligible for Medicaid in a month, even if you

<sup>44</sup> MEH § 1.1.3.2. This does not apply to BadgerCare Plus eligibility.

<sup>45</sup> MEH § 15.1.2.

<sup>46</sup> When in the month are resources counted for SSI: 20 CFR § 416.1207(a); POMS SI § 01110.600.

<sup>47</sup> SSI resource limits: 20 CFR § 416.1205; SI § 01110.003.

<sup>48</sup> MEH § 16.1.

<sup>49</sup> Eligibility back to 1st of month: MEH § 2.8.1.

had too many assets when the month began, if you reduce your countable assets below the eligibility limit by the end of the month. (See [Part VIII](#) for ways to reduce countable assets.)

If you are a new applicant and you need a medical service that you want Medicaid to pay for (or if you want the cost to count towards your Medicaid income deductible), it is very important to make sure you are below the EBD asset limit before the end of the month when you get the service. Unpaid amounts you owe for medical services may offset excess income through the Medicaid Deductible (see [Part VII.E](#)) but do not offset your countable assets, even if you are only slightly over the asset limit and have very large medical expenses.

Your eligibility for EBD Medicaid, or the begin-date for the Medicaid deductible, can begin on the first day of any month up to three months before the month you apply, if you were eligible in the prior month. This is true even if you are not eligible in the month you apply.<sup>50</sup>

### C. What assets can you own without affecting SSI or Medicaid?

#### 1. Unavailable assets.

Some things that you own are not included as part of your assets for SSI and EBD Medicaid eligibility because you cannot sell them for cash that you can use to support yourself. These assets are not included because they are considered unavailable.<sup>51</sup> For example:

- An **employer-sponsored retirement account** that you cannot cash in as long as you continue to hold your job is not an asset while you hold the job. Assets you can cash in after you leave the job that are not part of a MAPP independence account will become an asset at that point.
- Some **interests in real estate** you own may be considered unavailable to you because you do not have a legal right to sell your interest. For EBD Medicaid these include:
  - An interest you own as a joint tenant, if another joint tenant refuses to sell.<sup>52</sup>
  - A life estate.<sup>53</sup>
  - An interest that you have listed for sale.
- EBD Medicaid will exclude a property interest (such as an insurance claim) where **you have started the process of cashing it in but the process will take more than 30 days**.
- SSI policy allows for payment of **conditional SSI benefits**<sup>54</sup> for set periods of time if the person has put nonliquid assets up for sale and agrees to repay benefit overpayments from the proceeds of sale. The length of time allowed depends on the asset involved. If attempts to sell real estate are unsuccessful for 9 months, it may continue to be excluded from countable assets, with no requirement for repayment. SSI does not automatically consider a joint tenancy in real estate unavailable but will exempt it if sale will result in hardship for a joint owner.

<sup>50</sup> Retroactive EBD Medicaid eligibility is covered in: Wis. Admin. Code § HFS 103.08(1) and (2); and MEH § 2.8.2.

<sup>51</sup> Resource availability is discussed in: 20 CFR § 416.1201(a)(1) and POMS § SI 01110.115(A) for SSI and in MEH § 16.2. for EBD Medicaid.

<sup>52</sup> MEH § 16.2.2.

<sup>53</sup> MEH § 16.8.1.6.

<sup>54</sup> 20 CFR §§ 416.1240 and POMS § SI 01150.200-.202.

## 2. Excluded assets

Some assets are excluded by statute or rule from being counted for SSI and EBD Medicaid in determining whether the asset tests are met, even though they meet the general definition of assets (they are cash or could be sold for cash). Wisconsin EBD Medicaid is required to follow the same exclusions as SSI, except when its exclusion is more generous.

Exclusions allow you to own much more in assets than is allowed under the asset test. If you have too much cash to meet the asset test you may be able to solve the problem by purchasing, repairing or improving an exempt asset. If someone else wants to help you without creating an asset or income eligibility problem, they can do that by giving you an exempt asset (see [Part VI.F.3](#)). Some of the asset exclusions that come up most often are:

- The value of any interest you own in **your home** is excluded.<sup>55</sup> The home exclusion allows you to own a valuable asset and can provide you with more control over where you live, stability and lowered housing costs. If you receive or apply for Medicaid-funded long-term care there is a \$750,000 limit on the total equity that can be excluded. (See [Part XI](#) for more information on what can be a home, the equity limit, and what happens if you leave your home or sell it.)
- Your interest in **household goods and personal effects** is excluded up to any value.<sup>56</sup> The exclusion includes things like clothing, furniture, household equipment, medical equipment, musical instruments, and jewelry that you wear or that has family significance. It does not include something valuable that you own as an investment or as a way of storing wealth.
- An interest you own in one **motor vehicle** is excluded up to any value if it is used to provide you with transportation.<sup>57</sup> You do not have to be the driver. (A second vehicle might be excluded as property of a trade or business or property that is part of a plan to achieve self-support.)
- An **Achieving a Better Life Experience (ABLE) Account**<sup>58</sup> allows you and other people to put money into an account that you own and can use as cash for many purposes, without having the money count as your income or as an asset for SSI or EBD Medicaid. Funds withdrawn from an ABLE Account may also be exempt from being counted as assets for a period of time. See [Part IX](#) and footnotes there for ABLE Account eligibility, funding limits, income and asset exemptions and permitted uses of funds.
- **Income producing property.** Exclusions of income-producing property include<sup>59</sup>:
  - **Property that is part of your trade or business** is excluded up to any value for both SSI and EBD Medicaid. This may include machines and equipment

<sup>55</sup> Home exclusion: 20 CFR § 416.1212; POMS SI § 01130.100; MEH 16.8.1.2-4.

<sup>56</sup> Household and personal effects exclusion: 20 CFR 416.1216; POMS SI § 01130.430; MEH § 16.7.1.1-.3.

<sup>57</sup> Motor vehicle exclusion: 20 CFR § 416.1218; POMS SI § 01130.200; MEH § 16.7.9.2. (The state rule, Wis. Admin Code § 102.06(2)(c), has not been updated to reflect current law.)

<sup>58</sup> ABLE Account: POMS § SI 01130.740; MEH § 16.7.30.

<sup>59</sup> For SSI: POMS SI § 01130.501-.504. (The federal rules, 20 CFR §§ 416.1220-.1224, have not been updated to reflect current law.). For EBD Medicaid: Wis. Admin. Code § DHS 103.06(5) and (13) and MEH § 15.6.3.1 and 16.9. The Medicaid Eligibility Handbook (as of May, 2025) includes a \$6000 limit on exclusion of nonbusiness income-producing property, but a recent fair hearing decision held that the state rules control and do not include this limit. Consult an expert for the current status of this exclusion.



used in your business, tools of trade required by an employer, farm equipment, a building, a computer that you use as part of your business, and money in a business account that you need to run your business.

- Other **property essential to your support** that produces income but is not part of a trade or business is excluded for SSI but only up to a value of \$6,000.
- **Income-producing real property and other income-producing property owned by a person with a disability** are excluded under the state rules for EBD Medicaid with no dollar limit.
- Money and property that is set aside as part of a **plan to achieve self-support (PASS)** or that build up from income that is part of an approved PASS plan are excluded from being counted as assets, as long as you use them according to the plan. PASS plans are discussed in [Part III.D](#), above. A friend or relative can make gifts to be set aside in a PASS plan.
- Some **cash** that you receive is not counted for a period of time after you get it. You may have to remind SSA or the IM agency that some money in an account came from one of these sources, and be able to show that you can identify the funds (see [Part D](#)). Examples include:
  - A **retroactive Social Security or SSI payment** is not counted as an asset for nine months after the month you receive it.<sup>60</sup>
  - A **payment for damage or loss** of your home, car, personal possessions or other excluded asset is not counted as an asset for nine months after the month you receive it.<sup>61</sup>
  - Money from **federal tax refunds and advance tax credits** (like the stimulus payments during the pandemic) is not counted as an asset for twelve months after the month you receive it.<sup>62</sup> State tax refunds are not protected in this way.
  - Money from certain kinds of **disaster assistance** is permanently excluded from being counted as an asset.<sup>63</sup>
  - Money from a **grant, scholarship, education savings account, or other gift set aside for educational purposes** (other than shelter costs) is not counted as income and is excluded from being counted as an asset for up to 9 months after the month you receive it.<sup>64</sup> Funds in a Coverdell account funded for you are not countable as assets until 9 months after the month of withdrawal. A gift can be from a private person (such as a family member). Any funds that you use for any purpose other than allowed educational expenses will count as income in the month you use the funds.
  - Money withdrawn from an ABL Account that you have not yet spent (unless the money is for a shelter expense) (see [Part IX](#).)
- The cash **value of life insurance** that you own is counted as an asset unless the total

<sup>60</sup> SSDI and SSI back-payment exemption: 29 CFR § 416.1233; POMS § SI 01130.600(B)(1); MEH § 16.7.11.1.

<sup>61</sup> 20 CFR 416.1232; POMS SI § 01130.630; MEH § 16.7.19.

<sup>62</sup> POMS § SI 01130.676; MEH § 16.7.7.

<sup>63</sup> POMS § SI 01130.620; MEH does not cover this exclusion, but refers to it in § 16.7.33.

<sup>64</sup> 20 CFR §§ 416.1124(c)(3) and 416.1250; POMS §§ SI 00830.455, SI 01130.455, and SI 01130.460. EBD Medicaid policy does not address this asset exclusion.

face value of all policies you own is **\$1,500 or less.**<sup>65</sup> Face value is what the policy says it will pay if you die. Cash value is what you would get if you cashed in a policy. You can reduce cash value of policies you own by borrowing against them. The life insurance exclusion is not very useful because it has not been adjusted for inflation, but some companies sell paid-up \$1,500 policies. See the next bullet for better ways to plan for funeral or burial costs.

» **NOTES:** Life insurance that has no cash value (term life insurance) is not an asset. Someone else who wants to buy insurance on your life can buy and own it (or give it to someone other than you)--a policy that someone else owns is not your asset.

- **Property and funds set aside for funeral, burial and cremation expenses.** There are several ways to set aside assets for funeral costs and disposition of your remains after death. (The term “burial costs” is used broadly, to also include cremation, a mausoleum, and funeral/memorial service costs.) These include:

- You can set aside up to \$4,500 (plus all interest earned after funding) in an **irrevocable burial trust.**<sup>66</sup> To do this you make an agreement with a funeral home for goods and services to be provided after your death. The plan should say whether prices are guaranteed. The funds for the plan are then put into a trust. The trust will name the funeral home as the beneficiary but you keep the right to switch to a different funeral home.
- If you want to set aside more than \$3,000, you can fund a **life insurance funded burial contract.**<sup>67</sup> As with a burial trust, you do this by making an agreement with a funeral home for goods and services to be provided after your death. The cost of the agreement is then funded by prepaid life insurance that you purchase and assign irrevocably to the plan. After the assignment of the insurance becomes irrevocable, you no longer can get your money back and the value of the insurance is not your asset. (Note: State law gives you 30 days from signing the assignment to change your mind, so it is not irrevocable during that period.)
- You can own a **burial space,**<sup>68</sup> and prepaid items such as an urn, vault, marker, burial container, and contract for opening and closing the gravesite.
- You can put up to \$1500 in a **separate, designated account for burial expenses.**<sup>69</sup> This is quick and easy to set up, and you can revoke the designation, but the amount excluded is reduced by the face value of any whole life insurance and burial trust. In the long run an irrevocable trust or life-insurance-funded contract will allow more adequate funding, and better ensure that the funds are there when needed.

» **NOTE: The state has an aid program that can pay for up to \$1,500 in unpaid**

<sup>65</sup> Life insurance exclusion: 20 CFR § 416.1230; POMS § SI 01130.300(C)2.a; Wis. Admin. Code § 103.06(10); MEH § 16.7.5.

<sup>66</sup> Burial trust exclusion: Wis. Stat. § 445.125(1); POMS § SI 01130.420; SI CHI01130.427 (WI); MEH § 16.5.1.

<sup>67</sup> Life insurance funded burial contract: Wis. Stat. § 445.125(2); 20 CFR 416.1231(b)(6); POMS §§ SI 01130.425 and SI CHI01130.426 (WI); MEH § 16.5.3.1.

<sup>68</sup> Burial space exclusion: 20 CFR § 416.1231(a); POMS SI § 01130.400; MEH § 16.5.4.

<sup>69</sup> Burial fund exclusion: 20 CFR 416.1231(b); POMS SI § 01130.410; MEH § 16.5.5.



**burial, cremation or funeral services. See [P03123, Wisconsin Funeral and Cemetery Aids Program \(WFCAP\) Informational Brochure.](#)**

**D. How should you track excluded cash resources so that they are identifiable?**

In some cases, money you are holding as cash is exempt from being counted as an asset for some period of time after you receive it (see [Part C.2](#)). Unless there is a specific requirement for a separate or escrow account (e.g., for funds from the sale of a home) you can mix excluded funds with other funds. However, in order for the funds to be excluded as an asset you have to show that they are “identifiable.”<sup>70</sup> Essentially, that means that you have to show that you have not spent them yet. When you spend money from an account, SSA will assume you are spending from funds that are not covered by the exclusion, but only if the account balance remains higher than the amount you want to exempt. Put another way, the amount you claim to be exempt cannot be larger than the smallest bank balance you have had since you received the payment.

*Example.* In April, Molly has \$1,500 in an account and deposits an \$800 federal tax refund so that the account has \$2,300 in it on May 1. She is not over assets in May because the \$800 tax refund is an exempt asset for 12 months. During May, she spends \$1,500 more than she deposits in the account, leaving a balance of \$700. After that, only \$700 will still be considered to be identifiable for exclusion as money that came from the tax refund.

**E. When can the state put a lien on your home for Medicaid or recover benefits from your estate?**

You (or others who want to help you) may be concerned about putting substantial assets (such as ownership of a home) in your name because of the possibility that the state may try to recover payments it makes for services by putting a lien on your home or making a claim against your estate after you die.<sup>71</sup>

A complete description of the estate recovery and lien laws, and planning methods to reduce the risk of estate recovery or lien enforcement or to seek hardship waivers, are beyond the scope of this booklet. The state describes the estate recovery program and Medicaid liens in a handbook, available on-line at <https://www.dhs.wisconsin.gov/publications/p1/p13032.pdf>. Some issues with respect to home ownership are discussed in [Part XI](#). The description below is only intended to provide an outline of when liens and estate recovery may apply.

The **Medicaid lien law** allows the state to put a lien on your home only if you are (or become) a nursing home resident or long-term hospital patient. The lien may not be placed on the home if you reasonably expect to return to live in it, or if any of the following relatives lives in the home: your spouse, your child who either is under age 21 or has a disability, or your sibling who shares ownership of the home and lived there for one year before you entered the nursing home or hospital.

If a lien is placed on the home, the state may not collect on the lien as long as you have a living spouse or a child who is under 21 or disabled, whether they live in the house or not. The state also may not collect on the lien at the time of your death if you have an adult child who is living in the home and who lived with you for two years and provided care for you that delayed your admission to a nursing home, or if your brother or sister lives in the home, if he or she lived

<sup>70</sup> POMS § SI 01130.700.

<sup>71</sup> 42 USC §1396p(a) and (b); Wis. Stat. § 49.496 and 49.849, Wis. Stats., and Wis. Admin Code § HFS 108.02(10)-(12).

there for at least 12 months before you were admitted to the nursing home.

Under the **Medicaid estate recovery law**, the state has a potential claim against your estate after you die for two categories of Medicaid benefits:

- Any Medicaid benefits paid on your behalf when you were a nursing home or long-term hospital resident, regardless of your age when you received the service.
- Medicaid benefits paid on your behalf after you reach the age of 55 for: home health services; private duty nursing; HCBW services (see [Part I.D](#)); and hospital admissions and medications provided to you while you were receiving HCB waiver services.

Medicaid estate recovery applies to the part of your estate that passes through probate or through joint ownership or payable-on-death designations. It also applies to other arrangements to pass on assets at your death that were created after August 2014, such as revocable trusts, life estates, and life insurance. The state may not recover anything from your estate if you are survived by a spouse or a child who is either under age 21 or disabled. However, there are some circumstances where the state may try to recover for benefits you received from assets you owned that are in the estate of your spouse at the time of your spouse's death.

## VI. INCOME

### A. How is income counted for SSI and EBD Medicaid? How is that different for earned and unearned income, and for cash and in-kind income?

See [Part IV.A](#) for information on the difference between income and assets for SSI and EBD Medicaid, and for information on when part of the income of a spouse or parent may be counted as your income.

SSI and EBD Medicaid treat income differently depending on whether it is earned or unearned. *Earned income*<sup>72</sup> includes wages that you get for working for someone else and any profit you get from working in your own trade or business. *Unearned income*<sup>73</sup> includes other income you get, such as a Social Security payment, pension or countable gifts of cash.

Some income is exempt from being counted in calculating income for eligibility tests and SSI payment amount. For the most part, the income exemptions for SSI and EBD Medicaid are the same, but there are some EBD Medicaid subprograms that have different rules or use gross income for some purposes (see [Part VII](#)).

Income can be in the form of cash (money, a cash card or financial investments) or it can be in-kind. In-kind income is something other than cash that you receive for less than its market value, and could include a car, clothing, furniture, food, services, or something that provides you with housing or helps you to meet your housing costs (like someone paying your rent or electric bill, or giving you a place to live at a very low rent).

The SSI and EBD Medicaid programs count in-kind income differently. This is an example of the state having a policy that is considered less strict than the SSI policy. The main rules and policies that apply to in-kind income are:

- If you get a gift of something that is exempt from being a countable asset (like a car that is your only car, furniture, household goods, food or clothing) it will not count as

<sup>72</sup> Earned income defined: 20 CFR § 416.1110-1112; POMS § SI 00820.001; MEH § 15.5.

<sup>73</sup> Unearned income defined: 20 CFR § 416.1120-1123; POMS § SI 00830.001; MEH § 15.4.

income. This is a way people can help you by paying for things instead of giving you cash that would count as income.

- If you get a gift of something that is not exempt from being countable (like a second car that is not exempt) it may be counted as unearned income for SSI. The value is the amount you could sell it for, which is often much less than the amount the giver paid for it. (A gift of this kind will not count as income for EBD Medicaid but will be considered an asset if you own it at the end of the month.<sup>74</sup>)
- Payments by others for services you receive are never income, because services cannot be sold and turned into cash.
- If someone pays for your costs of housing or gives you a place to live without charging a minimum required amount, SSA may count part of the payment or reduced rent as your income. SSI calls this *in-kind support and maintenance* (ISM). EBD Medicaid does NOT count gifts of shelter expense or reduced housing costs as income.<sup>75</sup> However, whether you pay your own shelter costs may affect EBD Medicaid in other ways. If you fail to qualify for SSI or lose SSI eligibility because of the way it counts in-kind shelter, it may be a good idea to make a separate application for EBD Medicaid. The policies on shelter costs is covered in more detail in [Parts G](#) and [XI](#).
- In-kind goods, shelter or services that you receive as payment for work may sometimes count as **earned income**.<sup>76</sup> This is most likely to come up if you have your own business and get paid with something other than money. Under SSI policy, in-kind income you receive from an employer is not countable if you are a domestic worker, if you work in agriculture, or if you receive the item for the employer's convenience (e.g., the employer gives you housing because the employer wants you to remain on-site). The SSI exceptions to counting of in-kind income earned from work should also apply to EBD Medicaid, but are not stated in the state policy.<sup>77</sup>

## **B. What income do SSI and noninstitutional EBD Medicaid exclude in determining your eligibility and Federal payment amount?**

### **1. Introduction**

Income that is counted for SSI can reduce your SSI payment or, if it puts your income over the SSI payment standard, make you ineligible for SSI. It also affects eligibility for EBD Medicaid under the subprograms discussed in [Part VII](#) and may affect MAPP premiums and HCBW cost-share. This book does not cover every income exclusion. If you get income from a source that is not mentioned, it is worth checking to see if it is excluded.

» **NOTE ON INSTITUTIONAL AND HCBW EBD MEDICAID:** EBD Medicaid uses a gross income test for categorical eligibility for institutional Medicaid and HCBW-related Medicaid. **This section covers income calculations for other, “noninstitutional” EBD Medicaid subprograms.** One way to see how **EBD Medicaid** treats income for different subprograms is to look at the worksheets in Part 40 of the *Medicaid Eligibility Handbook*.

<sup>74</sup> MEH § 15.4.6.

<sup>75</sup> The policy that unearned in-kind support and maintenance is not counted for [Medicaid is stated in Attachment 2.6-A, Part A.1., of Medicaid State Plan | Wisconsin Department of Health Services.](#)

<sup>76</sup> 20 CFR §§ 416.1110-416.1111; POMS § 00820.010.

<sup>77</sup> Wis. Admin. Code § DHS 103.07(2)(c); MEH § 15.5.1.

Income you receive as payment for work or from your business is generally treated more generously and is more effective in raising your income than simple gifts of money.

## 2. What are some items of income that are excluded from being counted for SSI and most types of EBD Medicaid?

There are some things you may receive that either are not income at all or are excluded from being counted as income. These include:

- Gifts from other people or a trust that are in the form of a **direct payment for an excluded asset, travel tickets, food or services you receive**. (But see [Part G](#) for payments for shelter costs if you receive SSI.) This, and other ways that other people can help you while minimizing effects on SSI and EBD Medicaid are covered in more detail in [Part F](#).
- Contributions by other people to an **ABLE Account** that you own. (See [Part IX](#).)
- FoodShare benefits, other Federal nutrition programs, Federal housing subsidies and **income excluded under other Federal laws**.<sup>78</sup>
- **Assistance based on need** funded by a state or local government.<sup>79</sup>
- Federal and state **income tax refunds and tax credits**, such as the earned income and child tax credits and the state property tax refund and homestead credit.<sup>80</sup>
- Other **refunds or reimbursement** of money that you paid yourself.<sup>81</sup>
- Any part of a **grant, scholarship, fellowship**, or gift that you use for paying tuition, fees, or other necessary educational expenses.<sup>82</sup>
- Food you or your spouse grow for yourselves <sup>83</sup>.
- Most types of **disaster assistance or crime victim compensation**.<sup>84</sup>
- Infrequent or irregular unearned income, such as **small cash gifts**, up to \$60 in a calendar quarter.<sup>85</sup>
- One-third of **child support payments** made by an absent parent.<sup>86</sup>
- Income you have set aside in a plan to achieve self-support approved by SSA (See [Part III.D](#))
- Most **interest and dividend income** (such as the interest on your bank account).<sup>87</sup> (There may be exceptions for income earned on investments that are excluded from being counted as an asset.)
- Veterans' Administration Aid and Attendance, housebound allowances and medical expense reimbursements. <sup>88</sup>

<sup>78</sup> POMS § SI 00830.099. See items in bold for exclusions under other Federal laws.

<sup>79</sup> POMS § SI 00830.175.

<sup>80</sup> POMS §§ SI 00830.060 and SI 00815.270; MEH §§ 15.3.34 and 15.5.7.

