

A stylized map of New York State is positioned behind the title text. The map is filled with a gradient from light green to dark green, matching the overall color scheme of the document. The background of the top section features a pattern of thin, white, curved lines on a dark green field.

# New York Makes Work Pay

Developing a path to employment for New Yorkers with disabilities

[www.NYMakesWorkPay.org](http://www.NYMakesWorkPay.org)

Policy to Practice Brief #2

## **The Medicaid Buy-In For Working People With Disabilities**

Individuals with Disabilities Can Earn Significant Wages and Qualify for This Important Health Care Benefit

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## About Policy-to-Practice Briefs

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This document is one of a series of policy-to-practice briefs published as part of the New York Makes Work Pay Project, a Comprehensive Employment Services Medicaid Infrastructure Grant funded by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) to the New York State Office of Mental Health (OMH) and its management partners the Blatt Institute at Syracuse University and the Employment and Disability Institute (EDI) at Cornell University. The New York Makes Work Pay Initiative is currently funded for calendar years 2009 and 2010 and will provide an array of services to individuals with disabilities and the agencies and advocates that serve them, helping to remove obstacles to work and pave the way to self-supporting employment.<sup>1</sup>

This brief is based, in part, on a similar document last updated by the authors in 2003 and originally published by the Work Incentives Support Center in the Employment and Disability Institute at Cornell. Materials were reviewed for accuracy by the Social Security Administration (SSA), Office of Employment Support Programs. However, the thoughts and opinions expressed in these materials are those of the authors and do not necessarily reflect the viewpoints or official policy positions of the SSA, CMS, or OMH. The information, materials and technical assistance are intended solely as information guidance and are neither a determination of legal rights or responsibilities, nor binding on any agency implementation and/or administrative responsibilities.

This publication is based on federal Social Security and Supplemental Security Income (SSI) laws, regulations and policy. However, unlike earlier versions, the current version is specifically targeted to New Yorkers with disabilities and, as such, will use New York's SSI rates in all its examples. Also, as relevant, we will specifically mention New York agencies by name and reference any New York-specific supports which may be able to assist New Yorkers with disabilities achieve their work goals when used in combination with SSI's Plan for Achieving Self Support. Notwithstanding this focus on New York, this publication will include extensive references to SSI policy and will be a valuable reference throughout the nation.

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<sup>1</sup> A detailed description of the New York Makes Work Pay Project and its services can be found at <http://www.NYMakesWorkPay.org>

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## I. Introduction

This policy-to-practice brief provides an in-depth illustrated description of New York State's Medicaid Buy-In for Work People with Disabilities (MBI-WPD) program. This brief first explains, by way of background, what Medicaid is and the important services it can fund for individuals with disabilities; explores the ways that individuals with disabilities have, historically, qualified for Medicaid; explains why the 1619(b) program cannot meet the needs of all working people with disabilities for continued Medicaid coverage; explains why the income disregards of Medicaid's medically needy/spend down category create only a modest work incentive and often discourage work activity; and explains why the limitations of the 1619(b) program and the spend down provisions create the need for an MBI-WPD program. The remainder of the brief is devoted to explaining how the MBI-WPD program works and its specific eligibility requirements, providing multiple case examples to illustrate the concepts discussed.

The authors believe that the MBI-WPD is one of the most important disability-related policy changes enacted in New York within the past 25 years. The MBI-WPD provisions have already resulted in more than 11,000 New Yorkers with disabilities having health care coverage despite working for significant wages at meaningful jobs.<sup>2</sup> Our goal is to reach a wide spectrum of readers who share a common goal of making individuals with disabilities aware of this important benefit and how it can support the work efforts of those individuals.

## II. What is Medicaid?

Medicaid, also known as Medical Assistance, is a publicly funded health insurance program. Medicaid has historically been thought of as a program for individuals with very limited income and resources. However, two special work incentives, the 1619(b) program and the MBI-WPD (both discussed below) allow for Medicaid eligibility for individuals who are working and earning substantial wages.

In New York, Medicaid is administered at the state level by the State Department of Health (DOH). The county Departments of Social Services (DSS) administer Medicaid, except in New York City where it is run by the Human Resources Administration (HRA). Medicaid costs are shared by the federal, state and county governments.

### A. Medicaid Should be Distinguished from Medicare

Medicare is a federal insurance program most frequently associated with receipt of Social Security benefits. An individual who receives Social Security Disability Insurance (SSDI) benefits qualifies for Medicare after 24 months of eligibility. Medicare Part A, hospital

<sup>2</sup> The MBI-WPD program has enrolled 11, 709 individuals, with 6,998 active MBI-WPD beneficiaries as of May 31, 2009.

insurance, is automatic and usually cost free. Medicare Part B is optional and subject to a monthly premium (i.e., \$96.40 in 2009). For many individuals who receive Medicare, the Medicaid agency can pay the Part B premiums through the Qualified Medicare Beneficiaries (QMB), Specified Low Income Medicare Beneficiaries (SLMB), or Qualified Individual (QI 1) program if the individual meets an income test.<sup>3</sup> Eligibility for the QI-1 program cannot be given to anyone who is otherwise eligible for Medicaid. Since Medicare has very limited coverage of community based care, it has historically not been as important as Medicaid to persons with disabilities who require and need community-based care.

Many individuals with disabilities will be dually eligible for both Medicaid and Medicare. These dually eligible individuals have, since 2006, been required to obtain their prescription drugs through Medicare Part D, rather than Medicaid. Unlike Medicaid, the Medicare Part D program often results in significant out-of-pocket expenses to the beneficiary. Those expenses may include monthly premiums, deductibles, and prescription co-payments and could total up to \$4,000 or more per year in some cases. Medicare beneficiaries who retain Medicaid eligibility can avoid many of these Part D expenses through the Part D low-income subsidy program, often referred to as “extra help.” Eligibility for the low-income subsidy program is generally based on financial need, with individuals with the lowest income qualifying for “full” rather than “partial” low-income subsidy benefits<sup>4</sup>.

