

Getting Medical Assistance for a Child (under 18) with a Severe Disability, Behavioral or Autism Spectrum Disorder under the PH-95 Category (“loophole”)



Why Medical Assistance?

Medical Assistance has the broadest coverage of medical and mental health services for persons under 18 of any insurance plan. It covers services rarely covered by employer provided insurance such as Behavioral Health Rehabilitation Services (“wraparound”), in-home shift nursing (2 hours or more per day), in-home personal care services, diapers, nutritional supplements, prescriptions and transportation to and from medical appointments. It also covers services, like in-home nursing, physical, speech or occupational therapy, without annual or lifetime caps often imposed by other insurance plans. Medical Assistance can be a child’s only insurance or it can be secondary to other coverage, covering those services or equipment not covered by the child’s primary insurance.

Will my child qualify?

There is a common misconception that all children with a disability or all children with an IEP (Individual Education Plan) or all children with a particular diagnosis qualify for Medical Assistance. That is not the case. The rules are just not that simple. However, many children with severe disabilities will qualify for Medical Assistance, regardless of their parent’s income. Here are some basic rules:

- A child can qualify for Medical Assistance even if she or he has other health insurance (although the other insurance usually needs to be billed first)
- The assets of the parent(s), guardians and the child (money in the bank, stocks bonds etc.) don't count in determining eligibility for Medical Assistance.
- The income of caregivers and guardians other than the parents don't count.
- The income of the parent(s) doesn't count if the child's condition meets certain disability standards.

This guide will try to explain the rules that apply to children with severe disabilities, or behavioral disorders.

Note: This guide does not deal with the eligibility for Medical Assistance of children who are in foster care or otherwise in custody of a county children and youth agency.

Eligibility requirements for Category PH-95, a.k.a. "loophole"

- **Age:** Under 18. **Note:** At age 18, parental income no longer counts for SSI, so many youths who had been on Medical Assistance under PH 95 can qualify for SSI at age 18. By qualifying for SSI, their Medical Assistance will continue with the same coverage (however coverage becomes limited when they turn 21). However, the 18 year old (or parent) must apply for SSI (at the local Social Security office) and a new disability determination is done using the adult disability standards. Since different disability standards are used, an 18 year old may not be found disabled by Social Security even though they had previously been considered disabled for Medical Assistance. Even if the family does not need the cash benefit from SSI, it is important to appeal an SSI disability denial in order to keep Medical Assistance (unless the 18 year old qualifies under a different category).
- **Disability:** Child must meet the Social Security disability guidelines (more about that later).
- **Resources (assets):** Not considered (neither the parent's nor the child's).
- **Income:** Income of the parents or other caregivers is NOT counted. However, income which is legally considered to be the child's IS counted, with some exceptions noted below. Having countable income does not disqualify a child from Medical Assistance, so long as the amount of the income does not exceed the income maximum. The maximum amount of countable income a child with severe disabilities can have and still get Medical Assistance is \$931 a month for the year 2012 (it goes up some each year). However, not all income is counted and significant deductions are also taken.

What income is counted:

- ❖ **Interest or dividends** on bank accounts, stocks, bonds, cds or other investments which are in the child's name (reported to the IRS under the child's Social Security number). The principal (the amount on which the interest or dividend is paid) is not counted (it is considered a resource which is exempt).
- ❖ **Earnings from child's job:** If the child is working, a portion of those earnings are counted. However, a child that earns enough to be over the income limit would probably not qualify for Medical Assistance under this category anyway because they probably would not meet the disability guidelines. If the child is employed, call us for more information at 1-800-274-3258.

What income is not counted:

- ❖ **Social Security:** "Child's benefits" or "survivors benefits" (not SSI) which are based on the past earnings of a deceased, disabled or retired parent will not be counted. See DPW Medical Assistance Eligibility Handbook §315.4 .
- ❖ **Court ordered child support:** Medical Assistance used to count child support payments on the grounds that child support was legally income to the child, not the parent (and only parental income is disregarded under the loophole). However, effective September 1, 2000, Medical Assistance no longer counts child support for children who meet the disability standards provided the support is court ordered (it remains counted for non-disabled children). This change is documented in Operations Memorandum 000-806 revised 09-01-00 issued 8-31-2000 effective 9-1-00.
- ❖ **Inheritances & payouts on life insurance policies:** These can be counted as resources, rather than income. Medical Assistance Eligibility Handbook §319.62 The advantage to children in having this money considered as a resource is that there is no resource limit for anyone under 21. Therefore inheritances & payouts on life insurance policies should not affect Medical Assistance eligibility for anyone under 21.
- ❖ **"Special Needs" Trusts:** Certain trusts, known as "special needs trusts" are not counted. The rules about how trust funds affect Medical Assistance eligibility depend on how the trust is set up and are too complex to set out here. Please contact the lawyer who helped establish the trust or a lawyer who specializes in trust and estate planning.

