CHAPTER 22-001 –RELATIVE RESPONSIBILITY

22-001.01 Relative Responsibility:

1. Spouse for spouse; and
2. Parent (biological, adoptive, or step) for child if the child is age 18 or younger and is still considered part of the household.

A child is considered part of the household, subject to the following:

1. If the child is living in the same household with parent(s), the parent(s)' income must be included.

    a. Exceptions:
        i. Home and Community Based and Developmental Disability Waiver: If a child, living in the parent(s)' home is receiving Medicaid services through a Home and Community Based Service Waiver, the parent(s)' income and resources are not deemed when determining eligibility for medical only.
        ii. Katie Beckett: If the child is not receiving waiver services, the income and resources of a parent are not deemed for Medicaid only if the minor is severely disabled and would require the level of care provided in a medical institution (Katie Beckett child) and requires certain medical services for special needs. (see 471 NAC 12-014). This exception applies only if the cost of care in the home is less expensive than the cost of care in a medical institution.
        iii. Autism Waiver: If a child, living in the parent(s)' home is receiving Medicaid services through Nebraska's Home and Community Based Waiver for Children with Autism Spectrum Disorder, both the parent(s)' income and Autism waiver child's income must be verified solely to determine a premium due amount when the gross income exceeds 185% FPL.

2. If the child is temporarily absent from the home (generally 90 days or less) but is still considered part of the household, the parent(s)' income must be included.
    a. Temporary absence includes, but is not limited to:
        i. School attendance where the child returns to the home on a regular basis (weekends, vacations, or summers).
        ii. Residence in an institution for a developmental disability or mental illness for 90 days or less may be considered temporary absence if the child was living in the parent(s)' household before institutionalization and will return to the parent(s)' household upon discharge.

3. If the child is permanently out of the home and no longer considered part of the household, the parent(s)' income must not be included.

22-001.02 Financial Responsibility

22-001.02A Unmarried Parents: When unmarried parents are living together as a family, the alleged father is not financially responsible unless he has acknowledged paternity or a court has determined that he is the father of the child after the birth.

22-001.02B Children of a Marriage: A woman's spouse is considered the father of any children who are conceived or born during a marriage even if the couple is separated and/or has filed for divorce or annulment unless there is a court order that states otherwise. If a woman states that her spouse is not the father of her child, establishment of paternity must be pursued, unless good cause exists.

22-001.03 Determination of Paternity: Paternity cannot be established unless an alleged father has signed a birth certificate, written and notarized paternity acknowledgment form or a court has determined him to be the father.

Note: Paternity cannot be established for an unborn.

22-001.04 Military Service: If a parent is absent due to active duty in the uniformed services of the United States, that parent is still considered part of the assistance unit and his/her income is considered available to the unit. Uniformed service is defined as the Army, Navy, Air Force, Marine Corps, Coast Guard, Environmental Sciences Services Administration, and Public Health Service of the United States. If the client states that separation is due to reasons other than performance in military service, the client must provide proof of bona fide separation.

If the parent in the military is incarcerated, s/he is no longer considered part of the assistance unit.

22-001.05 Joint Physical Custody: In a household where both parents are not continuously present, a determination must be made if both parents are present, if so income and resources of both parents must be used in the eligibility determination and the needs of both included in the unit. This includes when the non-custodial parent has sufficiently frequent contact with the child(ren) so that the normal parental roles of providing guidance, physical care, and maintenance have not been interrupted.

In addition, this policy applies when there is joint physical (shared) custody where the physical custody of the child(ren) is split between both parents. This can be either on a scheduled basis as included in a divorce decree or on an informal basis agreed to by both parents.

22-001.06 Special Provisions Pertaining to Minor Parents

22-001.06A Minor Parent: If a minor parent has a legal guardian, according to Nebraska law the guardian has no financial responsibility for the minor.

22-001.06B Minor's Parent(s) Receiving ADC/MA: If a minor parent is living with his/her parent(s) who is receiving ADC/MA for another child, the minor parent must be in his/her parent(s)' unit.

If assistance is received for the minor's child, that child must also be in the parent(s)' unit.

When a minor parent becomes emancipated, graduates from secondary school at age 18, or reaches age 19, s/he and his/her child become a separate unit.

