

- Par. 1.** Material Transmitted and Purpose – This manual letter is to clean up items that were inadvertently not moved from manual letter cover number 3406 into the appropriate sections. Additions are in red underlined print and deletions are in red, strikethrough, and underlined.

Medicare Savings Programs 510-05-60

Asset Limits for the Medicare Savings Program 510-05-60-20

No person may be found eligible for the Medicare Savings Programs unless the total value of all non-excluded assets does not exceed the limit established for the Medicare Part D Low Income Subsidy. This amount changes annually. Effective with the benefit month of January 2014 ~~2013~~, the limits are:

1. \$7,160 ~~\$7,080~~ for a one-person unit (\$7,080 in 2013); or
2. \$10,750 ~~\$10,620~~ for a two-person unit (\$10,620 in 2013).

Eligibility Under Spousal Impoverishment 510-05-65 Community Spouse Asset Allowance 510-05-65-20

2. The community spouse asset allowance is determined by first establishing a spousal share. The spousal share is an amount equal to one half of the total value of all countable assets owned (individually or jointly) by the institutionalized, HCBS, or community spouse.

Example:

If the spousal share is:	The community spouse asset allowance is:
\$12,500	<u>\$23,448</u> \$12,500 (at least the minimum)
\$90,000	\$45,000
\$250,000	\$125,000

From the spousal share, the community spouse asset allowance is established, and is an amount that is equal to the community spouse share, but not less than \$23,448 ~~\$23,184~~, and not more than \$117,240 ~~\$115,920~~, effective January 2014 (~~\$22,728~~ ~~\$23,184~~ and ~~\$113,640~~ \$115,920 effective January ~~2012~~ 2013).

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Assets 510-05-70

Annuities 510-05-70-45

Annuities Purchased from August 1, 2005 Through February 7, 2006 510-05-70-45-25

- c. The annuity meets all of the following conditions:
- i. The annuity is irrevocable and cannot be assigned to another person;
 - ii. The issuing entity is an insurance company or other commercial company that sells annuities as part of the normal course of business;
 - iii. The annuity provides for level monthly payments;
 - iv. The annuity will return the full principal and has a guaranteed period that is equal to at least 85% of the annuitant's life expectancy;
 - v. The monthly payments from all annuities that meet the requirements of this subsection do not exceed ~~\$2,898~~ \$2,931 effective January ~~2013~~ 2014 (\$2,898 effective 2013 and, when combined with the annuitant's other income at the time of application for Medicaid, does not exceed \$4,396 effective January 2014 (\$4,347 effective 2013); and
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Valuation of Assets 510-05-70-60

3. Real property:

a. With respect to mineral interests:

i. If determining current value (for sale or pending transfer):

(1) Fair market value is the value established by good faith effort to sell. The best offer received establishes the value.

(2) A good faith effort to sell means offering the mineral interests to at least three companies purchasing mineral rights in the area, or by offering for bids through public advertisement.

ii. If determining a previous value for mineral rights sold or transferred in the past, fair market value is:

(1) If producing, the value is an amount equal to any lease income received after the transfer plus three times the annual royalty income.

(a) Based on actual royalty income from the ~~36-60~~ months following the transfer; or

(b) If 60 months have not yet passed, based on actual royalty income for the months that have already passed, and an estimate for the remainder of the 60 month period.

(2) If not producing, but mineral rights are leased, two times the lease amount (based on the actual lease and not the yearly lease amount) that was in place at the time of the transfer.

Example: John Oilslick leased his mineral acres in 2008 for \$3000. He transferred his mineral rights to his adult children in January 2010. The children have a new lease on these acres effective January 2011 for \$10,000. The disqualifying transfer is equal to two times the \$3,000 lease that was in place at the time of the transfer.

Payment for Services to an Attorney-in-Fact 510-05-80-37
(N.D.A.C. Sections 75-02-02.1-43)

When an individual makes a payment to their Attorney-in-Fact for services or assistance furnished to the individual by the Attorney in Fact, the services or assistance furnished may not be treated as consideration for transferred income or assets, unless:

1. There is a valid written contract:
 - a. Entered between the individual and the Attorney in Fact prior to the Attorney in Fact rendering the services, and payment is made pursuant to the valid written contract; and
 - b. The contract was executed by the individual or the individual's Attorney in Fact who is not a provider of services or assistance under the contract; and

Example: It is acceptable for a Medicaid recipient's Attorney in Fact to sign the contract to have a third party provide the services.

Example: It is not acceptable for a Medicaid recipient's Attorney in Fact to sign the contract to have the Attorney in Fact provide the services.

Example: It is acceptable for a competent Medicaid recipient to sign the contract to have the Attorney in Fact provide the services.

- c. Compensation is reasonable and consistent with rates paid in the open market for the services actually provided; and
 - d. The services are necessary and reasonable, or

Example: Mary has had Power of Attorney for both her parents for the past 3 years. Her parents' health has been steadily deteriorating over the past two years. Mary's Mother has always told her children she never wants to go to a nursing facility, so Mary, as outlined in the Power of Attorney agreement, provides round the clock nursing care for her parents for \$2000 per month including her room and board. The worker has verified that both parents need a nursing home level of care and has needed it for at least the past year. Now, Mary's Father has fallen and it is just too much for Mary to care for both parents, so they are applying for nursing care for Mary's Father. We would consider the \$2000 per

month plus room and board payments to be reasonable. If the parents had gone directly to long term care, it would have cost them in excess of \$14,000 per month. If they'd have hired a private nurse, it would have cost approximately \$9,000 month.

Reasonableness is dependent upon the type of service provided, whether the service is necessary, the size and scope of the services and what the going rate is in the community for such services.

Example: John has held a Power of Attorney for his father for the past 3 years. John's Dad lost his eyesight and the largest part of his Power of Attorney duties was to pay bills once per month. The agreement had a stated value for these services of \$500 per month. John's Dad at this time had minimal assets, and expenses. Most bills were set up as automatic withdrawals from his bank account. John usually spends 1 hour per month paying his Dad's bills. \$500 per hour for writing checks is not reasonable. If Dad, for example would have several pieces of property in which he had a life estate interest, and was collecting rents, and John was spending 30 – 50 hours per month doing this, it would be reasonable.

2. If there is not a written contract, the prior course of dealings between the individual and Attorney in Fact included the individual paying compensation upon rendering services or assistance, or within 30 days thereafter.

Example: Deb is a 'snowbird' who winters in New Mexico 5 months of the year. There is a history of Deb paying Tim to manage her properties while she is in New Mexico during those months. Deb has been fully capable, so Tim does not conduct everything for her, just intermittently. In such a case, a written contract would not be required as there is an established history of payments made for services. We would require verification of past payments made and for which services.

Reasonable payments are allowed as a spend down of assets but not as a deduction from income.

Income 510-05-85
Income Levels 510-05-85-40

Subsection 2.(e) is **Updated** to include the increase in the income level for each ineligible household member is a spousal impoverishment case. This supersedes IM #5210.

- e. Family member income level. The income level for each ineligible family member in a spousal impoverishment case is ~~\$655~~ ~~\$646~~ effective July ~~2013~~ ~~2014~~ (~~\$630~~ ~~646~~ effective July ~~2012~~ ~~2013~~).