Medicare beneficiaries entitled to Medicaid are considered “dually eligible” making them automatically eligible for the full Part D low-income subsidy program. This will be the case no matter how high the individual’s income is. Thus, for example, an individual who earns \$40,000 per year and retains Medicaid under the 1619(b) program or qualifies for the MBI-WPD will be eligible for the full low-income subsidy program. Under the full low-income subsidy program, the individual avoids all Part D deductibles (including the well-known “doughnut hole” costs), pays no monthly premiums if he or she selects what is known as a “benchmark plan” (a prescription drug coverage plan that has been designated by Medicare to meet certain coverage requirements and which has a monthly premium that is fully subsidized by Extra Help), and pays no more than a \$3.20 prescription co-payment.

## **B. Services Covered by Medicaid**

New York’s Medicaid program offers a broad spectrum of services for individuals with disabilities, including Home and Community Based Services, clinical services, and other services such as day programs and respite. Examples of services include:

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<sup>3</sup> See the State Department of Health website: [http://www.health.state.ny.us/health\\_care/medicaid/program/update/savingsprogram/medicaresavingsprogram.htm](http://www.health.state.ny.us/health_care/medicaid/program/update/savingsprogram/medicaresavingsprogram.htm) for more information on the Medicare Savings Programs, including eligibility charts for New York.

<sup>4</sup> The Center for Medicare Rights, located in New York City, has a wealth of information on its website: <http://www.medicarerights.org>. More information on eligibility for the Medicare part D low-income subsidy program in their “Issues and Actions” section.

- Inpatient and outpatient hospital care
- Physician's services
- Mental health counseling
- Home health care, including personal care services and private duty nursing
- Physical therapy, occupational therapy, speech and language therapy
- Durable medical equipment
- Prescription drugs (keep in mind that individuals who are dually eligible for Medicaid and Medicare must obtain prescription drugs through the Medicare Part D program)

**A Medicaid Waiver May Extend the Scope of Available Services.** When approved by the federal Centers for Medicaid and Medicare Services (CMS), a Home and Community Based Services (HCBS) waiver can allow the state to provide expanded services to designated populations. For example, an HCBS waiver administered by the New York State Office of Mental Health (OMH) allows children and adolescents with mental illness to receive a range of services not otherwise available through the traditional Medicaid program. Through several HCBS waivers, administered by the New York State Office of Mental Retardation and Developmental Disabilities (OMRDD), developmentally disabled children and adults have access to targeted services not otherwise provided by the Medicaid program.

The New York State Office of Mental Health established the Personalized Recovery Oriented Services (PROS) program which is a comprehensive recovery program for adults with mental illness that integrates treatment, support and rehabilitation. Although not a Medicaid waiver program, individuals with mental illness receive a wide range of vocational services not otherwise available through the traditional Medicaid program.<sup>5</sup>

As we look at individual cases and determine whether the MBI-WPD is critical to support the individual's work efforts, the services funded through traditional Medicaid or an HCBS waiver will become critical to that analysis.

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<sup>5</sup> The "PROS Provider Handbook," available on the State Office of Mental Health website: <http://www.omh.state.ny.us/omhweb/pros/handbook.htm> is a good starting point for more information on the PROS program.

### III. The Historical Ways Individuals with Disabilities Qualify for Medicaid and Why the Medicaid Buy-In is Needed

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#### A. SSI and the 1619(b) Program

##### 1. SSI Recipients Qualify for Medicaid Automatically in New York State

New York is one of 39 states in which Medicaid eligibility is automatic for SSI recipients.<sup>6</sup> If an individual receives an SSI payment of at least \$1 per month, Medicaid eligibility follows automatically. In 11 states, known as section 209(b) states, Medicaid eligibility is not automatic for SSI recipients. These 209(b) states use their own Medicaid eligibility criteria which differ from SSI eligibility criteria: Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia.<sup>7</sup>

##### 2. Individuals Who Lose Eligibility for SSI Cash Benefits, through Work Activity, Can Retain Eligibility for Medicaid through the 1619(b) Program.

The 1619(b) Medicaid benefit has been a permanent part of the SSI program since 1987.<sup>8</sup> This work incentive allows an individual, who loses the right to a cash benefit through the receipt of wages, to continue automatic Medicaid eligibility in most cases. Two examples illustrate how this benefit can work:

**The Case of David.** *David is a New York State resident who lives alone and receives SSI benefits of \$761 per month (i.e., the 2009 living alone rate). He goes to work and earns \$1,800 gross per month or \$21,600 per year. Using SSI's formula for budgeting income, David's monthly countable income will be \$857.50 ( $\$1,800 - 20 - 65 = 1,715$  ( $2 = \$857.50$ ). Since this is more than the \$761 SSI rate, he will lose his SSI check. David should be able to retain Medicaid under 1619(b), since his annual income of \$21,600 is less than New York's threshold of eligibility (i.e., \$43,421 in 2009).<sup>9</sup>*

<sup>6</sup> 42 U.S.C. 1396a(a)(10)(A)(i)(I). Medicaid eligibility is also automatic for SSI recipients in the District of Columbia and the Northern Mariana Islands.

<sup>7</sup> 42 U.S.C. 1396a(f); Social Security Program Operations Manual Systems (POMS) SI 01715.020.

<sup>8</sup> 42 U.S.C. 1382h; 20 C.F.R. " 416.264 - .269; POMS SI 02302.010 C.