<sup>81</sup> POMS § SI 00815.250; MEH § 15.3.19.

<sup>82</sup> POMS § SI 00830.455 and MEH § 15.4.13.

<sup>83</sup> POMS § SI 00830.700;

<sup>84</sup> POMS §§ SI 00830.620 and .660; MEH § 15.3.4.

<sup>85</sup> POMS § SI 00810.410 and § MEH § 15.3.10.

<sup>86</sup> POMS § SI 00830.420, SI 00830.425; MEH § 15.4.14.

<sup>87</sup> POMS § SI 00830.500; MEH § 15.4.9.1.

<sup>88</sup> POMS § SI 00830.308; MEH § 15.3.26.

There is a **\$20 general income exclusion** per month. If you have countable unearned income after taking all other exclusions, SSI will exclude \$20 of unearned income per month in determining SSI eligibility and payment amount.<sup>89</sup> If you have no countable unearned income, the \$20 exclusion will be added to the earned income exclusion.

You will be able to keep a much larger share of any earned income you have from work. SSI and EBD Medicaid start from your gross income, without deductions for the income and FICA taxes that may come out of your income. (But see exception below if you are blind.) If you are self-employed, count the profit you make, after deduction of business expenses. From that income, you can take the following exclusions for SSI and most EBD subprograms:

- *Impairment related work expenses (IRWEs).*<sup>90</sup> IRWEs include costs that you pay yourself for goods or services you need because of your disability to enable you to work, such as costs of specialized transportation and attendant care.
- The first \$65 of earned income you earn in a month. (This might be increased up to \$85 if you have not used all of the \$20 general exclusion on unearned income). The programs count one-half of your remaining earned income.<sup>91</sup> This means that you increase your total income by \$.50 for every additional dollar you earn. Working is a good way to increase your total income, but you still need to watch carefully whether your total countable earned and unearned income affects your benefits in ways you cannot afford. (See [Parts III.B](#) and [III.C](#)).

**Example.** See [Part D](#) for an example of how this arithmetic works and of how more income from an outside source can reduce total income.

» **Note on costs of working for people who qualify as blind.** If you meet the SSI standard for benefits based on blindness, you can deduct additional expenses of working, including FICA taxes, as blind work expenses (BWEs) from earned income for purposes of SSI.<sup>92</sup> BWEs are deducted AFTER the half-of-remainder exemption, which means they are twice as valuable as IRWEs. (EBD Medicaid does not have any reference to BWEs in rule or policy, even though the state is required to follow SSI income-counting rules.)

### 3. How are income exclusions for EBD Medicaid different from the income exclusions for SSI?

EBD Medicaid allows you to exclude additional amounts from income that are not exemptions for SSI. This special *exempt income*<sup>93</sup> includes

- Amounts you pay for court-ordered **support payments** for a spouse or minor child, and for some support payments that are not court-ordered.
- Amounts you pay for certain **guardianship costs**, including guardian fees and court-ordered attorney fees.
- Expenses of **maintaining a home** or apartment during a stay in a medical institution if

<sup>89</sup> POMS § SI 00810.420; MEH § 15.3.8.

<sup>90</sup> 20 CFR § 416.1112(6) and (8); POMS SI § 00820.530-.560; MEH § 15.7.4.

<sup>91</sup> 20 CFR § 416.1112; POMS SI § 00820.500-.520; MEH § 15.7.5.

<sup>92</sup> BWEs: POMS § SI 00820.535.

<sup>93</sup> MEH § 15.7.2.

it is likely that you will return to the home (see [Part XI.F.](#)).

- Costs associated with real property listed for sale. (See [Part XI.F.](#))
- Medical/remedial expenses you must pay yourself are exempt for purposes of eligibility for nursing home care and the HCBW programs, and (for amounts over \$500) for the MAPP program. See [Part VII.](#)
  - Medical expenses include health insurance costs and prescribed health care costs that you are responsible for and that are not covered by Medicaid.
  - Remedial expenses include other health-care related costs you are responsible for and that are not covered by Medicaid, such as case management, day care, housing modifications, respite care, supportive home care and transportation.
- **Medical/remedial expenses** you owe from services you received during a period when you are not eligible for Medicaid, including payments for services that would have been covered by Medicaid, can be deducted from your countable income for purposes of Medicaid Deductible eligibility for EBD Medicaid. (See [Part VII.E.](#))

### C. How does countable income affect your SSI eligibility and federal SSI payment?

If you are on SSI in Wisconsin you will receive both a federal SSI payment and one or more separate state SSI “supplement” payments.<sup>94</sup> State payments are discussed in [Part D.](#) below).

You must apply for SSI through the federal Social Security Administration (SSA). You will only be eligible for SSI in a month if your countable income in that month is below the federal SSI payment level that applies to you. See Table I for the federal SSI payment levels in effect in 2025 for the different federal payment categories. See [Part IV.B](#) for when you may be treated as married. The payment categories are:

- **Eligible individual.** The payment level for an individual will be used to determine your eligibility and the amount of your federal payment: (1) if you are not treated as married; (2) if you are married but not living with your spouse; or (3) if you are treated as married and your spouse is not a person who could qualify for SSI based on age or disability (but see the deeming rules, [Part IV.C.](#)).
- **Eligible couple.** If you are treated as married and live with your spouse and you both meet the age or disability requirements to be eligible for SSI, you will get the federal benefit for an eligible couple.
- **“Household of another.”** If you are an eligible individual or eligible couple living in someone else’s home, you **might** be treated as getting in-kind shelter from the household. In that case, your federal benefit will be reduced by one-third. (See [Part G.3](#) for when that applies and how to avoid it.)

To be eligible for federal SSI in a month, the total amount of your income that SSI counts must be less than the federal SSI payment level that applies to you. If you are eligible your federal SSI payment will be the difference between your countable income and the federal SSI payment level that applies to you. The effect of this is that every dollar of countable income

<sup>94</sup> EXCEPTION: A few people who were eligible for the state supplement but no federal payment in 1996 might still be receiving the state supplement without a federal ssi payment.



reduces the federal SSI payment by a dollar. If you are eligible for SSI on an ongoing basis your payment in a month will be based on your income in the month two months before that month.<sup>95</sup>

**Table I: SSI 2025 Income Eligibility Limits and Maximum Federal Payment Amounts**

Federal Payment Category	Amount
You are an eligible individual and are treated as being in your own household	\$967.00
You are an eligible individual and are treated as being “in the household of another”	\$644.67
You are an eligible couple and are treated as being in your own household	\$1450.00
You are an eligible couple and are treated as being in the “household of another”	\$966.67

#### **D. What is the Wisconsin State SSI Supplement and what happens to the supplement if you lose federal SSI?**

If SSA lists you as a Wisconsin resident and you are eligible for a federal SSI payment for a month, Wisconsin will pay a supplemental payment to you for that month. (NOTE: This is a Wisconsin-specific program. Other states supplement SSI in other ways or have no supplements.)

Wisconsin’s state SSI supplement is paid separately by the state. There is no separate state application except to qualify for the exceptional expense and caretaker supplements, discussed below. The state pays the supplement to you for a month if SSA informs the state that you were eligible for a federal benefit that month. The supplement is a flat dollar amount for each payment category, and the payment amounts are not adjusted for cost-of-living changes.

A special increased state supplement level called the **Exceptional Expense Supplement** or SSI-E is available for people who live in certain residential facilities and for people who live in ordinary homes or apartments and need 40 or more hours per month of “primary long-term support services.”<sup>96</sup> If you are not in a residential facility, eligibility for SSI-E is based on need for support services, not whether the person is actually getting them. The kinds of services that are counted include supportive home care, living skills training, and certain community mental health support services. To get this increased payment level, you must apply for certification through your IM agency. You are not eligible for SSI-E if you are an adult who is treated as living in the household of another.

The **caretaker supplement** is available to you if you get SSI and have one or more minor children who get certain kinds of Medicaid. As with SSI-E, you must apply through your local county or tribal agency or consortium.

The different state payment categories are shown in Table II.

<sup>95</sup> SSI computation month: 20 CFR § 416.420; POMS SI § 02005.001.

<sup>96</sup> Information on eligibility for SSI-E is in the Wisconsin Department of Health Services’ SSI-E Handbook, on-line at <http://www.emhandbooks.wisconsin.gov/SSI-e/> [SSI-e.htm](#). The statute for the program is Wis Stat § 49.77.



**TABLE II: Wisconsin State SSI Supplement Payment Amounts**

Wisconsin State Supplement Payment Category	Wisconsin State Payments
Eligible individual who is either (1) not married or (2) married but not living with your spouse)	\$83.78
Eligible individual who is either (1) not married or (2) married but not living with your spouse) AND applies and qualifies for Exceptional Expense Supplement (\$95.99)	\$179.77
You are an eligible couple (both spouses eligible for SSI and living together) *The Exceptional Expense Supplement (\$95.99) may be added for you if you apply and qualify for it.	\$132.05
You are a married eligible individual living with a spouse who is not eligible for SSI* *The Exceptional Expense Supplement (\$95.99) may be added if you apply and qualify for it) (The payment may be \$135.05 if you are treated as being in the household of another for federal SSI.)	\$130.43
SSI-E--Exceptional expense supplement (per person for each individual who applies and qualifies).	\$95.99
SSI Caretaker Supplement (if you care for a child who gets Medicaid) First Eligible Child Each Additional Eligible Child	275.00 165.00

As long as you are eligible for even \$1 in federal SSI benefits you should receive the full state supplement for that month. On the other hand, if you go even a small amount over the federal income limit, or are otherwise ineligible for federal SSI in a month, you will lose the entire state SSI supplement. **This means that small increases in outside income can reduce your total income.** If you are close to the federal SSI eligibility limit, you may need to be

careful to avoid small income increases that will result in loss of the state supplement. This is especially important if you receive SSI-E.

*Example.* Paul lives in his own apartment and needs over 40 hours of supportive home care. In 2025, he receives a Social Security benefit from his own work record of \$910 per month, of which \$890 is counted as his income (after the \$20 standard exemption). He also works and earns \$125 per month. Of that, \$65 and half the remainder is exempt under the earned income exemption, leaving \$30 as countable earned income ( $\$125 - \$65 = \$60 \div 2 = \$30$ ). With \$920 in total countable income (\$890 + \$30) he gets \$47 in federal SSI to bring him up to the \$967 SSI payment level. He also gets the regular Wisconsin state supplement for an individual (\$83.78) and the SSI-E supplement (\$95.99). He is offered additional work from which he will earn \$100 per month, of which \$50 (one-half) will count for SSI purposes. If he takes the work, he will only be \$3 over the Federal payment level but he will lose both his federal SSI and the entire \$179.77 state supplement. His total income will be reduced by about \$177 per month. Paul has to choose to either limit his work, live with substantially less income, or work a lot more. (If he chooses to take the work Paul will still be able to get Medicaid in one of several ways—see [Part VII](#)—but he will have to apply for it through the state.)

#### **E. How does countable income affect Medicaid if you are not getting SSI?**

Part VII discusses several different ways that you can be eligible for EBD Medicaid if you do not get SSI. These are called “subprograms,” but they are really just different ways of qualifying for one program (EBD Medicaid). There are almost as many different income tests and ways of counting income as there are ways of being eligible for Medicaid. You will need to look at the particular ways that you may qualify for EBD Medicaid to decide how additional income will be counted, and how it will affect you. A table showing current income tests for single individuals and married couples living together is in § 39.4 of the *Medicaid Eligibility Handbook* (MEH). Forms showing income calculations are in MEH § 40.1.

In deciding what does and does not count as income in determining eligibility for EBD Medicaid, Wisconsin by law is required to use the same methods as Social Security uses for SSI, unless the state decides to be more generous or has a specific waiver that allows for different treatment.<sup>97</sup> Generally (but not always), the state follows this requirement. Where it does not, an appeal may be needed to enforce the law.

Some of the major ways in which Wisconsin EBD Medicaid is more generous in counting income than SSI include:

- The fact that someone else is providing housing for you or paying for things that SSI counts as “shelter costs” (see [Part G](#)) does not affect how your income is determined for your eligibility for EBD Medicaid. However, you may be better off paying your own shelter expenses if you are getting HCBW services and are paying a cost-share. See [part VII.J.2](#) for a discussion of how paying your own shelter costs can affect you if you are paying a cost-share for Family Care or IRIS.
- For most (but not all) income tests, Medicaid deducts certain payments you make to support your spouse and minor children, and certain court-ordered guardianship costs (see [Part VI.B.3](#)).

<sup>97</sup> EBD Medicaid and SSI comparability: 42 U.S.C. 1396a § 1902(r)(2)(A) and 42 CFR §§ 435.601(b)(2) & (d), 435.831(b)(2) & 435.845(b).

- For the Medicaid deductible, Medicaid deducts from your income the amount of health and long-term support costs that you are responsible to pay yourself (see [Part VII.E](#)). These expenses can also reduce your premium for the MAPP program, and the amount of your cost-share for Family Care/HCB waiver services (see [Part VII.I](#) and [VII.J](#)).

## **F. How can people (or trusts) help you financially without affecting your SSI/Medicaid?**

### **1. General rule: people and trusts should usually pay bills and not give cash.**

Generally, the issue for people and trusts who want to use their money or property to make your life better is not WHAT they pay for, but HOW they pay for it. There are very few ways (see EXCEPTIONS, below) that assistance will affect your benefits, if the person or trust making the payment does so by paying the provider directly, or by paying a bill (including a credit card bill). On the other hand, it will often create a problem if someone gives you cash (or a cash card) that you can use to make the purchase, or pays you with cash to reimburse you for something you bought.

Because most direct gifts to you of cash and things that act like cash (e.g., most gift cards and debit cards) count as income, people and trusts generally have to help you by paying bills directly to providers for things you receive that do not count as income, or by paying the parts of your credit card bill that are not for cash.<sup>98</sup>

*Example 1.* Emily's brother wants to buy her some new clothes. Her brother gives her a \$300 gift card to a store, and she buys what she needs. The \$300 counts as income for her SSI and EBD Medicaid. It will reduce her SSI and (depending on her other income) may make her ineligible for SSI and some EBD Medicaid subprograms.) The same thing would happen if she went out and bought the clothes and he reimbursed her by giving her cash.

*Example 2.* Emily's brother wants to buy her some new clothes. He figures out a way to pay for the clothes without giving her cash or a gift card, and there is no effect on her SSI or EBD Medicaid. There are several ways the brother could use to do this:

- He could go with her and pay the store for what she picks out.
- He could appoint an agent to go with her to pay for the clothes, and then repay the agent.
- He could ask the store to set the clothes aside, bill him, and give her the clothes after the bill is paid.
- She could shop on-line and he could put the purchases on his credit card.
- She could use her own credit card, and her brother could pay the credit card company directly for the part of the bill that was for the clothing.

» **EXCEPTIONS—When can paying a bill or making an in-kind gift be a problem?** There are a few ways that people paying bills for you can affect SSI and/or **EBD Medicaid**. These include:

<sup>98</sup> Payment of bills: 20 CFR § 416.1103(g); POMS SI 00835.400.

- **Paying the part of a credit card or other bill that resulted in you getting cash or a countable asset.**
- **Giving you something you can sell that is not an excluded asset.** An example would be giving you jewelry that you never wear and hold only for its value.
- **Paying for something that SSI counts as a shelter cost** or giving you a place to live may reduce SSI, but usually not dollar-for-dollar (see [Part G.](#)). While help with shelter costs does not affect eligibility for EBD Medicaid it may increase your liability for a share of costs of HCB waiver services, if you have a cost-share (see [Part VII.J.2.](#)).

## **2. What's wrong with cash, and when is it OK to make gifts of cash (or things that are a lot like cash)?**

Generally, **gifts of cash direct to you** are not a good way to make you better off overall. Direct gifts of cash count as unearned income and reduce federal SSI on a dollar-for-dollar basis, so they will not increase your total income. Countable income from gifts of cash may or may not affect you if you get EBD Medicaid but do not get SSI. (They may not affect you if your income is below the eligibility limit that applies to you, even after the gift is counted, and you are not paying a cost-share for long-term care. If you are on MAPP, they may only cause a small increase in your premium. (See [Part VII](#) for income limits under the different Medicaid subprograms.)

The methods that allow people and trusts to avoid gifts of cash (see [Part 1](#)) **can be inconvenient and restrictive**. Fortunately, there are some exceptions that at least come close to letting you control funds from other people and trusts as you would if it were your own money. These include:

- The **general disregard of \$20 per month** can be applied to cash gifts if you have no other unearned income.
- **Small, infrequent gifts of cash adding up to no more than \$60 in a calendar quarter<sup>99</sup>** are not countable income. The \$60 exemption should apply to EBD Medicaid, but the *Medicaid Eligibility Handbook* says to disregard only \$30 per quarter. (For SSI, you should not receive cash gifts from the same person more than once in a calendar quarter, or two months in a row.)
- **Funding that a person or trust puts into an ABLE Account is not income**, if you are eligible and below the ABLE funding limits. Once in the ABLE Account, the money belongs to you and you can access it like any bank account, although there are some limits on what you can use the money for. (See [Part IX](#) for limits on funding and use of funds.)
- If you have a credit card, **a payment of your credit card bill by a person or trust directly to the credit card company is not income** if the bill is for things that are not counted as income. People should not pay the part of a credit card bill that resulted in you getting cash. For payments for shelter costs, see [Part G](#).
- **Funding of a True Link Visa® Prepaid Card by a person or trust is not income.** True Link cards works like a debit card, up to the prefunded limit. Again, there are some

<sup>99</sup> Infrequent and Irregular cash gifts: 20 CFR § 416.1124(c)(6); POMS § SI 00810.410; MEH § 15.4.6.

restrictions on what you can buy with the card, and you cannot use it to get cash.<sup>100</sup>

- **A gift of cash that you set aside for educational purposes** other than room and board costs is not income and you can hold the funds set aside for education for up to 9 months without having the funds count as an asset.<sup>101</sup> However, using the funds for any purpose other than educational expenses will count as income in the month you use the funds. (Unfortunately, the Wisconsin *Medicaid Eligibility Handbook* language on this exclusion is unclear about private gifts.) It may be better for other people to pay education costs directly, or to put the money in an education savings account that you do not own.
- **Funding a PASS plan to help you become more self-supporting.** (See [Part III.D](#)).
- **Funding an account that will be part of your trade or business.** (See [Part V.C.2](#)).
- **Making a loan** to you is not income if it is a genuine loan (see Part 3) but if the money is held as cash into the next month it will be considered an asset unless it is exempt as a business account or part of a PASS plan).

### 3. How can people (and trusts) help you by buying things, or lending money to you, without affecting SSI and EBD Medicaid?

Fortunately, there are a lot of things that people can pay for on your behalf (by paying the provider directly or paying your credit card bill) without affecting your SSI or EBD Medicaid eligibility or benefits. Some examples are:

- **Payment for any kind of service you receive.** The fact that someone else pays a bill for services that you receive does not produce income for you and does not affect your SSI or EBD eligibility—a service does not meet the basic definition of income because you cannot sell it to get money. Some examples of services people can pay for without affecting SSI or EBD Medicaid are:
  - **Personal services** like haircuts, supportive home care,
  - **Household services** like cleaning and lawn care.
  - **Home repairs** like services of a carpenter, plumber or electrician.
  - **Medical, health care and supportive services.**<sup>102</sup> This can fill gaps in Medicaid coverage, give you a wider choices of providers or help you get services or items that meet your needs better than the ones Medicaid provides.
  - **Education and vocational training and support.**<sup>103</sup> Paying for school tuition, or for other learning opportunities is not income (but paying shelter costs may affect SSI or an HCBW cost-share. If someone else is funding a § 529 educational savings plan for you, it is better for them to own it, not you, so that it does not become a countable asset for you. If money in a § 529 plan is not used for your education expenses, it can be rolled over to an ABL account or (if you have a qualifying disability) used for your benefit in other ways.)

<sup>100</sup> POMS § SI 01120.200.E.1.e; <https://www.truelinkfinancial.com/>.

<sup>101</sup> Gifts for Educational Purposes: 20 CFR §§ 416 Appendix to Subpart K-Part. III; and 416.1250; POMS §§ SI 00830.455 and SI 01130.455.

<sup>102</sup> Medical and support services: 20 CFR § 416.1103(a) & (b); POMS SI § 00815.050.

<sup>103</sup> Education and training: 20 CFR § 416.1124(c)(3).

- Telephone, internet and cable bills.
- Transportation, travel and entertainment, including vehicle repair, cost of transportation, costs of a companion and costs of lodging when you are away from home.

• **Purchase of excluded assets (other than a home) and things you cannot sell.**<sup>104</sup>

If someone helps you pay for something that is an excluded asset after you get it, or that you cannot sell, their payment does not count as income. (But see [Part XI](#) if the gift is of a home.). A more complete list of excluded assets is in [Part V.C.2](#), but some examples of things people can pay for without affecting benefits include:

- **Food, clothing, personal care items and household supplies.** In the past, food and clothing counted as in-kind income for SSI but this has now changed. Gifts of any of these items, or payment of bills for them, is not countable as income for you.
  - **Furniture, electronics and appliances that you use in your home.**
  - **Medical supplies or equipment.**
  - **A car or van that you use for transportation** (unless you already own one) and **vehicle modifications**
  - **Gas for your car.**
  - **Property that you will use in a trade or business.** This allows someone to buy equipment for you to set up a business that will provide work and income in the long term.
  - **Costs of service animals and pets, pet food and costs of care.**
  - **Airline and other transportation tickets**<sup>105</sup> that someone pays for and gives to you or are not counted as your income (unless you sell them for cash).
- **Payment of insurance premiums, other than life insurance.** Payments by another person for health, auto, or renter's insurance will not affect benefits. Homeowner insurance may be a shelter cost (see [Part G](#)). Payment for whole life insurance may produce income (increased value). Generally, there is no reason for someone to pay for life insurance, unless it is assigned to burial/funeral planning or owned by someone other than you.
- **Loans.** Money you borrow from someone else is not income for you. (but it may be an asset in the next month if you hold it as cash). To be exempt, a loan must be genuine—there must be a genuine intent to repay it when it comes due, and a genuine expectation that you will be able to repay it. It is best to put in writing that you must repay, and when. Loans can be useful if you have to pay lump sums that are hard to save for because of the SSI and Medicaid asset limits, such as property tax bills or major home repairs. You can borrow the money to pay the expense, repay the loan over time from monthly income, and then borrow the money again when you need it. People can also lend you money against property you already own, e.g. by taking a mortgage on your home that you only have to repay when the home is sold. A secured, deferred-payment loan can be a way to turn your home equity into money you can use now, and to reduce the value of the asset you will

<sup>104</sup> Gift of an excluded resource: 20 CFR § 416.1103(j); POMS SI § 00815.550.

<sup>105</sup> Transportation tickets: 20 CFR § 416.1124(c)(16); POMS SI § 00830.521; MEH § 15.3.25.

own if you move out of the home or die.

- **Housing costs.** Payment of some housing costs does not affect SSI. (See [Part G.](#)) Payment of housing costs does not affect EBD Medicaid, unless you are a person who gets HCBW services and has a cost share.

