

9050.0750 DEDUCTION FOR VOLUNTARY SUPPORT OF DEPENDENT SPOUSE OR HOUSEHOLD.

Subpart 1. **Generally.** The facility financial staff shall deduct from the applicant's or resident's gross monthly income calculated under part 9050.0710 the amount necessary to meet the basic needs of the dependent spouse or household as calculated under this part. The applicant or resident or spouse of an applicant or resident who requests a deduction under this part must verify the monthly expenses of the dependent spouse or household that are not met by income or resources otherwise available to the dependent spouse or household.

Subp. 1a. **Eligibility of dependent spouse for spousal allowance.** A spouse being considered for a maintenance allowance must disclose any asset, income, or expense information that is requested at the time of application or admission, at the time the maintenance allowance is requested, or at any subsequent time the maintenance is adjusted.

Subp. 1b. **Commissioner of veterans affairs authority to establish, review, and revise spousal allowance basic needs and personal needs expenditures.** The commissioner of veterans affairs shall establish and annually review the items categorized under "basic needs" and "personal needs" and allowance limits on categories of expenses covered within those definitions. The commissioner of veterans affairs shall revise the allowances as necessary to reflect a reasonable sum for the average person. If the commissioner of veterans affairs does not take action to review the allowance, the allowance must be adjusted by multiplying it by the percentage of change of the Consumer Price Index (CPI) on the first day of each calendar year. The initial recommendations presented to the commissioner of veterans affairs must be based upon a review of the actual allowances currently being used at each home, data from the Bureau of Labor Statistics, or a combination of the two. Future recommendations must be based upon the current allowances, requests for increased allowances that have been received by the homes, and data from the Bureau of Labor Statistics.

If a spouse believes that an allowance as based upon the allowance limits is insufficient to meet the spouse's needs, the spouse or a legal representative may submit a written request to the administrator for a waiver. The decision to grant or deny a waiver must be based on assets, income, or expense information provided under subpart 1a. The reasons for granting or denying the waiver must be put in writing and delivered to the spouse or the legal representative. If the waiver is granted, the administrator shall indicate the amount of the revised spousal allowance and the duration of the waiver. No waiver may be granted for more than one calendar year. A spouse may apply for an additional waiver upon the expiration of an existing waiver.

Subp. 1c. **Spousal benefit applications.** If a spouse or dependent wishes to obtain spousal allowance payments, the spouse, dependent, or legal representative must apply for the maximum of every benefit for which the spouse or dependent may be eligible that will

increase the income of the spouse or dependent. The benefit must be applied for only if the spouse or dependent is eligible to receive the full amount of the benefit, without penalty for making the claim or withdrawal at that time. The facility staff shall provide a spouse, dependent, or legal representative information about possible available benefits or programs of assistance and shall assist in applying for those benefits.

Subp. 2. **Determination of spouse's or dependent's monthly expenses.** The deduction for the basic needs of the dependent spouse or household is the sum of the following expenses, prorated on a monthly basis as they are incurred or can be estimated with reasonable certainty:

A. expenses related to the homestead as follows:

(1) monthly rent, mortgage, or home equity loan payments, except that home equity loans obtained after the date of a resident's admission must be related to expenses of the homestead or other basic needs for which a deduction is requested;

(2) costs of supporting a dependent child or children residing with the spouse. Allowances for education of the child beyond high school or the equivalent of high school must not be considered. Student loans must not be considered as an allowance expense. If there is a dispute over whether or not an item is an education expense, the administrator shall make a final determination on the issue;

(3) real estate taxes;

(4) homeowner's or renter's insurance;

(5) home maintenance and repair costs in a reasonable amount. Allowances are provided for home maintenance to keep the homestead presentable and in good working order. Allowances are not provided for improvements such as adding space or remodeling, except as necessary for physical access for the spouse or dependent;

(6) association fees for townhouses, condominiums, or similar arrangements;

(7) electric and gas charges;

(8) water and sewer charges;

(9) solid waste removal charges; and

(10) telephone costs;

B. transportation costs, including costs of public transportation and costs of acquiring and maintaining a privately owned motor vehicle;

C. food;

D. clothing;

E. medical insurance for the spouse and the applicant's or resident's dependent child or children residing with the spouse and long-term care insurance premiums for the spouse if the policy was purchased at least 12 months before the resident's initial admission date;

F. medical expense payments, except for expenses related to long-term care treatment. For the purposes of this item, long-term care expense includes expenses incurred for nursing homes, hospice care, home health care, foster care, adult day care, or similar nonacute care;

