

Spend Down Guidelines to Preserve Medicaid and/or SSI

Funds you receive from a legal settlement can jeopardize your continued eligibility for needs-based government benefits, such as Supplemental Security Income (SSI) or Medicaid.

What options are available?

If funds you receive from a legal settlement will cause you to exceed the *resource* limit for the benefits you receive, your options may include:

- Spending the money down to the resource limit
- Purchasing exempt assets
- Placing the money into a Special Needs Trust (if eligible)
- Placing the money into an ABLE Act account (if eligible)
- Some combination of the above options
- Choosing to discontinue receiving the benefit

What is a Resource?

Not everything a person owns (i.e., not every asset) is a resource and not all resources count against the allowed limit. Federal and state regulations provide for the exclusion of certain types and amounts of resources. Unless a resource is specifically excluded, it is considered “countable.”

The most common resources are cash and bank accounts. Resources also include any other personal property or real property that an individual (or spouse) owns or has the authority to convert into cash.

What is a Spend Down?

For SSI and Medicaid, the term “spend down” refers to spending excess money down to the applicable *resource* limit (which is generally \$2,000 for an unmarried individual and \$3,000 for a married couple).

The spend down must occur in the same month in which the money is received. By being below the *resource* limit as of the first moment of the following month, a spend down allows the recipient to maintain eligibility for those needs-based benefits.

For example, if John Sample, an unmarried individual and SSI recipient, receives \$22,000 on April 12th, he must spend down his total resources to \$2,000 before May 1st to maintain his SSI eligibility. If John uses a check for his spend down, he should ensure that the check clears his bank account before the last day of the spend-down month.

How can a recipient spend their funds?

A spend down allows Medicaid and SSI recipients to plan and purchase a variety of items to improve their quality of life now and in the future—while still maintaining eligibility for needs-based benefits. The excess money must be spent solely for the benefit of the recipient. Purchasing

items for other people is usually considered a gift, and making a gift may cause a period of ineligibility for Medicaid or SSI.

Purchases made should be of exempt assets (i.e., assets exempt from *resource*-counting rules). Some allowable purchases include:

- Paying off existing debts
 - Note: The loan must be bona fide with a realistic expectation of repayment at the time the loan was provided. Special scrutiny is applied if paying back a loan from a family member or friend.
- Purchasing a home or paying off all or part of a mortgage on a home
 - Note: The recipient must be on the title or have a life tenant agreement.
- Paying rent for that calendar month only
- Paying for home repairs or deferred maintenance expenses, including remodeling or modifying a home to accommodate an individual's disabilities
 - Note: The recipient must be on the title or have a life tenant agreement.
- Buying home furnishings or appliances
- Hiring an attorney to do estate planning and/or Medicaid planning
- Paying medical expenses or bills not covered by Medicaid or Medicare
- Educational expenses
- Entertainment or recreation expenses
- Vacation or travel expenses
- Pre-pay burial arrangements
- Purchasing an automobile including registration and insurance
 - Note: The recipient must be on the title and only one vehicle is considered an exempt resource.
- Buying personal products or services such as clothing, hygiene products, hair styling, etc.

The recipient must report to the appropriate agency.

A recipient must report changes in *income* and *resources* within 10 calendar days after the month in which the change occurred to the appropriate agency: the local Social Security Administration office (SSA) or the local state Medicaid office. Reports should include:

- The name of the person reporting the change
- The name and social security number (SSN) of the person the report is about
- Facts about the change (e.g., explanation of spend down, receipts, bank statements, etc.)
- When the change happened

Reports may be in writing, by telephone, or in person. To find the local SSA office, visit: <https://secure.ssa.gov/ICON/main.jsp>. Contact information for state Medicaid offices can be found at <https://www.medicaid.gov/about-us/contact-us/contact-state-page.html>.

Because of the reporting requirement, it is important to keep receipts for all purchases made. If you mail documents, make a copy of the documents before submitting them to the appropriate

government agency. Also, consider sending the documents by certified mail with a signature confirmation to ensure the documents are delivered in a timely manner.

What about *income* requirements?

Income includes any item an individual receives that can be used to meet his or her need for food or shelter—including funds from a legal settlement.

Thus, the receipt of a legal settlement received during a month is evaluated under the *income*-counting rules. Generally, an individual who has too much income in a particular month is not eligible for SSI in that month. Any income not spent in the month it is received will be counted as a *resource* in the following month.

Accordingly, the recipient may need to repay the SSI benefit for the month in which the funds from a legal settlement are received.

Conclusion

A spend down can be a valid option for Medicaid or SSI recipients who receive legal settlements. Prudent planning and preparation will minimize the ineligibility period and will help avoid the wasting of settlement funds. If a spend down is done properly, the recipient's quality of life can be improved for many years to come.

DISCLAIMER

This document provides general information related to the laws and regulations governing needs-based government benefits eligibility and is based upon published agency guidelines. Some jurisdictions may have laws and regulations that differ substantially from one another, and your jurisdiction may have unique, specific requirements.

Please speak with your caseworker, local government agency, or professional counsel to verify income limits, resource limits, notification and spend down regulations, and other specific requirements in your jurisdiction.

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