

**I-1400 NEED****I-1410 GENERAL INFORMATION**

An applicant/enrollee shall be considered in need if their income and resources meet certain program standards.

All of the current and available income and resources of the applicant/enrollee are considered in determining need for non-Modified Adjusted Gross Income (MAGI)-related (formerly D-related) programs.

\*\*

**I-1411 RESERVED**

\*\*

**I-1415 PROHIBITED SSI PROVISIONS \*\***

If an agency provides Medicaid to aged, blind or disabled individuals receiving Supplemental Security Income (SSI), it must provide Medicaid to individuals who would be eligible for SSI, except for an eligibility requirement in SSI that is specifically prohibited under Medicaid.

Apply prohibited SSI provisions (PSP) at the conclusion of the SSI-related Medicaid eligibility determination if any of the following factors cause ineligibility. The individual must meet all other SSI eligibility factors, except for the prohibited eligibility requirement.

**Deeming of Income and Resources**

Medicaid regulations prohibit counting certain income and resources available in determining Medicaid eligibility for the following individuals:

Do not consider the income and resources of a step-parent or grandparent as available to a child.

\*\*

**I-1416 OTHER PROHIBITED PROVISIONS****I-1416.1 Treatment of payments made under the *Susan Walker v. Bayer Corporation et al.* settlement and the Ricky Ray Hemophilia Relief Fund Act of 1998 (Referred to collectively as Blood Products Litigation, or BPL)**

Section 4735 of the Balanced Budget Act of 1997 (Public Law 105-33) and the Ricky Ray Act of 1998 (Public Law 105-369) provided for the continuation of Medicaid eligibility for individuals receiving payments under the *Susan Walker v. Bayer Corporation et al.* settlement or the Ricky Ray Act relief fund.

Payments made to individuals under the settlement or relief fund are not counted as income or resources in determining either eligibility for, or the amount of, benefits under the Medicaid Program, notwithstanding any other provisions of law. \*\*

**Important:**

Income derived from these settlement payments is not exempt.

If any payments are placed in interest-bearing accounts or some other investment medium, the income generated will be counted as unearned income.

If the payments are used to purchase an item that would not normally be excluded as a resource, the value of that item may be counted as a resource in determining eligibility.

Do not assess a transfer of resources penalty if the individual transfers the settlement or relief funds for less than fair market value. Do not count settlement or relief funds placed in a trust.

**I-1420 NEED - DEEMING**

Deeming is the process of considering income and resources of another individual or individuals to be available for meeting an applicant/recipient's basic needs of food, clothing, and shelter whether or not the income and resources are actually made available.

Deeming of income and resources is appropriate in the following non-MAGI-related programs:

- Qualified Medicare Beneficiary (QMB);

- Specified Low-Income Medicare Beneficiary (SLMB);
- Qualified Disabled and Working Individuals (QDWI); and
- SSI-related cases.

Deem income for these individuals:

- Ineligible spouse-to-eligible spouse, when living together in a legal or non-legal union;
- Ineligible parents-to-eligible child, when living in the same household; and

**Note:**

Deem income from natural and/or legal parents in the home only. Do not deem step-parent income to a child.

- Alien sponsor-to-alien, whether or not living in the same household.

It is not equitable to deem the entire amount of income and resources from the ineligible spouse, parent or alien sponsor to the Medicaid applicant/enrollee. The ineligible person is allowed to allocate income and resources to meet their own needs and those of ineligible children, as well as legal tax dependents of alien sponsors, prior to deeming.

When deeming income from an ineligible parent or alien sponsor, count deemed income as unearned income.

When deeming income from an ineligible spouse, the remaining income of the ineligible spouse, after allocation for ineligible children, is combined with the income of the eligible spouse. The couple is then treated the same as an eligible couple for budgeting purposes.

## I-1421 DEFINITIONS FOR DEEMING PURPOSES

### **Alien Sponsor**

A person or agency who signed an affidavit or statement agreeing to support an alien as a condition of the alien's entry into the U.S. as a permanent resident.

### **Allocation**

A deduction from income, which is subject to deeming, that is set aside for the support of persons other than the eligible individual.