**G. What if someone pays costs that SSI classifies as shelter costs, charges you a low rent, or gives you a place to live in their home?**

**1. What is the effect of having someone else pay your shelter costs, if you are receiving SSI?**

» **NOTE 1 on help through an ABLE account.** If you are eligible for an ABLE Account, and have not reached the contribution limits, **people and trusts can help you with shelter costs without affecting SSI by making contributions to an ABLE Account** that you can then use for shelter costs. See [Part IX.](#)

» **NOTE 2 on government and charitable assistance.** This section is about voluntary help you get from family, friends or a trust for your benefit. Housing subsidies, reduced rent and energy cost payments under government programs are not counted as income for SSI or EBD Medicaid. Many charitable programs that provide assistance with energy or other shelter costs are also exempt.

» **NOTE 3 on help from parents of a minor or a spouse.** If you are a minor child living with a parent, or a married person living with a spouse, housing costs paid by the parent or spouse are not counted as your income.

SSI classifies certain costs as shelter costs and counts the payment of shelter costs by another person (or by a trust) as a special kind of income called *in-kind support and maintenance (ISM)*.<sup>106</sup> *Shelter costs* for SSI include mortgage payments, cost of homeowner insurance required by your mortgage-holder, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.<sup>107</sup> Not all things that help you afford housing are counted. Some examples of things that people can pay for that do not count as ISM are condominium association fees, home maintenance and repairs, renter's insurance, homeowner's insurance if you do not have a mortgage that requires it, and telephone/internet costs.

If another person or a trust does pay for things that SSI defines as shelter costs, it will count as income only up to a limited amount called the *presumed maximum value (PMV)*.<sup>108</sup> The PMV is calculated by taking one-third of the federal SSI payment amount for the year and adding \$20. (The PMV is \$342.33 in 2025.) Once you have received an amount equal to the PMV in a month, additional in-kind help with shelter costs will no longer affect your SSI. This means that you can benefit from outside help, if the help is substantially more than the PMV. In that case, you may choose to accept the reduction in SSI in order to get the help you need with shelter costs.

*Example.* Fred lives alone and gets SSI and has no other income, so his total income in

<sup>106</sup> 20 CFR §§ 416.1121(h) & 416.1130 - 416.1147; POMS SI § 00835.000 ff.

<sup>107</sup> 20 CFR § 416.1130(b); POMS § SI 00835.020.B.36.

<sup>108</sup> 20 CFR §§ 416.1140(a)(1); POMS SI § 00835.300.



2025 is 1044.78 (Federal SSI of \$967 plus state supplement of \$83.78). The rent for his one-bedroom apartment is \$1200 per month, which is more than his total income. His father pays all of the rent directly to the landlord and pays all the utility costs directly to the providers. Only the PMV amount is counted as Fred's income, so his Federal SSI is reduced by \$342.33 to \$668.67 (the maximum reduction). His state supplement of \$83.78 is not affected, so his income is now \$752.45 and he owes no rent or utilities out of that. The subsidy from his father makes Fred substantially better off and gives him housing he could not otherwise afford. (BUT—see [Part 2](#) and [Part IX](#) for other options that avoid any reduction in SSI.)

The same rule applies if you own your home (or a trust owns a home for you), and someone else pays all or part of counted shelter costs (mortgage, insurance required by the mortgage, real estate taxes, and utilities). The payments count as income for SSI, but only up to the PMV.

## 2. What is the effect if you live in a home or apartment with reduced rent?

Another way that a person might help you with housing is to own or rent a house or apartment in their name and then rent it to you at a reduced rent.<sup>109</sup> Under Social Security policy, if the rent you are required to pay under a rental agreement is at least equal to the presumed maximum value amount for that year, the reduced rent does not count as income for purposes of SSI and does not reduce your SSI.

*Example.* Same as the example above, except Fred's father rents the apartment for \$1200 per month and pays all the utilities and sublets it to Fred under a rental agreement. Fred's father does not live in the apartment. Under the rental agreement Fred must pay his father \$350 per month in rent (in 2025), with heat, light and water included. Social Security will not count the difference between the rent Fred pays paid and the actual value of the apartment because there is a business arrangement (with his father as landlord) and Fred is paying more than the PMV (\$342.33 in 2025) on rent. Fred's SSI is not affected by this arrangement.

This arrangement would also work if Fred's father bought a home, paid all the costs of owning and maintaining the home, and then rented it to Fred under a rental agreement that required a rental payment equal to or more than the PMV.

» **NOTE: TRUST OWNERSHIP EXCEPTION.** A trust for your benefit could rent a home or apartment and sublet it to Fred, in the same way that Fred's father did in the example. However, **the result is different if a trust for your benefit owns a home and lets you live in it.** In that case (according to SSA policy) you are treated as a homeowner, and any shelter costs by the trust count as in-kind support, up to the presumed maximum value.

## 3. "Household of another" status: What if you get SSI and live with someone else who owns or rents the place where you live?

If you live in a home that is owned or rented by another person who lives with you, and you receive both food and shelter from the person who owns or rents the home, you may be treated as being in a special category called *living in the household of another*. If you are considered to be living in the household of another, your SSI payment will be reduced by a flat amount equal to one-third of the Federal SSI payment level (\$322.33 per month for a single person in 2025),

<sup>109</sup> POMS SI § 00835.380.A.2.

no matter how much the food and shelter you receive is really worth. The good news is that the value of the benefit you receive from living in the household may be much greater than the reduction in SSI. On the other hand, any reduction in the payment standard is bad. At worst, it may affect your eligibility for SSI. The SSI exceptional expense supplement (SSI-E) is not available to a person who is subject to the one-third reduction.

Most people who know the rules can avoid the one-third reduction. You will not be treated as *living in the household of another* and be subject to the one-third reduction if:

- **You have a rental agreement**<sup>110</sup> with the person who owns or rents the home, under which you have an obligation to pay rent. (For this to work, you should keep your money separately from the person you rent from, and there must really be a payment from you to the person you rent from. If the person is your guardian or representative payee, they should keep separate accounts for your money and their money.) The rental agreement can be a flat rate for room, board and other expenses. In order to avoid any reduction in SSI due to subsidized rent, the rent you pay must be at least equal to the presumed maximum value. (See [Part 1](#).)
- **You buy your food separately.** In that case, you will still need a rental agreement for the shelter you receive under which you pay at least the presumed maximum value in rent.
- **You pay your fair share of household expenses.**<sup>111</sup> To figure out your fair share, average household expenses are divided by the number of people in the home. SSA only requires that you pay a share of food and the things it counts as shelter expenses (see [Part 1](#)). You will not get credit for paying for other things, like the phone bill. To establish a track record of paying your fair share, it may help to borrow money so that you can start paying your fair share and apply to get the regular SSI rate. (Paying fair share is complicated and is often unaffordable for people on SSI. Most people find that a rental agreement is easier and better.)

#### **4. What is the effect on EBD Medicaid if someone else pays your housing costs?**

If you are not on SSI or the 1619(b) program (See [Part III.C.2](#)), and you apply for EBD Medicaid through the state, in-kind shelter you receive as unearned income will not count as your income.<sup>112</sup> This means that people and trusts can provide or pay for housing-related costs for you without affecting your eligibility for EBD Medicaid benefits. However, if you get HCBW services and are required to pay a cost-share the amount that you pay yourself for housing costs is one of the factors in determining your cost-share payment. This means that having someone else pay your shelter costs may increase the amount of your cost-share. (See [Part VII.J.2](#)).

## **VII. EBD MEDICAID ELIGIBILITY IF YOU ARE NOT RECEIVING OR APPLYING FOR SSI OR 1619(b) BENEFITS**

### **A. When can you (or must you) apply separately for EBD Medicaid?**

This section deals with eligibility for EBD Medicaid if you have a disability but have been found ineligible for SSI or 1619(b) or have decided that you do not want to apply for or continue under SSI or 1619(b). It applies if you are denied SSI because you are working in substantial gainful activity, if you are denied or lose SSI because of unearned income, or if you work and earn more than the 1619(b) program allows. Note that you can apply for EBD Medicaid

<sup>110</sup> POMS § SI 00835.120.A.5. and E.

<sup>111</sup> 20 CFR § 416.1133; POMS § SI 00835.160, .465 and .475.

<sup>112</sup> The policy that unearned in-kind support and maintenance is not counted for Medicaid is stated in Attachment 2.6-A, Part A.1., of Wisconsin's Medicaid State Plan. Earned in-kind benefits are covered by Wis. Admin. Code § DHS 103.07(2)(c).

separately, even when you are appealing an SSI denial or termination and are waiting for the SSA appeal process.

- » **NOTE ON INCOME LIMITS:** Income limits change every year. This section gives the limits as of January 1, 2025 (or February 1, 2025 for **MAPP**) for single individuals. For income limits for a married couple, or income limits at future times, see the EBD Medicaid income and asset table in § 39.4 of Wisconsin's *Medicaid Eligibility Handbook*. Annual DHS Operations Memos announce new rates before they are in the MEH.

Reasons you might need (or choose) to apply for EBD Medicaid through an IM agency include:

- **You choose not to apply for SSI.** You do not have to apply for SSI, in order to apply for EBD Medicaid. You may decide that the amount of SSI you will get is not worth the effort, or that you will be better off under state policies.
- **Your SSI eligibility is delayed pending appeal.** Sometimes people lose SSI because of an error by SSA and must wait for an appeal to correct the error. A separate EBD Medicaid application can at least restore that part of benefits.
- **Your income or assets are too high for SSI/1619(b) but not for EBD Medicaid.** All of the state's EBD Medicaid subprograms have higher income-eligibility limits than the SSI federal payment standard. Some allow the expenses of your health care to offset your income. MAPP may allow higher earnings than 1619(b). See the programs listed in this section for the ones that may work for you. Wisconsin counts assets at the end of the month, not the beginning, so you may be eligible for EBD Medicaid in a month when you were not eligible for SSI due to assets.
- **You are denied SSI and 1619(b) because you are working in substantial gainful activity.** You can apply for MAPP if you have a qualifying disability regardless of whether you are working in substantial gainful activity.
- **You want to take advantage of the higher income and asset limits that apply to MAPP.**
- **You need long-term support services or institutional care** that costs more than your income.

## **B. Where and how do you apply for EBD Medicaid?**

Information on how to apply is on-line at [ForwardHealth: Apply for Benefits | Wisconsin Department of Health Services](#). Traditionally, Medicaid applications were made to the income maintenance (IM) agency of your county or your designated tribal agency. Those entities still process applications, but you now have your choice of several ways to apply:

- You can apply by phone or in person at the county IM agency or your tribal agency.
- You can fill out a paper application, available at [Wisconsin Medicaid for the Elderly, Blind, or Disabled Application Packet](#) and mail it to one of the data processing units (addresses are on the form) or deliver it to your county.
- You can choose to apply on-line by using the [ACCESS website](#).

Currently, county IM agencies are grouped into 11 “consortia.” Typically, when you submit information or call you will be communicating with the consortium for your area—meaning that the person you talk to may or may not be from your county but does have access to your case information. A list, contact information and map of county IM and tribal agencies, the consortia, and the areas they cover is available at: [Income Maintenance and Tribal Agency Contact Information | Wisconsin Department of Health Services](#).

### C. Why might it matter which subprogram is used to find you eligible for Medicaid?

The *subprograms* described in [Parts D to M](#) are different paths to eligibility for one program: EBD Medicaid. They vary in terms of income and asset requirements, disability test, functional support need test, and whether you need to be a former SSI recipient. All are “full service Medicaid” programs and the coverage provided is the same no matter which path is used to qualify (although some may require a premium or cost-share payment). **You may be eligible under more than one subprogram, and which program is used can make a substantial difference.** For example:

- If you qualify as a past SSI recipient under Disabled Adult Child or Widow(er) status (see [Parts F](#) and [G](#)) you will benefit from a permanent income deduction of all or part of your SSDI payment, and will have no cost-share liability if you receive home and community-based waiver services. However, you may also be eligible under HCBW status Group B (see [Part J.2](#)). If the IM agency uses the Group B path to find you eligible you may end up paying a cost-share you should not have to pay. (See example in [Part F](#).)
- If you work at even a minimal level, the Medicaid Purchase Plan (MAPP) will be available to you as an alternative path to eligibility. This allows higher income and asset limits but requires payment of a (very reasonable) premium and creates the need to plan ahead for the transition if you are no longer able to work. (See [Part I](#)).
- » **You cannot rely on the IM agency to identify the subprogram that is best for you or to tell you all the ways you may be eligible.** If you have identified a subprogram that you think works best for you, ask for it in the application and state clearly why you think you are eligible for it. This may require a separate letter or note. **Look at the notices you receive**, not only to see whether you are found eligible for Medicaid, but also to see what subprogram the **IM agency** has used in making its determination.

### D. Categorically Needy Eligibility: Getting EBD Medicaid if your countable income is below the state categorically needy income test (federal SSI payment level + standard state supplement).

Wisconsin’s income-eligibility limit for categorically needy EBD Medicaid in 2025 is \$1050.78 for a single person and \$1,582.05 for a couple. These numbers are higher than the federal SSI payment standards by the amount of the standard state SSI supplements, so some people who have excess income for federal SSI will still be eligible for Medicaid as categorically needy. To be eligible, you must still meet the \$2000 limit on countable assets (or \$3000 for a couple).<sup>113</sup>

<sup>113</sup> The EBD Assets and Income Table is in MEH 39.4.1

Your countable income and assets will be calculated using Wisconsin's EBD Medicaid methods, which means that in addition to SSI income/asset exemptions:

- You should get the additional EBD Medicaid income disregards (certain legal fees, support payments, medical and remedial costs, etc. discussed in [Part VI.E](#)).
- Lump sums should be treated as assets, not income.
- Your assets should be counted as of the end of the month, which may be an advantage if you started a month with excess assets or receive a lump sum during the month. See [Part V.B.](#)).

**E. *Medically Needy* status and the Medicaid Deductible: Getting Medicaid if you meet the medically needy income standard or have bills for current or past medical and support services that offset income that is over the medically needy standard.**

If you have countable income that is over the SSI or categorically needy income-eligibility limits, you may still be eligible for EBD Medicaid if you meet the medically needy income standard (currently about \$200 higher than the Categorically Needy standard) OR have health-related bills you are obligated to pay. Those bills can be used to offset your excess income through a process called the *Medicaid Deductible*.<sup>114</sup> People eligible in this way are called medically needy. Generally people with medically needy status who become eligible for home and community based waiver services with a cost-share liability choose to participate in HCBW Group B (see [Part J.2](#), but that is not mandatory. See [Part K](#) if you are in a nursing home or hospital for a period of 30 days or more.

Countable income and assets are determined for the Medicaid Deductible in the same way as they are for SSI-related categorical eligibility (see Part D). The \$2,000 (or \$3,000 for a couple) asset limit applies, and **excess assets are not offset by medical expenses** (see [Part V.B](#)). Your countable income is compared to the medically needy income standard (\$1304.17 for an individual and \$1,762.50 for a couple, from 2/1/2025-1/31/2026). If you have countable income below the medically needy standard, you are eligible as medically needy without a deductible. If you have countable income above the income standard it is added up over a six-month period called the *Deductible Period* to arrive at your deductible amount. (You can choose to begin the deductible period **up to 3 months before the month when you apply** if you were asset-eligible in those months.) When you have incurred enough medical and remedial expenses (including health insurance and costs of therapy, transportation and support services you need because of your disability)<sup>115</sup> to offset the deductible, you can be eligible for Medicaid for the balance of the deductible period. Note that **you only have to be responsible for an expense—you do not have to actually pay it. You can also use expenses from the past that you still owe** (even from a time when you were over the asset limit or not disabled), as long as you have not already used them to meet the Medicaid deductible.<sup>116</sup>

*Example.* Betsy is age 40 and has a disability from a car accident. She has just become eligible for SSDI and is in the waiting period before her Medicare coverage will start. Her SSDI is \$1520 per month (\$1,500 after the \$20 exemption). She has \$5,000 of old unpaid medical bills. She is careful to keep her assets under the \$2,000 limit in case she has a need for Medicaid. In July, 2024, she has an operation. She

<sup>114</sup> Medicaid Deductible: §§ HFS 103.04(3) and 103.08(2), Wis. Admin. Code.; MEH Part 24.5.1 & 15.7.3

<sup>115</sup> See MEH § 24.7.1.1 for a description and examples of costs that can be used.

<sup>116</sup> See MEH § 24.7.1. for a description and examples of when old bills can be used.



applied for Medicaid in October, 2024, and chose to start her six-month deductible period on July 1, 2024 (to last until December 31, 2024). [The income limit in those months of 2024 was \$1,255 per month.] Her deductible amount is \$1470 ( $\$1,500 - \$12,55 = \$245 \times 6 = \$1,470$ ). She can use some of her old bills to meet the deductible. Medicaid will not pay the old bills, but it will pay for the costs of the July operation and other costs in the deductible period. She will have to apply again if she wants Medicaid in January or months after that.

- » **NOTE:** The Medicaid Deductible is an important safety net but it is complicated to use—you have to prove your health care expenses and go through a new process of applying and establishing eligibility every six months, which may mean going on and off Medicaid. If you have a disability and are able to work at even a minimal level it will often be simpler and better financially for you to seek eligibility through MAPP (see [Part I](#)).

**F. Disabled adult child special status for categorical eligibility: Getting EBD Medicaid if you lost SSI because of a Social Security Disabled Adult Child (DAC) benefit.**

If you are age 18 or over, you have been disabled since before you were age 22 and you have a parent with a work record, you may be eligible for an SSDI benefit as a disabled adult child (DAC)<sup>117</sup> of your parent when your parent starts drawing a Social Security retirement or disability benefit or dies (see [Part II.A.2](#)). If you have been receiving SSI, a DAC SSDI benefit can result in income-ineligibility for SSI at two points:

- If your initial benefit is high enough when your parent starts drawing a benefit or dies, you will lose SSI eligibility when the DAC benefit starts. You do not have the option of refusing the benefit—SSI requires that you apply for and take SSDI benefits that are available to you.
- If you have been receiving a benefit because a parent is retired or disabled, your DAC benefit may increase when that parent dies, or because fewer people are drawing on the same account, and the increase may put your income over the SSI eligibility limit.

If you are age 18 or over and eligible for an SSI benefit in a month, and lose eligibility for SSI in the next month only because you start getting a DAC SSDI benefit or have an increase in the DAC SSDI benefit, your EBD Medicaid eligibility is protected by the Disabled Adult Child (DAC) subprogram. Your federal and state SSI will stop when your federal DAC benefit puts you over the federal SSI income limit. You will have a grace period during which your Medicaid will continue and you will need to apply to continue your EBD Medicaid beyond the grace period through the state process (see Part A). You will be eligible for EBD Medicaid in a month as a categorically needy person under the DAC subprogram if:<sup>118</sup>

- You meet the categorically needy test for countable assets (\$2000 for a single person).
- You meet the categorically needy countable income test (\$1050.78 for a single person in 2025). Your income will be counted in the same way as it is for categorically needy status (see [Part D](#)). The only difference is that the IM agency **must also deduct the increase in the SSDI DAC benefit that caused you to become ineligible and any**

<sup>117</sup> Social Security refers to a person with this status as an adult child disability beneficiary (ACDB). The DAC term is used here because it is used by Wisconsin in the EBD Medicaid program.

<sup>118</sup> 42 U.S.C. § 1383c(c); MEH § 25.2,

**cost-of-living or other increase in that amount that has occurred since you last received SSI. If you were receiving SSI-E before you lost SSI, the IM agency must also deduct the amount of the SSI-E supplement from your income.**

The disregard of the SSDI income for DAC special status can leave you with much more income than other categorically needy EBD Medicaid recipients, and without the requirement that you use part of your income for the Medicaid Deductible or HCBW cost-share. It can also mean that there is much more room for you to receive countable income, including income from work or cash gifts from other people, without affecting your EBD Medicaid.

*Example.* Until January, 2025, Mary had been eligible for federal and state SSI and SSI-E benefits. She had SSDI benefits from her own work record of \$600 per month, with federal SSI making up the difference up to the federal SSI payment level. After her father's death in November, 2024, she became eligible for a Social Security Disabled Adult Child (DAC) SSDI benefit of \$1700 per month. She continued to get the \$600 SSDI payment on her own record, so her DAC SSDI payment was \$1,100 per month, with the first payment coming in January, 2025. She was otherwise eligible for SSI in January, but became ineligible because the SSDI started. She keeps her assets below \$2000. She applies for EBD Medicaid through her IM agency, specifically asking for DAC special status. The IM agency should disregard the entire \$1100 DAC SSDI benefit in determining her eligibility, the \$20 standard deduction, and her lost SSI-E payment (\$95.99), leaving her with only \$484 in countable income. If a friend gives her \$200 per month, it will not affect her eligibility as her countable income (\$684) will still be below the categorically eligible income limit. In future years, the COLA increases on her full SSDI benefit will be disregarded.

**You do not have to be continuously eligible for EBD Medicaid to get the benefit of the DAC income disregards.** You are eligible for DAC status in any month when you meet the tests for DAC status, even if you have been ineligible in past months (or years) or have never established DAC status before.

If you have DAC status and receive Home and Community-Based Waiver services (Family Care and IRIS) **you will not be liable for a cost-share for HCB Waiver services you receive.** This is an enormous benefit, as it means that you can keep the disregarded portion of your DAC SSDI benefit for your own needs and wants.

*Example.* In the example above, assume Mary was receiving support services through IRIS. If she has DAC status, she does not have to pay a cost-share for her IRIS services. If she were eligible through HCB Waiver eligibility, her cost-share could be up to \$557 per month, depending on her housing costs.

» **REPEAT WARNING! When you apply, make a specific request for DAC status, and provide all information necessary to show that you qualify.** When you get a notice saying you are eligible, review it to make sure it is for categorical eligibility based on DAC status, and not eligibility under another subprogram.

### **G. Categorically Needy Disabled Widow(er)'s Special Status**

If you are a person who lost SSI because you started receiving a disabled widow(er)'s



SSDI benefit (see [Part II.C](#)), your EBD Medicaid eligibility is protected in a similar way to the protection that would apply if you had lost SSI eligibility due to a DAC benefit (see [Part F](#)).<sup>119</sup> The disabled widow(er)s SSDI benefit may be paid to you because you (1) have a disability; (2) are age 50 or over and meet a special disability test; and (3) were married to someone who paid into the Social Security system and who has died. (If you were divorced from your spouse before he or she died, the marriage must have lasted at least 10 years.)

**H. § 503 eligibility: Getting Medicaid if you could be eligible for SSI if cost-of-living adjustments (COLA) to your Social Security benefit were deducted from your income.**

Under § 503 eligibility<sup>120</sup> (named after the number of the Federal law that created it) you can qualify for EBD Medicaid using a special income deduction if:

- At some time in your life you received both SSI and a Social Security benefit for the same month or months (even if the Social Security benefit was a retroactive benefit), but your income is now over the Categorically Needy income limit (see [Part D](#)). There is no requirement that you must have lost your SSI because of the COLAs.
- Your income is at or below the Categorically Needy eligibility limit if all of the cost-of-living increases in Social Security benefits (COLAs) that have occurred since the last month in which you were eligible for SSI are deducted from your countable income. If you were receiving SSI-E before you lost SSI, the IM agency should also deduct the amount of the SSI-E supplement from your income. Your countable income is otherwise determined in the same way as it is for categorically Needy eligibility.
- You are otherwise eligible for EBD Medicaid (including meeting the asset limit.)