<sup>9</sup> POMS SI 02302.200 contains the Charted Threshold Amounts governing 1619(b) eligibility in each of the states, the District of Columbia, and the Northern Mariana Islands. For 2009, the general threshold for 1619(b) ranges from a low of \$24,293 in Alabama to a high of \$53,808 in Alaska.

**The Case of Christina.** *Christina resides with her two young children and receives \$570 in SSDI benefits and \$147 in SSI benefits. She goes to work part time and earns \$465 per month in gross wages. She will lose SSI benefits. This is because she has \$750 of monthly countable income, i.e., \$550 of her SSDI and \$200 ( $\$465 - 65 = \$400/2 = \$200$ ) of her wages, which will be counted against New York's 2009 SSI living with others rate of \$697. Under these facts, Christina should be able to continue Medicaid through 1619(b). This is because she lost her SSI due to wages and has annual income from wages (\$5,580) that is less than New York's 2009 1619(b) threshold for eligibility (\$43,421).*

In both of these cases the individual, having established both a loss of SSI due to wages and annual wages less than the state's 1619(b) threshold, would also have to meet additional 1619(b) criteria:

- continue to be blind or disabled;
- have been eligible for either an SSI payment or 1619(b) Medicaid in a prior month during the past 12 months;
- have both unearned income and resources that are within SSI limits; and
- meet a Medicaid use test (i.e., has used Medicaid during the last 12 months; expects to use Medicaid during the next 12 months; or would be unable to pay unexpected bills in the next 12 months without Medicaid).

Additional detail on how each of these criteria work in practice can be found in Social Security's policy manual.<sup>10</sup>

In some cases, a New Yorker with a disability can establish 1619(b) eligibility at income levels higher than \$43,421 per year under an "individualized threshold" of eligibility:

**The Case of Gregory.** *Gregory, an SSI beneficiary who is spinal cord injured, goes to work and earns \$48,000 per year. He lives in New York where the 1619(b) general threshold is \$43,421 per year in 2009. He loses SSI benefits and since his annual wages are more than \$43,421, he will not be eligible under the general 1619(b) threshold. However, he can keep Medicaid under an individualized threshold if his Medicaid costs are high enough. If we assume Medicaid would pay \$35,000 per year for medical expenses (most of this would be for home health care), that amount would be added to a "base amount" of \$19,284 and Gregory's "individualized" 1619(b) threshold for 2009 would be \$54,284 ( $\$19,284 + \$35,000$ ). Since his \$48,000 salary is below that figure, Gregory remains eligible for Medicaid.<sup>11</sup>*

<sup>10</sup> See POMS SI 02302.010 C.

<sup>11</sup> See POMS SI 02302.045 B.2. for a more detailed discussion of the individualized threshold requirements.

### 3. Section 1619(b) Medicaid is Only Available to Former SSI Recipients.

Section 1619(b) Medicaid is a powerful work incentive but will only be available to a New York resident (or resident of any of the other 49 states, District of Columbia, or the Northern Mariana Islands) if that individual has been on SSI in the past and lost the right to an SSI payment because of the budgeting of wages. An individual whose only income, other than wages, comes through Social Security, a private disability benefit payment, or some other form of unearned income will not be able to access 1619(b) Medicaid. The MBI-WPD program, discussed in Parts IV. and V, below, was created in part to meet the needs of individuals who have never received SSI and cannot access 1619(b) Medicaid.

## B. Medicaid's Medically Needy or Spend Down Program

### 1. How the Medically Needy Program Works

An individual who is not eligible for SSI or eligible for continued Medicaid through the section 1619(b) program, as discussed above, must apply separately for Medicaid under what is known as the medically needy program. A single individual with a disability will be eligible, under New York's 2009 Medicaid rules, if countable income is no more than \$767 per month and resources are no more than \$13,800.<sup>12</sup> This program is often referred to as the "Excess Income or spenddown program" because an individual whose countable income is more than \$767 will qualify only with a spenddown. The spenddown amount is determined by subtracting the net countable income from the Medicaid income level. This optional Medicaid program is available in approximately two thirds of the states.

***The Case of Rita Brown.** Rita, age 20, lives with her parents, has mild mental retardation, and receives \$837 in SSDI benefits (i.e., CDB or DAC benefits based on her disabled mother's earnings record). This is too much income to qualify for SSI (i.e., June's countable income is \$817 and the 2009 SSI living with others rate is \$697). After a \$20 deduction, it is also \$50 more than the \$767 income limit for Medicaid, meaning Rita will have a \$50 per month Medicaid spenddown.*

### 2. Medicaid's Income Disregards for Persons who are Working

New York's medically needy program rules for disregarding income are nearly identical to SSI's rules.<sup>13</sup> The first \$20 of unearned income is disregarded. The following amounts are disregarded from earned income:

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<sup>12</sup> Information on eligibility under New York's medically needy or spend down program is available on the Medicaid section of the State Department of Health website: [www.health.state.ny.us/health\\_care/medicaid](http://www.health.state.ny.us/health_care/medicaid) (follow the links for income and resource eligibility, then look at eligibility chart(s) for individuals who are aged, blind, or disabled).

<sup>13</sup> These income disregards will also apply in determining MBI-WPD eligibility.<sup>14</sup> 42 U.S.C. § 1383(a)(6); 20 C.F.R. § 416.1338. SSDI Benefits will continue under parallel provisions. 42 U.S.C. § 425(b); 20 C.F.R. § 404.316(c).

