

## A MARRIAGE (OR, AT LEAST, A CIVIL UNION) OF GRANDFATHERS:

### THE PICKLE AMENDMENT & §1619(B)

In most states, a person who gets SSI is automatically entitled to Medicaid. If the person loses SSI due to excess income, he typically loses Medicaid at the same time. Federal Medicaid law includes two separate grandfather clauses that help former SSI beneficiaries qualify for Medicaid coverage. These provisions deem the person to still be on SSI, and therefore eligible for Medicaid, even though he no longer gets an SSI check:

- The Pickle Amendment – for purposes of calculating Medicaid eligibility, this amendment discounts the amount of the individual's current Social Security income by all cost-of-living adjustments (COLAs) that have taken effect since he lost SSI. (See accompanying chart) If the discount brings the person's total income below the current SSI threshold, he qualifies for Medicaid.
- Section 1619(b) of the Social Security Act [42 U.S.C. §1382h(b)] – creates a work incentive by allowing individuals with severe impairments to receive Medicaid as if they were still SSI-eligible, by disregarding their earned income.

Is it possible to marry these two grandfather clauses, so that an individual can benefit from both? In other words, if a person with a disability who is Pickle eligible returns to work, can he do so without losing Medicaid coverage? Can a former SSI beneficiary qualify for Medicaid by disregarding *both* COLAs *and* earnings?

The answer is “Yes”. This is confirmed by Social Security POMS SI 01715.015: Special Groups of Former SSI Recipients:

Under ... the “Pickle Amendment,” title II beneficiaries who would continue to receive SSI/SSP payments (or would continue to be eligible for benefits under section 1619(b)) but for their title II COLAs continue to be considered SSI recipients for Medicaid purposes. If an individual's other income would

not have precluded continuing SSI payments (or deemed payments under section 1619) without the title II COLAs, the State must continue to consider the individual to be an SSI recipient for Medicaid purposes.

Here is an example:

Joe received SSI and SSDI from August to November 1982. In November 1982 his SSDI increased and made him ineligible for SSI. His Pickle deduction in 2007 is .489. (See chart)

His current SSDI check is \$818 He has no other unearned income. Pickle reduces his countable SSDI to \$400/month (\$818 x .489). Since \$400 is less than the current SSI income limit (including the standard \$20 disregard) of \$643, the Pickle Amendments makes him eligible for Medicaid.

But Joe is working and has earned income of \$658/month. The state Medicaid agency says that his earnings take him over the \$643 limit, and the agency denies him Medicaid coverage.

The state is mistaken. Since Joe's unearned income (with Pickle deduction and general income exclusion) is below \$643, only his earned income that pushes him over the limit. When it is earned income that pushes a person over the limit, he qualifies for 1619(b) (assuming that he meets all other 1619b requirements). So, the combination of Pickle and 1619(b) makes Joe eligible for Medicaid.

Advocates should ensure that their states are applying Pickle and 1619(b) as required. Thanks to Molly Sullivan of the Oregon Advocacy Center for identifying this problem. For more information on implementing the federal policy in your state or in applying it to your client's case, contact Molly at: [msullivan@oradvocacy.org](mailto:msullivan@oradvocacy.org); Steve Hitov at the National Health Law Program: [hitov@healthlaw.org](mailto:hitov@healthlaw.org); or Gene Coffey at National Senior Citizens Law Center: [GCoffey@nslc.org](mailto:GCoffey@nslc.org).