**I. Medical Assistance Purchase Plan (MAPP): Getting Medicaid if you have a disability and work.**

If you are an adult (at least age 18) with a disability and earn money from working you may be able to qualify for Medicaid through the Medical Assistance (Medicaid) Purchase Plan (MAPP) subprogram.<sup>121</sup> MAPP has much more generous income and asset limits than other EBD Medicaid subprograms and does not consider your work in evaluating your disability. It requires payment of a premium that is affordable for most people. For people who need long-term care the premium is typically lower than the HCBW cost-share (see [Part J.2](#)). The requirements for MAPP eligibility include:

- **Work.** You must engage in a work activity for which you receive something of value (money or in-kind payment) at least once per month, or be in a certified counseling program. The work activity can be for an employer or can be self-employment.

The person who pays you for work can be anyone, including a family member. The person must certify that they are paying you for work activity.

- *Example.* Andy's father makes an agreement for the next year to pay \$20 each month for Andy to water the plants in his father's house twice per month and certifies that the agreement is in place. Andy meets the work requirement for

<sup>119</sup> Medicaid disregard of disabled widow(er) benefit: SS Act § 1634(d) [42 U.S.C. § 1383c]; MEH § 25.3.

<sup>120</sup> Wis. Stat. § 49.472; Wis. Admin. Code §§ DHS 103.03(1)(g), 103.04(8) and 103.087, Wis. Admin. Code; MEH Part 26.

<sup>121</sup> Wis. Stat. § 49.472; Wis. Admin. Code §§ DHS 103.03(1)(g), 103.04(8) and 103.087, Wis. Admin. Code; MEH Part 26.

MAPP, if the agreement is carried out.

- **Disability.** You must have a determination from the state Bureau of Disability Determinations that you have a disability. This can be an existing determination of disability for purposes of SSI, SSDI or EBD Medicaid, but it does not have to be. If you apply for MAPP and do not have a disability determination you will have to apply for one, but BDD will evaluate your disability **without considering whether you are working or what earnings you have, even if you are working at or above the substantial gainful activity level.**
- **Income.**<sup>122</sup> If you are not married, your countable income must be no more than 250% of the poverty level for a single person (\$3,260.43 per month from 2/1/2025 to 2/1/2026.) If you are married and living with your spouse, the combined countable income of you and your spouse must be no more than 250% of the poverty level for a couple (\$4,406.25 per month). Countable income for MAPP is your income after a set of deductions from your gross earned and unearned income. The deductions include:
  - The first \$65 of earned income, plus half of any remaining earned income.
  - Impairment-related work expenses.
  - An additional \$20 from remaining income.
  - Special exempt income (see [Part. VI.B.3](#)).
  - Medical and remedial expenses you incurred that are above \$500 per month.
  - The most recent COLA in your SSDI, if the federal poverty levels have not yet been adjusted for the year to reflect cost-of-living increases.
  - The COLAs that would be disregarded for § 503 eligibility, if you are a former SSI recipient eligible for the § 503 disregard of SSDI cost-of-living adjustments (see [Part H](#)),
- **Assets.** You can have countable assets of up to \$15,000 when you apply and be eligible for MAPP. The usual EBD Medicaid exclusions apply. **If you are married, only your assets are counted—assets in the name of your spouse are ignored.**
- **Premium.** Payment of any required MAPP premium is a condition of eligibility. Whether you have to pay a premium, and how much, depends on an amount called your *premium gross income*. Premium gross income is your gross earned and unearned income but with deductions for your IRWEs, medical/remedial expenses and the most recent SSDI COLA adjustment, if federal poverty levels have not yet been adjusted for the year. **Only your income and costs are counted—income and costs of your spouse are ignored.** If your premium gross income is under the poverty level for a single person (\$1,304.17 as of Feb. 1, 2025) you are not required to pay a premium. If you have premium gross income above the poverty level for a single person, the premium is \$25 plus 3% of the amount of premium gross income that is above the poverty level for a single person.
  - *Example.* In the example above Andy has gross SSDI income in March, 2025 of \$1,700 and earns \$40 for the work he does for his father. He does not have

<sup>122</sup> Poverty level numbers effective 2/1/2025 were published in DHS DMS Operations Memo 25-02. See that publication for larger family sizes.

IRWEs or MREs to deduct. His premium gross income is therefore \$1,740. This is \$436 above the poverty level for a single person. 3% of \$436 (rounded down) is \$13, so his premium for MAPP is \$38 (\$25 + \$13).

**Saving to an Independence Account.** After you are eligible you can save up to 50% of your earned income into a special kind of account called an *independence account*. As long as you stay within that limit, the amount you have saved in an independence account while you were eligible for MAPP eligible will not count as an asset for EBD Medicaid at any time, even if you later stop working and participating in MAPP. In order to use this option, **you must register the account as an independence account with the IM agency**, using the state registration form. If the account is not a retirement account, it must be a new account established in your name after you have become eligible for MAPP. A retirement account you already own can be registered as an independence account, but only funds saved into the account while you are eligible for MAPP will be exempt. You may be charged a premium penalty if you save too much into an independence account.

MAPP is an important protection for people who want to work but need to keep Medicaid. It does not protect against other effects of working at a substantial gainful activity level, such as loss of benefits or disability status for SSDI and Medicare (See [Part III](#)). If you no longer participate in MAPP but still need EBD Medicaid, you will need to meet the \$2,000 resource limit again, although resources correctly saved and held in an independence account can continue to be exempt.

## **J. Getting Medicaid if you are an adult eligible for Home and Community-Based Waiver (HCBW) services.**

See [Part I.D](#) for a description of the Home and Community-Based Waiver (HCBW) programs for adults (Family Care, Partnership, PACE and IRIS). These programs all use the same eligibility test for Medicaid-funded services.

The HCBW programs are called “waivers” because they started as exceptions from Medicaid laws and rules that allowed for coverage of long-term care only in institutional settings and operate under waiver agreements with the federal government. This is reflected in several aspects common to HCBW and institutional services, including:

- A person participating in an HCBW program is referred to in Medicaid rules and policies as an ***institutionalized person*** even when they are living in a home or small community setting. When reading the Medicaid rules and policy, it is important to understand that the term *institutionalized person* is not limited to a person who is in a *medical institution* (see [Part K](#) for that definition).
- The need to show a **functional need** for support services similar to the kinds of needs that, at one time, were only covered in institutional settings (see [Part I.C.5](#)).
- Similarities in **financial eligibility** based on either meeting a special income standard or a showing that income is insufficient to meet cost of care and other allowed expenses in the absence of Medicaid eligibility.
- Applicability of **spousal impoverishment protections** (see [part 3](#)).
- Applicability of **divestment penalties** that may result in periods of ineligibility if you give transfer assets for less than market value (see [Part VIII.C.](#)). If you are a person

who may need Medicaid-funded long-term care in the next 5 years, do not reduce your assets by making gifts to other people without consulting an expert.

- Possible applicability of **liens and estate recovery** to property you own at the time of your death (see [part V.E](#)). An important difference is that **Medicaid payments for HCBW services are only subject to recovery if you are age 55 or over at the time of service.**

## 1. HCBW Eligibility

The HCBW programs, and functional eligibility, are covered in [Part I.D](#). Financial eligibility for HCBW is complicated, especially if you are married (see [Part 3](#)). Depending on your situation, you may need or want expert advice on qualifying for Medicaid long-term care and on the type and quality of services you are likely to receive if you do. The important thing to understand is that **if you need long-term support services you can potentially qualify for Medicaid with a much higher income than the normal income-eligibility limits and, if you are married, protect more assets and income for your spouse than other subprograms allow.**

You can qualify for HCBW services by applying through the Aging and Disability Resource Center for your area. You will need to establish functional eligibility by going through the functional screen that applies to the program (see [Part I.C.5](#)).

If you are already eligible for Medicaid you do not have to change the way you qualify and you will not have to pay a cost-share for HCBW services. This is called **Group A eligibility**. (If you have been qualifying through the Medicaid Deductible, it usually makes sense to switch to Group B eligibility, discussed below, so that you pay the HCBW cost-share instead of the deductible, but you have a choice.)

If you do not qualify for Medicaid under another subprogram when you apply for HCBW services you will need to make an application for EBD Medicaid. If the ADRC finds you functionally eligible, you can get help from the ADRC in completing the Medicaid application. The ADRC should also help you calculate and report your ongoing medical and remedial expenses and housing expenses, and determine whether there is any issue of asset divestment that affects your eligibility. (See [Part VIII.C.1](#) for a discussion of divestment.)

If you do not qualify for EBD Medicaid under one of the other subprograms (or prefer HCBW eligibility) you may be able to qualify as an HCBW participant through what is called **Group B eligibility**. (The usual \$2000 asset test will apply to you for Group B, but if you are married additional assets may be protected for your spouse— see below.) You may qualify for Group B under either of two income tests. Unlike other Medicaid subprograms, these tests use your gross income, including all earned and unearned income, without any disregards or exemptions or deductions, and before taxes or Medicare premiums are taken out. If you are married, only your income counts towards the Group B test; your spouse's income is ignored. The two income tests are: <sup>123</sup>

- **Group B.** You may qualify for what is called **Group B categorical eligibility** if your gross income is below the Federal SSI payment level for an individual for the year, multiplied by 3. (The Group B limit is \$2,901 in 2025 but changes each year with the federal SSI payment level.)

- **Group B Plus.** You may qualify for what is called **Group B Plus eligibility** if your gross income is below the average cost of nursing home care (\$10,371.78 in 2025) plus the medically needy income limit (\$1,304.17 in 2025). In 2025, the Group B Plus gross income limit should therefore be \$12,158.97 (\$10,371.78 + \$1,304.17).

» **NOTE:** If your income exceeds the Group B limit but you have high medical costs you may qualify under the Medicaid deductible (see [Part E](#)).

Under either Group B or Group B Plus you may have to make a payment towards the cost of your HCBW services in order to stay eligible. This required payment is called a *cost-share* and is discussed in the next section.

## 2. HCBW Cost-Share for Group B Participants

If you are eligible for Medicaid under Group B you may have to pay a share of the costs of your long-term care. Whether you have to pay a cost-share, and how much, is determined by a separate income test with its own special set of deductions from income, including a deduction for housing costs. The cost-share can be quite high (in 2025 the maximum was \$3,855.56 per month). It is based on your income, not the actual cost of the specific services you receive, so it may not be worth it to you if you do not receive many services. Countable income for the cost-share is calculated by taking the following deductions from your gross income:

- **The Community Waivers Personal Maintenance Allowance.** The maximum allowance is \$2,901.00 (in 2025). Up to the maximum for the year, the following amounts can be included in the Personal Maintenance Allowance:
  - An amount called the Community Waivers Basic Needs Allowance (\$1,147 in 2025).
  - If you have earned income, the first \$65 per month of earned income you have, and half of any earned income you have over \$65. Note that you only get this credit if your total deductions are under the cap on the total Personal Maintenance Allowance. **If you have earned income, you should consider whether you are better off paying the premium for MAPP eligibility, rather than the Group B cost-share.**
  - **Housing costs over \$350 that you pay yourself.** For this purpose, housing costs include rent, insurance, mortgage, property taxes and utilities. If you are in a residential facility, it is the amount of the facility charges that is designated to be for housing. **It is best if you pay your own housing costs from your own income or resources or from an ABLE account.** Other people can help you by paying other expenses not counted as housing costs, or by contributing to an ABLE account.
  - **Housing costs over \$350 that you pay yourself.** For this purpose, housing costs include rent, insurance, mortgage, property taxes and utilities. If you are in a residential facility, it is the amount of the facility charges that is designated to be for housing. **It is best if you pay your own housing costs from your own income or resources or from an ABLE Account** that you can then use for housing expenses. Other people can help you by paying other expenses not counted as housing costs, or by contributing to an ABLE Account.



- **Family maintenance.** These are limited payments you may make for your minor children who do not live with you and for a spouse if the spousal impoverishment rules (see [Part 3](#), below) do not apply to you. See MEH § 28.6.4.2. for details on what is deductible.
- **Special Exempt Income.** The expenses that can be included as deductible Special Exempt Income are discussed in [Part VI.B.3](#).
- **Health insurance costs.** This includes premiums you pay for health and dental insurance, including premiums for Medicare. The fact that these expenses reduce your cost-share is a reason to pay these costs from your own funds (including an ABLE Account).
- **Medical and remedial expenses.** This includes bills you pay for medical or remedial expenses that are not covered by Medicaid or are for services at a time when you were not eligible for Medicaid. The fact that these expenses reduce your cost-share is a reason to pay these costs from your own funds (including an ABLE Account).

### **3. Eligibility for Medicaid-funded HCBW services if you are married to someone who is not eligible for Medicaid-funded HCBW services or nursing home care.**

If you are married and applying for HCBW services using Group B eligibility, special rules, called *spousal impoverishment protections*,<sup>124</sup> may allow your spouse to keep a share of the assets that you and your spouse own and may allow some of your income to go towards the support of your spouse (This discussion assumes that your spouse is not also applying for HCBW services or long-term institutional care.) The spousal impoverishment protections include:

- **Income.** None of your spouse's income is counted as your income, for purposes of your EBD Medicaid eligibility. In addition, if your spouse's income is below an amount that the state considers will meet their basic minimum maintenance needs, part of your income can be given to your spouse to bring their income up to that amount. (At least \$3948 per month in 2025.) The basic amount can be increased through a special process, e.g., if your spouse has excess shelter costs or establishes additional basic needs through a hearing process. An additional allocation can be made for minor children and certain other dependent relatives who live with your spouse.

» **NOTE: Because income of your spouse is not counted, you may benefit from planning that converts some of your assets into an income stream for your spouse.**

- **Assets.** Your spouse can keep all of the retirement assets they own, and money the two of you have set aside for burial expenses. The usual income exemptions apply to other resources. Your spouse can also keep a minimum of \$50,000 of other countable assets in their name, in addition to the \$2,000 that you can keep in your own name. If the total countable assets of you and your spouse at the time your assets are assessed add up to more than \$100,000, your spouse can keep half of your total assets, but only up to a maximum amount that goes up each year with inflation (\$157,920 in 2025). In some cases, your spouse may be allowed to keep more than the minimum asset amount, because he or she needs the assets to produce more income. At the time you become eligible, the assets of you and your spouse can be held in either of your names. However, assets must be in your

<sup>124</sup> Spousal impoverishment is described in more detail in Spousal Impoverishment Protections Under WI Medicaid (Greater Wisconsin Agency on Aging Resources, August, 2021) on their website ([www.gwaar.org](http://www.gwaar.org)). DHS has a description on-line at [Wisconsin Medicaid—Spousal Impoverishment Protection](#). Sources of law and policy include: 42 USC § 1396r-5; Wis. Stat. § 49.455; § HFS 103.075, Wis. Admin. Code; MEH § 18 & 39.4.4.

spouse's name after you have been eligible for 12 months or they will be counted as your assets. As long as you are continuously eligible additional assets your spouse receives or holds are not counted as part of your assets.<sup>125</sup>

- » **NOTE:** Because of this structure, you can benefit from planning that will maximize the amount of the countable resources of you and your spouse when your resources are assessed but minimize the resources that are countable when you actually become eligible. You can get an assessment when you are functionally eligible--you do not need to wait until you are financially eligible to get a resource assessment.<sup>126</sup>

This description is meant only to give you an idea of the kind of planning that can be done, and is not a guide to doing detailed planning yourself. You should consult an expert attorney in Medicaid planning as early as possible before applying for Medicaid, if you are married, think you will need Medicaid-funded long-term care and want to preserve assets and income for your spouse and family. You should also seek estate planning advice about possible use of trusts.

#### **4. Estate recovery for HCBW services received after age 55.**

EBD Medicaid benefits paid on your behalf after you reach the age of 55 for HCBW services, and for home health services, private duty nursing, and hospital admissions and medications provided to you while you were receiving HCBW services, may be part of a state claim against assets that you own at the time of your death (see [part V.E.](#)).

#### **K. Institutional Long-Term Care: Getting EBD Medicaid if you are in a medical institution for more than 30 days.**

If you are in one or more medical institutions for a continuous stay of more than 30 days you may be eligible for EBD Medicaid under the Institutional Long-Term Care subprogram. A medical institution may include a nursing home, intermediate care facility, hospital or similar facility.

- » **NOTE:** Special rules may exclude Medicaid coverage and eligibility if you are an adult under age 65 in a facility that primarily provides treatment for people with mental illness.

Medicaid eligibility and coverage for long-term residents of medical institutions are beyond the scope of this booklet, but are briefly discussed here because:

- You may live in a community setting but have a stay in a hospital and/or nursing home that lasts 30 days or more, or wonder how you will be eligible if you need long-term institutional care.
- A stay in a medical institution may subject your property to the estate recovery program or Medicaid liens on a home. (See [part V.E.](#))
- Some other programs (HCBW services and Katie Beckett) were designed originally to provide an alternative for people who at that time were typically served in medical institutions. This is sometimes reflected in the logic and language of those programs.

<sup>125</sup> 42 USC § 1396r-5(c)(4)

<sup>126</sup> MEH § 18.4.2



If you have been receiving SSI, placement in medical institution for a full calendar month will reduce your federal SSI payment level to only \$30 per month. If you lose SSI eligibility solely because of that reduction your Medicaid eligibility will continue<sup>127</sup> but you may need to apply for continuation through the IM agency.

If you are an HCBW-services recipient through Family Care, Partnership, or PACE you can continue to have that status while in a medical institution but your cost-share will be determined using the medical institutions cost-share calculation method (see below). If you are an IRIS participant any payment for nursing home care must come through regular Medicaid, and not your IRIS budget. You can retain IRIS status during a temporary institutional stay, but at some point you will be required to disenroll.

The asset test for institutional EBD Medicaid, and the spousal impoverishment protections that apply to assets and income if you are married, are similar to what is described for HCBW services (see [Part J](#)). For purposes of income, you will be eligible if either of the following apply:

- Your gross income is below the Institutions Categorically Needy Income Limit. This is computed annually by multiplying the Federal SSI payment level for the year for a single person by 3 (\$2,901 in 2025).
- Your gross income is below an amount that the program considers to be your monthly need. The monthly need amount consists of the private-pay cost of care, a small personal needs allowance (\$45 per month), and other allowed costs, including:
  - The cost of maintaining your home or apartment, if you are expected to be able to return home.
  - Amounts for family maintenance, special exempt income and health costs similar to those used in the cost-of-care calculation for HCBW services (see last section).

Eligibility under the Institutional Long-Term Care subprogram only applies if you need a level of care that qualifies you for Medicaid coverage of the care you are receiving. The option of eligibility under the Institutional Long-Term Care subprogram is in addition to, not instead of, eligibility under other subprograms. No matter how you are eligible, you will be required to make a payment towards cost of care if your income exceeds the personal needs allowance and some other allowed costs (these may include health insurance costs and expenses of maintaining your home if you are expected to return home.)

#### **L. Getting EBD Medicaid if you are a participant in the Children's Long Term Support Services waiver (CLTS).**

The CLTS waiver for children (see [Part I.E](#)) does not provide a path to Medicaid eligibility similar to Group B eligibility for the HCBW service waivers for adults. A child found to be functionally eligible for CLTS waiver services is eligible for those services if they are eligible for full-service Medicaid in any other way, including eligibility for BadgerCare Plus. Most commonly, a child in need of CLTS services who is not eligible for SSI or BadgerCare Plus due to family assets and/or income will be eligible for Medicaid through the Katie Beckett Program (see next section).

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127 MEH § 27.4.3

**M. Katie Beckett Program: Getting Medicaid if you are a child in need of long-term care and are living with parents who have too much income for you to be eligible for SSI or BadgerCare Plus.**

The Katie Beckett program<sup>128</sup> (named after the child who inspired it) was designed to provide Medicaid eligibility for children who have functional needs for support similar to children in institutions but live at home with parents whose assets and/or income are counted in determining their eligibility for SSI, BadgerCare Plus and other EBD Medicaid subprograms. It also may help you if the income you have in your own name is over standard Medicaid income limits.

» **NOTE: There is no asset test for Medicaid for people under age 19**, whether under Katie Beckett or any other pathway to Medicaid other than SSI. SSI still has an asset test and deems assets from parent to child; Katie Beckett does not affect SSI eligibility.

You can be eligible for EBD Medicaid through Katie Beckett, without regard to your parents' income, if:

- You are under age 19.
- You have been determined to have a disability of the kind that would allow you to get SSI.
- You have a functional need for long-term care as determined by the functional screen used for children's programs. This is the same screen used for CLTS waiver services (see Part I.C.5 ).
- You live at home or in an eligible community-based setting.
- Any income that you have in your own name (e.g., from Social Security) is below the Institutions Categorically Needy income limit (\$2901 in 2025). This income test is applied to gross income, without any deductions or disregards.
- Have support service needs that can be safely met where you live, and do not cost more than institutional care would cost.

» **NOTE:** Katie Beckett has its own application process. More information about the Katie Beckett program, how to apply, and how to get more information can be found online at: <http://dhs.wisconsin.gov/kbp/eligibility.htm>

## **VIII. EXCESS ASSET ISSUES INCLUDING LUMP-SUM PAYMENTS**

You may own countable assets when you decide that you want to apply for SSI or EBD Medicaid that are over the asset-eligibility limit that applies to you. You may also receive money or other property in the form of a countable asset that will put you over the asset limit if you continue to own it. The impact of assets on eligibility, when assets are considered available, and when available assets are exempt from being countable, are discussed in [Part V](#). This Part VIII discusses some options to reduce countable assets so that you can meet (or continue to meet) the asset limit that applies to you.

<sup>128</sup> Katie Beckett Program: SS Act § 1902 (e)(3) [42 U.S.C. § 1396a(e)(3)]; § DHS 103.07(2)(f), Wis. Admin. Code; MEH § 29.1

### A. How do lump-sum payments affect SSI and EBD Medicaid?

Sometimes you may not be able to avoid receiving money or other property in your own name. Some examples include: a relative may leave money or property directly to you (as opposed to directing it to a supplemental needs trust—see [Part X](#)); you may receive a back payment when you first become eligible for SSI or SSDI; you may sell a valuable asset, such as your home, or you may leave a job and become eligible to receive retirement benefits in a lump sum. If you don't claim something that you have a right to get, SSI and EBD Medicaid may treat it as an asset anyway (because it is available to you). If you refuse a gift (e.g., by saying that you will not take an inheritance) this may be considered a divestment and cause loss of some benefits (See [Part C](#)).