The application process for Category PH-95 (loophole)

1. Get the child's birth certificate

To obtain an official copy of a birth certificate for a child born in PA, call (724) 656-3100 or go to

http://www.portal.health.state.pa.us/portal/server.pt/community/birth_certificates/14121 on the web.

2. Get the child's Social Security card

If the child doesn't have one or needs a replacement, get an application for a card from the local Social Security office (form SS-5). Call 1-800-772-1213 or the TTY number, 1-800-325-0778 for more information or go to http://www.ssa.gov/replace_sscard.html on the web.

3. Assemble documentation of the child's disability or condition

While Social Security will do this for families applying for SSI, it is the parent/guardian's responsibility to do this when applying for Medical Assistance under the disabled child (loophole) provision. Remember that unless the child is found to meet the disability standards, the income of the parent/guardian will be counted. The people who make the disability determinations will not examine or evaluate the child. If the problem or limitation is not documented, it will not be considered.

4. The disability standard (what you need to document)

It is not enough for a child to have a disability, a specific diagnosis or an IEP in order to qualify for Medical Assistance under SSI or the non-SSI disabled child (loophole) provision. The child's disability or condition must meet a set of standards. The standards used, even for children applying just for Medical Assistance under the loophole, are the Social Security childhood disability standards. Those standards are called the "Childhood Listings of Impairments," found on the web at:

<http://www.socialsecurity.gov/disability/professionals/bluebook/ChildhoodListings.htm>.

The standards vary depending on the "body system" that is affected by the disability or condition. You will need to find the body system that is affected by your child's disability/condition to determine which of the standards apply.

However, as a general rule of thumb, the disability standards consider the extent to which the child's disability/condition limits the child's ability to perform basic functions (appropriate for his/her age group). These basic functions include physical and neurological functioning (ability to walk, talk, feed oneself etc.), sensory functioning (ability to see or hear), cognitive functioning (ability to learn and understand) and psychological functioning (ability to develop and maintain relationships with others, avoid violent behavior and dangerous situations, etc.).

A parent/ guardian should not try to determine whether their child's condition meets the Listings. The usefulness of the Listings to parents is to determine what they will need to document. In most cases, it is necessary to document the nature, severity, frequency and duration of the limitation(s) in addition to the medical or psychiatric condition that causes the limitation(s). Important sources of documentation include: the child's doctors, therapists, teachers, guidance counselors and school records (including the Comprehensive Evaluation Report, the Multidisciplinary Evaluation or "MDE", report cards and attendance records) IEPs are not enough because they focus on educational issues which are not the primary focus of the Social Security disability standards. For more information regarding the "listings of impairments" that apply to children with mental illnesses or bio-neurological conditions, ask us for the guide on that topic.

5. Applying

You can apply either by filing out a paper application or by applying online. You can obtain a paper application form- PA600CH- by calling the Healthy Kids Hotline 1-800-986-5437. You can also download then print out the application form from the web at:

http://www.dpw.state.pa.us/ucmprd/groups/public/documents/form/s_001688.pdf.

After you fill out the paper application, you must either mail it or drop it off at your local County Assistance Office.

You can find the location and phone number of your County Assistance Office in the blue pages of the phone directory under "Government & Other Public Services- Public Welfare" or on the web at:

<http://www.dpw.state.pa.us/findfacilsandlocs/countyassistanceofficecontactinformation/index.htm>. If mailing, send it certified or get a mailing certificate to prove when you mailed it. If

you are dropping it off at the County Assistance Office, ask for a receipt. You can also apply online <http://www.compass.state.pa.us>.

In either case, you will be asked after your child's application is filed to provide certain documentation, either in person or by mail, to your local County Assistance Office.

6. Get an SSI eligibility determination

SSI (Supplemental Security Income) is a program administered by Social Security that provides a monthly check and Medical Assistance to persons who meet Social Security's disability criteria and have low incomes and assets. Even if the family is not seeking SSI, the County Assistance Office may require that you get a determination from Social Security as to the child's eligibility for SSI. (See 55 Pa. Code §141.21(n)(2)) Unlike Medical Assistance under the loophole, parental (and stepparent) income and assets DO count in determining eligibility for SSI. However, Medical Assistance will not be denied if parental income or assets

exceed the SSI limits. Therefore, it is sufficient to get a denial for SSI from Social Security so long as the denial is on the basis of income or assets- not because Social Security has determined the child does not meet their disability requirements. The SSI eligibility screening can be done with a simple phone call in most cases. To get a determination as to whether the child meets the income and resource requirements, you should do the following:

- Call Social Security at 1-800-772-1213. When you hear the recorded message, choose the option that allows you to get a live Social Security representative. The parent/guardian should ask the Social Security representative that they would like to have an appointment set up for an SSI financial eligibility screening over the phone. Some representatives will give you a date and time when a Social Security representative will call to take the necessary information to make a determination on financial eligibility for SSI. Unfortunately, there does not appear to be a clear policy or practice regarding phone interviews so you may need to go into your local Social Security office to make an SSI application. To find the closest Social Security Office, call 1-800-772-1213 or go to <https://secure.ssa.gov/apps6z/FOLO/fo001.jsp> on the web.
- Remember that parent's and stepparent's income and assets count for SSI so be sure to have pay stubs, bank statements and other income and resource records available on the date Social Security calls back.
- If the Social Security representative determines that the parent/stepparent/child's income or resources are over the SSI limits, ask the representative to send a written letter to that effect. Keep that letter to submit to the County Assistance Office as proof that the child was denied SSI.

If the child had been on SSI recently (in the last year or so) and was terminated due to parental income or resources of the parent(s) or child, the County Assistance Office will usually accept the fact that the child had been on SSI as proof the child meets the Social Security disability standards so long as the child was not terminated on grounds that he/she was no longer disabled.

Tip: If the child was terminated on the grounds that he/she no longer meets the disability standards, it is essential that the parent/guardian appeal the SSI termination (they have 65 days from the date on the SSI termination notice to do so). Otherwise, the determination of Social Security that the child does not meet the disability standards will be binding on Medical Assistance and the child will not qualify under category PH-95.

What if I call Social Security, and find that my child qualifies for SSI?

In some cases, the parent/stepparent/child's income is within the SSI limits. In that case, the parent will have to file a full SSI application at their local Social Security office and Social Security will determine whether the child meets the disability guidelines. Note that if Social Security determines that the child does not meet the disability guidelines, the child will not be eligible for either SSI or for Medical Assistance under the PH-95 (loophole) category although the child may be eligible under a different category of Medical Assistance, like Healthy Beginnings, where disability is not a requirement but parental income is counted. Therefore, if the child is found not to meet the SSI disability guidelines and does not qualify for Medical Assistance under one of the "non-disabled" categories, it is critical that the parent/guardian **appeal** Social Security's decision.

Necessary documentation

- the **child's Social Security card** (or receipt from Social Security that an application for a card has been filed);
- the **child's birth certificate** (original or State-certified copy—not a photocopy) or some acceptable alternative;
- for non-citizens, **proof of immigration status**;
- some **proof of address** (usually the parent/guardian's drivers license if the address is current);
- **Documentation of income in the child's name** (Social Security notices or photocopies of checks, child support orders or statements from Domestic Relations, bank statements or other statements showing interest, dividends or other earnings on bank accounts or other investments in the child's name);
- **Documentation of the nature and extent of the child's disability or condition** or, for a child recently on SSI, an SSI termination notice, if the grounds for termination were excess income or resources, not lack of disability;
- If requested by the County Assistance Office – **Documentation that the child does not qualify for SSI** (letter from Social Security);
- **Health insurance policy numbers** (or a copy of the card if available) of any insurance under which the child is covered;
- **Car insurance policy number** (if the parent(s) have a car – this is needed because car insurance often provides coverage of health care expenses related to an automobile

accident); and

- **Pay stubs** or other documentation of parental income. Even though parental income does not count, documentation of that income is required by state law.

Authorization to Release Information- Form PA 4

Caseworkers will usually insist the parent/caregiver sign a blanket release form which allows DPW to contact employers, banks, etc. to obtain financial information relevant to the child's application for Medical Assistance. State regulations require a parent/caregiver to sign this release form in regards to "information about...the applicant or recipient..." 55 PA. Code §201.4 (1)(ii). State regulations state that "the applicant" includes "The adult with whom an unemancipated minor lives..." 55 PA. Code §123.82. Therefore, the parent/caregiver is legally obligated to sign the PA 4 form to release information regarding both the child and the parent, even though parental income and assets are not relevant for eligibility purposes.

Citizenship Documentation

Parents will also need to fill out the "Citizenship and Identify Information" form PA 1809 for their child. Other household members do not have to be listed on the form unless you are also applying for Medical Assistance for them. Parents will also have to fill out and sign an "Affidavit Attesting to Identity of Minor Child". The form asks for the signature of a witness but does not need to be notarized.

What happens next for Medical Assistance?