Note: The family is not required to receive Medicaid for the minor's child.

22-001.06C Minor Parent Living with Specified Relative, Guardian or Conservator: A minor parent who is living with a specified relative, guardian, or conservator is considered emancipated unless the minor parent is receiving support from his/her parent(s), guardian or conservator.

Note: See 477 NAC 1-001 for a list of specified relatives.

22-001.06D Minor Not Living with Parent(s): If the parent(s) has been contributing to the support of the minor, written verification from the parent(s) of his/her plans to continue or not continue to support is required.

22-001.06E Minor Living in Parent(s)' Home: If a minor is living in his/her parent(s)' home, s/he is considered emancipated if s/he has married. If the minor has married, s/he may be a separate unit with his/her child. If the marriage is annulled, the minor is not considered emancipated.

22-001.07 Special Provisions Pertaining to Spouse for Spouse For AABD/MA

22-001.07A Spouse for Spouse: A divorce dissolves the marriage of a couple and there is no longer spouse-for-spouse responsibility. A legal separation does not dissolve the marriage. The following guidelines shall be used in determining financial responsibility for a married couple:

1. Living Together Without Medicaid Waiver or Program of All-Inclusive Care for the Elderly (PACE) Services: Consider income and resources of both spouses living together in the same household as available to each other. Use the resource standard for two for medical. Budget together for medical, whether one or both are eligible.

   Exception: If the spouse receiving VA is eligible for AABD/MA, budget him/her separately for medical. This only applies if they would be ineligible for SSI as a couple. If they would both be eligible for SSI, the non-SSI spouse must apply.

2. Living Together With Medicaid Waiver or PACE Services: For medical eligibility, consider income and resources separately. Use the medical resource standard of one for each and budget separately for medical. If only one spouse is eligible, consider income and resources together for grant eligibility.

3. For medical eligibility, use the spousal impoverishment treatment of resources and income. An assessment and designation of resources must be completed.

4. Living Apart and Neither in a Specified Living Arrangement: Consider income and resources separately beginning in the first full month the couple cease to live together. Allow the client(s) a resource standard for one for medical and budget the client(s) separately. Total countable resources for the couple must not exceed $8,000. Follow this guideline whether one or both are eligible.

   Exception: If either spouse is current pay SSI, follow SSI budgeting rules.

5. Living Apart and Both in a Specified Living Arrangement: If both spouses are in a specified living arrangement, consider income and resources separately. Allow the client(s) a resource standard for one for medical. Budget the client(s) separately for medical. Follow this guideline whether one or both are eligible.

6. Living Apart with One in a Specified Living Arrangement: If only one spouse is eligible, spousal impoverishment rules apply for treatment of income and resources. An assessment and designation of resources must be completed. For medical, allow the client the resource standard for one and budget on Form DA-4M. If both spouses

   are eligible and one enters a specified living arrangement, consider income and resources separately beginning in the first full month the couple ceases to live together. Allow each a resource standard for one for medical. Budget separately for medical.

   Note: If one spouse is temporarily absent from the home, continue to consider the couple's income and resources together. An absence of less than 90 days may be considered temporary. If the spouse will be absent longer than 90 days, determine if the client plans or is able to return home.

22-001.08 Deeming Provisions for AABD/MA Children:

22-001.08A Parent for Child: For AABD/MA income and resources of a parent(s) to a child age 17 or younger, if living in the same household, shall be deemed.

See 477 NAC 22-001.08B for deeming procedures and 477 NAC 22-001.01 for exceptions to this deeming requirement.

22-001.08B Disabled Child Not Receiving SSI

22-001.08B1 Deeming Income of Responsible Persons: Income of the following individuals is considered in determining a client's eligibility when s/he does not receive SSI:

1. Parent for child age 17 or younger and still considered part of the household; and
2. Sponsor for an alien.

When there is a self-supporting parent(s) for children in two different units, the procedures for deeming found below are followed and the resulting deemed income is divided between the units with the children on AABD/MA. A portion of the income of these individuals is deemed (determined available) to the client using the following procedures.