If you are receiving SSI, money that comes to you as a lump sum (other than a back SSI payment, an unavailable asset that becomes available, or money from the sale of something you already own) will count as income for SSI in the month you receive it. Unless an exception applies (see [VI.B.2](#) and below), if you keep a lump sum as money into the next month after the month you receive it, it will be a countable asset and may cause you to lose your SSI benefits for the months that your assets remain over the limit. You may have to pay back SSI benefits that you receive for months when you are not eligible.

Wisconsin EBD Medicaid does not count a lump-sum payment as income but does count it as an asset in the month you receive it (unless an exception applies). Because Medicaid counts assets at the end of the month, the asset will not affect you if you spend it before the end of the month. Even if you still own the asset at the end of the month, you will not lose eligibility for that month if you had ongoing eligibility when the month began. However, you will not be eligible for that month if you are a new applicant, and you will lose ongoing Medicaid eventually if you continue to hold the asset and are over the resource limit. (This may take a couple of months because the IM agency must send out a notice that your benefits are ending and give you time to appeal.)

Some exceptions to these general rules (see [part V.C.2](#)) include:

- **Retroactive Social Security and SSI payments** do not count as an asset for 9 months after the month you receive them. Retroactive SSI is not income when you receive it.
- **Federal tax refunds and credits** are not countable income and do not count as an asset for 12 months after the month you receive them. State tax refunds are not income, but do count as assets with no 12-month delay.
- **Grants and loans for educational tuition and fees** are not income if they are used for tuition and fees, and do not count as an asset for 9 months after the month you receive them.
- **Federal disaster relief payments** do not count as income and do not count as an asset for 9 months after the month you receive them.
- **Gifts made directly into an ABLE account or approved PASS plan** do not count as an asset as long as the conditions of the account are met.
- **Money from the sale of an ownership interest in a home** is not income (because you already owned the home) and is not counted as an asset if it is used to purchase another home within three months.

If you know that a lump sum is coming to you, it is best to have a plan for how to deal with

it before you have access to it. A payment is available when you receive it, or when you could get it by applying for it. For example:

- **A check you can cash is an asset when you get it**, whether you cash it or not.
- **An inherited retirement or investment account** may be counted as an asset from the time when you are able to get it by applying for transfer into your name. EBD Medicaid policy provides that something you own is not an asset if it will take more than 30 days to cash out, but only if you take the action required to cash it out.<sup>129</sup>

## B. What are some options for dealing with excess countable assets?

» **CAUTION:** If you have substantial assets **consider whether you are better off spending them on your health care and support needs rather than qualifying for Medicaid.** If you need long-term care you may want to investigate the availability and quality of what Medicaid provides to people in your area. Paying privately paying for services may give you more choice of providers, even if you will eventually need to switch to Medicaid as a payment source.

There are many ways to spend countable assets or to turn them into a form that is considered unavailable or exempt. Some ideas include:

- **Pay off debts.** Excess assets can be used to pay a debt as long as you have a legal obligation to pay.
- **Prepay a Medicaid deductible.** If you plan to qualify by paying a Medicaid deductible (see [Part VII.E](#)) you can quickly reduce assets by prepaying the deductible amount to the state (before getting the services and incurring the bills).<sup>130</sup>
- **Prepay your mortgage**, if you have one. Most mortgage loans allow you to prepay all or part of the principal. The increased equity in your home is then an exempt asset as long as you continue to live in the home or plan to return.
- **Spend some or all of it.** There is no penalty for spending your assets, as long as you do not pay more for things than they are really worth (See [Part C](#)). Options include:
  - Pay for travel and services you want or need.

» **NOTE:** If you pay a relative for services get expert advice on how to avoid a divestment penalty (see [Part C](#)).

- **Buy excluded assets.** You can use the funds to buy any of the excluded assets listed in [Part V.C.2](#). As examples, you can buy a home, replace your furniture or car, or purchase transportation tickets for later use.
- **Pay for unmet health, dental, or equipment needs.** There are gaps in Medicaid coverage. For example, because of lack of providers who take Medicaid, and limits on coverage, you cannot always get the dentist or dental services you want just using Medicaid. A lump-sum can be a chance to get important dental work

<sup>129</sup> MEH § 16.2.1.

<sup>130</sup> MEH § 24.7.3.

done. You may also want to buy equipment or medical supplies that Medicaid will not cover.

- **Pay for home repairs or improvements** that can reduce your future costs, improve your living situation, and build your equity in your home,
- **Put money into an ABLE Account.** (See [Part IX.](#)) If you qualify and have not reached the funding limits. An ABLE Account is a way for you to own and control money in your own name, with minimal restrictions on how funds can be used.
- **Put money into a supplemental needs trust or pooled trust account for your sole benefit during your life.** (See [Part X.F.](#)) A supplemental needs trust funded with your own money (including an account in a pooled trust) allows you to set aside funds that can be used for your future needs and wants, but means giving up direct control of your funds and agreeing to a claim on funds that remain in the trust at the time of your death for the value of Medicaid services you have used. There are strict technical requirements for how the trust must be drafted and established.
- **Consider switching to the Medicaid Purchase Plan (MAPP) if you can work even a few hours per month.** (See [Part VII.I.](#)) MAPP allows people who are working and who pay a premium to get Medicaid and still have \$15,000 in countable assets (instead of \$2000), and to build up more savings over time.
- **Put it into education, a business or a PASS plan.** Getting more education and training or investing in starting a business (e.g., by buying needed equipment) can raise your income in the long term. Putting assets into a Plan to Achieve Self Support (PASS--[Part III.D](#)) allows you to keep funds in the plan and use them over time for education or other costs that will help you to work.
- **Prepay for rent or other expenses.** If a person or company who provides something you need (like your landlord) is willing to take a prepayment towards future goods or services, that can be a way to reduce your assets.<sup>131</sup> To avoid the issue of whether you are able to get the money back just by asking for it, it is a good idea for the agreement to say that you can only demand the money back if the supplier fails to deliver what you paid for.
- **Consider consulting an expert attorney about other options.** There are other financial planning devices that can be used to reduce your assets for purposes of EBD Medicaid but get the benefit from them over time, **The Medicaid laws and rules on use of these devices by either you or your spouse are complicated, strict, and full of traps** and they should only be used with the advice of an expert attorney to ensure that they can really help you and to avoid the possibility that they will make you worse off or subject you to divestment penalties. Three of these options, which may help some people, include:
  - **Make gifts that are exempt from being counted as divestments, or that will not affect you.** See the discussion of divestment in [Part C.](#)
  - **Buy a Medicaid-compliant annuity.** An annuity is an investment that pays out a future stream of periodic payments. If you are married and need nursing home or HCBW services an annuity can turn a countable asset into income

<sup>131</sup> POMS § SI 00835.380(B)(3), 00835.480(D)(3), and 00835.710(D)(1).

for your spouse that will not be counted as income for you. Whether this is helpful depends on specific circumstances. An annuity that does not meet strict requirements<sup>132</sup> may be considered a divestment and result in loss of eligibility for long-term support services (see [Part C](#)) or may continue to be counted as an asset because it can be sold.

- **Loaning money to someone in exchange for a promissory note.** Like annuities, promissory notes can be a way to reduce countable assets and get the benefit of the asset paid to you or your spouse over time. Again, requirements are strict and complicated:<sup>133</sup> the note must be written to require that you will be paid back all of the money loaned, with interest, during your life expectancy and that payments to you will be even and regular.

### **C. Divestment: What if you give your assets away, or sell them for less than they are worth?**

The term *divestment* refers to reducing your assets by giving them away or selling them for less than they are worth, as a way of becoming or staying eligible for SSI and/or EBD Medicaid. Divestment can include giving away your rights to something you never received (for example, giving up the right to an inheritance before it comes to you). Divestment can result in a period of time when you are not eligible for SSI and/or for certain Medicaid long-term care programs and services. It does not affect eligibility for other Medicaid services.

The information in this section is not intended to be a guide for people who want to make transfers of assets as a way of qualifying for Medicaid long-term care or SSI. It is only intended to alert you to the risks of making gifts and other transfers for less than market value. While there are exceptions to when transfers are considered divestments, there are pitfalls to their use that are not covered in this discussion. There are also strategies for divestment planning that are not discussed here. If you want to transfer assets as a way to qualify for Medicaid, or are thinking of setting aside assets through use of an annuity, promissory note, trust or life estate, you should consult an attorney with expertise and experience in Medicaid planning (see [Part XII](#)).

The fact that you can make a transfer of assets to benefit others as a way to get Medicaid long-term care does not mean that it is in your best interests to do so. See the CAUTION at the start of [Part B](#)).

#### **1. How does divestment affect eligibility for Medicaid long-term care for adults?**

If the IM agency finds that you did not receive fair market value in return for a transfer and that you made the transfer for the purpose of getting Medicaid coverage, it may impose a divestment penalty period. This is a period of time when Medicaid will not pay for certain long-term care services, including adult HCBW waiver services (Family Care, Partnership, PACE and IRIS) and institutional Medicaid for adults including nursing home care and hospital stays of over 30 days). Divestment does not affect coverage of other Medicaid services. Some transfers are not considered divestments, and some divestments do not result in penalties (see list of exceptions at the end of this section).

For a summary by the state of its divestment policies, and a link to a divestment factsheet, see [Medicaid: Divestment | Wisconsin Department of Health Services](#)

<sup>132</sup> Wis. Stat. § 49.453(4); and MEH § 16.7.4 and 17.2.6.14.

<sup>133</sup> Wis. Stat. § 49.453(4)(c); 42 U.S.C. § 1396p(c)(1)(I); MEH § 17.2.6.15.



If you are applying for or receiving Medicaid coverage of certain long-term care services for adults, the IM agency will ask about and consider any transfers of your assets that have been made **within 5 years before the application**— including transfers made by someone else on your behalf and transfers made by your spouse. This is called the ***look-back period***.

- If you made a gift or transfer for less than market value during the look-back period, and a divestment exception does not apply, the Medicaid program will impose a ***penalty period***. During the penalty period, you will be ineligible to get Medicaid payment for long-term care. The IM agency will calculate the length of the penalty period by dividing the total value of the gifts that you made during the look-back period by the average private-pay nursing home rate. This rate is updated annually. In 2025, the average nursing home rate is \$340.99 per day. For example, if you applied for long-term care in 2025 and the IM agency decided that you had divested a total of \$15,000 during the 5-year lookback period, the penalty period would be 43 days ( $\$15000 \div \$340.99$ , rounded down to the nearest whole day).
- The **start date for the penalty period** is the first date on which you would have otherwise been eligible for the Medicaid long-term care to which the penalty applies. This means that you must apply and be found both financially and functionally eligible before the penalty period will start to run. For HCBW services, the penalty period begins when you have both (1) made an application and been found eligible for care and (2) been eligible in every other way for HCBW services. For nursing home care, the penalty period only begins if you are in the nursing home and eligible in every other way for Medicaid coverage of nursing home care.

Transfers you make **after you start receiving Medicaid-funded long-term care** also must be reported and may result in a penalty period if they are found to be divestments. The penalty may also apply to transfers by your spouse (even transfers that result from your spouse's death). Your spouse should consult an expert before making transfers and in making an estate plan.

**Purchase of annuities, making of loans in exchange for promissory notes and paying relatives for care or services** may be treated as divestments if they do not meet strict requirements.<sup>134</sup> (See [Part B](#).)

**Exceptions.** The Medicaid divestment penalty does not apply to all transfers. Some of the exceptions (not a complete list) are:

- A transfer to a **trust or pooled trust account for your own sole benefit** that meets very specific requirements. (See [Part X.F](#) for details.)
- A transfer of assets **of any kind (including your interest in your home) to a spouse or to your child who is disabled or blind** (as defined for SSI), regardless of your child's age.<sup>135</sup>
- A transfer to a **trust established solely for the benefit of your child of any age who is disabled or blind, or for the benefit of any person with a disability (other than a spouse) who is under age 65 and is disabled.** (See [Part X.E](#) for details on this exception.)
- A transfer of **an interest in your home** to<sup>136</sup>:

<sup>134</sup> MEH § 17.2.6.14 (annuities); 17.2.6.15 (promissory notes); and 17.2.6.10 (payments to relatives for services).

<sup>135</sup> MEH § 17.2.6.8 and 17.2.6.9.

<sup>136</sup> MEH § 17.2.6.8.



- **Your spouse, minor child (under age 21) or child who is disabled or blind (of any age).**
- **Under very specific circumstances (get expert advice):**
  - An adult child or sibling who shared the home with you for two years immediately prior to your admission for Medicaid institutional care and provided care to you.
  - A sibling who shared the home with you for at least a year immediately prior to your admission for Medicaid institutional care and had an ownership interest in the home.
- **A transfer of an exempt asset other than your home** (see [Part V.C.2](#)), if the transfer is made after you become eligible for EBD Medicaid and the asset has been determined to be exempt.<sup>137</sup> (The exception does not apply to an asset that is unavailable but not exempt.)
- **A transfer that the IM agency finds was made exclusively for a purpose other than qualifying for Medicaid long-term care.**<sup>138</sup> Be cautious in relying on this intent exception: it is not unusual for IM agencies to impose penalties for transfers that have other legitimate purposes (like helping a relative) if the effect is also to reduce your assets. However, state policy describes some transfers that automatically meet the intent exception, including:
  - A transfer that left you with enough assets and anticipated income to cover five years of long-term care (or to last the rest of your life, if you were expected to live less than five years).
  - A transfer made when considering your age and health you were not expecting to need long-term care in the next five years.
  - A transfer that totaled less than 15% of your income for the year, and followed your past pattern of gifting.
  - A transfer for support of a relative who was your dependent for tax purposes.

(This is not an exclusive list—other transfers can be found to meet the exception on a case-by-case basis.)

- A transfer made by your spouse to a trust for you established by your spouse's will at the time of your spouse's death.<sup>139</sup> This would typically be a supplemental needs trust for you, with assets going to other family members at your death. Consult an expert if you are considering this kind of planning.

The state may also decide that a penalty period should not be imposed because it would result in an ***undue hardship***, meaning deprivation of needed medical care, food, or shelter. This exception is very strictly applied and there is no way to apply for it in advance of your need for care.

## 2. How does divestment affect eligibility for SSI?

SSI has its own separate laws and rules governing divestment.<sup>140</sup> SSI only considers divestments that occurred in a look-back period of 36 months. The penalty period is the number

<sup>137</sup> MEH § 17.2.3.2.

<sup>138</sup> MEH § 17.2.6.1.

<sup>139</sup> MEH § 17.2.6.12.

<sup>140</sup> Divestment for SSI: 42 U.S.C. § 1382b(c); POMS SI §§ 01150.001-.111.

of months you get by dividing the total amount divested during the penalty period by the federal SSI payment level. The penalty period for SSI starts to run in the month in which the transfer is made, even if you have not yet applied for SSI and are not eligible for SSI in that month. SSI has its own divestment exceptions.<sup>141</sup>

Unlike the Wisconsin EBD Medicaid program, SSI has no explicit exception allowing transfer to a pooled trust account for your own sole benefit at a time when you are age 65 or over. In rare cases SSA local office have found such transfers to be divestments. SSI hearing decisions have held that these trusts are not divestments because they provide fair market value provided the funding is reasonable given the person's likely needs and wants during their lifetime.

## IX. USE OF ABLE ACCOUNTS

### A. Introduction to ABLE accounts.

The availability of ABLE Accounts was created by the Achieving a Better Life Experience (ABLE) Act<sup>142</sup> in 2014. If you are eligible and stay within the contribution limits, ABLE accounts provide a way for you to receive, own and spend money in a way that does not count as either income or an asset for SSI, Medicaid, or any other federal benefit program that has an income or asset test.

ABLE programs are operated by states or by groups of states operating together. Wisconsin has not had a program, but as of 2025 is considering starting a program or joining one of the programs operated by groups of states. **Wisconsin residents can use any program from any other state that accepts out-of-state residents.** More information on ABLE accounts and on programs from other states is available on-line at [Home - ABLE National Resource Center](#). Another source is a group of states that are working together as the [National Able Alliance Home](#).

You can fund an ABLE account with your own money as a way to set aside money for your future use in an account that is not countable as an asset but is readily accessible to you. Other people or trusts who want to help you can also contribute money to an ABLE account. An ABLE account is not a trust—the money in it belongs directly to you and you (or a guardian or appointed agent) make decisions on how and when to use it.

- » **NOTE:** An ABLE account creates a major exception to the ordinary rule that a gift of cash from another person or from a trust counts as your income. An ABLE account can also be used by people to fund your shelter costs without affecting SSI (see [Part VI.G](#)), your HCBW cost-share calculation (see Part [VII.J.2](#)) or other federal benefits (such as HUD subsidized rent programs).
- **Note on taxation:** Income earned on an ABLE account is not taxable. There are also tax credits and deductions for some contributions. See [ABLE accounts - Tax benefit for people with disabilities | Internal Revenue Service](#) and [DOR ABLE Accounts](#).
- **Note on state Medicaid recovery claim.** There may be a claim by the state on funds left in a ABLE account at your death, for Medicaid you have received. It is not clear whether that has been enforced in practice but you may not want to

<sup>141</sup> POMS §§ SI 01150.120-.126.

<sup>142</sup> Public Law 113–295. MEH 16.7.30.

accumulate more in an ABLE account than you expect to use for yourself during life.

### **B. Who is eligible to have an ABLE account?**

You can only have an ABLE account if you have a qualifying disability that you had before you reached a set age. **In 2025 the set age is 26 but it will go up to age 46 on January 1, 2026.** You are eligible if you had a formal determination of disability or blindness for SSI, SSDI or Medicaid before the set age, but if you did not have a formal determination before the set age you can still become eligible if you certify that:

- You have a medically determinable physical or mental impairment that is on the specific list of impairments that Social Security uses to determine disability of children, or that results in an equivalent level of disability to one of the listed impairments.
- Your impairment occurred before you reached age 26 (or age 46, after 1/1/26).

In order to use the certification process you must state that you have (and will keep) a copy of a written diagnosis of the impairment from a physician that indicates which of the listed impairments applies.<sup>143</sup>

### **C. What are the limits on how much can be put and kept in an ABLE account?**

You can only have one ABLE account at a time. There are three limits on how much money can be put into your ABLE account:

- **Annual contribution limit.** Total contributions from all sources to an ABLE account must not add up to more than the annual contribution limit. Anything over the contribution limit in the year will count as your asset. If it came from someone other than you it will also count as your income. The annual limit goes up with inflation. In 2025 the contribution limit is \$19,000 per year.
- **Additional contribution if you are working.** If you are working and not participating in a retirement plan sponsored by your employer, you can make contributions to an ABLE account above the usual limit, up to the total value of the compensation from work you receive. There is a cap on the amount you can contribute in a year (\$15,060 in 2015).
- **Total size of account for SSI.** Any amount in your account over \$100,000 will count as your asset for purposes of SSI. This limit does not apply to EBD Medicaid.
- **Size limit imposed by individual programs.** Individual ABLE programs have their own limits on total size of accounts. This is something to look for in choosing a program.

If people or trusts that want to help you are unable to do so through an ABLE account

because of funding limits, they can still do so in the other ways discussed in [Part E](#) and [Part VI.F](#). The ABLE account can then be used for what it does best—giving you direct access to cash that you can use for qualified expenses and (for some people) paying shelter costs in ways that will not affect your benefits (see [Part VI.G](#)).

<sup>143</sup> IRS Regulations § 1.529A-2.

#### D. How are contributions treated if they are within contribution limits?

A gift of money from another person or from a trust that would have been countable income under normal SSI and Medicaid rules is not countable as income if the gift is made to an ABLE account and is within the annual contribution limit. ABLÉ accounts only take money—they will not accept other forms of property (like stock or an IRA).

Money that you put into an ABLÉ account is not income because it is just a transfer of something you already owned. However, if something was income when you received it (or if you had a legal right to receive it as income) the transfer to an ABLÉ account will not reduce your income. As examples:

- If another person or a trust gives you money directly it is countable as income to you even if you then send it to your ABLÉ account.
- If you ask your employer to deposit your paycheck to your ABLÉ account the paycheck will still count as your income.

#### E. How can you use the funds from an ABLÉ account?

An ABLÉ account belongs to you. You (or your guardian of estate or conservator, if you have one) manage the account and decide when to withdraw money and how to spend it. You can also appoint an agent to have power to make decisions about use of funds from your account. You can spend money from the account by arranging direct transfers of money (including transfers to other accounts you own) or by use of a card that acts like a debit card. Some programs also allow use of checks.

- » **NOTE ON MANAGEMENT AND CONTROL:** You own the funds in an ABLÉ Account and (unless you have a guardian or conservator) you control the use of funds. There is typically no up-front oversight of whether you use funds for qualified expenses. Other people and trusts who funded the account cannot control your use of it, but they may not want to fund it again if you use funds for unintended purposes or unqualified expenses.

**Qualified expenses.** The ABLÉ law requires that you only spend your ABLÉ account funds for yourself on a set of expenses that are considered *qualified disability expenses*. This is not as restrictive as it sounds. *Qualified disability expenses* include most things you will typically need or want to buy, including the expenses of:<sup>144</sup>

- **Basic living**, including food and clothing. This is not well-defined, but probably also includes things like personal supplies, furniture, home repairs and modifications, haircuts, and other personal services.
- **Housing**, including rent, utilities, taxes and mortgage (BUT see [Part G](#)).
- **Transportation**.
- **Education and employment training and support**.
- **Assistive technology**, adaptive equipment and related services.

<sup>144</sup> Qualified disability expenses are defined in IRS Rule § 1.529A-0(b)(15). Examples of allowed expenses are in POMS § SI 01130.740 and MEH § 16.7.30.

- **Health care**, prevention, and wellness and personal support services.
- **Legal services and financial management**, including costs of the ABLE Account.
- **Funding a plan for your funeral, burial or cremation.**

Expenses to avoid. You should not spend money on expenses for other people, unless it is necessary for you to have a companion to assist you. The SSA POMS section says that luxuries and entertainment are not qualified disability expenses. Examples of things that you should avoid funding (unless specifically tied to a need created by your disability) include: theater tickets; luxury transportation, hotels or restaurants; expensive furniture, perfume, jewelry, and artwork; and gifts for other people. This should not be hard:

- Other people can pay for travel costs, furniture and personal items for you without running the money through an ABLE account.
- You, or other people, can set aside money in a supplemental needs trust which is not restricted to using funds for qualified disability expenses.
- Using the ABLE Account for more basic costs can free up your other funds for things that might be considered luxuries.

**F. Can you continue to hold funds after you have withdrawn them from an ABLE account?**

SSI policy allows you to hold funds that you have withdrawn from an ABLE account without having those funds count as an asset for SSI even if the funds are held into months after the month of withdrawal.<sup>145</sup> (The *Medicaid Eligibility Handbook* does not have this exception.) **The SSI exception does not apply to the use of ABLE Account funds for shelter costs.** If you are using ABLE Account funds to pay housing costs, pay the costs directly or use the funds to pay the costs in the month that you withdraw the funds. The SSI exception applies as long as you are able to identify the funds (see [Part V.D](#)) but should probably be used only for expenses that will happen in the relatively near future.

