

Chapters 477 NAC 20 through 28 apply to the following: Aged, Blind, and Disabled (ABD); Medically Needy (MN); Medicaid Insurance for Workers with Disabilities (MIWD); Women's Cancer Program; Transitional Medical Assistance (TMA); Former Foster Care; Emergency Medical Services Assistance (EMSA); Children and Young Adults Eligible for IV-E Assistance

CHAPTER 24-000 RELATIVE RESPONSIBILITY AND SPONSOR DEEMING FOR ALIENS FOR NON-MAGI PROGRAMS

24-001 RELATIVE RESPONSIBILITY: In determining eligibility, the Department must consider as available to a client the income and resources of

1. A parent (biological, adoptive, or step) for a child if the child is eighteen (18) years old or younger and is still considered part of the household; and
2. One spouse for another spouse.

24-001.01 Parent for Child Relative Responsibility

24-001.01A Child Considered Part of Household: If a child is living in the same household with his/her parent(s), the parent(s)'s income and resources must be considered available to the child.

24-001.01A1 Exceptions: A parent(s)'s income and resources are not considered available to

- i. A pregnant minor who, pursuant to Neb. Rev. Stat. section 71-6903, is denied financial support by her parents, guardians, or custodians due to her refusal to obtain an abortion, and is therefore considered emancipated for purposes of public assistance;
- ii. A child receiving Home and Community-Based Waiver;
- iii. A child receiving Developmental Disability Waiver; or
- iv. A child approved for Katie Beckett Medicaid. See 477 NAC 24-001G2b(1) and 477 NAC 27-009.

24-001.01A2 Temporary Absence: If a child is temporarily absent from the home (ninety (90) days or fewer) but is still considered part of the household, the parent(s)'s income and resources must be considered available to the child. Temporary absence includes, but is not limited to

1. School attendance where the child returns to the home on a regular basis (weekends, vacations, or summers).

2. Residence in an institution for a developmental disability or mental illness for 90 days or fewer may be considered temporary absence if the child was living in his/her parent(s)'s household before institutionalization and will return to the parent(s)'s household upon discharge.

24-001.01B Child No Longer Considered Part of Household: If a child is permanently out of the home and no longer considered part of the household, his/her parent(s)'s income and resources shall not be considered available to the child.

24-001.01C 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.

24-001.01C1 Unmarried Parents: When unmarried parents are living together, 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.

24-001.01C2 Children of a Marriage: Married individuals are considered the parents of any children who are conceived or born during a marriage, even if the couple is separated, has filed for divorce or annulment, or states that one individual is not the parent of the child, unless there is a court order that states otherwise.

24-001.01D 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.

24-001.01E Joint Physical Custody: In a household where both parents are present, though not necessarily continuously, income and resources of each must be used in a child's eligibility determination and the needs of both parents included in the unit. This includes situations in which 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.

This policy applies when there is joint physical (shared) custody in which 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 as agreed to

by both parents. The percentage of time spent with each parent is irrelevant in a joint custody arrangement for Non-MAGI cases.

24-001.01F Special Provisions Pertaining to Minor Parents

24-001.01F1 Minor Parent: If a minor parent has a legal guardian, according to Nebraska law, the guardian has no financial responsibility for the minor.

24-001.01F2 Medically Needy Minor's Parent(s): If a minor parent is living with his/her medically needy parent(s) who is receiving Medicaid for another child, the minor parent must be in his/her parent(s)'s unit.

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

24-001.01F3 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.

24-001.01F4 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.

24-001.01F5 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 being supported from his/her parent(s), guardian, or conservator.

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

24-001.01G Deeming Provisions for ABD Children

24-001.01G1 Parent for Child: If an ABD child age 17 or younger is living in the household of his/her parent(s), the income and resources of the parent(s) shall be deemed (i.e., determined available).

See 477 NAC 24-002.03 for exceptions to this deeming requirement.

24-001.01G2 Disabled Child Not Receiving SSI

24-001.01G2a Deeming Income and Resources of Responsible Persons: A parent(s)'s income and resources are considered in determining the eligibility of a child age 17 or younger who is part of the household when the disabled child does not receive SSI.

When there is a self-supporting parent(s) for children in two different program cases, the procedures for deeming found below are followed and the resulting deemed income and resources are divided between the program cases containing the children on ABD. A portion of the income and resources of these individuals is deemed to the child using the following procedures.

24-001.01G2b Neither Parent nor Child is Receiving SSI: If neither a disabled child nor his/her disabled parent(s) is receiving SSI, and the child is living in the same household with his/her parent(s), the parent(s)'s income and resources must be deemed, with the following exceptions.