G. personal needs of the spouse or dependent child or children;

H. payments for documented consumer debts incurred before the resident's admission to a facility operated by the commissioner of veterans affairs for which the spouse is legally responsible. The payments may be limited to the minimum monthly payment due; and

I. support payments actually paid by the spouse to a former spouse or dependents who do not reside with the spouse.

Subp. 2a. **Resources excluded.** In determining a spouse's or household's available resources, the facility financial staff shall exclude from consideration the following:

A. real property excluded under part 9050.0600, subpart 2;

B. one motor vehicle per household, for personal use;

C. household goods and furniture, personal effects, wearing apparel, and jewelry regularly used by the spouse or dependent child or children in day-to-day living;

D. the value of personal property used to produce business or farm income, including tools, implements, farm animals, and inventory, or capital and operating assets of a trade or business necessary to income production;

E. life insurance policies purchased prior to the date of initial admission for residency;

F. individual retirement accounts, Keogh accounts, or other pension or deferred compensation plan accounts;

G. burial accounts, burial plans, burial contracts, or burial trusts;

H. other personal property specifically excluded by federal law, federal regulation, or state law; and

I. savings accounts or other monetary investment instruments that are income producing.

Subp. 2b. **Application of dependent spouse's or household's available resources.** If an applicant or resident, or the spouse of an applicant or resident, requests a deduction from the applicant's or resident's gross monthly income for support of a dependent spouse or household, the facility financial staff shall verify the available resources of the dependent spouse or household. All resources listed in subpart 2a must be excluded for the purposes of determining availability of resources. If the facility financial staff has verified that the dependent spouse or household has no resources available other than excluded resources, a deduction from the applicant's or resident's gross monthly income must be calculated according to subpart 3.

Available resources must be calculated to include assets belonging to the spouse as of 12 months before the date of admission. Asset transfers to the applicant are permissible. Any action by a spouse within the 12 months before the initial admission for residency that defers income from an asset, limits the liquid value of an asset, or makes an asset unusable is presumed to be improper. If property or resources have been incorrectly transferred, the spousal allowance will be adjusted in accordance with part 9050.0650, subpart 3. Any asset transfer or sales after the date of initial admission by a spouse to anyone other than the resident is an incorrect transfer and part 9050.0650, subpart 3 applies, unless the proceeds of the transfer or sale are used by the spouse or dependent for normal living expenses.

If a maintenance charge or a spousal allowance is adjusted because of an incorrect transfer, the resident, spouse, or dependent or their legal representative may request from the administrator a waiver if the adjusted maintenance charge or spousal allowance will cause undue hardship resulting in an imminent threat to the individual's health and well-being. In evaluating a waiver, the administrator shall take into account whether the individual was a victim of financial exploitation, whether the individual has made reasonable efforts to recover the transferred property or resource, and other factors relevant to a determination of hardship. If the administrator does not approve a waiver, the administrator shall issue a written notice to the individual stating the reasons for the denial and the process for appealing the decision. The decision may be appealed to the commissioner of veterans affairs. An appeal to the commissioner of veterans affairs must be handled in the same manner as a hearing under part 9050.0580.

Subp. 3. **Calculation of amount of deduction.** The facility financial staff shall calculate the amount to be deducted from the applicant's or resident's monthly income for support of a dependent spouse or household as follows:

A. calculate the spouse's gross monthly income using the method for calculation of the applicant's or resident's gross income in part 9050.0710, then subtract the following deductible items:

(1) state and federal income tax payments and withholdings consistent with the number of allowable exemptions;

- (2) FICA payments;
 - (3) mandatory retirement fund payments;
 - (4) voluntary retirement fund payments. The payment amounts must not exceed the average of the monthly sums paid by the spouse during the 12 to 24 months prior to the resident's initial admission;
 - (5) actual reasonable unreimbursed expenses of child care necessary to earn an income and paid to anyone other than a parent of the child;
 - (6) union dues;
 - (7) professional association dues if they are required to obtain or retain employment;
 - (8) cost of uniforms, tools, and equipment used on the job that are required to retain a job but are not furnished by the employer;
 - (9) public liability insurance premiums if they are required by the employer when an automobile is used in employment and the premiums are not paid by the employer; and
 - (10) Medicare insurance payments;
- B. total the spouse's monthly expenses as determined under subpart 2;
 - C. subtract item B from item A; and
 - D. the amount by which item B exceeds item A is the amount allowed as a deduction for the dependent spouse or household.

Statutory Authority: *MS s 198.003*

History: *14 SR 2355; 20 SR 2095; 28 SR 1251; L 2005 c 56 s 2; L 2008 c 297 art 2 s 29*

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