**G. When might a person or trust want to fund your ABLE account as a way for you to pay shelter costs or as a way to help you if you are in subsidized housing?**

If you are on SSI and someone else pays your shelter costs, the payment can result in a reduction in your SSI (see [Part VI.G](#)). If another person or trust funds an ABLE Account for you, you can then pay the expense from the ABLE account and it will not be counted as an outside payment. Pay the shelter cost directly, or in the same month that you make the withdrawal.

If you are an adult receiving HCBW services and have to pay a cost-share, you may be able to reduce your cost-share by paying your own shelter expenses. If another person or trust funds an ABLE Account for you, you can then pay the expense from the ABLE Account and it will not be counted as an outside payment.

If you are in some kinds of HUD-subsidized housing, the housing authority or project manager may count all or part of payments you receive (whether in cash or as payments for things and services you receive) as income which may affect your eligibility or rent. Contributions to an ABLE Account are not counted as income for this purpose.

## X. USE OF TRUSTS

*This Chapter X is intended to help readers understand how trusts can be helpful and some of the choices that go into creating a trust. Hopefully, it will help readers judge whether language in a trust document works for them. It is not intended to give readers a recipe for drafting a trust. It does not cover everything that needs to go into an effective trust document. Trusts are complicated legal documents and need to be tailored to individual circumstances and goals. An attorney should be consulted in drafting a trust or adopting a community or pooled trust. If possible, the settlor should seek an attorney who is familiar with trust law, the needs of people with disabilities and the requirements of public benefits programs.*

### A. What is a trust and how can it help you?

One option for family members or others who want to help you is to establish and fund a trust for you. Under a trust, assets or income are given (directly or by will) to a person called the trustee, who must use the assets only for purposes set out by the person creating the trust. For example, your parents can create a trust and give assets to the trustee to use for your benefit (your parents are then called the *settlors* and you are the *beneficiary*).

A trust for your benefit can be helpful in several ways. First, a trust allows the person who sets it up to appoint the trustee to manage and invest the funds and figure out how to spend the funds for your benefit. This can be helpful if you are not good at managing money, do not like managing money or are at risk of being exploited by other people. Second, the trust can be written to protect the property in the trust from anyone you may owe money to, including creditors, someone who sues you, your spouse or ex-spouse, and public benefits programs. Third, the person who creates the trust can indicate how the funds should be used for your particular needs (and when funds should not be used). Finally, if the trust is correctly written as a *supplemental needs trust* you can benefit from property in the trust while not having it count as an asset for SSI or Medicaid.

If you are the beneficiary of the kind of trust used for SSI and Medicaid planning, the assets in the trust do not belong to you even if the trust is funded with your own assets. You do not have the control you would have if you owned the money yourself. Assets of a trust are titled in the name of the trustee, and the trustee makes decisions about how to use them. Assets of a trust should never be mixed with assets you own, including assets managed for you by a guardian or representative payee. The person creating the trust should consider carefully whether there are ways of allowing you to have direct ownership, to receive direct distributions from the trust or to let you get the benefit of funds with as little red tape as possible (see Part [VI.F.2.](#)) They should also consider ways that your circumstances may change over time and leave flexibility for the trustee to respond to possible changes.

Once a trust is created, other people who want to help you can add money or property to it by gift or will. The person who creates the trust can say what will happen to any funds left in the trust when you die, or they can give someone else the power to make that decision. As long as the money was not yours before it went into the trust, it can be left to other people or organizations after your death.

### B. What are some common terms of all supplemental needs trusts (SNTs) to avoid the trust being a countable asset for SSI or EBD Medicaid?



- » **NOTE:** If assets are put in a trust that belonged to you before going into the trust, the trust will be a first-party trust. A first-party SNT must meet special rules on how it is created, and must provide a claim against assets left in the trust when you die for the amount of Medicaid benefits you have received during your lifetime (see [Part F](#).) Those requirements do not apply to a trust that is funded entirely by other people, called a third-party trust (see [Part D](#)).

A trust designed to hold assets for your benefit that are not counted as your assets for SSI and EBD Medicaid is commonly called a **Supplemental Needs Trusts (SNT)** or sometimes a **Special Needs Trust**.<sup>146</sup> SSI and EBD Medicaid will not count the property in a third-party trust as your asset, even though you are a beneficiary, as long as you do not have any legal right to require that the trust make distributions to you or provide you with basic support.<sup>147</sup>

An SNT for your benefit (whether funded by a third party or with your assets) will typically contain some standard provisions:

- It will avoid giving you power to require payments by saying that it is up to the trustee to decide whether, when and how to use trust property to benefit you. A trust of this kind is called a **discretionary trust**.
- It will say that its main purpose is to **supplement the support and services you get from public benefits** and not to replace that support, but allow exceptions if necessary to more appropriately meet your needs and wants.
- It will say that **you cannot sell or give away your rights under the trust** to anyone else. (This avoids any possibility that the trust will be considered your asset because you can sell your rights)
- It will say that assets of the trust are **exempt from claims of creditors and the state**. If an SNT is properly drafted and created, so that it does not count as an asset for Medicaid, it can have a valid provision in the trust that says it is exempt from claims of your creditors and claims of the state for public benefits even if it is funded with your own assets.<sup>148</sup> (The trust will still be subject to claims for child support and a trust funded with your assets will create a claim for the state on assets remaining at your death.)

Some SNTs are written so that the trustee may never do anything that would result in a loss or replacement of government benefits and can never give you cash or provide basic support for you. Some even say that a trustee may use trust assets only for luxuries. Under SSI and Wisconsin Medicaid policy, as long as a trust leaves use of the funds up to the discretion of the trustee these kinds of strict restrictions are not necessary and will limit the ways in which the trust can be useful for you. It is usually better to give the trustee flexibility to make decisions for your benefit which might reduce or replace public benefits but also improve your quality of life. For example, it usually makes sense for the trustee to have authority:

- To provide support, but only at the discretion of the trustee.
- To buy an item or service of better quality than public benefits would provide, such as more appropriate dental care or better medical equipment, or to pay privately when doing so gives you a wider choice of provider.

<sup>146</sup> Some people (and SSA in the POMS) use special needs trust to refer only to trusts funded with assets that belonged to you before going into the trust. Wisconsin's trust code, Wis. Stat. § 701.0103(29), uses the term trust for an individual with a disability to refer to any supplemental needs trust.

<sup>147</sup> POMS SI § 01120.200.D.2.; *Richland County v. DHSS*, 183 Wis. 2d 61, 357 N.W.2d 7 (Ct. App. 1994); § 701.06(5m), Wis. Stats.; MEH § 16.6.4.1.

<sup>148</sup> Wis. Stat. §§ 701.0103(29), 701.0502(1)(b) and 701.0503(3).



- To make a large purchase for you that results in a small or short-term loss of benefits. Examples could include the purchase of a home or annual payment of real estate taxes in a lump sum.
- To give you cash, but again only at the discretion of the trustee. This power could be used to distribute cash through an ABLE account, under a PASS plan, at a time when it does not affect your eligibility or Medicaid cost-share, or at a time in your life when you are self-supporting and not relying on Medicaid and SSI at all.
- To give you access to better housing by paying housing costs, even if that results in loss of some benefits.

Of course, laws and policies can change, or you may move to a state with more restrictive policies. It is a good idea to ensure that someone (such as the trustee or a directing party) has authority to modify the trust in order to comply with applicable law, or to transfer assets to a trust written to comply with applicable law.

### **C. How can trust funds help you without the trust distribution being counted as income?**

Payments made directly to you in cash may have the effects on SSI and Medicaid discussed in [Part VI.F.2](#). Payments for shelter costs, may reduce or eliminate your SSI payment or increase your HCBW cost-share obligation (see [Part VI.G](#)). For SSI, this includes paying expenses of a home you live in that is owned by the trust. A trustee must try to make the trust work for you while working around those restrictions.

**Things a trust can pay for that are not counted as income.** Trusts, like individuals, can pay for any of the items and services that are listed in Part VI.F.3, without having the distributions count as your income. Unlike ABLE accounts, trusts are not restricted to using funds for qualified disability expenses and can pay for entertainment, luxury services, and travel.

**Ways to make distributions.** The trustee can pay the provider of goods or services directly or appoint an agent to make payments on behalf of the trust and be reimbursed. However, it can be difficult for the trustee to pay a provider directly or find someone to shop with you. A trust can make distributions more efficiently, and give you greater autonomy and flexibility in making decisions on use of funds, through any of the ways discussed in [Part VI.F.2](#). For example, the trust can fund an ABLE account (if you qualify), pay your credit card bills (but not for cash you receive), or pre-fund a True-Link card.

### **D. Third-party trusts: How can a trust be created and funded, when it is funded by people other than you?**

A trust that is funded entirely with assets that did not belong to you before going into the trust is called a *third-party trust*. A third-party trust does not have to meet the special creation requirements that apply to a trust funded with your assets (see [Part F](#)). Property remaining in the trust at your death can go to people named as remainder beneficiaries, with no claim for Medicaid benefits you have received. There is no requirement that the trust be for your sole benefit during your lifetime unless:

- A person funding the trust wants their gift to qualify for a Medicaid divestment

exception (see [Part VIII.C](#) and [Part X.E](#)).

- The trust is created by the will of your spouse to be funded with your spouse's assets after your spouse's death.

A trust does not have to be funded at the time it is created—it is enough if there is an expectation of future funding (e.g., because it is named to receive funds in a will). A third-party trust can be created by a separate document (or community trust adoption agreement) while the settlor is still living or can be created by will when the settlor dies. Creation during a settlor's life allows the settlor to fund it while they are alive and provides an opportunity to other people who want to help you to make gifts to the trust without having to create separate trusts for you. Making the existence of the trust known to people who want to help you will reduce the risk that people will leave money to you directly.

» **EXCEPTION:** An SNT for your benefit to be funded by your spouse must be created by will.

A settlor can fund a trust at the settlor's death by making the trust a beneficiary in his or her will, or by making remainder designations on investment accounts, retirement accounts<sup>149</sup> or life insurance policies. Money left directly to the beneficiary will not go to the third-party trust so it is important to make sure all designations are to the trust and not to the individual or some group that includes the individual (like "my children"). It is also important for the settlor to review beneficiary designations to make sure that the trust will be funded at the level they intend despite changes in their financial situation over time.

Designating the SNT as a beneficiary of **life insurance policies** can provide a relatively quick and reliable source of funding, with no tax consequences. However, if life insurance is relied on as the primary method of funding the SNT it is important to ensure that the life insurance will stay in place and premiums will be paid as long as the insured person lives (or until a plan is made for another source of funding).

Third-party trusts pay much higher tax rates on income that is taxable to the trust (see Part J). For that reason, funding a trust with substantial assets from pre-tax retirement accounts (like traditional IRAs or 401(k)s) can result in high taxes. A settlor should consult an expert if major funding is expected to come from pre-tax retirement accounts.

It is often important for the settlor to have a durable financial power of attorney that appoints someone as the settlor's financial agent if the settlor becomes incapacitated. If the power of attorney gives the agent the right powers, the agent can fund the trust to ensure that the trust can help you during a period when the settlor is incapacitated and unable to provide help to you. The agent can also take advantage of the divestment penalty exceptions that apply to transfers to SNTs (see next section) by making transfers that fund the trust and then allow the settlor to apply for Medicaid long-term care.

#### **E. Medicaid divestment exceptions for people who fund a third-party supplemental needs trust.**

Ordinarily, a person who transfers assets to a trust for another person will be treated as having made a divestment and will be subject to a penalty period if he or she applies for

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Medicaid funding for long-term care within 5 years after the transfer (see [Part VIII.C.1](#)). However, there are two exceptions that allow transfers without a divestment penalty if the transfer is to a trust (or community or pooled trust account) that has a person with a disability as the only beneficiary.<sup>150</sup> The two exceptions are:

- There is no divestment penalty if a parent funds a trust for the sole benefit of their child who has a disability, regardless of the child's age (even if the child is over age 65).
- There is no divestment penalty if a person funds a trust for the sole benefit of any person with a disability if the beneficiary is under age 65 at the time the trust is funded. There is no requirement that the person funding the trust have any relationship to the beneficiary for this exception to apply. This exception should not be used for a trust for a spouse which will be treated as self-funded (see [Part F](#)).

In order for the person funding the trust to qualify for either of these exceptions, the beneficiary must have a disability of the kind that would qualify them for SSI. If they do not have a current disability determination, the person making the transfer can ask for one to be made in order to determine whether the divestment exception applies. The trust does not have to include a provision to repay Medicaid for benefits received by the beneficiary.<sup>151</sup>

## **F. First-party Medicaid payback trusts and pooled trust accounts: How and when can your own assets be put into an SNT for your own benefit?**

### **1. Treatment of self-funded Medicaid payback trusts and pooled trust accounts.**

With the exceptions discussed below, if assets that belong to you or your spouse are put into a trust the assets will continue to be treated as your assets under the SSI and EBD Medicaid programs if the trust allows a payment for your benefit to be made out of the assets. If payments are made for your benefit, they will count as your income, so that (unless the trust is drafted and created correctly) putting assets into a trust for your own benefit can leave you worse off than continuing to own them directly.<sup>152</sup>

There are two important **exceptions** when a self-funded supplemental needs trusts (**SF-SNT**) will not be treated as your assets after transfer to the trust and distributions will not automatically be treated as income. One is for a **Medicaid payback trust**, discussed in Part 2 below. The other is for an **account in a pooled trust**, discussed in Part 3 below. As with third-party SNTs, an SF-SNT must be written so that you have no legal right to require that the trust make payments of cash to you, or that the trust provide basic support, but can allow such distributions at the discretion of the trustee (see [Part B](#)). Distributions from the SF-SNT for your benefit are treated under the same income-counting rules that apply to any SNT (see [Part C](#)) and trusts can use the same methods to facilitate distributions. Under both the Medicaid payback and pooled trust exceptions for an SF-SNT for your benefit:

- **You must be a person with a disability** of the kind that would qualify you for SSI or EBD Medicaid. If you do not have a disability determination (e.g., because you have not been receiving SSDI, SSI or Medicaid benefits based on disability), you can and must apply for one to show that you qualify for the exception.

<sup>150</sup> 42 U.S.C. § 1396p(c)(2)(B)(iii) and (iv); MEH § 17.2.6.2.

<sup>151</sup> MEH § 17.2.6.2; CMS State Medicaid Manual 3257.B. The CMS State Medicaid Manual requires that there be a plan to spend the assets for the beneficiary during his or her expected lifetime and it is safest to follow that guidance.

<sup>152</sup> 42 U.S.C. § 1396p(d); § 49.454 Wis. Stats.; POMS § SI 01120.201.D.; MEH § 16.6.4.2

- **The trust must be written so that during your lifetime the trust will benefit no one except you.** This is referred to as the *sole benefit* requirement. It means, for example, that a self-funded trust will not work if your goal is to make distributions to family members, even those (like children) that you have a duty to support. (Incidental benefit is allowed. For example, if a trust provides housing to you, you can let other people live in the home.)
- **The trust must be irrevocable.** Irrevocable means that no one has the power to end the trust, to pull the property out of the trust or to benefit anyone except you.
- **The trust must be established by you, your parent, your grandparent, your legal guardian, or a court.** A trust or pooled trust account is established by the person who signs the document to create the trust. If a guardian creates the trust or account, the guardian must have specific authority from the court to do so, before the account is established.
- **The person who transfers funds to the trust must have legal authority to make the transfer of funds.** For example, your parent can create the trust or trust account but will not have authority to transfer your property unless you give it to them, they are your guardian, or they control the funds as your representative payee. If a guardian is funding the account, the guardian must have legal authority from the court to transfer the funds (this is separate from the power to create the trust or account).
- The trust must provide that the amount that can be distributed to other people or organizations from trust assets at your death will be reduced by the **Medicaid payment amount**. The Medicaid payment amount is the total of all expenditures made to you by any state(s) for Medicaid services during your life, before or after the trust is established. It includes all Medicaid services, not just long-term care. The offset for the Medicaid payment amount is part of the trust itself. It is not part of the estate recovery program (see [Part V.E](#)) and the exceptions that apply to estate recovery do not apply.
- **The trust must name identifiable remainder beneficiaries** who will get any remaining assets of the trust after your death and after the offset for the Medicaid payback amount. This is true even if the creator of the SNT does not expect that there will be any remainder.
- The trust must not allow for any amendment or transfer of assets that would undermine the sole benefit, Medicaid-payment offset or identifiable beneficiary requirements.

**Generally, the goal of an SF-SNT should be to benefit you during your life** by allowing you to set aside and benefit from assets that would otherwise be spent on your support and health care expenses. The sole-benefit requirement and the Medicaid payback offset mean that SF-SNTs are typically not good ways to hold assets to use for other people or to pass assets on to other people after you die. Three exceptions to this are:

- If distributions for you (such as payments for housing or a vehicle) incidentally benefit others.
- When you can use the option to send the remaining assets to a pooled trust account for a person with a disability (see [Part 3](#)).
- If you fund the trust and then die before you have used a lot of Medicaid benefits.

**Do not rely on a Medicaid payback trust or pooled trust account to pay your funeral or burial/cremation expenses or other remaining debts after your death.** If the offset for the Medicaid payment amount is larger than the amount of remaining assets in the trust there will be no funds for any costs other than trust administration costs and taxes. The trust will also not complete distributions for expenses you had during life that were not paid before your death. You can fund a separate noncountable burial trust or plan before transferring funds to an SF-SNT, or the SF-SNT can make distributions to fund funeral and burial/cremation plans while you are alive. See [Part V.C.2](#) for discussion of how funds can be set aside funeral and burial/cremation expenses.

## **2. Requirements for Medicaid Payback Trust exception.**

A Medicaid payback trust (sometimes called a special needs trust or (d)(4)(A) trust) is typically a freestanding trust drafted specifically to benefit you, with an individual or trust company appointed by the establisher of the trust to serve as trustee.<sup>153</sup> **The trust must provide that when you die the trust will first use any remaining funds to pay an amount (up to the Medicaid payment amount) to any and all states that have made Medicaid payments on your behalf.** The only exceptions are for administrative costs and taxes. If the SF-SNT contains a properly drafted Medicaid payback clause, and meets the requirements in Part 1, assets of the trust will not be counted as your assets for SSI and Medicaid purposes and transfers of assets to the trust will not be counted as divestments but only if the assets are transferred to the trust before you reach age 65.<sup>154</sup> There are many technical requirements for these trusts and the creator should work with an attorney who is expert in the drafting, creation and funding requirements.

## **3. Requirements for pooled trust account exception.**

*For more information on how pooled trusts are administered, see discussion of the choice to use a pooled and community trust account in [Part H.5.](#))*

The second exception applies to an account in a pooled trust. A pooled trust (sometimes referred to as “(d)(4)(C) trust”) is a type of community trust that meets specific requirements. It must be established by a nonprofit agency. A Master Trust governs all accounts, but each account has its own creation document. There are two Wisconsin nonprofit charitable organizations that have established pooled trusts in Wisconsin: Wispact, Inc. and Life Navigators, Inc.<sup>155</sup> This discussion is limited to accounts in those trusts. (A creator can also choose a trust located in another state if it serves Wisconsin residents. Those trusts may have different policies, and that option is not discussed here. An account in a multistate pooled trust may make sense for you if you are likely to move to another state and served by the trust.)

In order to qualify for the exception from the ordinary rule that assets of a self-funded trust count as your assets, an account created for you in a pooled trust must meet the following requirements (in addition to the creation and other requirements for self-funded trusts listed in [Part 1](#) above.)<sup>156</sup>

- The pooled trust must be established and managed by a nonprofit organization. The Wispact and Life Navigators trusts have a separate financial institution as trustee, to

<sup>153</sup> In the past, community trusts have accepted Medicaid payback accounts, but this is now uncommon. If the trust allows, assets of a freestanding Medicaid payback trust can be transferred to a properly-created pooled trust account if management by a nonprofit under a master trust is desirable. See Wis. Stat. § 701.1313(3)(a).

<sup>154</sup> 42 U.S.C. § 1396p(d)(4)(A); POMS § SI 01120.203(B); § 49.454, Wis. Stats.; MEH § 16.6.5.

<sup>155</sup> The Wispact pooled trust is Wispact Trust I, which accepts accounts for beneficiaries of any age. Life Navigators has two pooled trusts, Trust II for people under age 65 and Trust III for people age 65 or over. For more information see [www.wispact.org](http://www.wispact.org) and [Trust Program for Kids and Adults With Disabilities | Life Navigators](#)

<sup>156</sup> 42 U.S.C. § 1396p(d)(4)(C); POMS § SI 01120.203; § 49.454, Wis. Stats.; MEH § 16.6.6.

hold and invest assets under policies set by the nonprofit manager. All decisions about whether and how to make distributions for your benefit from your account or the trust's charitable fund are made by the nonprofit manager.

- Assets in your account will be tracked and accounted for separately and can only be used to make distributions for your benefit and to pay any management fees. However, funds from all accounts are pooled for purposes of management and investment.
- Funds left in your account at your death must either be retained by the larger trust for the charitable purposes of the nonprofit managing organization or be first used to pay the Medicaid payback amount to all states that have made paid for Medicaid services for you. If the trust chooses to pay the Medicaid payback any remaining assets after the payback can be used to pay your final expenses or distribute assets to remainder beneficiaries named by the creator. Both Wispact and Life Navigators have the following policies:
  - The creator may designate a person with a qualifying disability to be the beneficiary of an account in the pooled trust, to be funded with any remaining assets at your death. The trust can retain all the remaining assets to the new account.
  - If there is no designation to an account for an individual with a disability, and there are enough assets in the account to make the full Medicaid payback and still have funds left over, the trust will pay the state for Medicaid benefits you have received, pay any unpaid final expenses you may have (like funeral costs or distributions requested but not made before your death), and distribute the amount left over to beneficiaries named by the creator.
  - If there is no designation to an account for an individual with a disability, and there are not enough assets to make the full Medicaid payback and still have funds left over, the trust will retain funds in the trust to be used for the charitable purposes of the nonprofit managing organization. These funds are used to help other trust beneficiaries and assist organizations that serve people with disabilities.

**Payments for your benefit from retained funds.** If you have an account in a pooled trust and all the assets have been spent, or there is a risk that expected distributions will use up all the assets, the nonprofit manager can make payments for you from the funds it has retained from other beneficiaries who have died. There are limits on the amount and purpose of the payments set by the nonprofit manager (ask the nonprofit manager for its policies).

