

DEPT. OF MEDICAL ASSISTANCE SERVICES

Groups Covered and Agencies Responsible for Eligibility.

Optional Groups Other than the Medically Needy.

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12VAC30-30-20. Optional groups other than the medically needy.

The Title IV A Agency determines eligibility for Title XIX services.

1. ~~Individuals~~ Caretakers and pregnant women who meet the income and resource requirements of AFDC, ~~SSI, or an optional State supplement as specified in 42 CFR 435.230~~ but who do not receive cash assistance.
2. Individuals who would be eligible for AFDC, SSI or an optional State supplement as specified in 42 CFR 435.230, if they were not in a medical institution.
3. A group or groups of individuals who would be eligible for Medicaid under the plan if they were in a NF or an ICF/MR, who but for the provision of home and community-based services under a waiver granted under 42 CFR 441, Subpart G would require institutionalization, and who will receive home and community-based services under the waiver. The group or groups covered are listed in the waiver request. This option is effective on the effective date of the State's section 1915(c) waiver under which this group(s) is covered. In the event an existing 1915(c) waiver is amended to cover this group(s), this option is effective on the effective date of the amendment.
4. Individuals who would be eligible for Medicaid under the plan if they were in a medical institution, who are terminally ill, and who receive hospice care in accordance with a voluntary election described in §1905(o) of the Act.
5. The state does not cover all individuals who are not described in §1902(a)(10)(A)(i) of the Act, who meet the income and resource requirements of the AFDC State plan and who are under the age of 21. The state does cover reasonable classifications of these individuals as follows:
  - (1) Individuals for whom public agencies are assuming full or partial financial responsibility and who are:

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(a) In foster homes (and are under the age of 21).

(b) In private institutions (and are under the age of 21).

(c) In addition to the group under b.(1)(a) and (b), individuals placed in foster homes or private institutions by private nonprofit agencies (and are under the age of 21).

(2) Individuals in adoptions subsidized in full or part by a public agency (who are under the age of 21).

(3) Individuals in NFs (who are under the age of 21). NF services are provided under this plan.

(4) In addition to the group under (6)(3), individuals in ICFs/MR (who are under the age of 21).

6. A child for whom there is in effect a State adoption assistance agreement (other than under Title IV-E of the Act), who, as determined by the State adoption agency, cannot be placed for adoption without medical assistance because the child has special care needs for medical or rehabilitative care, and who before execution of the agreement:

a. Was eligible for Medicaid under the State's approved Medicaid plan; or

b. Would have been eligible for Medicaid if the standards and methodologies of the Title IV-E foster care program were applied rather than the AFDC standards and methodologies.

The State covers individuals under the age of 21.

7. §1902(f) States and SSI criteria States without agreements under §§1616 and 1634 of the Act.

The following groups of individuals who receive a State supplementary payment under an approved optional State supplementary payment program that meets the following conditions. The supplement is:

a. Based on need and paid in cash on a regular basis.

b. Equal to the difference between the individual's countable income and the income standard used to determine eligibility for the supplement.

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c. Available to all individuals in each classification and available on a Statewide basis.

d. Paid to one or more of the classifications of individuals listed below:

- (1) Aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.
- (2) Blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.
- (3) Disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.
- (4) Individuals receiving a State administered optional State supplement that meets the conditions specified in 42 CFR 435.230.

The supplement ~~does not vary~~ varies in income standard by political subdivisions according to cost-of-living differences.

The standards for optional State supplementary payments are listed in 12VAC30-40-250.

8. Individuals who are in institutions for at least 30 consecutive days and who are eligible under a special income level. Eligibility begins on the first day of the 30-day period. These individuals meet the income standards specified in 12VAC30-40-220.

The State covers all individuals as described above.

9. Reserved.

10. Individuals required to enroll in cost-effective employer-based group health plans remain eligible for a minimum enrollment period of one month.

~~11. Individuals entitled to elect COBRA continuation coverage and whose income as determined under §1612 of the Act for purposes of the SSI program, is no more than 100 percent of the Federal poverty level, whose resources are no more than twice the SSI resource limit for an individual, and for whom the State determines that the cost of COBRA premiums is likely to be less than the Medicaid expenditures for~~

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~~an equivalent set of services.~~

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Standards for optional state supplementary payments.

12VAC30-40-250. Standards for optional state supplementary payments.

Payment Category

(Reasonable Classification)	Administered by	Income Level		Income Disregards Employed
		Gross	Net	
	Federal	State	1 person/ Couple	2 person/ Couple
(1)	(2)	(3)	(4)	(5)
a) Aged, blind, disabled in domiciliary facilities	X	300% of SSI payment limit	Rate of home up to specified maximum of <del>\$623</del> <u>\$815</u> per month for allowance for an individual <u>(effective 11/1/00)</u> <u>Maximum for homes in Planning</u>	Disregards of SSI Program

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Standards for optional state supplementary payments.

