S T A T E O F N E W Y O R K

2013

2011-2012 Regular Sessions

I N A S S E M B L Y

January 12, 2011

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to medical assistance for needy persons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph 1 of paragraph (b) of subdivision 2 of section 366 of the social services law, as amended by chapter 638 of the laws of 1993 and as designated by chapter 170 of the laws of 1994, is amended to read as follows:

(1) In establishing standards for determining eligibility for and amount of such assistance, the department shall take into account only such income and resources, in accordance with federal requirements, as are available to the applicant or recipient and as would not be required to be disregarded or set aside for future needs, and there shall be a reasonable evaluation of any such income or resources. The department shall not consider the availability of an option for an accelerated payment of death benefits or special surrender value pursuant to paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law, or an option to enter into a viatical settlement pursuant to the provisions of article seventy-eight of the insurance law, as an available resource in determining eligibility for an amount of such assistance, provided, however, that the payment of such benefits shall be considered in determining eligibility for and amount of such assistance. THE DEPARTMENT SHALL NOT CONSIDER THE AVAILABILITY OF AN INDIVIDUAL'S ELECTIVE SHARE OF THE INDIVIDUAL'S DECEASED SPOUSE'S ESTATE, AS AN AVAILABLE RESOURCE IN DETERMINING ELIGIBILITY, PROVIDED: (I) THE INDIVIDUAL HAS EXECUTED AN EFFECTIVE WAIVER OF THE RIGHT OF ELECTION OF SUCH SHARE, IN ACCORDANCE WITH PARAGRAPH (E) OF SECTION 5-1.1-A OF THE ESTATES, POWERS AND TRUSTS LAW; (II) THE WAIVER CAN NOT BE AMENDED OR REVOKED BY THE INDIVIDUAL, INCLUDING, WITHOUT LIMITATION,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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WAIVERS EXECUTED WITH CONSIDERATION; AND (III) THE INDIVIDUAL'S ELECTIVE SHARE IS NOT OTHERWISE CONSIDERED AVAILABLE, IN ACCORDANCE WITH SUBDIVISION FIVE OF THIS SECTION. There shall not be taken into consideration the financial responsibility of any individual for any applicant or recipient of assistance under this title unless such applicant or recipient is such individual's spouse or such individual's child who is under twenty-one years of age. In determining the eligibility of a child who is categorically eligible as blind or disabled, as determined under regulations prescribed by the social security act for medical assistance, the income and resources of parents or spouses of parents are not considered available to that child if she/he does not regularly share the common household even if the child returns to the common household for periodic visits. In the application of standards of eligibility with respect to income, costs incurred for medical care, whether in the form of insurance premiums or otherwise, shall be taken into account. Any person who is eligible for, or reasonably appears to meet the criteria of eligibility for, benefits under title XVIII of the federal social security act shall be required to apply for and fully utilize such benefits in accordance with this chapter.

S 2. Paragraph (f) of subdivision 5 of section 366 of the social services law, as relettered by section 26-a of part C of chapter 109 of the laws of 2006, is relettered paragraph (g) and a new paragraph (f) is added to read as follows:

(F) (1) AVAILABLE ASSETS AS DEFINED IN CLAUSE (I) OF SUBPARAGRAPH ONE OF PARAGRAPH (D) OF THIS SUBDIVISION SHALL INCLUDE THE VALUE OF THE INDIVIDUAL'S ELECTIVE SHARE OF THE INDIVIDUAL'S DECEASED SPOUSE'S ESTATE, EXCEPT WHERE:

(I) THE INDIVIDUAL HAS EXECUTED AN EFFECTIVE WAIVER OF THE INDIVIDUAL'S DECEASED SPOUSE'S ESTATE, IN ACCORDANCE WITH PARAGRAPH (E) OF SECTION 5-1.1-A OF THE ESTATES, POWERS AND TRUSTS LAW, AT LEAST THIRTY-SIX MONTHS BEFORE THE INDIVIDUAL APPLIED FOR MEDICAID; OR

(II) THE INDIVIDUAL EXECUTED A WAIVER LESS THAN THIRTY-SIX MONTHS BEFORE THE INDIVIDUAL APPLIED FOR MEDICAID, AND THE PERIOD OF INELIGIBILITY HAS EXPIRED.

(2) THE PERIOD OF INELIGIBILITY SHALL BE COMPUTED BY DETERMINING THE VALUE OF THE INDIVIDUAL'S ELECTIVE SHARE AS OF THE DATE OF THE INDIVIDUAL'S SPOUSE'S DEATH, DIVIDED BY THE AVERAGE COST OF NURSING FACILITY SERVICES TO A PRIVATE PATIENT, AS DETERMINED BY THE COMMISSIONER.

(3) NO PERIOD OF INELIGIBILITY MAY BE CALCULATED UNTIL THE DEATH OF THE INDIVIDUAL'S SPOUSE, AND SUCH PERIOD SHALL COMMENCE AS OF THE DATE THE WAIVER IS SIGNED.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.