**Funding a pooled trust account if you are age 65 or over.** Unlike the Medicaid payback trust exception for freestanding trusts, assets in an account in a pooled trust are not counted as assets for Medicaid or SSI even if they are transferred to the account after you reach age 65. If you are over 65 and receiving benefits based on your age (so that you have no disability determination), you will need to make an application for a disability determination to establish that you qualify for the exception. SSA policy states that transfers to a pooled trust of assets of a person over age 65 may be evaluated to determine whether they are divestments. (Some other states also have this policy.) This has happened rarely, but it means that SSA may evaluate whether it is reasonable to expect that the assets used to fund the trust will be needed for the anticipated wants and needs of the beneficiary.<sup>157</sup>

<sup>157</sup> At least two Social Security fair hearing decisions, including one in Wisconsin, have found that the transfers to pooled trusts were for market value and therefore



### **G. How can a creator give guidance to the trustee or trust manager but leave flexibility to respond to future changes?**

If a creator feels it is essential, no matter changes in circumstances, they can prohibit certain uses of funds or distributions under certain circumstances. However, it is generally not a good idea to put absolute restrictions on future distributions. A trust document can give examples of types of distributions the creator believes to be appropriate or inappropriate, without making them mandatory or prohibited. A creator can also plan for changes in law, or changes in state of residence, by giving the trustee, or a trust protector, authority to amend the trust or transfer funds to another trust. If the first trust is self-funded, the second trust must meet all the requirements for a Medicaid payback or pooled trust account.

A creator can plan for the inability or unwillingness of a trustee to continue to serve by providing a means for appointment of a successor trustee and/or transfer to a community or pooled trust. A self-funded trust or pooled trust account must only allow amendment that will preserve the Medicaid payback or trust retention provision that applies and may only allow transfers to a Medicaid payback trust or pooled trust account. In the case of community/pooled trusts, the master trust and trust manager will set any limits on distributions, provide for trustee removal and appointment, and provide for any transfer to another community or pooled trust.

For all types of SNTs and community/pooled accounts, the creator can provide guidance to the trustee through a separate **letter of intent**. This gives information and guidance to the trustee or trust manager but is not part of the trust and does not restrict the trustee or trust manager if circumstances change. Typically, it includes a description of your circumstances, strengths, support needs, communication preferences, and other needs, wants, preferences and goals. It can then say how the creator thinks trust assets should be used under different future circumstances and even whether the creator thinks there are some circumstances when distributions should be restricted or stopped. In writing a letter of intent, the settlor should look at [Part VI.F](#) on ways the trusts can help you and think about what they want the trust funds to be used for, given the trust's level of funding and the risk that the account will be exhausted. Models for letter of intent can be found online.<sup>158</sup>

### **H. What should the settlor consider in appointing a trustee, advisor or trust protector or choosing a freestanding or community/pooled trust.**

#### **1. What are the powers and duties of a trustee of an SNT?**

The trustee of an SNT for you is a fiduciary. That means that they owe you a strong duty to carry out the terms of the trust and administer it loyally in your interests as intended by the trust creator. A trustee can hire other people or agencies to help them understand and carry out their responsibilities. Trusts are not like guardianships—there is no court oversight of a trustee unless someone asks for it and no outside person will review a trustee's actions unless that is set up in the trust itself. Major responsibilities of a trustee include:

- **Investing and managing money and other property** owned by the trust, keeping accounts of trust income, expenses and distributions, filing tax returns paying any taxes due from the trust and informing you of trust income taxable to you. It is

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were not divestments for SSI.

<sup>158</sup> See, for example, [The Special Needs Letter of Intent | Special Needs Alliance](#) and the planning documents used by community and pooled trusts.



essential that the trustee understand that the trust is a separate entity—you do not own trust assets and they must never be mixed with assets that you own, even if those are held for you by a guardian or representative payee. The trustee has no power over other assets you own, or income you receive in your own name.

- **Using the funds for your benefit in ways that protect your SSI and/or EBD Medicaid.** The trustee needs to decide how to use trust assets for your benefit and know how to pay for things in ways that do not count as your income, protect you from misuse of funds and give you as much dignity and autonomy as possible. This means that the trustee needs to actively seek good current information about you and your current circumstances, needs and wants, needs to understand the effect of distributions on your benefits and needs to decide when some loss of benefits is acceptable. The trustee needs to plan ahead and retain enough funds for your future needs and wants, but not be so careful that the funds are not used when you have needs or wants the trust can safely afford to meet.
- **Protecting the trust.** The trustee (or a trust protector) may be given power to amend the trust so that it continues to carry out its purpose if there are changes in law or policy, to take action to ensure that the trust will continue to have an appropriate trustee, or to make the decision to transfer assets to another trust.

**Co-fiduciaries.** The responsibilities of a trustee can be shared by two or more co-trustees, trust managers or trust protectors. This can be a way to share both power and work, but also means that the co-trustees must agree on decisions. In some cases co-trustees have different jobs (e.g., with one responsible for financial management and another for deciding how funds should be used for your benefit). In a community trust or pooled trust the nonprofit organization that is the trust manager is a fiduciary, sets overall policy on asset management, makes all decisions about distributions and has power to take protective action, such as removing the trustee or amending the trust document.

## **2. Providing for appointment of a trust advisor or trust protector.**

A trust document may appoint a trust advisor to assist the trustee by providing advice on particular issues. For example, if a trust company is trustee the trust may appoint a family member, friend or paid case manager as trust advisor to monitor your situation and make recommendations about distributions that will meet your needs and wants. Typically, the trustee is required to seek and listen to advice but does not have to follow it. The community and pooled trusts managed by Wispact, Inc. and Life Navigators, Inc. provide for appointment of an advisor for each account.

A trust document may also appoint a trust protector with powers to take certain actions if required. For example, a trust protector may have power to modify the trust to conform to changes in law or policy, power to receive and review accounts, power to fill a vacancy if there is no serving trustee, power to remove and replace the trustee, and/or power to transfer assets of the trust to a community or pooled trust. Like appointment of a co-trustee, appointment of a trust protector can be used as a check on the powers of the trustee.

## **3. Should the settlor appoint a family member or friend as trustee?**

Often, an SNT for you will appoint your parent(s) or sibling(s) as the first trustee and appoint other relatives (such as your siblings) or family friends to be successor trustees to serve

if the first trustee can no longer serve. The advantage of this can be having a trustee who knows and cares about you and will often be willing to serve for reasonable (or no) compensation. Some potential downsides are:

- The family member or friend may not understand the nature and amount of work involved, the need to keep trust money separate from any other assets, and how distributions affect public benefits. One option is for the settlor to fund the trust during life and involve the successor trustee as a co-trustee so that they have some experience of what is involved and how the creator wants trust assets to be used.
- Having a family member in control of funds for you can damage normal family relationships. You may see trust assets as belonging to you and not understand (or accept) when a funding request is denied. It may be better to allow a family member to just be a family member, without also being a potential source of funds.
- A family member may have a conflict of interest. For example, if your sibling (or their children) is in line to receive the assets of the trust after your death, they may be less motivated to make distributions to help you.
- If the family member is both a trustee and your guardian or representative payee, the roles (and accounts) may become confused.

If the settlor wants to appoint a family member some ways to reduce or plan ahead for potential problems include:

- Another family member (or a professional trustee) can be appointed co-trustee, so that there is more than one person sharing the work and making decisions. Sometimes they can have different roles, with one as money manager and the other deciding on distributions.
- It can be made clear that the trustee should hire outside help as needed.
- There can be a provision appointing a corporate trustee as a successor trustee (if affordable) and/or allowing the trustee to transfer assets to an account in a community or pooled trust.
- An advisor can be appointed to provide information and guidance to the trustee.
- A trust protector can be appointed to make a change of trustee or transfer of assets to a community or pooled trust.

#### **4. Should a settlor appoint a bank or trust company as trustee?**

Banks with trust departments and other trust companies (referred to here as “corporate trustees”) have expertise in holding and managing trust funds. A settlor may choose a corporate trustee because there are no family members with the skills to be trustee, to prevent family disputes, or because the size of the trust calls for professional management. Some potential downsides are:

- Corporate trustees charge fees. Typically, corporate trustees charge a percentage of trust assets as a fee for the work they do. This can be value for money. However, with trusts they view as small, corporate trustees typically charge a minimum fee that is a much larger percentage of trust assets. (“Small” to a corporate trustee may mean

anything under \$1 million.) Even if an SNT starts with substantial assets, it is likely to be spent down over time so that minimum fees take a larger and larger share of remaining assets.

- Some corporate trustees do not have staff who are experts in working with people with disabilities or in making distributions for people who rely on public benefits. Even if they do, they may not be able to monitor the beneficiary's personal situation to best decide whether and how to use trust assets.
- Corporate trustees often change over time because of staff changes, changes in business plans or mergers with other financial institutions. A corporate trustee that now has a commitment to SNTs may not have the same commitment in future years.

If a settlor plans to use a corporate trustee, some ways to reduce or deal with problems include:

- Consider one of the community or pooled trusts that have nonprofit management as well as a corporate trustee and do not have large minimum fees on small accounts (see [Part 5](#) below).
- Appoint someone who knows and cares about the person to act as advisor or co-trustee, with the role of identifying your needs, wants and circumstances and making recommendations (or decisions) about distributions.
- Appoint a trust protector with power to change trustees or to transfer assets to a community or pooled trust.

## **5. Creating an account in a nonprofit pooled or community trust for people with disabilities.**

Some nonprofit organizations have sponsored community trusts and pooled trusts (see [Part F.3](#)) that enable individuals to place money or other property in accounts that are all part of a single larger trust governed by a master trust. Each account is created by an agreement with individualized terms (like the name of the beneficiary, choice of advisor and directions for distributing remaining assets when the beneficiary dies). If an account is created for you, the funds in the account can only be used for your benefit. However, the funds from all the accounts are pooled for investment. A corporate trustee holds the funds and makes investment decisions with guidance from the nonprofit manager. All decisions about how funds are used for your benefit are made by the nonprofit manager.

An account in a **pooled trust** is a first-party trust—it is funded with assets that belonged to you before going into the trust account, and must provide that amounts that can be distributed after your death will be retained by the trust or reduced by the amount of Medicaid benefits you have received (see [Part F.2](#)). Accounts in a **community trust** are typically third-party trusts (funded entirely by people other than you) and are not subject to retention or a Medicaid payback at the time of your death. Wispact, Inc., and Life Navigators, Inc., operate community trusts as well as pooled trusts.

Advantages of community and pooled trusts include:

- A total focus on operating supplemental needs trusts for people with disabilities. Staff are knowledgeable about working and communicating with people with disabilities, guardians and account advisors, about how distributions can be made without unduly affecting public benefits and about how distributions can be made in ways that are

convenient and respect beneficiary autonomy and dignity.

- Typically, an individual beneficiary specialist will be assigned who will know the individual and their circumstances and can help them access trust benefits in appropriate ways.
- Fee schedules and other policies favor smaller trusts, when compared with corporate trustees. Typically, these trusts do not charge minimum fees on smaller accounts, and they may subsidize the costs of creating accounts.
- The trust manager will stay informed about any need to update the trust to conform to changes in the law and will have authority to make needed changes to trust documents. The trust manager will also be able to easily offer options to make it easier to access trust benefits (such as the True Link card, use of ABLE Accounts and use of trust agents).
- The nonprofit trust managers maintain charitable funds from pooled trust remainders that may provide assistance to a beneficiary whose account is depleted.
- The trust and adoption documents are drafted to function as SNTs. Public benefits agencies are familiar with community and pooled trust documents and are likely to accept them more quickly than trust documents creating freestanding trusts.

Some downsides of pooled and community trusts are:

- There are limits to how much their documents can be individualized.
- Their investment policies must be taken as-is. There is little or no room for a settlor or beneficiary to say how funds will be invested (although there may be some ability to choose level of risk).
- Because assets are pooled for investment, they typically want contributions to be in cash. They may have policies limiting acceptance of other types of assets, such as homes, existing investments or inherited individual retirement accounts.
- They are bureaucracies, trying to serve a lot of people with different needs and vulnerabilities. This may mean their processes and policies are at times inflexible or over-protective.

### **I. How can you plan ahead for a possible future need for a self-funded SNT or pooled trust account?**

If you do not need or want to put your property in a trust now, or if you do not currently have the kind of disability that would let you open a pooled trust account, you can plan ahead for the possible future need to put your assets in trust by appointing an agent under a durable financial power of attorney and giving the agent authority to establish and fund a trust for you. See [Part II.E](#). The authority should indicate who you want as trustees, advisors and remainder beneficiaries, or explicitly give the agent authority to make those decisions. You should work with a knowledgeable attorney to ensure that the grant of authority says what it needs to say.

### **J. What are the tax effects of an SNT?**

The tax impact of trusts is too complicated to be covered in this book. This section is only intended to identify planning issues that may arise. People concerned with gift, estate, or income tax consequences should consult an attorney or tax advisor before setting up a trust or to decide how to allocate income from the trust after it is funded.

Gifts and bequests to a trust can be subject to gift taxes and estate taxes. The gift tax exemption for gifts to an individual (\$19,000 per year in 2025) usually does not apply to gifts to supplemental needs trusts, because the transfers are discretionary. (Unless a settlor is very wealthy, it is unlikely that they will ever have to pay gift or estate tax, but they may need to file a gift tax return.)

Trusts may have income, like dividends and interest earned on trust income or distributions the trust receives from inherited pretax individual retirement accounts (traditional IRAs) that belong to the trust.

Income of a first-party trust for you will be taxed as your income, whether or not it is distributed to you. This is usually a good thing, as your tax rates will be lower than the trust's rates.

Income of a third-party trust will be taxed as income of the grantor (the person who funded the trust) if the grantor is living and is acting as trustee or has kept certain powers. A trust with this status is called a grantor trust. If the grantor is not living or does not keep grantor trust powers, the trust is treated as a nongrantor trust. In a nongrantor trust income will be taxed as trust income, if the income is not distributed. Most income that is paid out in distributions for your benefit (or directly to you) will be taxed as your income. This means that if you are a beneficiary of a trust you will typically have to pay taxes on trust income distributed for your benefit but not on distributions that are made from trust principal.

Income that is taxed as income of a trust is subject to much higher income tax rates than apply to an individual. This means that it can be a problem for a nongrantor trust to have a lot of income that it does not distribute for your benefit in the year it is received. **This problem arises most often for SNTs when a grantor leaves large amounts from pretax retirement accounts (such as traditional IRAs and 401(k) accounts) to the trust** and required minimum distributions from those accounts to the trust turn out to be much larger than distributions from the trust to the beneficiary in the same year.

On the other hand, a small amount of income that is not distributed and is taxed as income of a nongrantor trust can provide a tax advantage. A *qualified disability trust* has a special income tax exemption (\$5,050 in 2034).<sup>159</sup> A trust is a *qualified disability trust* if all of the current beneficiaries have disability determinations showing disabilities of the kind that would qualify them for SSI.

## XI. OWNING A HOME

### A. What kind of assets can be excluded as a “home”?

With the exception noted below SSI and EBD Medicaid will not count any interest you own in your home as your asset, if you live in it or consider it to be your primary home and plan to come back to live in it.<sup>160</sup> A home can be almost anything you live in, including a house, a condo, mobile home, or houseboat. Land connected to the home and related buildings on the land are part of the home and are not counted as assets. This includes land and buildings on a farm, even if a road separates parts of the land from each other. Your interest in the home is not a countable asset, no matter what form it takes. For example, you can own the home all in your own name, share ownership with someone else, be in a cooperative, own just the right to live in the home for life (life estate), or have an interest as beneficiary of a trust.

<sup>159</sup> Internal Revenue Code § 642(b)(2)(C).

<sup>160</sup> 20 CFR § 416.1212; POMS SI § 01130.100; Wis. Stat. § 49.47(4)(b)1. and (bc); Wis. Admin. Code § 103.06(1) and (4); MEH § 16.8.1.1-5.

- » **NOTE: Limit on equity value for eligibility for long-term care.** You will not be eligible for Medicaid coverage of HCBW services or services in a nursing home or hospital for a period of 30 days or more if your interest in your home is valued at more than \$750,000 and you do not have a spouse, minor child or disabled child who lives in the home. The limitation applies even if you put the home up for sale. A mortgage loan will reduce the value of your interest.

## **B. What are some advantages of owning a home?**

Owning a home has several potential benefits:

- It may give you more control and stability than living in a home that belongs to someone else. If you rent, your landlord may decide to end your lease and sell or rent your home to someone else. If you live in a home owned by a service provider, you may not get to choose where it is, how it is decorated, and who else lives there. You may have to move if you change service providers, or your needs do not match the services provided in the home.
- It may allow you to afford better housing than if you rented, especially if the home is largely paid for up-front or you have loans that do not require payments while you live in the home. This can leave you with more of your income to spend on other things.
- If you have money in your own name, buying a home (or paying off your mortgage) can turn a large countable asset into an asset that is not countable for SSI and Medicaid. If you eventually move out, the proceeds can be used for you or set aside for your benefit (for example, in a self-funded SNT).
- It may be easier to get support services if you have good, stable housing, and/or can offer a place to live to support staff. You may also be able to reduce housing and service costs by sharing your home with someone else who needs support services.
- You can customize your home to meet your individual needs and preferences.
- You may be able to use your equity to meet your current needs by using a “reverse mortgage” to take out loans that do not have to be paid back until the home is sold.

## **C. What are some risks of owning a home?**

Owning a home has some difficulties and risks. These include:

- It is important to make sure you can pay the real costs. In figuring out whether you can afford a home, you need to think about maintenance and future repair costs, as well as regular monthly payments for your mortgage, taxes, insurance, and utility bills. The \$2,000 asset limit for SSI and EBD Medicaid (except for MAPP) make it difficult to save for the periodic lump-sum costs (such as real estate taxes and repairs). (See [Part J](#) for approaches to this problem.)
- Owning a home requires a lot of work and management to make sure the bills get paid, the house and yard are maintained, and needed repairs are made. You may not want to do this work, or you may need some help to do it.
- You will own a large resource that you may lose if you are not a good financial manager, if you become a victim of financial exploitation or if you have large debts.

For example, if you take out a large loan with a mortgage on your home and the money gets spent or stolen you may lose the home itself.

- It may be hard for you to move again if you want to. If you move out of the home without selling it, and do not intend to return, the value of your interest in the home may be counted as an asset. If you do sell the home and do not roll it over into another home you will have to deal with receiving a large lump sum. (See [Part VIII.B](#) for ways of using large lump sums.
- If you receive certain long-term support benefits, or are at risk of needing them, there may be restrictions on your ability to transfer your interest in the home to others during life or at your death (see [Parts V.E](#) and [VII.J.4](#)).
- If you get SSI, payments from others to help you pay housing expenses may count as your income (see [Part VI.G](#)). Unless you can receive that needed help through an ABLE account, it might be better to receive help in the form of renting a home that is owned (or rented) by the person who wants to help you. (See [Part I](#))

#### **D. Buying an interest in a home.**

If you have assets, one way to turn them into uncountable assets, and to get long-term use from them, is to purchase a home, pay off a mortgage loan or invest in home repairs or improvements. Once you have equity in a home, you may be able to borrow against it to get cash when you need it. People often are able to buy homes with a combination of funds—money they have or about to receive as a lump sum, gifts or loans from family members, deferred payment loans and grants from government and private sources, and mortgage loans. While people on SSI and SSDI often have limited incomes, the income is secure and that is taken into account by some lending institutions. In choosing a home, it is important to determine not only whether the purchase price is affordable, but whether you will be able to pay the costs of maintenance and future repairs.<sup>161</sup>

#### **E. How can other people (or a trust) help you become a homeowner?**

If someone else (including a trust for your benefit) wants to help you become a homeowner, it is important to think about how this should be done to fit your situation. Some of the choices are:

- **Buy or give you a home for you in your own name.** If the person or trust pays all or part of the cost directly to the seller of an interest in a home (or gives you an interest in a home directly) and you will own the home in your own name and live in it, the gift will be treated by SSI as in-kind support.<sup>162</sup> Medicaid will not count this as income at all. SSI will count it as income in the month you receive the interest in the home, but only up to the presumed maximum value for in-kind support (\$342.33 in 2025 for a single person; see [VI.G.1](#))—so the only effect of a gift of a home is a one-month \$342.33 reduction in SSI. It is important that you move into the home in the month you get it, so that it is not treated as a gift of a countable asset, or as a countable asset in the next month.
- **Lend you the money to buy an interest in a home.** Another way a person or trust can help you buy a home is to lend you the money and take a mortgage on the home for the loan. A loan is not countable income for SSI and EBD Medicaid, and the proceeds

<sup>161</sup> A potential source of housing counseling for people with disabilities and information on deferred-payment loans and grants is [Movin' Out, Inc. - Accessible Housing Solutions for People with Disabilities in Wisconsin](#).

<sup>162</sup> 20 CFR § 416.1103(j), Example 2.



are not a countable asset if you invest them in a home before the beginning of the next month. The loan can be with or without interest and can be written so that you only have to pay it back when the home is sold (during your life or after your death). This means that you do not have to make payments while you live in the home, but that the money you borrowed (plus any interest) goes back to the person or trust who loaned it to you after you no longer live in the home. This reduces your costs and avoids problems that may be caused by ownership of a large asset in your own name. If it is secured by a mortgage the part of the equity that must go to repay the loan (plus any interest charged) will not be subject to Medicaid liens or estate recovery.

- **Give or sell you a life estate in the home.** A life estate is the right to live in the home and control its use during your lifetime. Usually, if you own a life estate you are also responsible for managing the home and paying the costs of ownership during your life. Another person owns the remainder interest, which means the right to full ownership of the house after you die. This protects the value of the remainder interest from your creditors and any state claims and limits your ability to sell or mortgage your interest. Even if you move out, EBD Medicaid will treat the life estate as an unavailable asset. (SSI does not follow this policy, but in fact a life estate is very hard to sell.) If you do sell (with the cooperation of the owner of the remainder interest) you will get only the value of the life estate, and this gets smaller every year. However, there are some significant problems with how Medicaid and SSI treat life estates:

- If you get SSI, a life estate in a home you do not live in may count as your asset unless you show that you tried to sell it and were unsuccessful.
- If you get EBD Medicaid (and not SSI) and do not live in the home, it will not count as your asset but you will still be responsible for managing it and paying expenses.
- SSI and Medicaid use an outdated table that over-values life estates. This means that if you sell the life estate for what it is actually worth you risk a finding that you divested the difference between the real value and what the SSI/Medicaid table says it is worth.
- If you became the owner of a life estate after August, 2014, state law and policy considers the interest you own in the life estate at the time of your death to be an asset that is subject to estate recovery (see [Part V.E](#) for when estate recovery may apply).

» **NOTE:** Purchase of a life estate may be considered a **divestment if you do not live in the home** for a period of 12 consecutive months after the purchase.<sup>163</sup>

- **Give you an interest as a joint tenant or tenant in common.** If you own a home as a co-owner, you will have an ownership interest but reduce the amount of equity that is in your name and be able to share ownership authority and responsibilities. A joint tenant owns an equal share of the value of the home and gets full ownership when the other joint tenant dies. A tenant in common can own an interest of any size, depending on what is stated in the deed. Your ownership interest should reflect the amount of money you put into the purchase of the home. Possible issues with this kind of arrangement include:

<sup>163</sup> MEH § 17.2.7.14.2.