**Child**

An individual who is neither married nor the head of a household and:

- Under age 18; or
- A student under age 22.

An eligible child is:

- Related by blood or legal adoption to a parent in the household;
- Under age 18; and
- Blind or disabled, as defined by the Social Security Administration (SSA).

An ineligible child is:

- Related by blood or legal adoption to a parent in the household; and
  - Under age 18; or
  - A student under age 21; and
- Is not blind or disabled as defined by SSA.

**Household**

Two or more persons living in common quarters and sharing facilities under such domestic arrangements and circumstances as to create a single family unit. A household does not exist if a person or group of persons does not have a residence.

When an applicant is age 18 or over and does not meet the deeming definition of a child, the household is comprised of:

- The applicant/enrollee;
- His spouse; and
- Any children of the couple.

When an applicant is under age 18, the household is comprised of:

- The applicant/enrollee;
- The parents; and
- Any other children of the parents.

An individual remains a household member when he is temporarily away from home for reasons of:

- Employment;
- Hospitalization; or
- School or vocational training.

**Note:**

These individuals remain household members if the intent is to return to the home. This intent may be evidenced by visits home on occasional weekends, holidays, or summer vacations.

An individual is not considered a member of the household when they are away from home for a prolonged period for reasons of:

- Military service; or
- Long-term medical treatment and/or rehabilitation; or

**Note:**

If the individual leaves the household for medical treatment and returns in the same month or the following month, the absence is temporary and deeming continues to apply.

- Hospitalization of premature or ill newborns which is expected to last more than thirty (30) days.

**Parent**

An individual living in the same household as the eligible child and who is the:

- Natural, adoptive or legal parent; or
- The spouse of the natural, adoptive or legal parent.

**Spouse**

The legal or non-legal husband or wife of:

- An eligible individual; or
- The parent of an eligible child.

An eligible spouse is a spouse who is aged, blind or disabled. An ineligible spouse is a spouse who is not aged, blind or disabled.

**I-1422 WHEN DEEMING IS NOT APPLICABLE**

In the non-MAGI-related eligibility groups, deeming does not apply in situations where a family does not have a residence. For example, if a family lives in a car because they cannot afford shelter, neither spouse-to-spouse nor parent-to-child deeming would apply.

Deeming of income or resources is not applicable:

- From a child to a parent or siblings;
- To newborns that have never been discharged from the hospital and are expected to remain in the hospital for more than thirty (30) days;
- To children that receive long-term care (LTC) or home and community-based services (HCBS) after the first calendar month of admission;
- To children that are discharged from a facility to his home to receive HCBS in the month of admission;
- To children with severe emotional disturbance that receive services in the Coordinated System of Care-Severely Emotionally Disturbed (CSOC-SED) waiver; and
- From sponsor to alien when:
  - The disability or illness of the alien begins after the date of entry into the U.S.;
  - The alien is residing in the U.S. under the Permanent Residence Under Color of Law (PRUCOL) legal category;
  - The sponsor is an organization; or
  - The alien's sponsor is also the alien's spouse and is eligible for SSI.

Do not deem resources to ineligible children.

Do not deem income to or from a spouse when one or both live in LTC facilities or receive HCBS. Refer to [I-1660 Spousal Impoverishment Resource Provisions \(LTC/HCBS\)](#).

Do not deem income or resources when both members of a couple are categorically eligible and are applying for assistance. In these cases:

- Combine their income;

- Do not include an allowance for ineligible children;
- Apply the appropriate income exclusions to the combined income;

**Note:**

Allow only a single:

- Standard deduction;
  - \$65 deduction; and
  - One-half disregard to the combined incomes.
- Use the appropriate income limit for two (2) persons for each case;
  - If MNP, combine their medical bills; and
  - Combine their resources and compare to the appropriate resource limit for two (2) persons.

## **I-1423 DEEMING OF RESOURCES**

Deeming of resources is applicable from the:

- Ineligible spouse to the applicant;
- Ineligible parents (or parent's spouse) to the child;
- Sponsor (or sponsor's spouse) to the alien. Deeming is applicable beginning with the month that U.S. Citizenship and Immigration Services (USCIS) grants permanent resident status to the alien, up to three (3) years.