22-001.08B2 Parent (No SSI): If the client does not receive SSI, the following guidelines must be used to determine if the parent(s') income is deemed:

1. If the minor is living in the same household with parent(s), the parent(s)' income must be deemed.

a. Exceptions:
   i. Home and Community Based Waiver: If a child, living in the parent(s)' home is receiving Medicaid services through a Home and Community Based Service waiver, the parent(s)' income and resources are not deemed when determining eligibility for medical only.
   ii. Katie Beckett: If the child is not receiving waiver services, the income and resources of a parent are not deemed for Medicaid only if the minor is severely disabled and would require the level of care provided in a medical institution (Katie Beckett child) and requires certain medical services for special needs. (see 471 NAC 12-014). This exception applies only if the cost of care in the home is less expensive than the cost of care in a medical institution.
   iii. To determine if deeming may be waived, the situation must be explained on, attach a current medical report, and forwarded it to the Central Office.
   iv. Autism Waiver: If a child, living in the parent(s)' home is receiving Medicaid services through Nebraska's Home and Community Based Waiver for Children with Autism Spectrum Disorder, both the parent(s)' income and Autism waiver child's income must be verified solely to determine a premium due amount when the gross income exceeds 185% FPL.

2. If the minor is temporarily absent from the home but is still considered part of the household, the parent(s)' income must be deemed.

3. If the minor is permanently out of the home and no longer considered part of the household, the parent(s)' income must not be deemed.

   When the parent(s) of an SSI child applies for categorical assistance, SSI should be advised of the potential eligibility of the parent(s). If the parent(s) is subsequently approved for assistance, SSI must be advised of the approval.

22-001.08C Client Receiving SSI: If a child age 17 or younger leaves a nursing facility or hospital where s/he was receiving an institutional personal needs amount SSI payment and goes home under a waiver, SSI must be notified of the waiver eligibility. Even though income and resources of the parent(s) may make the child ineligible for SSI, if the child is waiver-eligible, SSI continues the institutional personal needs amount payment without deeming income and resources of the parent(s).

Note: If the parent(s) is receiving SSI, none of the parent(s) income shall be deemed.

22-001.08D Child in an IMD: If a child who is placed in an IMD is a ward of the Department or another public agency or if the placement is court-ordered, see 477 NAC 25-001. If the child who is placed in an IMD is still considered part of the household, the parent(s)' income is deemed. See 477-000-009 for calculation procedures.

22-001.09 Sponsors for Aliens

22-001.09A Sponsors for Aliens: 100 percent of the income and resources of a sponsor (and sponsor's spouse, if they are living together) shall be considered when determining the eligibility of an alien who applies for Medicaid if the sponsor has signed an affidavit of support under Section 213A of the Immigration and Nationality Act. The sponsor's income and resources will be considered available to the alien until the alien:

1. Becomes a U.S. citizen;
2. Has worked 40 qualifying quarters of coverage as defined under Title II of the Social Security Act or can be credited with the qualifying quarters as provided under Section 435 and the alien did not receive any federal means tested public benefit during that time period. This provision does not apply to restricted Medicaid;
3. If the individual is pregnant (including 60 days post partum);
4. If the individual is under age 19.

22-001.09B Sponsor of More than One Alien: When an individual is a sponsor for two or more aliens who are living in the same home, the amount of deemed income and resources of the sponsor (and the sponsor's spouse, if living with the sponsor) is divided equally among the aliens. When an individual sponsors several aliens but not all apply for assistance, the sponsor's total deemable income and resources are applied to the needs of the aliens who apply for assistance.

If a sponsored immigrant demonstrates that s/he or his/her child(ren) have been battered or subjected to extreme cruelty by a spouse or a parent or by a member of the spouse's or parent's family who is residing in the same household as the alien, deeming may be waived if a judge, an administrative law judge, or INS recognize the battery or cruelty.

22-001.09C Deeming Exception: If a sponsored immigrant demonstrates that s/he or his/her children have been battered or subjected to extreme cruelty by a spouse or a parent or by a member of the spouse's or parent's family who is residing in the same household as the alien, deeming may be waived if a judge, an administrative judge, or INS recognize the battery or cruelty.

22-001.10 Alien Duties: As an eligibility requirement, the alien is responsible for –

1. Providing income and resource information from the sponsor; and
2. Obtaining the necessary cooperation from the sponsor. If the alien does not provide the necessary information, s/he is not eligible for assistance.