



# FITZWATER LAW

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## Elder Law Group

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## How can I qualify for Medicaid if my income is too high? What is an Income Cap Trust?

### What Is An Income Cap Trust?

An Income Cap Trust is a special type of trust designed to meet the income limit for Medicaid eligibility. If an applicant has more than 300% of the SSI standard in monthly income, he or she does not automatically qualify for Medicaid benefits for long-term care. The income limit is currently \$2,829 per month (2024 figure). An applicant with gross monthly income above that amount needs an Income Cap Trust in order to receive Medicaid for long-term care.

Once an applicant qualifies for Medicaid, thus becoming a Medicaid recipient, all of the recipient's income is deposited monthly into a new account and disbursed according to a Medicaid approved budget. At the recipient's death, the remaining money in the account is paid to the State of Oregon.

### Do I Need An Income Cap Trust?

An Income Cap Trust is needed if the applicant's gross monthly income exceeds \$2,829 per month. Because certain deductions, such as taxes and health insurance, are withheld from the recipient's gross monthly income before the income check is written or directly deposited, the recipient may not actually receive \$2,829 per month. Keep in mind, therefore, that it is the amount of gross monthly income, the income before deductions, that must be below \$2,829 in order to avoid the need for an Income Cap Trust.

### What Can Be Paid From The Income Cap Trust?

The trustee may make the following types of payments from the Income Cap Trust:

1. **Personal Needs Allowance/Maintenance Standard:**
  - a. For residents in nursing homes, the allowance is \$77.14 per month.
  - b. For residents in an assisted living facility, foster home, or in their own home, the allowance is \$210 per month. In addition, recipients in these types of living situations must pay a minimum room and board amount for their care, which is currently \$733 per month. This amount is raised each year, in the summer.
2. **Administrative Costs:** The amount of \$50 per month is available to pay for costs associated with administering the Income Cap Trust. These costs can include bank fees, check charges, postage, mileage, etc. The trustee may pay himself or herself the balance of the \$50 as a fee for working on the trust. Therefore, a total of \$50 per month is available for all of the monthly expenses of the Income Cap Trust, including the trustee fee.



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### 3. **Community Spouse Allowance:**

- a. A special formula is calculated to determine how much of the Medicaid recipient's income may be paid as a monthly allowance to the spouse who is not on Medicaid (the "Community Spouse").
- b. In some limited circumstances, a court order may be obtained to increase the monthly allowance to the Community Spouse.

### 4. **Health Insurance Premiums:**

- a. Deductions for health insurance for the Medicaid recipient and his or her spouse may be paid from the Income Cap Trust.
- b. These premiums may be deducted from a pension, but they may also be paid by check – each situation is different, but all premiums are payable from the Income Cap Trust.

### 5. **Burial Plan:** The cost of a pre-paid burial plan may be paid from the Income Cap Trust, up to a maximum cost of \$5,000.

### 6. **Other Incurred Medical Expenses:**

- a. If the Medicaid recipient has medical bills that were incurred in the three months prior to the approval of the application, the portion of the bill not covered by insurance can be paid from the Income Cap Trust.
- b. Also, any medical cost or medical equipment costs that become necessary and recommended by a doctor when the recipient is on Medicaid may be paid from the Income Cap Trust, provided the Medicaid caseworker approves the expense.

### 7. **Other Reserves:** There may be other appropriate deductions, depending on the case. A lawyer well trained in Income Cap Trusts will be able to identify those deductions.

### 8. **Patient Liability:** The money left after making the payments set forth in items 1 through 7 above is the amount to be paid to the care facility. Any remaining amounts owed to the care facility for charges relating to recipient's care are paid by Medicaid.

## How Does An Income Cap Trust Work?

The Income Cap Trust is created and managed by a trustee who deposits the Medicaid recipient's income into a new bank account established in the name of the Income Cap Trust. The trustee also writes checks on the Income Cap Trust account each month, which checks are written according to a budget prepared by an attorney and approved by the Medicaid caseworker. The budget must meet the requirements listed in the previous section. All distributions from the Income Cap Trust must be verified in writing in order to be allowed. Once the budget is approved, the trustee is given a copy, generally with instructions from the attorney.



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### What Happens When the Medicaid Recipient Passes Away?

Usually, the trustee will pay the last bills owing from the Income Cap Trust. Soon after the recipient's death, the State will contact the trustee and request repayment of the balance the Income Cap Trust account, if any. If there is any money left in the Income Cap Trust account at recipient's death, that money is owed to the State. Once the Income Cap Trust account is empty, the trustee should close the account.

**DISCLAIMER:** The information contained in this document is based on Oregon law and is subject to change. It should be used for general purposes only and should not be construed as specific legal advice by Fitzwater Meyer Hollis & Marmion, LLP or its attorneys. Neither this website nor use of its information creates an attorney-client relationship. If you have specific legal questions, consult with your own attorney or call us for an appointment.