Combine the resources of an applicant and the spouse living in the home. Compare the countable value to the appropriate resource limit for two (2) persons.

### **I-1423.1 Resources Excluded from Deeming**

Resources which would be excluded for an applicant are excluded from deeming if they are owned by:

- A parent, or the spouse of a parent, when deeming from parent to child; or
- The alien sponsor who is also the spouse or parent of the alien.

A pension fund is not counted as a resource in the deeming process if it is owned by:

- An ineligible spouse;  
An ineligible parent; or
- The spouse of an ineligible parent.

**Note:**

Amounts distributed from a pension fund are considered income. Refer to I-1424 Deeming of Income.

### **I-1423.2 Parent-to-Child Resource Deeming Procedure**

Total the non-excluded resources of the ineligible parents.

Deduct the resource limit for:

- One (1), if one parent is in the home; or
- Two (2), if both parents are in the home.

The remaining resources are deemed to the potentially eligible child. If more than one child is applying, divide the deemed resources equally among the potentially eligible children.

Add the deemed resources to the child's countable resources.

### **I-1423.3 Sponsor-to-Alien Resource Deeming Procedure**

Consider the non-excluded resources of the sponsor and the sponsor's spouse, whether or not living in the home with the alien.

Compare the value of the resources belonging to the sponsor (or sponsor and spouse) to the SSI resource limit for one (or a couple). Any amount over the resource limit is deemed to the alien.

If the sponsor lives with a spouse and the spouse is also a sponsor of the alien, allow twice the SSI resource limit for one and deem any resources over this amount to the alien.

Add the deemed resources to the other countable resources of the alien.

**I-1424 DEEMING OF INCOME**

When determining eligibility for non-MAGI-related groups, deeming of income is applicable to an:

- Eligible individual residing in the same household with an ineligible spouse;
- Eligible child residing in the same household with the parents or a parent and the spouse of a parent;

**Exception:**

If the natural or adoptive parent is deceased/divorced and the eligible child lives with a stepparent only, the stepparent's income is no longer deemed to the eligible child.

- Alien, whether or not living in the same household with the sponsor. Deeming is applicable beginning with the month that USCIS grants permanent resident status to the alien, up to three (3) years.

**I-1424.1 Income Not Included in Deeming**

Do not deem the following income from an ineligible spouse or ineligible parent:

- Income excluded by federal law from consideration in SSI-related cases (Refer to [I-1534 Types of Income \(SSI-Related\)](#));
- Income based on need which is furnished by any local, state or federal agency \*\*, and any income which was taken into account in determining eligibility and which affected the amount of such assistance or payment;

**Examples:**

- SSI;
  - Family Independence Temporary Assistance Program (FITAP) cash assistance;
  - Veteran's Administration (VA) pensions; or
  - In-kind support and maintenance.
- Grants, scholarships or fellowships for tuition and fees or other expenses necessary to the securing of an education at educational or vocational institutions;

- Tax refunds;
- Income paid by a household member to comply with court-ordered support payments or payments enforced under Title IV-D;
- Foster care payments received for providing care to an ineligible child;
- Up to the maximum allowable limit per-month total earned income of a child who is a student. When the child makes the income available to the household, the excluded income cannot exceed the per-calendar-year limit. Refer to [Z-100 Maximum SSI Student Child Earned Income Exclusion Amounts](#) for limits;
- Disaster assistance;
- Work expenses of the blind; and
- Income necessary and used for an SSA-approved plan for achieving self-support.

All income from an alien sponsor is countable, except:

- Housing assistance, when the alien is living in the house for which the sponsor receives housing assistance;
- Disaster assistance; and
- Energy assistance

## I-1424.2 Income Deeming Procedures

Refer to [Z-1500 Deeming Allowance](#).

### Spouse-to-Spouse Deeming

**Step 1.** Determine eligibility of the applicant/enrollee based on their own income before determining whether deeming is applicable.

