Conclusion

Please see a good elder law attorney if you have any questions on this. Every situation is different, there is no such thing as an easy Medicaid application, and we believe that all but the most simple Medicaid applications should have an attorney's involvement.

SPOUSAL DIVERSION WORKSHEET

Institutionalized Spouse's Gross Income:	$________
Community Spouse's Gross Income:	$________
Minimum Monthly Maintenance Income Allowance	$ 2,155.00/m
Maximum Monthly Maintenance Income Allowance	$ 3,216.00/m
Excess Shelter Cost (what housing costs must exceed)	$ 647.00/m
Community Spouse's Housing Costs	
Monthly Mortgage:	$________
Monthly Rent:	$________
Monthly homeowner's insurance:	$________
Monthly taxes:	$________
Monthly Condo/Homeowner's fees:	$________
Total Housing Costs:	$________
Monthly Average Housing Utilities:	
Water:	$________
Sewage:	$________
Gas:	$________
Electric:	$________
Total Utilities:	$________
Calculation of Excess Housing Costs	
Total Housing Costs:	$________
(Plus) Total Utilities or $361, whichever is greater:	$________
(Minus) Normal housing costs	$ (647.00)
= **Excess Housing Costs**	$________
Calculation of Spousal Diversion	
Institutionalized Spouse's Gross Income:	$________
(Plus) Excess Housing Costs	$________
=**Spousal Diversion**	$________*
Patient's Responsibility:	
Institutionalized Spouse's Gross Monthly Income:	$________
(Minus) Personal Needs Allowance	$ (130.00)
(Minus) Monthly Spousal Diversion amount to be kept by the community spouse (calculated above)	$________
= Amount paid monthly to the nursing home	$________

*this cannot exceed the institutionalized spouse's income or the maximum amount of $3,216/m

When you need help.

DeLoach Hofstra+ Cavonis, PA

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FLORIDA SPOUSAL INCOME DIVERSION CALCULATION WORKSHEET

By D. "Rep DeLoach, III

If you are reading this, you or your loved one may be in a Florida nursing home and may be on or applying for Medicaid. If there is a spouse at home (the "community spouse"), you may be worried about how much income he or she may be able to keep. In order to assist the Medicaid applicant and the community spouse, I am recreating our firm web page and adding the worksheet for your consideration.

Please note these number adjust slightly, usually by a few dollars, at the beginning of the year and in the middle of the year.

When a single person is in the nursing home on Medicaid, the income rules are fairly easy. Find the applicant's gross income, subtract $130 for the personal needs allowance and pay the remainder to the nursing home as part of the patient's responsibility. Income can be a little more complicated when there is a spouse at home.

Rather than requiring a couple to reduce their joint income to poverty level, Florida law permits the community spouse (the spouse at home) to maintain a higher income for self-support if his or her income falls below the minimum monthly maintenance needs allowance (MMMNA). In 2020, for example, Florida allows the community spouse to keep at least $2,155 in monthly income, or up to $3,216 in certain cases as discussed below. First, any income the community spouse receives in his or her own name—Social Security, pension, or dividend income, for example—may be retained fully by the community spouse. Very importantly, no portion of the community spouse's own income is required to be assigned to Medicaid or diverted to cover the cost of care for the institutionalized spouse. As a result, the community spouse's income could exceed the allowed minimum of $2,155. In fact, the community spouse's income can be unlimited. It is only the community spouse's assets that affect the institutionalized spouse's Medicaid.

If, however, the minimum allowance of $2,155/month cannot be met by the community spouse's income alone, Florida allows the institutionalized spouse to divert income to the community spouse to close the gap. This situation may occur, for example, when a husband with greater income is the institutionalized spouse and a wife with a smaller income is the community spouse. In such cases, income that is paid to the institutionalized spouse (such as Social Security and pension income, for example) may be diverted to and retained by the community spouse to assist with his or her basic income needs. The transfer of income from the institutionalized spouse to the community spouse is referred to as the spousal diversion.

Calculating income can be confusing but remember that the government is not trying to impoverish the spouse at home and take away all of his or her income. In fact, the government wants to provide a minimum level of income support for the community spouse.

