



## Ohio Administrative Code

### Rule 5101:6-7-02 State hearings: standards for revising community spouse income and resource allowances at a state hearing.

Effective: March 1, 2019

---

#### (A) Purpose

This rule sets forth the standards to be applied in a state hearing requested for the purpose of revising a community spouse's minimum monthly maintenance needs allowance in accordance with rule 5160:1-6-07 of the Administrative Code, or the community spouse resource allowance in accordance with rule 5160:1-6-04 of the Administrative Code. In so doing, this rule incorporates by reference the definitions set forth in those rules and the standards for evaluating income and resources. An appellant may request a single hearing for revising both the minimum monthly maintenance needs allowance and the community spouse resource allowance, which the hearing officer may continue to successive dates as necessary to determine both issues.

#### (B) Minimum monthly maintenance needs allowance

(1) If either the community spouse or the institutionalized spouse establishes at a state hearing that the community spouse needs additional income above the level otherwise provided by the existing minimum monthly maintenance needs allowance, the hearing decision shall substitute the allowance with an amount adequate to provide such additional income to the community spouse as is necessary, notwithstanding the minimum monthly maintenance needs allowance cap set forth in rule 5160:1-6-07 of the Administrative Code.

(2) The standard for granting such a revision in the minimum monthly maintenance needs allowance is that the community spouse's need for additional income is due to exceptional circumstances that have resulted in significant financial duress. Exceptional circumstances are those that are more rare than occur in everyday life, such as acts of God or accidents and illnesses that result in personal harm or property damage. Significant financial duress is the result of an exceptional circumstance only when the community spouse is faced with a financial obligation that exceeds the spouse's ability to also pay reasonable living expenses from income or resources that exceed the community spouse resource allowance.



(3) A substituted minimum monthly maintenance needs allowance may not exceed the institutionalized spouse's income minus personal needs allowance. It shall be tailored to the circumstance of significant financial duress and may be time-limited as appropriate to the circumstance.

(C) Community spouse resource allowance

(1) An existing community spouse resource allowance may not be revised in a hearing decision if the income of the institutionalized spouse, minus the personal needs allowance, is adequate to raise the income of the community spouse to the minimum monthly maintenance needs allowance. The minimum monthly maintenance needs allowance standard periodically increases, which may create a need for additional income to be diverted from the institutionalized spouse to the community spouse. An additional allocation of resources shall not be made to the community spouse when the minimum monthly maintenance needs allowance standard increases unless the institutionalized spouse's income, minus personal needs allowance, is inadequate to raise the income of the community spouse to the minimum monthly maintenance needs allowance.

(2) If either the community spouse or the institutionalized spouse establishes at a state hearing that the existing community spouse resource allowance, in relation to the amount of income generated for the community spouse by the allowance, is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance in effect at the time of the hearing, the hearing decision shall substitute for the allowance an amount adequate to provide such a minimum monthly maintenance needs allowance.

(3) Procedure for determining a substituted community spouse resource allowance

(a) The substitute community spouse resource allowance needed to meet the deficit between the minimum monthly maintenance needs allowance and income available to the community spouse shall be based on the cost of a single premium lifetime immediate monthly payment annuity (SPLIMPA) with monthly payments equal to the deficit, excluding income currently generated by both spouse's countable resources. Either spouse shall produce at the hearing three written SPLIMPA cost estimates from three different commercial sources that are each designed to produce monthly payments as



closely equal to the deficit as is practicable. Upon request the local agency shall offer assistance obtaining the estimates. Estimates of an annuity that is a delayed payment annuity, a time-period certain, an annuity with a death benefit, or an annuity that guarantees return of the principle is not a SPLIMPA and cannot be used to determine the amount of additional resources needed.

(b) The amounts of the three estimates shall be averaged to determine the average cost of a SPLIMPA. The average of the three SPLIMPA estimates must show the cost of a SPLIMPA that generates income equal to the difference between the minimum monthly maintenance needs allowance, and the total income of the community spouse and institutionalized spouse less the personal needs allowance. If the averaged cost of the SPLIMPA is less than the current community spouse resource allowance, the allowance shall not be changed by the hearing decision. If the averaged cost of the SPLIMPA is more than the current community spouse resource allowance, the allowance shall be substituted with the averaged cost.

(c) Neither the community spouse nor the institutionalized spouse shall be required to purchase a SPLIMPA as a result of the application of this rule at a state hearing. However, if a substituted community spouse resource allowance has been granted through a state hearing that applied this rule, the income that was projected by the approved SPLIMPA average will be deemed to the community spouse whenever a determination or redetermination of the monthly income allowance is computed.

(D) An appeal requested in accordance with this rule for a revision in a monthly minimum maintenance needs allowance or community spouse resource allowance may be overruled if a community spouse or institutionalized spouse has not made a reasonable effort to qualify for any available source of income or resources that would make the revision unnecessary in whole or in part.