For deeming to apply in programs other than the Spend-Down Medically Needy Program (SD-MNP), the applicant/enrollee must be eligible based on their own income.

- Subtract the \$20 disregard from unearned income, if applicable.

- Subtract any remainder of the \$20 disregard, and \$65 and one-half of the remainder from gross earned income.
- Compare the countable income to the appropriate current individual income limit.
- For programs which use the Federal Poverty Income Guidelines (FPIG), compare to FPIG, not the Federal Benefit Rate (FBR).

If the income is equal to or greater than the individual income limit, the applicant/enrollee is ineligible. Consider eligibility in SD-MNP.

If the income is less than the individual income limit or if considering eligibility in SD-MNP, determine whether there is income to deem from the ineligible spouse.

**Step 2.** Determine whether any of the income of the ineligible spouse can be allocated to ineligible children. Do not include any child who receives FITAP or SSI.

- Multiply the number of ineligible children by the living allowance (the difference in FBR for an individual and FBR for a couple) for ineligible children to establish the total living allowance for the ineligible children.
- From this amount, subtract the gross income belonging to the ineligible children allowing all inclusions in [I-1534 Types of Income \(SSI-Related\)](#), except the one-third child support disregard.
- If there is no remainder, the children's needs are met and no income is allocated to them.
- Any remainder is the children's unmet living allowance.

**Step 3.** These are the three (3) sub-steps necessary to determine whether the ineligible spouse's remaining income exceeds the individual living allowance (the difference in FBR for an individual and FBR for a couple):

- Calculate the ineligible spouse's earned and unearned income, applying only the appropriate exclusions listed in I-1424.1 Income Not Included in Deeming. Do not subtract the \$20 or \$65 plus one-half deductions.

- Subtract any unmet living allowance, for the children, from the ineligible spouse's unearned income. If the ineligible spouse has insufficient unearned income to cover the allocations, the balance is deducted from the ineligible spouse's earned income.
- Compare the remaining income of the ineligible spouse to the living allowance (the difference in FBR for an individual and FBR for a couple). See [Z-1500 Deeming Allowance](#).

If the remaining income is equal to or less than the living allowance (the difference in FBR for an individual and FBR for a couple), there is no income to deem to the applicant/enrollee. Compare the income of the applicant/enrollee to the individual income standard for the appropriate program.

If the remaining income is greater than the living allowance (the difference in the individual FBR and couple FBR), deeming is applicable. The applicant/enrollee and ineligible spouse are treated as an eligible couple for budgeting purposes.

- Add the remaining unearned income of the ineligible spouse to all of the unearned income of the eligible individual. Add the remaining earned income of the ineligible spouse to the earned income the eligible individual.

- Subtract one \$20 disregard from the total unearned income determined in **Step 6**.

If there is earned income, subtract any remainder of the \$20 disregard, and \$65 and one-half of the remainder from the total earned income determined in **Step 6**.

- Add the remaining earned and unearned income together to determine total countable income. Compare countable income to the couple income standard for the appropriate program.

### Parent-to-Child Deeming

- Step 1.** Calculate the earned and unearned income of the parents of the applicant/enrollee, allowing only the appropriate exclusions listed in I-1424.1 Income Not Included in Deeming. Do not subtract the \$20 or \$65 plus one-half deduction.

**Step 2.** Determine the amount that can be allocated to ineligible children:

- Multiply the number of ineligible children by the living allowance for the ineligible children (the difference in the individual FBR and couple FBR. See [Z-1500 Deeming Allowance](#)). Do not include in the count children who receive SSI or FITAP.
- Subtract the income of each ineligible child, if any.
- Total the unearned income of the parents.
- Subtract any remaining living allowance for ineligible children not met by the own income of the children.
- Total the earned income of the parents. Subtract any remaining living allowance for ineligible children.

If there is no remainder, there is no income to deem.

If there is income remaining, deeming is applicable.