Example of the Spousal Diversion (Minimum level)

For example, assume that Sharon and Randy are a senior couple living in Florida on Randy's monthly $2,000 Social Security/pension and Sharon's $1,000 monthly Social Security. Randy's health has severely declined and he needs to be in the nursing home on Medicaid for long-term care. Because Sharon's income is less than the MMMNA ($2,155/month), she will be able to retain $1,155 of Randy's monthly income at a minimum; all of Randy's remaining income, minus $130, will need to be paid to the nursing home as his patient's responsibility. This is an example of diversion that does not account for Sharon's (the community spouse) excess housing costs. With excess housing costs, Sharon may be able to divert more of Randy's income to help her.

In this example, let's change the facts a little. What if Randy's income was still $2,000/month but Sharon's income was $2,000/month? Here, Sharon would only be able to divert some $155/month to herself as her own income offsets what she is able to divert for herself.

Raising the Spousal Diversion above the Minimum Allowance

In addition to the Minimum Monthly Maintenance Income Allowance of $2,155/m (until 06/30/21), the income diversion to the community spouse can be increased up to the Maximum Monthly Maintenance Income Allowance of $3,216/month (until 06/03/21). Medicaid rules allow the income to be increased to the maximum level only through calculating the community spouse's excess shelter costs. Basically, if the community spouse rents their residence, has a mortgage, or the housing costs are above a certain level, the spouse can keep even more of the institutionalized spouse's income. The rules are generally as follows:

- Housing costs must exceed the community spouse housing allowance of $647/month.
- Housing costs include mortgage payments, rent, insurance, condo maintenance fees and utilities.
- Once the community spouse's shelter costs exceed the allowance of $647/month, the community spouse can start to divert more of the institutionalized spouse's income, up to the maximum level of $3,216/month.

Calculating the Excess Shelter Costs

<u>Step 1</u> - Add the community spouse's monthly housing expenses. Allowed expenses are limited to rent or mortgage payment (including principal and interest), taxes, insurance (homeowners or renters), maintenance charges if a condominium and mandatory homeowner's association fees.

Step 2 - To the total obtained above, add the current food stamp standard utility disregard ($361/m for 2020). Allowed utilities are limited to water, sewage, gas, and electric. This basically gives a credit of $361/m for utilities, but if utilities are higher than this, you can raise above the $361.

Step 3 - To determine what portion of the total shelter costs is excess, subtract $647 from the total costs. The difference is the community spouse's excess shelter costs.

Best Example of the Calculating the Spousal Diversion

This can all be pretty confusing, even to elder law attorneys, so hopefully the following helps. Here, Randy is in the nursing home (the institutionalized spouse) and Sharon is doing well at home (as the community spouse). They own a home with a mortgage of $800/month. Randy's income is $2,000/month and Sharon's income is $1,000/month.

Without any excess shelter costs, Sharon will be able to keep $1,155/month of her husband's income as the Minimum Monthly Maintenance Income Allowance (MMMIA). Randy will keep $130/month as the personal needs allowance and the rest goes to the nursing home as part of the patient's responsibility.

To get Sharon more income diverted from Randy's own income, we need to calculate the excess shelter costs:

$ 800/m (mortgage)

+$ 150/m (property tax)

+$ 100/m (insurance)

+$ 361/m (Standard Utility Allowance)

=$1,411/m (Total)

- $ 647/m (normal standard housing costs)

=$ 764 (excess housing costs for the community spouse)

This means we raise the $2,155/month by $764/month. Sharon will now keep $2,919/month as she had housing costs exceeding the normal $647/month. The husband keeps $130/month and the nursing home is paid nothing! ($3,000 total gross income minus the $2,919 diverted to Sharon minus the $130 patient's responsibility = $0/month).

What if the spouse cannot live on the Diversion Amount?

If there is court ordered support against an institutionalized spouse (for monthly support income for the community spouse), the community spouse's monthly income allowance cannot be less than the amount ordered. A good elder law attorney can work with the family to go to court to increase obtain a court order for spousal support.