

**TO:** Local District Commissioners, Medicaid Directors

**FROM:** Betty Rice, Director  
Division of Consumer and Local District Relations

**SUBJECT:** Treatment of Institutionalized Spouses' Social Security  
Benefits and Requests for Additional Resource Allowances

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** Bureau of Local District Support:  
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This message is to advise social services districts of a change to the Department's "income first" policy that is used to determine if a community spouse is entitled to an increase in the community spouse resource allowance.

Under the Department's spousal impoverishment rules, if the amount of monthly income otherwise available to a community spouse is less than the minimum monthly maintenance needs allowance (MMMNA), \$2,103 effective 1/1/00, the institutionalized spouse may transfer income to the community spouse to bring the community spouse's income up to the MMMNA. If the institutionalized spouse's income is insufficient to bring the community spouse's income up to the MMMNA, an increased community spouse resource allowance must be established to generate income to bring the community spouse's income up to the MMMNA pursuant to a fair hearing or court order.

In determining whether a community spouse is entitled to an increased community spouse resource allowance, the income which the nursing home spouse is allowed to transfer to the community spouse is first attributed as available to the community spouse.

Due to an adverse U.S. Court of Appeals decision in Robbins v DeBuono, concerning the transfer of a nursing home patient's Social Security income to the community spouse, the Department can no longer attribute an institutionalized spouse's Social Security income to the community spouse unless the institutionalized spouse intends to make this income available to the community spouse.

This change is effective immediately. It is important to note that this change only affects cases where the institutionalized spouse does not voluntarily agree to make his or her Social Security income available to the community spouse. Generally, the reason for not making Social Security income available will be to permit the community spouse to retain additional resources. If an institutionalized spouse does not make his or her Social Security income available to the community spouse and the community spouse's income is less than the MMMNA, the social services district should not include the Social Security income in the MBL budget (Budget Types 08, 09 and 10). The Social Security income is, however, considered to be available for the cost of care and should be entered with any other NAMI amount on the Principal Provider Subsystem (minus any appropriate disregards). To ensure that these cases do not get Mass Rebudgeted and an incorrect NAMI updated on the Principal Provider Subsystem, districts should use a 12/31 "To Date".

Note: Buy-in eligibility for these cases should be done off line.

Fair Hearing staff will utilize this new policy when reviewing cases requesting a higher community spouse resource allowance.

Please note that the Department is seeking judicial review of the Robbins decision. Districts will be advised if the Robbins decision is overturned. In the meantime, districts must adhere to the policy set forth in this message.