- If you are getting SSI, it is not clear that a co-owner who does not live in the home can pay part of the expenses of the home without the payment being counted as in-kind support.
- Problems can arise if you do not agree with the co-owner about management or use of the home, or about a decision to sell.
- Medicaid liens and estate recovery apply to your interest as a tenant in common and to your interest as a joint tenant, if the joint tenancy was created after August 1, 2014 (see [Part V.E](#)).
- **Own the home in the name of a relative or friend so they can rent it to you.** This can be a good option, if it is stable. See [Part I](#), below.

#### **F. What if you want to move and/or sell a home that you own?**

If you sell your home the proceeds of sale will be an uncountable asset if the money is used to buy another home within 3 calendar months.<sup>164</sup> (EBD Medicaid policy states that an escrow account is required, but SSI policy does not have that requirement. It is not clear what is meant by “escrow account” or whether the state can legally require more than SSI requires.)

If you move out of your home, it may become a countable asset if it is no longer considered your home and is not exempt from being counted. Reasons the home may be exempt from being counted, even if you are not living there, include:<sup>165</sup>

- A home is still considered to be your home if you are not living in it but say that you intend to return to it. However, if you are getting Medicaid-funded long-term care and are required to pay a cost-share you may not be able to use your income to pay expenses of owning the home if it is unlikely that you will be able to return home.
- Even if you do not intend to return to the home, a former home may continue to be exempt if:
  - You are making a reasonable good-faith effort to sell your home but have not yet been able to sell it.<sup>166</sup> If you are in a Medicaid institution or getting HCB waiver services, you can use your income to pay essential costs while the home is up for sale. SSI benefits you receive during the first 9 months while the home is up for sale may have to be paid back after the home is sold.
  - You are in a nursing home or other medical institution or receiving support under an HCB Waiver and your spouse or a dependent relative lives in the home.
  - You left because of domestic abuse and are still looking for a place to live. (This exception is in SSI policy but not in the state Medicaid Eligibility Handbook. It should apply to EBD Medicaid under the general rule that the state must follow SSI policy on how assets are counted.)
  - You own it jointly with another person and the other joint owner refuses to sell.<sup>167</sup> SSI policy (but not EBD Medicaid policy) requires a showing that sale of the property would cause undue hardship to a joint owner of the property due to

<sup>164</sup> 20 CFR § 416.1212(e); POMS SI § 01130.110; MEH § 16.8.1.5.

<sup>165</sup> POMS § SI 01130.100.B.4 & 6. and D.; MEH § 16.8.1.3.

<sup>166</sup> 20 CFR §§ 416.1242 and .1245(b); POMS SI §§ SI 01150.200 and 01130.140; MEH § 16.2.2.

<sup>167</sup> Wis. Admin. Code § DHS 103.06(3)(b); MEH § 16.2.2 .

loss of housing.<sup>168</sup> (This provision does not apply if you own the property with someone else as a tenant in common but you may be able to prove that in fact you are not able to sell.)

### **G. Can a supplemental needs trust (SNT) own a home or provide you with housing?**

An SNT is a potentially useful way to provide housing, either by making a payment to the seller so that you can buy a home in your own name, by lending funds to you to buy or maintain a home (with a mortgage held by the trust), or by holding a home in trust for your use. Some advantages of holding all or part of your interest in the trust are:

- If the trust owns the home, the trustee can provide management of the home, making sure that taxes are paid, insurance is maintained, and needed repairs are identified and made. If you have a housemate, they can rent from the trustee, so that you do not have to be a landlord or deal with income from rent. If the trust only holds a mortgage, you can have the authority and responsibility of a homeowner, but the trustee will have the authority of a mortgage-holder to monitor whether certain responsibilities are met.
- If adequately funded, the trust can contribute to the cost of the housing and charge you an affordable rent (or no rent). (But this may be a problem if you get SSI—see list of considerations below.)
- If you move out of a home owned by the trust there will be no effect on your countable assets, because your interest in trust assets is not an available asset. If the home is sold, the money received will be added to trust assets for your future benefit and will not come to you as a lump-sum in your name. This ensures that the trust's investment in the home can continue to be protected and used as the trust directs, and that funds that originally came from a third-party-funded trust can be returned to the trust. (If you own a home directly, funds received from sale that you want held in trust would have to go into a self-funded SNT.)
- If the trust has a mortgage on a home that you own, the equity represented by the loan balance will be protected in the same ways. The mortgage can also give the trust authority to make sure the home is insured and maintained, and taxes are paid.

Some special considerations that apply to ownership of a home by a trust include:

- Whoever sets up the trust must make sure that the trustee is willing and able to take on the responsibility of managing the home, and/or to hire someone else to do the property management. Not all trustees will do this work, and some may charge additional fees. Pooled and community trusts may accept homes as trust assets but will have policies on when they will do so and how they will charge for property management.
- If you receive SSI and you live in a home that the trust owns for your benefit, SSA may treat you as the owner of the home and not as a renter, even if there is a rental agreement.<sup>169</sup> This means that shelter expenses paid by the trust may be counted as your income for SSI purposes, up to the presumed maximum value (see [Part VI.G](#)). It is important to determine whether you can afford to pay the expenses, or are willing to accept the reduction in SSI.

<sup>168</sup> Undue hardship to co-owner of home: 20 CFR § 416.1245(a); POMS §§ SI 01130.130 and SI 01130.100.B.6.b.

<sup>169</sup> POMS §§ SI 01110.515.C.2 and 01130.100.B indicate that SSI will ordinarily treat your interest in a home held in trust for you as an equitable ownership interest.

» NOTE: if you are eligible for an ABLE account and the contribution limits allow, the trust can make contributions to the ABLE account which you can then use for shelter expenses—then you are paying with your own money (see [Part IX](#)).

- Homeownership assistance and bank financing may only be available if you are the direct homeowner.

## **H. What expenses of the home can others help you with?**

As discussed in [Part VI.G.1](#), if you get SSI and someone else pays part of costs that SSA counts as shelter costs the payment may count as income by an amount up to the presumed maximum value (\$342.33 in 2025 for a single person). If someone pays for future shelter costs in a lump-sum, the payment may be counted as in-kind income for all the months to which it applies.<sup>170</sup> Medicaid does not count shelter costs paid by someone else as your income, but if you are receiving HCBW services and pay a cost-share you may be able to reduce your cost-share by paying your own shelter costs (see [Part VI.G.4](#)).

If your SSI benefits or HCBW cost-share is affected by whether or not you pay for your own shelter costs, it is better if people or trusts pay for things that are not considered shelter costs, freeing up your income to pay shelter costs yourself. Expenses that are related to the home but are not considered shelter costs, and that someone else can pay without affecting SSI, include: telephone, cable, and internet bills; costs of maintenance services and home repairs; replacement of furniture and equipment; insurance not required by a mortgage holder; condominium association fees; and purchase of household supplies.

## **I. When does it make sense for another person to own or lease a home and then rent it to you?**

If another person wants to provide a home for you, it may be a good idea for the title or primary lease to the home to be held by another person (such as a family member) who can then rent (or sublet) the home to you. Reasons why this might be a good plan for you may include:

- If you receive SSI, a person who owns or rents a home can rent (or sublet) the home to you. As long as the rent you are required to pay under a rental agreement is at least equal to the presumed maximum value (\$342.33 in 2025 for a single person) SSA will not treat you as a person receiving in-kind support (see [Part VI.G.2](#)). The person who is renting to you can pay all other costs of owning (or renting) the home without affecting your SSI. (BUT--this does not work if a trust for your benefit owns the home and rents to you.)
- The person who owns the home can manage the property and make sure expenses are paid.
- If you need to share expenses with a housemate, the rent your housemate pays will not count as your income, because it goes to the owner of the home and not to you. This makes it easier to charge the housemate a fair rent without worrying about the SSI rules on what expenses can be used to offset rental income.
- If you move out, the person who owns the home can sell it or rent it out and use the money to help you in some other way.

<sup>170</sup> POMS § SI 00835.360 and .474.

- If owned outside of trust, the value of the home is not tied up in a trust or subject to a trustee fee.
- The home will not be subject to a Medicaid lien or estate recovery or to claims of creditors.

One problem with this approach is that it does not give you control of your housing arrangement, except for whatever protection you get under a lease. If there is no trust involved, there is a risk that the person trusted to provide a home for you will be unable or unwilling to continue, or will die. Ideally, there will be protections to ensure that the home will always be owned by someone committed to your welfare and has agents to continue the arrangement if they are incapacitated. A long-term lease with an option to renew can give you some assurance that you have a stable right to live in the home as long as you keep up your end of the agreement.

#### **J. How can you arrange to pay large, lump-sum expenses?**

Paying expenses of home ownership can be difficult on SSI income levels. A particular problem is paying property taxes and major repairs. Money you save to pay lump-sum tax bills and future repair costs will count as an asset and may put you over asset limits. Possible options to avoid this are:

- If you are not on SSI and are working, you may want to consider being eligible under the MAPP program. The MAPP program allows you to hold and accumulate assets above the usual SSI and Medicaid limits (see [Part VII.I](#)).
- Pay on a quarterly or monthly basis, if the municipality will allow.
- Borrow the money for the taxes or repairs when they are needed, and then pay the money back to the trust over time. A family member or SNT can be the lender. Any loan must be genuine (see [Part VI.F.3](#)).
- If you have an ABLE account, you can use it to accumulate money for large expenses (see [Part IX](#)).
- If you have a self-funded SNT you put money into it for future expenses (but payment of shelter costs from a trust may reduce SSI and increase an HCBW cost-share--see [Part VI.G](#)).

#### **K. What happens if you rent out part of your home?**

If you rent out part of a home that you own or rent in your own name, any profit you make can be considered income.<sup>171</sup> In figuring income for SSI and Medicaid, you can subtract your necessary expenses from the rent, including the renter's share of mortgage interest, taxes, insurance, utility costs and maintenance costs. Renting can be a way to help you to share the costs of home ownership with someone else without a major effect on SSI/Medicaid.

» **NOTE: Mortgage principal.** Payments you make for mortgage principal cannot be deducted from rent in computing your income from rent, so rent you can charge may be lower than your real costs. If you are in an institution or receiving HCBW services and are renting out exempt real property, the cost-of-care payment may not allow you to keep the funds you need to make principal payments, unless you can get a hardship waiver.

<sup>171</sup> 47. 20 CFR § 416.1121(d); POMS SI § 00830.505; § DHS 103.07(2)(e). Wis. Admin. Code; MEH § 15.4.23 and 15.5.3.

If you are sharing your home equally with someone else, it is important to say in the sharing agreement that your housemate is renting not only a bedroom but also equal shared use of the common areas of the home. This provides a basis for saying that your housemate should pay their share of the expenses of the home, and not just the expenses for their room.

If someone else helps you buy your home, you may want them to keep an ownership interest in the home so that they can take on the role of being landlord to your housemate. For example, your parent could own a one-half interest in your home and rent their interest to your housemate. That way, you do not have to be a landlord, and none of the profit from the rent is your income.

## **XII. LEARNING MORE, KEEPING UP WITH CHANGES AND FINDING ADVOCACY ASSISTANCE**

### **A. Finding and applying program laws, rules, and policies.**

The materials referenced in the footnotes in this book give more detail about an issue and how it applies to different situations than this book can provide. The footnotes are primarily there to give citations to agency policies about an issue. Sometimes the footnotes also provide references to laws and rules if those may be helpful to understanding the policy or to point out when a rule is out of date and should not be relied on. In general, **the caseworkers handling your claim will be looking at the policy manuals** and not at the laws or rules (even if you point out a law or rule to them). For that reason, the policy manuals will be most helpful to you in understanding what will happen in your case at the local agency level and in making arguments to caseworkers and supervisors about what they should do. The laws and rules will be more useful if you are appealing a caseworker decision. If you appeal and ask for a hearing, the administrative law judge should recognize that laws and valid rules control over policy.

#### **• Understanding the difference between laws, rules and policy.**

- **Laws.** A statute or public law is adopted by the legislature and is the controlling law. When a federal bill passes it becomes a Public Law. Some federal laws are codified as parts of an Act (like the Social Security Act) and/or are given numbers and published as part of the United States Code<sup>172</sup> (“USC” in the footnotes.) Some federal laws are only identified by their Public Law (PL) number. When a state bill passes it becomes an Act. Most state laws that are permanent are given a statute number and published as part of the Wisconsin Statutes<sup>173</sup> (“Wis. Stat.” in the footnotes).
- **Rules.** A rule is adopted through a formal process by the agency that administers a program. A rule has the force of law unless it conflicts with a current law (most often because it has not been updated to match changes in the law). Federal rules are published in the Code of Federal Regulations (CFR).<sup>174</sup> State rules are published in the Wisconsin Administrative Code.<sup>175</sup>
- **Policy.** Agency policy is a statement by the agency of its interpretation of the laws and rules, and is primarily to provide guidance to the agency workers implementing the program. If there is a conflict between the law and an agency

<sup>172</sup> <http://straylight.law.cornell.edu/uscode/>.

<sup>173</sup> [www.legis.state.wi.us/rsb](http://www.legis.state.wi.us/rsb).

<sup>174</sup> <https://www.ecfr.gov/>.

<sup>175</sup> [https://docs.legis.wisconsin.gov/code/admin\\_code](https://docs.legis.wisconsin.gov/code/admin_code).



rule or policy, the law controls. If there is conflict between a policy and a law or a valid rule, the law or rule controls (unless the rule conflicts with current law). Agency policy is often more up-to-date than rules because policy statements can be changed more quickly when the law changes. Agencies may collect policies in published manuals, or issue policy by memo.

- **Finding a law, rule or policy from a footnote.** If you copy a citation from a footnote and search for it on-line the search engine should take you to the section of the law, rule or policy cited. Alternatively, you can go to the publication on-line, and search for a provision by number.
- **Fair hearing and court decisions.** Sometimes fair hearing decisions by administrative law judges and decisions in cases taken to court interpret agency policy or find a conflict with the law or a rule. These decisions provide guidance to the agency and are often (but not always) followed. Fair hearing decisions are particularly helpful on issues that leave discretion to the decision-maker, such as whether a transfer was made with intent to divest, whether market value was received for a transfer, whether a hardship exception should apply, or how much income is adequate for support of a community spouse. This book does not provide references to fair hearing decisions. Experienced attorneys will often know about decisions on particular issues or be able to find them.
- **SSI laws, rules and policy.** The laws creating and governing SSI are in Title XVI of the Social Security Act, codified in 42 USC § 1381-1383c. The federal rules on SSI are published in Title 20 of the Code of Federal Regulations (CFR) Part 416. Social Security Administration policy is contained in its *Program Operations Manual System* (POMS)<sup>176</sup> and policy on SSI is in the sections that start with “SI”. POMS sections often start with a reference to the section of the Social Security Act and federal rule(s) interpreted by the POMS section. Information and links to the manual governing the Wisconsin state SSI supplement can be found at <https://www.dhs.wisconsin.gov/ssi/index.htm>.
- **Medicaid laws, rules and policy.** Medicaid is a joint federal/state program. States must follow federal law, in order to qualify for federal funding. The federal laws that govern Medicaid are in Title XIX of the Social Security Act, codified in 42 U.S.C. §§ 1396-1396v. Federal rules on eligibility are published in 42 CFR Part 435. Many of the policies that govern eligibility are published in the CMS State Medicaid Manual (a federal manual, despite its name). State laws on Medicaid eligibility, divestment and estate recovery are in Wis. Stat. Ch. 49, Wis. Stats. State rules on Medicaid eligibility are in Ch. HFS 103, Wis. Admin. Code. State policy on eligibility for EBD Medicaid is in the state’s *Medicaid Eligibility Handbook (MEH)*.<sup>177</sup> (Eligibility for BadgerCare Plus is covered by a separate handbook.) The state also publishes policy guidance in Operations Memos which may provide detail on specific issues or updated information not yet in the MEH. Because of federal law requiring the state to follow SSI rules on how income and assets are counted for EBD Medicaid (unless the state decides to be less restrictive) the SSI provisions in POMS on those issues also apply to EBD Medicaid. (The text or footnotes notes some cases where the state appears to have failed to follow SSI rules.)

<sup>176</sup> Online at SSA’s [Policy Information Site - POMS - About POMS](#)

<sup>177</sup> Online at [Medicaid Eligibility Handbook](#)



- **Agency Websites.**

- Social Security's website, [www.ssa.gov](http://www.ssa.gov), has a broad range of information about Social Security programs. Links to the laws and rules affecting Social Security and SSI, the Program Operations Manual System (POMS), and the *Social Security Handbook* can be found at <http://policy.ssa.gov/>. The website of the Centers for Medicare and Medicaid Services, <http://www.cms.hhs.gov/>, has information about federal law and policy governing Medicaid, as well as other information about these programs.
- The Wisconsin Department of Health Services (DHS) website, <https://www.dhs.wisconsin.gov> has eligibility and coverage information about many of the programs mentioned in this book.

- **Updated income eligibility limits and payment amounts.** Many of the dollar amounts used in determining eligibility and benefits go up every year with changes in the cost of living, federal poverty levels, or other measures of inflation. The cost of living adjustment (COLA) for Social Security and SSI benefits (which also increases

the EBD Medicaid eligibility limits based on SSI) is usually announced in November. The annual adjustments for eligibility tests based on the poverty level are typically published in January. There are several sources that you can use to get updated numbers. These include:

- The Wisconsin Department of Health Services (DHS) publishes Operation Memos at [DMS Operations Memos | Wisconsin Department of Health Services](#) that provide updates on cost-of-living adjustments and poverty level changes that affect EBD Medicaid eligibility and cost-sharing. Two examples for 2025 numbers are: [Operations Memo 24-34, 2025 Cost-of-Living Adjustment \(COLA\) for Medicaid](#) and [Operations Memo 24-34, 2025 Cost-of-Living Adjustment \(COLA\) for Medicaid](#).
- Social Security's website gives the COLA for federal SSI and SSDI payments and updated numbers for the earning levels Social Security uses to decide if someone is working in substantial gainful activity. Go to <http://www.ssa.gov/cola/> and look for the current year.
- The state DHS's SSI page has a chart of both the current federal and state SSI benefits for people in different living arrangements.
- Most of the asset and income levels that apply to EBD Medicaid can be found in Table 39.4 of the *Medicaid Eligibility Handbook (MEH)*. However there may be a delay and the Ops Memos will give more current information.

## **B. Finding Information and Advocacy Assistance**

Some sources of information and assistance on benefits issues include those listed below. This is not a complete list, but gives places to start that can help you find other resources:

- **Aging and Disability Resource Centers (ADRCs).** The ADRCs can provide information about a wide range of programs and local resources for people with

disabilities. Information and assistance specialists can often help understand various program and help establish eligibility for options you choose. Contact information can be found at a [local Wisconsin ADRC](#).

- **Benefit specialists.** Benefit specialists can provide information and advocacy assistance on a wide range of public and private benefits, housing and insurance issues, can mediate disputes and can assist or provide representation in appeals. Services are free. There are two benefit specialist programs:
  - **Disability benefit specialists** provide assistance to people with disabilities who are ages 18 to 59 and deal with proof-of-disability issues as well as financial eligibility issues. They are located at the ADRCs and receive technical assistance and training from attorneys at Disability Rights Wisconsin. You can get a referral to a disability benefit specialist by calling the ADRC. See [Benefit Counseling: Disability Benefit Specialists | Wisconsin Department of Health Services](#) for more information on the role and location of benefit specialists.
  - **Elder benefit specialists** provide assistance to people age 60 or over. They may be located at the ADRC, in the county aging unit office, or in another location. They receive training and technical assistance from program attorneys. See Benefit Counseling: [Elder Benefit Specialists | Wisconsin Department of Health Services](#) for more information on the role and location of benefit specialists.
- **Long-term care ombudsman.** The long-term care ombudsman programs provide information on the rights of people in long-term care programs, mediate to try to get informal resolution of issues with long-term care funding, planning and provider agencies, assist in filing grievances and can provide representation for administrative hearings. The program for people age 60 and over is located at the Board on Aging and Long-Term Care, see [BOALTC](#) and works with people in nursing homes and other residential care settings and with people who receive or are eligible for HCBW services. The Disability Rights Wisconsin Family Care and IRIS Ombudsman program provides assistance to people with disabilities age 18 to 59 who receive or are eligible for HCBW waiver services. See [Family Care and IRIS Ombudsman Program - Disability Rights Wisconsin](#).
- **Other Disability Rights of Wisconsin programs.** Disability Rights has other programs that provide information, referral and advocacy on benefits issues to other people with disabilities, including assistance to people in institutions, to children age 18 and under on education and service issues, and to people receiving or seeking services for mental illness. See [Home - Disability Rights Wisconsin](#).
- **Work incentives benefit specialists.** See Part III.A.
- **Legal services programs** provide legal services to people with low incomes throughout the state, including advocacy on benefits issues. See [Home - Disability Rights Wisconsin](#) and [Home - Judicare](#).
- **Private attorneys.** Many private attorneys have expertise on income and asset planning for EBD Medicaid and SSI and/or on proof of disability. You should interview them on level of familiarity and experience with your particular issue. While not all attorneys with expertise are on these lists, some places to look for people

who may have relevant expertise and experience include:

- Members of the National Academy of Elder Law Attorneys (who often also work on disability benefit issues). See [Find a Lawyer - Basic Search NAELA](#)
  - Members of the Special Needs Alliance. See [Find an Attorney | Special Needs Alliance.](#)
  - Attorneys listed as helping to establish trust accounts with Wispact, Inc. (see [List of Attorneys - Wispact](#)) and Life Navigators, Inc.
  - Members of the National Organization of [Social Security Claimants' Representatives | NOSSCR](#), on proof-of-disability issues.
-

**Roy W. Froemming** is of counsel with the law firm of Johnson Teigen, LLC., where he practiced in the areas of estate planning, special needs planning, and trust administration.

### **Professional Background and Activities**

From 2003 until 2021, Attorney Froemming was in private practice as the sole attorney at Froemming Law Office in Madison, where he specialized in special needs planning, estate planning, guardianship, and elder law. Roy was named as among the Best Lawyers in America ® for the practice area of Elder Law each year from 2013 to 2020.

Prior to entering private practice, Roy spent 27 years working at nonprofit agencies and working under foundation grants including:

- Three years at the Center for Public Representation, first as attorney to the Nursing Home Ombudsman Program and then as Project Director for Access to Senior Citizens, the first benefit specialist program for the elderly in Wisconsin and one of the first in the nation.
- Twenty years at Disability Rights Wisconsin (most of those as Managing Attorney for Developmental Disability Advocacy).
- Two years as Project Coordinator of the Wisconsin Self-Determination Project.
- One year as trust developer at Movin' Out, Inc., an agency focused on development of community housing for people with disabilities.

Roy is a frequent speaker and writer on topics related to public benefits, special needs trusts, and pooled trusts.

### **Education**

Yale University, B.A. in English Literature, magna cum laude

University of Wisconsin Law School, J.D., cum laude, Order of Coif

### **Memberships**

His most recent memberships include:

- Advisor, Past Member, and Past Chairperson of the Elder Law and Special Needs Section of the State Bar of Wisconsin
- Advisor and Past Member of Board of Directors of the Wisconsin Chapter of the National Academy of Elder Law Attorneys
- Wisconsin Trust Code Study Group (2010-2024}