

Accessing Home and Community-Based Services When Income Appears Too High

A Factsheet for Professionals



People with income **no more than \$500 over** the monthly income limit for the Community HealthChoices (CHC) Waiver, OBRA Waiver, or LIFE program may be eligible for a Waiver or LIFE program using a qualified **Income Spend Down Trust**.

This fact sheet explains how to use a qualified Income Spend Down Trust to qualify for a Waiver or LIFE program, even if income is above the program income limit.

How Does It Work?

The income limit for the CHC Waiver, OBRA Waiver and the LIFE Program is \$2,829 in 2024. Only the applicant's income is counted. If the applicant's income is no more than \$500 above the income limit, each month they deposit this "excess" income into an "income spend down trust." The trust is managed by a special nonprofit trust company. The nonprofit becomes the trustee of that money.

Individuals Under Age 65

The nonprofit trustee can spend the money on supplemental items, services and expenses that solely benefit the individual. The money placed in the trust can build up so that larger purchases can be made, or it can be used on monthly expenses. For example, the trust can purchase a laptop computer, new furniture, or clothing for the applicant; or pay their monthly utility bills or rent. But the trust cannot give cash or pay back the money that is deposited.

Important Note: Individuals under age 65 with a disability who are working or can do some work may be able to access the CHC or OBRA Waivers through the [Medical Assistance for Workers with Disability](#) (MAWD) program, instead of an Income Spend Down Trust. MAWD has higher resource and income limits than the Waivers. It only counts around half of any income from work. There is no need to set up a trust or spend income on anything special to qualify for MAWD. However, individuals do have to pay a monthly premium for MAWD. The monthly premium is equal to 5% of the countable income.

Individuals Aged 65 or Over Applying for the CHC or OBRA Waiver

The nonprofit trustee will use the money to pay the individual's monthly medical or care expenses that are equal to the amount their income is over the Waiver limit. For example, the trust can:

- Pay an aide directly to provide home care and assistance above what the waiver covers.
- Pay old medical bills if there is a repayment agreement signed by the provider.
- Pay the monthly rental fee for medically necessary equipment or supplies the waiver is not covering. For example, medically necessary nutritional supplements.

Medicare prescription drug costs cannot be used as an allowable expense because there are no prescription drugs costs – even copays – once someone is on the Waiver.

Individuals Aged 65 or Over Applying for a LIFE Program

The nonprofit trustee must send the money to the state (Department of Human Services). After the individual's death, the money will be used to repay the state for the cost of certain LIFE Program services that were received.

Who can be a Trustee?

Only nonprofit pooled trust companies can serve as trustee of income spend down trusts. There is only one nonprofit trust company in Pennsylvania that currently handles them: the [Achieva Family Trust](#). Achieva Family Trust currently requires:

- a) an initial contribution of \$100 to open the trust;
- b) a \$100 annual administrative fee; and
- c) an amount equal to the amount monthly income exceeds the income limit for the Waiver or LIFE program.

Who is Eligible to Use an Income Spend Down Trust?

People who wish to use an Income Spend Down Trust to qualify for a Waiver or LIFE program must meet the following criteria:

1. Total (gross) income of **\$3,329** or less in 2024. That is \$500 over the usual income limit of \$2,829. That amount may increase in 2025. Only the Waiver/LIFE Program applicant's income counts.
 - When figuring out total income, add back in anything that is deducted from Social Security payments or other income, such as the \$174.70 Medicare Part B premium.
2. Under the resource limit for the Waiver/Life Program.
 - The limit for resources that are counted (such as bank accounts) is \$8,000 for someone who is single. It is higher for married couples. There is no resource limit if an applicant lives with their child who is under age 21. Not all resources count. For example, an individual's home and one car are not counted as resources.

- Unless the applicant is in a nursing home, they must provide copies of up to 5 years of bank statements to the County Assistance Office so it can determine if resources were transferred or given away without fair payment.
 - Applicants in a nursing home that is being paid for by Medicaid are under the resource limit for the Waiver/Life Program.
 - The Income Spend Down Trust cannot be used if an applicant's resources are too high. A private elder law attorney should be contacted for advice on handling excess resources.
3. Determined to be clinically eligible for the waiver. This determination is made by the Independent Enrollment Broker as part of the Waiver/LIFE application process.
 4. Able to understand and sign legal documents or have a power of attorney or court-appointed guardian who can. A copy of the signed power of attorney showing specific authority to create an irrevocable trust or guardianship order is required.
 5. Additional Requirement for People Age 65+ applying for a Waiver à Have regular monthly medical or care expenses that the applicant is or will be responsible for paying.

Is Help Available?

Yes! People interested in learning more about opening an income spend down trust may email ISDTrust@achieva.info. Achieva will provide trust paperwork and instructions. They do not provide legal advice about trusts or Medicaid eligibility.

New Applicants for CHC or LIFE

Legal assistance opening a spend down trust may be obtained from a private elder law attorney specializing in Medicaid eligibility. Search for an attorney specializing in Medicaid at www.paela.info/resources-links/find-an-attorney/.

People Who Are Losing CHC or Trying to Leave a Nursing Home with Waiver Services

The Pennsylvania Health Law Project (PHLP) can provide free legal help to people losing the CHC waiver because their income is too high. We also help people who are in a nursing home paid for by Medicaid whose income is too high for the CHC waiver.

PHLP evaluates individual cases and can help people decide if an Income Spend Down Trust is right for them. Contact the PHLP Helpline at 1-800-274-3258. Help may also be obtained from a private attorney specializing in Medicaid. Search for an attorney at www.paela.info/resources-links/find-an-attorney/.

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 situation, please call PHLP's Helpline at 1-800-274-3258.