District 8

Increased by 15%.

b)Aged, blind, disabled in approved adult foster care homes	X	300% of SSI payment limit	Approved rate for home up to a maximum of <del>\$461</del> <u>\$508</u> . <u>Maximum for homes</u> <u>in Planning</u> <u>District 8</u> <u>increased by</u> <u>15%</u>	Disregards of SSI Program
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12VAC30-30-40. Reasonable classifications of individuals under the age of 21, 20, 19, and 18.

See 12 VAC 30-30-20 5

See 12VAC30-30-30 5.

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More Restrictive Categorical Eligibility Criteria.

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12VAC30-30-50. More restrictive categorical eligibility criteria.

More restrictive categorical eligibility criteria:

1. Presumptively eligible SSI recipients are not covered.
2. Presumptively disabled or blind SSI recipients are not covered.
3. Conditionally eligible SSI recipients are not covered.

(See 12VAC30-40-10 through 12VAC30-40-30 for the more restrictive financial eligibility criteria)



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Methods of Determining Income.

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12VAC30-40-100. Methods of determining income.

a. AFDC-related individuals (except for poverty level related pregnant women, infants, and children).

(1) In determining countable income for AFDC-related individuals, [~~only the method~~ the methods] under the State's approved AFDC plan [and any more liberal methods described in 12VAC30-40-280 is are] used.

(2) In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to children living with parents until the children become 21.

(3) Agency continues to treat women eligible under the provisions of §1902(a)(10) of the Act as eligible, without regard to any changes in income of the family of which she is a member, for the 60-day period after her pregnancy ends and any remaining days in the month in which the 60th day falls.

b. Aged individuals. In determining countable income for aged individuals, including aged individuals with incomes up to the Federal poverty level described in section 1902(m)(1) of the Act, the following methods are used.

For optional State supplement recipients in §1902(f) States and SSI criteria States without §1616 or 1634 agreements SSI methods only apply

In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses.

c. Blind individuals. In determining countable income for blind individuals, only the methods of the SSI program apply.

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For optional State supplement recipients in §1902(f) States and SSI criteria States without §1616 or 1634 agreements, only SSI methods apply.

In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses and the income of parents as available to children living with parents until the children become 21.

d. Disabled individuals. In determining countable income of disabled individuals, including disabled individuals with incomes up to the Federal poverty level described in §1902(m) of the Act, only the methods of the SSI program only.

For optional State supplement recipients in §1902(f) States and SSI criteria States without §1616 or 1634 agreements, only SSI methods apply.

In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses and the income of parents as available to children living with parents until the children become 21.

e. Poverty level pregnant women, infants, and children. For pregnant women and infants or children covered under the provisions of §1902(a)(10)(A)(i)(IV), (VI), and (VII), and 1902(a)(10)(A)(ii)(IX) of the Act--

(1) The methods of the State's approved AFDC plan are used in determining countable income.

(2) In determining relative financial responsibility, the agency considers only the income of spouses living in the same household as available to spouses and the income of parents as available to children living with parents until the children become 21.

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(3) The agency continues to treat women eligible under the provisions of §1902(a)(10) of the Act as eligible, without regard to any changes in income of the family of which she is a member, for the 60-day period after her pregnancy ends and any remaining days in the month in which the 60th day falls.

f. Qualified Medicare beneficiaries. In determining countable income for qualified Medicare beneficiaries covered under §1902(a)(10)(E)(i) of the Act, only the methods of the SSI program are used.

If an individual receives a Title II benefit, any amounts attributable to the most recent increase in the monthly insurance benefit as a result of a Title II COLA is not counted as income during a "transition period" beginning with January, when the Title II benefit for December is received, and ending with the last day of the month following the month of publication of the revised annual federal poverty level.

For individuals with Title II income, the revised poverty levels are not effective until the first day of the month following the end of the transition period.

For individuals not receiving Title II income, the revised poverty levels are effective no later than the date of publication.

g. Qualified disabled and working individuals. In determining countable income for qualified disabled and working individuals covered under 1902(a)(10)(E)(ii) of the Act, the methods of the SSI program are used.

h. COBRA Continuation Beneficiaries

For COBRA continuation beneficiaries specified at 1902(u)(4), costs incurred from medical care or for any other type of remedial care shall not be taken into account in determining income, except as provided in section 1612(b)(4)(B)(ii).

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More restrictive methods of treating resources than those of the SSI program; §1902(f) states only.

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12VAC30-40-240.

A. The following limitations apply to resources in addition to the resource requirements of the Supplemental Security Income (SSI) program for the aged, blind and disabled.