24-001.01G2b(1) Exceptions:

1. Home and Community-Based Waiver: If a child living in his/her parent(s)'s home is receiving Medicaid services through a Home and Community-Based Service waiver, the parent(s)'s income and resources are not deemed when determining eligibility for Medicaid.
2. Katie Beckett: If a child is not receiving waiver services, the income and resources of a parent are not deemed for Medicaid if the child is severely disabled and would require the level of care provided in a medical institution as well as certain medical services for special needs (a Katie Beckett child; see 477 NAC 27-009).

24-001.01G3 Child 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)'s income shall be deemed.

24-001.01G4 Child in an IMD: If a child under age 19 is placed in an IMD and 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 Appendix 477-000-009 for calculation procedures.

24-001.02 Special Provisions Pertaining to Spouse-for-Spouse Relative Responsibility for ABD

24-001.02A Divorce and Separation: 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.

24-001.02B Determining Financial Responsibility for a Married Couple:

24-001.02B1 Living Together without Medicaid Waiver or Program of All-Inclusive Care for the Elderly (PACE) Services: The income and resources of spouses living together in the same household shall be considered available to each other. The resource standard for two shall be used to determine eligibility whether one spouse or both are eligible.

Exception: If one spouse is receiving VA benefits, and is eligible for ABD Medicaid, then eligibility shall be determined separately. This only applies if the couple would be ineligible for SSI as a couple. If they would both be eligible for SSI, the non-SSI spouse must apply.

24-001.02B2 Living Together with Medicaid Waiver or PACE Services: If only one spouse is eligible for ABD Medicaid, then use the spousal impoverishment treatment of resources and income. An assessment and designation of resources must be completed. See 477 NAC 26-003.01B and 477 NAC 26-003.01F. If both spouses are eligible for ABD Medicaid, then eligibility shall be determined separately. The resource standard for one shall be used for each spouse. The combined resources must be \$8,000 or less.

24-001.02B3 Living Apart and Neither in a Specified Living Arrangement: Eligibility shall be determined separately beginning the first full month the couple ceases to live together. Consider only the income and resources in the applicant spouse's name. The spouse shall be allowed a resource standard for one, and eligibility shall be determined separately. Total countable resources for each spouse must not exceed \$4,000. This guideline shall be followed whether one spouse or both are eligible.

24-001.02B4 Living Apart and Both in a Specified Living Arrangement: If both spouses are in a specified living arrangement (see 477 NAC 26-001), eligibility is determined as follows: Consider the income of each spouse separately.

Consider the resources that each spouse has in their own name. Combined resources must be below \$8,000. Each spouse shall be allowed a resource standard for one. This guideline shall be followed whether one spouse or both are eligible.

24-001.02B5 Living Apart with One in a Specified Living Arrangement: If only one spouse is eligible for ABD Medicaid, spousal impoverishment rules apply for treatment of income and resources (see 477 NAC 26-004 and 477 NAC 26-003). An assessment and designation of resources must be completed (see 477 NAC 26-003.01B and 477 NAC 26-003.01F). The spouse shall be allowed the resource standard for one. If both spouses are eligible and one enters a specified living arrangement, income and resources shall be considered separately beginning the first full month the couple ceases to live together. Each spouse shall be allowed a resource standard for one. Combined resources must be \$8,000 or less.

Note: If one spouse is temporarily absent from the home, the couple's income and resources shall continue to be considered together. An absence of fewer than 90 days is considered temporary. If the spouse will be absent more than 90 days, the spouse's plans or ability to return home shall be evaluated.

24-001.02C Spouse for Spouse Hardship Exemption: A hardship exemption may be granted to enable an eligibility determination using only the applicant's resources in cases where it is not possible to verify the resources of the non-institutionalized spouse due to inability to obtain complete information. This exemption can only be granted by Central Office.

Note: If the community spouse is assisting the applicant with the application process or was living with the institutionalized spouse just prior to institutionalization, spouse for spouse financial responsibility applies.

24-002 SPONSOR DEEMING FOR ALIENS

24-002.01 Sponsors for Aliens: One hundred (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. Alien status must be verified by electronic data sources. The sponsor's income and resources will be considered available to the alien until one or more of the following circumstances apply:

1. The individual becomes a U.S. citizen;
2. The individual 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. The individual is pregnant (including 60 days post-partum); and/or
The individual is under age 19.

24-002.02 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 Medicaid, the sponsor's total deemable income and resources is applied to the needs of the aliens who apply for Medicaid.

24-002.03 Deeming Exceptions

24-002.03a Battery or Extreme Cruelty: If a sponsored immigrant demonstrates that s/he or his/her child(ren) have been battered or subjected to extreme cruelty by a spouse, 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 the U.S. Citizenship and Immigration Services (USCIS) recognize the battery or cruelty.

24-002.03b Categorically Ineligible Spouse: The sponsor's deemed income and resources for a categorically ineligible spouse (e.g., not aged, blind, or disabled) are not deemed to the non-sponsored eligible spouse.

24-002.04 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.