**Step 3.** Determine the amount of parental income to be deemed to eligible child.

- Subtract \$20 (the SSI standard deduction) from any remaining (**Step 3**) parental unearned income.
- Subtract \$65, plus any of the remainder of the SSI standard deduction, and one-half of the remainder from remaining (**Step 4**) earned income.
- Add the remaining unearned and earned income.
- From this total, subtract the individual FBR (for a one (1)-parent household) or the couple FBR (for a two (2)-parent household). The remaining income is deemed to be unearned income to the child.

**Note:**

If more than one child is applying, divide deemed income equally.

## Sponsor-to-Alien Deeming

### Deeming Pretest

Before deeming from the sponsor, determine the eligibility of the alien based on their own income.

Sponsor-to-alien deeming is applicable for three years (36 months) or five years (60 months), depending on and beginning with the month that the USCIS grants the alien permanent resident status. Refer to **Deeming Period**, below.

An alien may be subject to more than one period of sponsor to alien deeming if USCIS revokes their status as permanent resident and later re-admits them as a permanent resident. Refer to **Multiple Deeming Periods**, below.

Sponsor-to-alien deeming applies whether or not the alien and sponsor live together.

If the spouse of the alien is their sponsor, apply spouse-to-spouse deeming rather than sponsor-to-alien deeming.

Do not apply sponsor-to-alien deeming when:

- The disability or illness of the client begins after date of entry into the U.S.;
- The alien is a permanent resident under PRUCOL;
- The sponsor is an organization; or,
- The sponsor of the alien is their spouse and the sponsor/spouse is eligible for SSI.

### **Deeming Period**

Effective October 1, 1996, the sponsor-to-alien deeming period became three (3) years following the date of lawful admission to the U.S., in all cases.

\*\*

### **Multiple Deeming Periods**

An alien may be subject to more than one (1) period of sponsor-to-alien deeming.

If USCIS revokes the status of an alien as a lawful permanent resident, but the alien is later readmitted as a permanent resident, sponsor-to-alien deeming is applicable again.

The new date of admission as a permanent resident, as assigned by USCIS, begins a new deeming period.

A Form I-551 (issued by USCIS upon the alien's readmission into the U.S. and displaying a new date of admission) is sufficient documentation to establish the previous revocation of permanent resident status.

An absence from the U.S. (even one that results in the suspension of SSI eligibility and payments) does not affect the calculation of the deeming period unless USCIS revokes permanent resident status.

### Deeming Procedures

**Step 1.** Total the gross earned and unearned income of the alien.

**Step 2.** Subtract the \$20 disregard, and the \$65 and one-half of the remaining earned income deduction, to determine countable income.

**Step 3.** Compare the countable income of the alien to the FBR for one (1) person.

If the countable income of the alien is equal to or greater than the FBR for one (1) person, they are ineligible. Consider eligibility in SD-MNP.

If the countable income of the alien is less than the FBR for one (1) person, or if considering for SD-MNP, determine whether there is income to deem from the ineligible sponsor.

### Sponsor's Living Allowance

**Step 4.** Total the earned and unearned income of the sponsor of the alien and their spouse living in the home, if any.

**Step 5.** Subtract from the total income:

- The FBR for one (1) person, as the allowance for the sponsor;
- The essential person allowance for the spouse of the sponsor if any; and
- The ineligible child allowance for each legal dependent of the sponsor other than the alien and spouse of the alien.

**Note:**

Do not subtract the income of an ineligible child from the allowance.

If the husband and wife are both sponsors of the alien, subtract the FBR for each and deduct the ineligible child allowance only once for each legal dependent.

The remaining income of the sponsor and spouse is deemed to the alien. Do not count the needs of the sponsor (or spouse of the sponsor) in the Medically Needy Income Eligibility Standard (MNIES) because their needs were considered in **Step 5** above of the deeming process.

**I-1425 CHANGES IN DEEMING STATUS**

Certain changes in the household can affect deeming status. Such changes are effective the month after the change occurs, except as noted:

- Ineligible spouse becomes eligible:
  - Treat as an eligible couple effective the month of the change in status;
- Spouses separate or divorce;
- Eligible individual begins living with an ineligible spouse;
- Death of ineligible spouse or parent; or
- Child reaches age 18 or 21.