1. For income-producing property and other nonresidential property, appropriate equity and profit is to be determined by the prorata share owned by an individual in relation to his proportionate share of the equity and profit.

2. Property in the form of an interest in an undivided estate is to be regarded as an asset when the value of the interest plus all other resources exceeds the applicable resource limit unless it is considered unsaleable for reasons other than being an undivided estate. An heir can initiate a court action to partition. If a partition suit is necessary (because at least one other owner of or heir to the property will not agree to sell the property) in order for the individual to liquidate the interest, estimated partition costs may be deducted from the property's value. However, if a partition would not result in the applicant/recipient securing title to property having value substantially in excess of the cost of the court action, the property would not be regarded as an asset.

B. Real property.

1. The current market value of real property is determined by ascertaining the tax assessed value of the property and applying to it the local assessment rate. The equity value is the current market value less the amount due on any recorded liens against the property. "Recorded" means written evidence that can be substantiated, such as deeds of trust, liens, promissory notes, etc.

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More restrictive methods of treating resources than those of the SSI program; §1902(f) states only.

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2. Real property contiguous to an individual's residence which does not meet the home property definitions in subdivision 3 of this subsection, the SSI income-producing requirement or the exceptions listed in subdivision 6 of this subsection and which is saleable according to the provisions in 12VAC30-40-290 C, shall be counted as an available resource. The equity value of the contiguous property shall be added to the value of all other countable resources.

3. Ownership of a dwelling occupied by the applicant as his home does not affect eligibility. A home shall mean the house and lot used as the principal residence and all contiguous property as long as the value of the land, exclusive of the lot occupied by the house, does not exceed \$5,000. In any case in which the definition of home as provided here is more restrictive than that provided in the State Plan for Medical Assistance in Virginia as it was in effect on January 1, 1972, then a home means the house and lot used as the principal residence and all contiguous property essential to the operation of the home regardless of value.

The lot occupied by the house shall be a measure of land as designated on a plat or survey or whatever the locality sets as a minimum size for a building lot, whichever is less. In localities where no minimum building lot requirement exists, a lot shall be a measure of land designated on a plat or survey or one acre, whichever is less.

Contiguous property essential to the operation of the home means:

a. Land used for the regular production of any food or goods for the household's consumption only, including:

(1) Vegetable gardens;

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(2) Pasture land which supports livestock raised for milk or meat, and land used to raise chickens, pigs, etc. (the amount of land necessary to support such animals is established by the local extension service; however, in no case shall more land be allowed than that actually being used to support the livestock.);

(3) Outbuildings used to process and/or store any of the above;

b. Driveways which connect the homesite to public roadways;

c. Land necessary to the home site to meet local zoning requirements (e.g. building sites, mobile home sites, road frontage, distance from road, etc.);

d. Land necessary for compliance with state or local health requirements (e.g. distance between home and septic tank, distance between septic tanks, etc.);

e. Water supply for the household;

f. Existing burial plots;

g. Outbuilding used in connection with the dwelling, such as garages or tool sheds.

All of the above facts must be fully reevaluated and documented in the case record before the home site determination is made.

4. An institutionalized individual's former residence is counted as an available resource if the recipient is institutionalized longer than six months after the date he was admitted. ~~The former residence is disregarded if it is occupied by the recipient's spouse or minor dependent child under age 18, or age 19 and is still in school or vocational training, or the former residence is occupied by the recipient's parent or adult child who is disabled according to the Medicaid disability definition, and who was living in the~~

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~~home with the recipient for at least one year prior to the recipient's institutionalization, and who is dependent upon the recipient for his shelter needs.~~

The former residence is disregarded if it is occupied by the recipient's:

- a. Spouse;
- b. Minor dependent child under age 18;
- c. Dependent child under age 19 if still in school or vocational training; or
- d. Parent or adult child who is disabled according to the Medicaid disability definition, and who was living in the home with the recipient for at least one year prior to the recipient's institutionalization, and who is dependent upon the recipient for his shelter needs.]

5. An applicant or recipient's proportional share of the value of property owned jointly with another person to whom the applicant or recipient is not married as tenants in common or joint tenants with the right of survivorship at common law is counted as a resource unless it is exempt property or is unsaleable.