- the first \$65 (or \$85 if there is no unearned income);
- impairment related work expenses;
- one half of remaining earned income;
- blind work expenses, for persons who are legally blind
- in 2009, up to \$1,640 per calendar month, but not more than \$6,600 per year for a full time student under age 22; and
- any income set aside in a Plan for Achieving Self Support (PASS).<sup>14</sup>

**Rita Goes to Work.** *Rita, from the example immediately above, goes to work and earns \$465 gross per month. The Medicaid program will disregard the first \$65 which Rita earns and disregard an additional 50 percent, leaving her with \$200 in countable wages ( $(\$465 - 65) \div 2 = \$200$ ). Her countable income is now \$1,017 per month (\$817 unearned + \$200 earned), making her spend down \$250 per month. Thus, as her income went up by \$465, her spenddown increased by \$200.*

Rita's Medicaid spenddown will continue to increase by \$1 for each additional \$2 she earns. For example, if Rita's gross pay increased by \$500, from \$465 to \$965 per month, her countable income would increase by \$250 and her spenddown would increase by \$250 to \$500 per month.

### **3. The Medically Needy Program's Income Disregard Rules Create Only a Modest Work Incentive, Discouraging Many Individuals from Working.**

The income disregards appear, at first glance, to create very good incentives to work. In practice, however, they are not great incentives for individuals who would like to work at significant earnings levels.

In all cases, the spenddown rules provide that the individual who works will have the first \$65 of gross wages disregarded. The individual must then devote half of their remaining gross wages to an increased spenddown. The 50 percent of wages that are left will then be diminished through the various forms of payroll deductions, such as the 7.65 percent contribution for Social Security and Medicare taxes (FICA), state and federal taxes, and the New York State Disability Insurance tax. Those available wages will then be further diminished by any costs related to maintaining the work itself, such as costs for transportation, work-related clothing, and child care.

Rita's case illustrates the dilemma faced by individuals in the Medicaid spenddown program. She would not net \$250 per month by increasing her wages by \$500, as the income disregard rules might suggest to the casual observer. That \$250 would quickly be reduced by \$38 in FICA taxes and could be reduced by another \$48 if she incurs \$3.00 per day for bus fare for 16 days of work per month. Rita's net gain from working will be

<sup>14</sup> For a listing of all income disregards, see the State Department of Health's Medicaid regulations at 18 N.Y.C.R.R. ' 360 4.6(a).

reduced further if she needs to buy additional clothing that is appropriate for her job. Finally, as Rita's gross pay approaches the substantial gainful activity level (\$980 per month in 2009), she faces the prospect of no longer meeting the disability criteria and losing her right to retain Medicaid eligibility with a spenddown.

The Medicaid Buy-In was created by Congress as an optional program and implemented in New York as the MBI-WPD to support the work efforts of individuals like Rita. Parts IV and V, immediately below, explain how individuals like Rita can work and actually see their spenddowns disappear as they retain Medicaid while working. Rita can even work at wage levels well in excess of the \$980 substantial gainful activity level and continue Medicaid through the MBI-WPD program.

## **IV. New York's Medicaid Buy-In for Working People with Disabilities: An Overview**

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New York's MBI-WPD was created by the state legislature in 2002 and became effective on July 1, 2003.<sup>15</sup> New York is now one of more than 40 states with this important program. With the MBI-WPD just over six years old, the program has enrolled 11,709 New Yorkers with disabilities, with enrollment numbers significantly higher in Upstate New York than in the New York City region. Of those enrolled, 6,998 remain currently active, as of May 31, 2009, in the MBI-WPD program.

The MBI-WPD legislation recognized the fact that many individuals with severe disabilities cannot realistically consider working for significant wages if they do not have the ability to retain Medicaid after they start working. As described in part III, above, many of these individuals will not be eligible for the 1619(b) Medicaid program because they have never received SSI benefits. Nor will the medically needy program, with its Medicaid spenddown provisions, offer a realistic alternative for coverage if the individual is expecting to work for significant wages.

The MBI-WPD legislation also recognized that many working individuals with severe disabilities are unable to find employer-funded private insurance that provides coverage comparable to Medicaid. In fact, a growing trend is for fewer private employers to offer health insurance to its employees, with the number of workers covered by employer-funded insurance decreasing each year. Workers who are covered by an employer-funded plan are increasingly asked to pay a very large percentage of the premium for individual or family coverage.

New York's MBI-WPD consists of two eligibility groups: the Basic Coverage Group and the Medical Improvement Group. The New York State Department of Health, which oversees implementation of the MBI-WPD, has prepared extensive policies to describe both eligibility requirements and implementation procedures for this program.<sup>16</sup>

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<sup>15</sup> NY Social Services Law 366.1(a)(12) and (13).

<sup>16</sup> See DOH administrative directives, 03 OMM/ADM-4 (June 4, 2003) and 04 OMM/ADM-5 (July 20, 2004), and DOH General Information System policy, GIS 08 MA/004 (February 2, 2008).

## A. The MBI-WPD's "Basic Coverage Group"

To be eligible for the Basic Coverage Group, an individual must meet the Social Security Administration's (SSA) disability standard established for the SSI program, but have too much income and/or resources to qualify for SSI. In addition to the usual Medicaid rules, an individual seeking MBI-WPD coverage must meet the following.<sup>17</sup>

- Have a certification of disability as defined by SSA;
- Be at least 16 but not yet 65 years old;
- Be engaged in paid work (full-time or part-time);
- Have a total net income, after SSI-related income disregards, that is not more than 250 percent of the federal poverty level (in 2009, if the income is all earned income, this could be up to \$55,188 for an individual and \$73,884 for an eligible couple);
- Have non-exempt resources that do not exceed \$13,800 for an individual or \$20,100 for an eligible couple.

Importantly, there is no substantial gainful activity (SGA) rule for the MBI-WPD, i.e., an individual can earn more than \$980 per month in 2009 (\$1,640 per month for individuals who are legally blind) and still meet the disability requirement of the program. This distinguishes the MBI-WPD from the medically needy program, with its spenddown provisions. If a medically needy Medicaid beneficiary is engaged in SGA by earning more than \$980 (2009), the individual is given a nine-month trial work period, after which the individual ceases to be considered disabled under the medically needy category. Because the MBI-WPD does not consider SGA in the disability determination, the same individual would continue Medicaid coverage under the MBI-WPD program.

