

BQC - 92 – 008

Date: January 22, 1992

To: Nursing Homes NH 5
Facilities for the Developmentally Disabled FDD 3

From: Larry Tainter, Director
Bureau of Quality Assurance

Subject: Update on Payment of Court Ordered Guardianship Fees for Nursing Home Residents

In Bureau of Quality Compliance (BQC) memorandum # 91-020, we provided new information regarding the method of payment for guardianship fees of nursing home residents who are recipients of Medical Assistance. In this memorandum we advised that court ordered guardianship fees (guardianship fees paid under court order and court approved guardian-ad-litem fees) may be considered as a deduction from an individual's income prior to the determination of the individual's liability for nursing home care thus allowing guardianship fees in these circumstances to be paid by the resident. Since the issuance of this memorandum, we have received questions regarding this policy which will be addressed below.

1. Does this policy also apply for residents of nursing homes or Facilities for Developmentally Disabled who are in receipt of a monthly Supplemental Security Income (SSI) check?

No. Residents who receive a monthly SSI check in an institution receive an amount of \$30 intended to be used for personal items and maintenance. Therefore, there is no income from which the guardianship fees may be deducted.

2. Does this policy extend to the withdrawal of an amount from the individual's personal account to pay for guardianship fees?

This policy has been developed for the purpose of allowing a deduction from the resident's current income for the payment of guardianship fees and does not extend to the withdrawal of funds from a resident's assets, held in a personal account. This policy was developed to provide a means for allowing the resident to retain a \$40 per month personal maintenance allowance in his/her resident account in addition to allowing the payment of guardianship fees from the resident's income.

3. Can a home which has advanced the costs of guardianship on behalf of a resident recoup those costs from the resident's income in the same manner that the resident's income could be charged for a guardianship proceeding that is current? Specifically, may a nursing home charge against a resident's account a monthly amount to reimburse the nursing home for pre-paying the costs of a guardianship?

A pre-payment made by the nursing home for a guardianship fee is not an allowable deduction in determining current available income for an individual. Available monthly income for the purposes of determining the resident's cost of care or liability for care is based on the resident's current circumstances.

4. Does this policy allow for the payment of obtaining a guardian prior to an for the purpose of nursing home placement?

No. This policy pertains to guardians obtained while the individual is a resident of a nursing home.

5. If a Medical Assistance recipient becomes incompetent while a resident of a nursing home, may fees for obtaining a guardian be paid out of the resident's income?

Yes, if ordered by the court during the guardianship proceedings.

Determination of eligibility and benefits in Medical Assistance is an ongoing process. As income of the recipient changes and/or as financial obligations of the recipient are incurred (which in this case would be the need to pay court ordered guardianship fees), the eligibility determination and nursing home liability calculations are adjusted. Therefore, when a court orders payment of fees for a guardian of a nursing home Medical Assistance recipient, the local county department of human services, Economic Support Unit, must be contracted so that appropriate income adjustments can be made.

If you have any questions, please contact the Field Operations Manager for your facility.

LT/SS/df 934.nm

cc: -BQC Staff
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-HCFA, Region V
-Illinois State Agency
-Ohio State Agency
-Michigan State Agency
-Indiana State Agency
-Minnesota State Agency
-WI Coalition for Advocacy
-Service Employees International Union
-WI Counties Assn.
-WI Medical Records Assn. Cons. Committee
-WI Assoc. of Homes & Services/Aging
-Comm. on Aging, Ext. Care Fac./HH (SMS)
-WI Assn. of Nursing Homes
-WI Assn. of Medical Directors
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-WI Assn. of Hospital SW and Discharge Planners
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-Bureau of Design Prof., DRL