6. Ownership of other real property generally precludes eligibility. Exceptions to this provision are: (i) when the equity value of the property, plus all other resources, does not exceed the appropriate resource limitation; (ii) the property is smaller than the county or city zoning ordinances allow for home sites or building purposes, or the property has less than the amount of road frontage required by the county or city for building purposes and adjoining land owners will not buy the property; or (iii) the property has no access, or the only access is through the exempted home site; or (iv) the property is contiguous to the recipient's home site and the survey expenses required for its sale reduce the value of such property, plus all other resources, below applicable resource limitations; or (v) the property cannot be sold after a



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reasonable effort to sell it has been made, as defined in 12VAC30-40-290. ~~[Ownership of real property other than the home will not affect eligibility when the property cannot be sold after a reasonable effort to sell has been made, as defined in 12VAC30-40-290.]~~

C. Personal Property

1. Prepaid burial plans are counted as resource since the money is refundable to the individual upon his request. Cemetery plots are not counted as resources. See 12VAC30-40-290.
2. Assets which can be liquidated such as cash, bank accounts, stocks, bonds, securities and deeds of trusts are considered resources.

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More Liberal Income Disregards.

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12VAC30-40-280.

~~For children covered under §1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act, the Commonwealth of Virginia will disregard one dollar plus an amount equal to the difference between 100% of the AFDC payment standard for the same family size and 100% of the Federal Poverty Level for the same family size as updated annually in the Federal Register.~~

Income Exemption for Aid to Dependent Children Categorically and Medically Needy (the Act §§1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§1902(a)(10)(A)(ii)(VIII), (IX); §1902(a)(10)(C)(i)(III) - For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance. Any interest earned on one interest-bearing savings account per assistance unit not to exceed \$5,000 at a financial institution, if the applicant, applicants, recipient or recipients designate that the account is reserved for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university; or for making down payment on a primary residence or for business incubation, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account.. For purposes of this section, "business incubation" shall mean the initial establishment of a commercial operation which is owned by a member of the Medicaid assistance unit. (Code of Va. 63.1-110)

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12VAC30-40-290.

§1902(f) State

A. Resources to meet burial expenses. Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for medically needy individuals, disregarded from countable resources is an amount not in excess of \$3,500 for the individual and an amount not in excess of \$3,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

1. The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and
2. The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

B. Life rights. Life rights to real property are not counted as a resource.

C. Reasonable effort to sell.

1. For purposes of this section, "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

2. A reasonable effort to sell is considered to have been made:

a. As of the date the property becomes subject to a realtor's listing agreement if:

(1) It is listed at a price at current market value; and

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(2) The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions); or

b. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

c. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts, such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

3. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

a. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

b. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in subdivision 2 c of this subsection for 12 months.

~~c. In the case of a recipient who has personally advertised his property for a year without success (the newspaper advertisements and "for sale" sign do not have to be continuous; these efforts must be done for~~

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~~at least 90 days within a 12-month period), the recipient must then:~~

- (1) Subject his property to a realtor's listing agreement at price or below current market value; or
- (2) Meet the requirements of subdivision 2 b of this subsection which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

4. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

5. Once the applicant has demonstrated that his property is unsaleable by following the procedures in subdivision 2 of this subsection, the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in subdivision 3 of this subsection.

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#### More Liberal Income Disregards.

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D. Automobiles. Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition (update monthly). In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

E. Life, retirement, and other related types of insurance policies. Life, retirement, and other related types of insurance policies with face values totaling \$1,500 or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds \$1,500, the cash surrender value of the policies is counted as a resource.

F. Resource exemption for Aid to Dependent Children categorically and medically needy (the Act §§1902(a)(10)(A)(i)(III), (IV), (VI), (VII); §§1902(a)(10)(A)(ii)(VIII), (IX); §1902(a)(10)(C)(i)(III)). For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings account per assistance unit not to exceed \$5,000 at a financial institution if the applicant, applicants, recipient or recipients designate that the account is reserved for one of the following purposes: (i) paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university; (ii) making down payment on a primary residence; or (iii) business incubation. Any funds deposited in the account, ~~and any interest earned thereon~~, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for any of the purposes stated in this section shall be exempt. For purposes of this section, "business incubation"

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shall mean the initial establishment of a commercial operation which is owned by a member of the Medicaid assistance unit. The net worth of any business owned by a member of the assistance unit shall be exempt from consideration so long as the net worth of the business is less than \$5,000.

G. Disregard of resources. The Commonwealth of Virginia will disregard all resources for qualified children covered under §§1902(a)(10)(A)(i)(III) and 1905(n) of the Social Security Act.

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12VAC30-40-350.

1. Aged, blind, and disabled recipients of optional State supplementary payments are eligible for medical assistance as categorically needy under this plan. The payments meet the four conditions specified in 45 CFR 248.2(d), that is, they are:

A. Regular, in cash, and based on need;

B. Available on a Statewide basis;

C. Made to reasonable classifications of individuals who, except for the level of their income, would be eligible for an SSI payment; and

D. Equal to the difference between income and financial standards used to determine eligibility for the supplement.

2. ~~There are no variations in the payment levels by political subdivision.~~ A 15% differential above the maximum rate set forth in the Appropriations Act each year is established for residents in Planning District 8.