Part III.B, above, explains that the right to participate in the medically needy/spenddown program, as an individual with a disability, is subject to application of an SGA test. This means that an individual who earns more than \$980 gross per month faces a denial or termination of benefits. The MBI-WPD eligibility requirement makes it clear that no SGA rule will be applied in this program.

**The Case of Dana.** *Dana, age 52 and single, has multiple sclerosis and uses Medicaid to pay for very expensive medications, home health care services and expects to ask Medicaid to pay for a replacement power wheelchair. She just became eligible for SSDI of \$1,037 per month and must pay a spenddown of \$250 per month to obtain Medicaid. She graduates from a community college and is offered a job in a day treatment program, serving adults with mental disabilities with a starting pay of \$1,500 per month. Dana will become eligible for the MBI-WPD, without a spenddown, despite earnings that are well above the SGA level, so long as she meets the other eligibility criteria.*

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<sup>17</sup> 04 OMM/ADM-4, p. 4.

## 1. How to Apply for the MBI-WPD

Applicants for the MBI-WPD can use any of the following forms to apply for the program:

- LDSS-2921: “Application for Public Assistance/Medical Assistance/Food Stamps/Services”
- Medicaid Renewal (Recertification) form (for individuals already on the Medicaid program)
- Access New York Health Care Form DOH-4220

**Filing MBI-WPD Application: Strategy Tips:** The DOH has done extensive training of staff at the local Medicaid agencies over the past several years. Despite that training, an applying individual may want to be clear with the Local Department of Social Services staff about the programs for which he or she is applying.

A individual with a disability and his/her advocate will want to make sure Medicaid staff understand that the individual is applying for the Medicaid Buy In for Working People with Disabilities program. Since both the Medicare Savings Program and the Excess Income (spenddown) Program are often referred to as “buy-in” programs, applicants should make it clear they are applying for the MBI-WPD. Our suggestion is to use form LDSS-2921 and write in bold lettering at the top of the page:

**“Medicaid Buy-In for Working People with Disabilities Application”** Hopefully, this will make it much more likely that the application will be processed properly.

If approved, an MBI-WPD case is authorized for 12 months unless the recipient turns 65 prior to the end of 12 months.<sup>18</sup>

## 2. Proof of Disability

MBI-WPD applicants who are SSDI beneficiaries who do not also receive SSI have been determined disabled under Social Security criteria. These individuals can provide a recent SSDI award letter as satisfactory proof of disability for the MBI-WPD program.

Some applicants will not be in receipt of benefits from SSA. For example, if an individual is currently receiving long term disability benefits through a private insurance company, but not SSDI, he or she will need to establish disability as part of the application process. The Local Department of Social Services (LDSS) will assist the applicant in gathering information from medical providers to support this part of their application. In most counties the DSS worker will have the applicant sign medical release forms and medical information will be requested from the applicant’s doctors and other health care providers. The State Disability Review Team will conduct all disability determinations and all continuing disability reviews for the MBI-WPD program.<sup>19</sup>

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<sup>18</sup> 03 OMM/ADM-4, p. 6

<sup>19</sup> 03 OMM/ADM-4, pp. 4,5.

Some applicants are already receiving Medicaid benefits through the medically needy category based on their disability. In these cases, there will not be a need for DOH to perform a new disability determination.<sup>20</sup>

### 3. The Age Requirement

This is very straightforward. An individual either is or is not at least 16 but not yet 65 years of age.

MBI-WPD beneficiaries who are approaching age 65 will face a challenge. The individual who chooses to keep working after age 65 will have no choice but to return to the medically needy program, and incur a spenddown. The one positive thing here is that this individual will no longer face a substantial gainful activity rule as he or she will now be eligible under the federal category of “aged” rather than “disabled.”

### 4. The Work Requirement

The Department of Health’s policy states that an individual must be “engaged in work activity for which they receive financial compensation and document earned income.” Acceptable proof of work may include pay stubs, pay checks, a written statement from an employer or, if those items are not available, an income tax return, W-2 form, or records of bank deposits.<sup>21</sup> If these are not available a written statement from the employer stating the hours worked and wages paid may be accepted as proof of work. DOH policy comments specifically on the practice involving some sheltered workshop employees who are described as “tax blocked,” i.e., they get pay stubs with details about their earnings with no taxes taken out. In these instances the detailed statement of earnings from the employer or current pay stubs is considered acceptable proof of work.<sup>22</sup>

What if an individual is self-employed? The self-employed person may be required by the Internal Revenue Service to file quarterly paperwork and payments for estimated taxes. Proof of tax payment in this manner will be enough to satisfy the paid work requirement. DOH policy explains that MBI-WPD applicants who are self-employed in their own business are not required to show a profit but must submit documentation as detailed in the DOH’s Medicaid Reference Guide.<sup>23</sup>

What if the self-employed individual is not paying estimated taxes? A self-employed individual may present a worksheet of hours worked, for whom, and income earned from each client as acceptable proof of the work requirement. We recommend that the individual regularly file the quarterly estimated tax paperwork and payments with the IRS

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<sup>20</sup> 03 OMM/ADM-4, p.6.

<sup>21</sup> 03 OMM/ADM-4, p. 7.

<sup>22</sup> 04 OMM/ADM-4, p. 6.

<sup>23</sup> 04 OMM/ADM-4, p. 6; Medical Assistance Reference Guide, Self Employment Business Income 075-076.

even if it is not clear that the business will generate enough profit by the end of the year to owe taxes. At a minimum, this would ensure that the individual is up to date on FICA payments which would be 15.3 percent or double what an employee pays, because the self-employed person must also pay the employer's share of these taxes.