Determining disability

Once the application and necessary documentation has been submitted, the caseworker at the County Assistance Office has authority to immediately find that the child meets the disability standards, pending a final decision by the Medical Review Team (which takes months), if, based on the documentation provided by the parent/guardian, the child "appears to be disabled". This is authorized by Medical Assistance Eligibility Handbook §305.26. This is known as "presumptive eligibility" and is very common if good documentation is provided. If the caseworker doesn't feel comfortable making the "presumptive eligibility" disability determination him/herself, ask the caseworker to transfer the case to the "DAP Unit" (Disability Advocacy Program Unit) at the County Assistance Office. The DAP Unit is comprised of workers specially trained in the disability standards. They will usually review the medical or psychiatric documentation, and may request that the parent/guardian get additional documentation or come in for an interview.

If the caseworker or the worker from the “DAP Unit” finds the child “presumptively eligible”, the caseworker can authorize Medical Assistance immediately. A Medical Assistance ID card (a.k.a. “Access Card”) should arrive in 1 to 2 weeks. If the child needs services under Medical Assistance before that, the parent/caregiver should ask the caseworker for the child’s Medical Assistance ID#, card issue #, category and program status code. With those numbers, most providers are willing to start serving the child under Medical Assistance without waiting for the official ID card (“known as the Access card). If the provider insists on an official card, the parent/caretaker can request a Temporary ACCESS Card (TAC) from the caseworker at the CAO. An Interim Medical Card can be done in a day. The caseworker cannot require documentation of a medical appointment. The statement of the parent/caregiver that there is an immediate need for the card is sufficient. Medical Assistance Eligibility Handbook §380.4.

Once the case has been authorized, the caseworker is supposed to transfer the case to the DAP Unit to review the medical or psychiatric documentation if they have not already done so. After that, the DAP Unit is supposed to send the documentation to an agency under contract with Medical Assistance, known as the Medical Review Team (“MRT”) which makes the final decision as to whether the documentation shows that the child meets the disability standards. If the MRT decides that the child’s documented condition does not meet the disability standards, the County Assistance Office will terminate the child’s Medical Assistance unless the child is eligible under another category. However, the parent/caregiver can appeal the MRT’s decision and if the County Assistance Office receives their appeal within 10 days of the termination notice being mailed, the termination cannot go through until after the family has had a hearing and gets a hearing decision. (Of course, if the parent/caretaker wins, the termination won’t go through at all.) The termination notice explains how to appeal.

Enrollment in an HMO

Children living in the following counties will be required to enroll in an HMO that has a contract with Medical Assistance: Adams, Allegheny, Armstrong, Beaver, Berks, Bucks, Butler, Chester, Cumberland, Dauphin, Delaware, Fayette, Greene, Indiana, Lancaster, Lawrence, Lebanon, Lehigh, Montgomery, Northampton, Perry, Philadelphia, Washington, Westmoreland and York. This is required even if the child has other health coverage, including another HMO- unless Medical Assistance pays the premium to add the child to the parent’s health insurance (“HIPP”). The services the child needs (other than behavioral health services) are then obtained through the HMO, rather than through Medical Assistance itself, although the HMO must cover all the services regular Medical Assistance covers. The requirement that a child living in one of the counties listed above be enrolled in one of the Medical Assistance HMOs applies even if the parent/caregiver is only seeking coverage for

behavioral health services, even though the Medical Assistance HMO does not directly provide that coverage.

The parent can choose from one of 3 Medical Assistance HMOs. If the parent does not choose, Medical Assistance will pick one. The parent is also asked to choose a primary care physician practice for their child. If the parent does not choose, the HMO will assign the child to one. Children who could be covered for a premium under their parent's health insurance may be eligible to have that premium paid by Medical Assistance under the "HIPPP" program (Health Insurance Premium Payment). If the child is enrolled in HIPPP, they will be disenrolled from their Medical Assistance HMO and have to use plain ACCESS (fee for service).

Coverage for behavioral health services for all children comes through a separate entity called a "Behavioral Health Managed Care Organization" which has a contract with the county MH/MR agency. There are different Managed Care Organizations for different counties. To find a list of these organizations by county served, go to http://www.dpw.state.pa.us/ucmprd/groups/webcontent/documents/communication/s_002108.pdf.

Medical Assistance HMOs are also in operation in several other counties besides the ones mentioned above. However, in those other counties enrollment in one of these Medical Assistance HMOs is voluntary.



Helpline: 1-800-274-3258 ▪ www.phlp.org

This publication is intended to provide general legal information, not legal advice. Each person's situation is different. If you have questions about how the law applies to your particular situation, please consult a lawyer or call the Helpline at 1-800-274-3258.