How many work hours per month are needed to meet the paid work requirement? For the Basic Coverage Group, there is no minimum number of hours required. So long as the individual documents payment for the work, the requirement is met.

There has been some confusion in the past about whether MBI-WPD beneficiaries must work 40 hours per month to qualify for the program. This is not a requirement for the Basic Coverage Group, but applies to the Medical Improvement Group which is discussed at part IV.B, below.

## 5. Meeting the MBI-WPD Income and Resource Requirements, Premium Payments

**The income test.** To be eligible for the MBI-WPD, countable income can be no more than 250 percent of the federal poverty level (FPL). If countable income is more than 250 percent of FPL, the individual will not be eligible for the MBI-WPD even if income is only slightly above the limit. Monthly "countable income" for a household of one must be \$2,257 or less (i.e., up to 250 percent of FPL). Since Medicaid will look at income after the deduction for all SSI-related income disregards, an individual with wages and no other income could have gross income up to \$4,599 per month (\$55,188 per year) and still be eligible for the MBI-WPD.

The income disregards are the same as those used in the medically needy/spenddown program (see Part III.B.2). The key income disregards are as follows:

*Unearned income:* \$20 general income disregard.

*Earned income:* \$65 plus any unused part of the \$20 disregard; impairment related work expenses; an additional 50 percent of earned income; blind work expenses for individuals who are legally blind; and any money set aside in a Plan for Achieving Self Support (PASS) that is approved by the Local Department of Social Services.<sup>24</sup>

**The resource test.** When the MBI-WPD was first implemented in 2003, the non-exempt resource limit was set at \$10,000. In 2008, the resource limit for all Medicaid programs, including the MBI-WPD, was raised to more than \$13,000. The resource limit currently stands at \$13,800 for 2009.

The resource disregards that apply in the medically needy/spenddown program also apply to the MBI-WPD. The following are some of the most important resource disregards (i.e., resources that are excluded or do not count):

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<sup>24</sup> For a listing of all income disregards, see the State Department of Health's Medicaid regulations at 18 N.Y.C.R.R. 360 4.6(a).

- an automobile of any value;
- a residential home;
- a \$1,500 burial reserve account;
- pension funds belonging to an ineligible or non-applying legally responsible relative which are held in an individual retirement account or in a work-related pension plan;
- resources contained in a PASS that has been approved by the LDSS; and
- for the month of receipt and the next month, refunds or advance payments of the Earned Income Tax Credit.<sup>25</sup>

**Monthly premiums.** The original MBI-WPD legislation contained a complicated formula for determining monthly premiums. Legislation from 2007 amended the Social Services law to simplify the premium structure and provide a flat fee. A moratorium on premium collection will exist until a federally approved premium structure and system for premium collection is possible.

## **B. The MBI-WPD’s “Medical Improvement Group”<sup>26</sup>**

Basic Coverage Group MBI-WPD recipients, who on continuing disability review are found to be medically improved to the point where they no longer meet the SSA disability requirements, but retain a severe impairment, may be continued on the MBI-WPD program if the State Disability Review Team finds that they meet Medical Improvement Group requirements. As of May 31, 2009 there were 65 Medical Improvement Group enrollees statewide.

In addition to the age (i.e., at least 16 but not yet 65), income and resource requirements for the Basic Coverage Group, eligibility requirements for the Medical Improvement Group include:

- First eligible under Basic Coverage Group: The individual must be a member of the Basic Coverage Group who loses eligibility due to medical improvement.
- Continuing severe impairment: The individual must still have “a severe medically determinable impairment.”
- At least 40 hours of work per month: The individual must work at least 40 hours per month and earn at least the federal minimum wage (\$7.25 per hour effective July 24, 2009).

<sup>25</sup> For a listing of all resource disregards, see the State Department of Health’s Medicaid regulations at 18 N.Y.C.R.R. 360 4.6(b).

<sup>26</sup> 04 OMM/ADM-5, p. 3-4.

### C. Work Stoppage and Grace Periods<sup>27</sup>

Many individuals with disabilities periodically move into and out of employment. Sometimes this loss of employment is because a job was temporary or the job was a grant-funded position in which an agency's grant was not renewed. Other times the job loss may be due to a flare up with the individual's medical condition. Often, the individual is able to return to work or find another job within a few months. There are two types of grace periods which may allow an individual to continue MBI-WPD eligibility, for up to six months, after he or she stops working.

**Change in Medical Condition.** A grace period of up to six months will be allowed if, for medical reasons, the recipient is unable to continue working. Medical verification will be required.

**Job Loss (through no fault of participant).** A grace period of up to six months will be allowed if, through no fault of the recipient, a job loss occurs. This could include a lay off. The local DSS or HRA must verify that the individual is reasonably expected to return to work as it is a temporary layoff, or that the recipient is actively seeking new employment.

An MBI-WPD recipient must apply to the local DSS or HRA for a grace period in the event he or she is no longer working. The LDSS or HRA is responsible for grace period determinations.

### D. The Relationship Between the MBI-WPD and Medicare Part D's Low-Income Subsidy

Many of the individuals who access the Medicaid work incentives, i.e., section 1619(b) and the MBI-WPD, will also be eligible for Medicare. This is because the individuals are either current SSDI beneficiaries or former SSDI beneficiaries, who lost benefits due to earnings above the SGA level and now receive extended Medicare benefits. Since these individuals are now "dually eligible" for Medicaid and Medicare, their prescription drug coverage must now come from Medicare Part D rather than through Medicaid.

There are two reasons to keep Medicaid through 1619(b) or the MBI-WPD even when Medicare Part D must now be used to pay for medication:

- first, Medicaid can still pay for every other service that the program covers, including many that are not covered through Medicare;
- and second, keeping Medicaid, even if the benefit might not be used, guarantees dual eligibility and automatic eligibility for the full low income Part D subsidy, saving up to \$4,000 per year or more in deductibles, co-payments, and premium payments.

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<sup>27</sup> 04 OMM/ADM-5, p. 6.

## E. The Right to Appeal Any Adverse Decision Involving the MBI-WPD Program

Medicaid policy requires that an applicant or recipient for any type of Medicaid service or eligibility category, including the MBI-WPD, has the right to an administrative fair hearing any time an adverse decision is made regarding their eligibility.<sup>28</sup> The adverse decision could involve any of the elements of eligibility described above (e.g., the disability or paid work requirement, income and/or resource limits, or the right to a grace period). When the local DSS or HRA makes an adverse decision regarding the MBI-WPD, they must send a written notice to the applicant or recipient advising him or her of the reason for the decision and the right to request a hearing within 60 days. If the notice terminates eligibility for the MBI-WPD, it must explain that eligibility can continue pending a final hearing decision if the individual requests the hearing within 10 days and requests aid continuing.

An individual has a right to be represented at the hearing by an attorney, paralegal, or advocate. Free legal representation may be available through Protection and Advocacy agencies, a Legal Services or Legal Aid office, some law school clinics, and some pro bono programs.

## V. Using Examples to Illustrate Key MBI-WPD Eligibility Issues

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### A. The Case of Rita Brown

Rita's case is summarized in Part III.C, above. Let us repeat her basic situation here:

Rita, age 20, lives with her parents, has mild mental retardation, and receives \$837 in SSDI benefits (i.e., CDB or DAC benefits based on her disabled mother's earnings record). This is too much income to qualify for SSI (i.e., June's countable income is \$817 and the 2009 SSI living with others rate is \$697). After a \$20 deduction, it is also \$50 more than the \$767 income limit for Medicaid, meaning Rita will have a \$50 per month Medicaid spenddown.

Rita goes to work and earns \$465 gross per month. The Medicaid program will disregard the first \$65 which Rita earns and disregard an additional 50 percent, leaving her with \$200 in countable wages ( $\$465 - 65 = 400$ ) / 2 = \$200). Her countable income is now \$1,017 per month (\$817 unearned + \$200 earned), making her spenddown \$250 per month. Thus, as her income went up by \$465, her spend down increased by \$200. Is Rita eligible for the MBI-WPD?

<sup>28</sup> The DOH fair hearing regulations governing Medicaid appeals are found at 18 N.Y.C.R.R. Part 358.

If Rita applies for the MBI-WPD, now that she meets the paid work requirement, she should be eligible with no premium due. Here is how Rita's countable income is determined:

<b>Step 1</b>	Unearned	\$837
	General income disregard	– 20
	Counted unearned income	\$817
<b>Step 2</b>	Earned income	\$465
	Earned income exclusion	– 65
		\$400
	Additional 50 % exclusion	– \$200
	Counted earned income	\$200
<b>Step 3</b>	Counted unearned income	\$817
	Counted earned income	+ \$200
	Total counted income	\$1,017

Since \$1,017 is below the 2009 monthly figure for 250 percent of the federal poverty level (FPL), i.e., \$2,257, she will be eligible for the MBI-WPD if she meets all other eligibility criteria. Since her countable income is below 150 percent of FPL, i.e., \$1,354 per month in 2009, she will not be assessed a monthly premium even when premiums become a part of the program.

Rita should be referred for benefits advisement services, through a Work Incentives Planning and Assistance (WIPA) project or through another agency that offers that service. The benefits adviser could, for example, explain how to apply for the MBI-WPD, explain the SSDI work incentives including the trial work period, and explore the potential use of SSI's Plan for Achieving Self Support.<sup>29</sup>

## B. The Case of Carolyn Rice

Carolyn Rice is 38 years old and worked as a legal secretary throughout most of her 20s. In her late 20s, Carolyn experienced severe depression, eventually stopped working, and currently receives a \$957 monthly Social Security Disability Insurance (SSDI) benefit. Carolyn receives Medicare Parts A, B and D. Medicare Part D pays for her two prescription drugs and Part B pays 80 percent of the cost of her quarterly psychiatrist visits. Carolyn also receives Medicaid, but must pay a \$160 per month spend down to qualify for coverage. Under an arrangement with her county Medicaid agency, Carolyn pays the \$160 directly to the Medicaid agency to guarantee her coverage. Medicaid pays for Carolyn's

<sup>29</sup> The PASS is explained in great detail in the policy-to-practice brief, Plan for Achieving Self Support: An SSI Work Incentive and Approach to Self-Directing Vocational Rehabilitation to Support a Range of Work Goals, available on the New York Makes Work Pay website: [www.nymakesworkpay.org](http://www.nymakesworkpay.org).

weekly mental health counseling sessions, pays the co-payments on her psychiatrist visits, and pays for a taxi service to take her to her appointments since her rural community does not have public transportation.

Carolyn returned to college a few years ago, with the support of New York’s Office of Vocational and Educational Services to Individuals with Disabilities (VESID), and is about to graduate with a bachelor’s degree in paralegal studies. Carolyn plans to work, part-time at first, but fears the loss of cash benefits, Medicare, and Medicaid. In fact, she is willing to sacrifice the cash benefits if she successfully transitions to full-time work, but cannot afford to lose her cash benefits right away. Nor can she afford to lose the Medicare and Medicaid benefits unless she finds a position with superior private health insurance benefits. Is Carolyn eligible for the MBI-WPD at this time?

Based on the facts presented, Carolyn is not working. Therefore, she fails to meet a critical element of eligibility and cannot be approved for the MBI-WPD.

Let’s assume that during her last semester of college, Carolyn obtains a job tutoring another student. She makes \$300 gross each month for working 30 hours at \$10 per hour. With this change in facts, she now meets the paid work requirement and should be eligible for the MBI-WPD. Here is how Carolyn’s countable income is determined:

<b>Step 1</b>	Unearned	\$957.00
	General income disregard	– <u>20.00</u>
	Counted unearned income	\$937.00
<b>Step 2</b>	Earned income	\$300.00
	Earned income exclusion	– <u>65.00</u>
		\$235.00
	Additional 50 % exclusion	– <u>\$117.50</u>
	Counted earned income	\$117.50
<b>Step 3</b>	Counted unearned income	\$937.00
	Counted earned income	+ <u>\$117.50</u>
	Total counted income	\$1,054.50

Since \$1,054.50 is below the 2009 monthly figure for 250 percent of the federal poverty level (FPL), i.e., \$2,257, she will be eligible for the MBI-WPD if she meets all other eligibility criteria. Since her countable income is below 150 percent of FPL, i.e., \$1,354 per month in 2009, she will not face a monthly premium.

Carolyn should also be referred for benefits advisement services. A benefits adviser could have early on identified the need for some paid work in order to qualify for the MBI-WPD. The benefits adviser could also: explain the potential use of the MBI-WPD’s grace period provisions if Carolyn does not find other work right away when she graduates and the tutor job ends; explain what may happen with her SSDI as she enters the work force

following college and the potential impact of the trial work period and extended period of eligibility provisions; and explain her ability to qualify for the Medicare Part D full low-income subsidy program (with the potential for thousands of dollars of savings), because MBI-WPD eligibility will make her dually eligible for Medicaid and Medicare.

The benefits adviser can also be expected to explain Carolyn's potential use of a PASS. The facts describe Carolyn as living in a rural area without public transportation. She could use SSI's PASS to save money toward the purchase of a vehicle, enabling her to travel to many potential job sites.

### **C. The Case of David Edwards**

David Edwards is a 42 year old man, who uses a power wheelchair due to his multiple sclerosis diagnosis. David worked throughout his 20s, but did not work enough after age 30 to qualify for SSDI benefits (i.e., he has insufficient Social Security "credits" to meet the insured status requirements needed to qualify for SSDI). David is divorced and receives \$1,200 per month in alimony benefits. He pays a spend down of \$413 per month to obtain Medicaid coverage. Medicaid covers very expensive prescription drugs, home health care services of more than 25 hours per week, pays for his neurologist, and will pay for a replacement power wheelchair when he needs one. Because David is not eligible for SSDI (and never has been), he is not eligible for Medicare.

David has worked for a local not-for-profit agency, Friends of the Needy, as a volunteer receptionist and data entry specialist. With accommodations related to his disability, he has been able to perform that work quite efficiently on a 5 to 10 hour per week schedule. In fact, Friends of the Needy has just received a new grant and would like to start paying David to perform this job as a 20 hour per week employee. At \$10 per hour, his gross pay will be approximately \$965 per month. David is concerned about the potential loss of Medicaid benefits if he takes this job, since his prescription drugs and home health care alone would cost him more than \$2,000 per month if he paid for them. At the very least, a friend has warned that his spend down would increase dramatically and that it might not be worth it to accept the paid job. Is David eligible for the MBI-WPD?

David seeks out the assistance of a benefits adviser to help him sort through the issues to determine if it is in his interest to accept this job. The benefits adviser explains that he would qualify for the MBI-WPD and that this would eliminate his \$413 spend down. At worst, in the future, David might have to pay a monthly premium to retain Medicaid while working. Here is how David's countable income is determined:

<b>Step 1</b>	Unearned	\$1,200
	General income disregard	— <u>20</u>
	Counted unearned income	\$1,180
<b>Step 2</b>	Earned income	\$965
	Earned income exclusion	— <u>65</u>
		\$900
	Additional 50 % exclusion	— <u>\$450</u>
	Counted earned income	\$450
<b>Step 3</b>	Counted unearned income	\$1,180
	Counted earned income	+ <u>\$200</u>
	Total counted income	\$1,017

Since \$1,630 is below the 2009 monthly figure for 250 percent of the federal poverty level (FPL), i.e., \$2,257, David will be eligible for the MBI-WPD if he meets all other eligibility criteria. Since his countable income is above 150 percent of FPL, i.e., \$1,354 per month in 2009, he will have a monthly premium when premiums become a part of the program.

In this case, the benefits adviser would not be needed to counsel David about the impact of his planned work on cash benefits, as he receives neither SSI or SSDI. The benefits adviser will be expected to counsel David on SSI's PASS and the potential of his setting aside all or part of his alimony payments to support a longer term goal, thereby making him eligible for an SSI check.

NOTE: This is a case in which David's benefits adviser must come from outside the Social Security-funded WIPA network. To qualify for WIPA services, David would either have to be an SSDI or SSI cash beneficiary, or a former beneficiary who continues to receive Medicaid through 1619(b) or Medicare through the Extended Medicare provisions.

## VI. Conclusion

The Medicaid Buy-In for Working People with Disabilities program addresses the health care needs of many New Yorkers who want to work despite severe disabilities. Combined with the continued availability of section 1619(b) Medicaid, there will now be a means for ensuring continued Medicaid eligibility for nearly all individuals with disabilities who are working. Readers of this policy-to-practice brief can play a major role in getting out the word about this worthwhile work incentive.

[www.NYMakesWorkPay.org](http://www.NYMakesWorkPay.org)

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#### **Partnering Organizations**

New York State Office Of Mental Health  
Employment and Disability Institute (Cornell University)  
Burton Blatt Institute (Syracuse University)

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