

Can People Who Live in ICFs-MR Participate in the Medicaid Buy-In for Workers with Disabilities (MBIWD) Program?

Yes They Can!

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"MBIWD is an Ohio Medicaid program that provides health care coverage to working Ohioans with disabilities. Historically, people with disabilities were often discouraged from working because their earnings made them ineligible for Medicaid coverage. MBIWD was created to enable Ohioans with disabilities to work and still keep their health care coverage."¹

People who live in Intermediate Care Facilities for People who are Mentally Retarded or Developmentally Disabled (ICFs-MR) can participate in the MBIWD program. The MBIWD statutes² and rule³ contain no categorical exclusion because of residence in an ICF-MR or any other living arrangement. A denial of participation in the MBIWD program solely because of residence in an ICF-MR should be appealed as an incorrect application of law or rule.⁴

County Job and Family Services (JFS) workers may be new to the program and may mistakenly apply Medicaid Aged, Blind and Disabled (Medicaid ABD) rules to determine MBIWD eligibility. The MBIWD program defines its own eligibility criteria, independent of Medicaid ABD eligibility criteria except where the MBIWD statutes and rule incorporate specific Medicaid ABD rules by reference. The complete MBIWD eligibility criteria are as follows.

Citizenship: U.S.⁵

Residency: Ohio⁶

Disability: must "[m]eet the definition" of disability used by Social Security Administration (SSA) regardless of earnings and substantial gainful activity (SGA), but need not be "receiving" SSI or SSDI payments to be eligible⁷

Age: at least 16, less than 65⁸

¹ "Medicaid Buy-In for Workers with Disabilities (MBIWD)" at <http://jfs.ohio.gov/Ohp/mbiwd.stm>.

² R.C. 5111.701 through 5111.7011.

³ O.A.C. 5101:1-41-30.

⁴ O.A.C. 5101:6-8-01(C)(1)(c).

⁵ O.A.C. 5101:1-41-30(C)(1)(a).

⁶ O.A.C. 5101:1-41-30(C)(1)(b).

⁷ O.A.C. 5101:1-41-30(C)(1)(c).

⁸ O.A.C. 5101:1-41-30(C)(1)(d).

- Premiums: monthly payment if income exceeds 150 percent of percent federal poverty level⁹
- Be working: full or part-time employment or self-employment from which state or federal income and payroll taxes are paid or withheld¹⁰
- Income: individual earned and unearned income - no deeming - not more than 250 percent of federal poverty level (FPL) after disregards and exemptions¹¹
- Resources: solely-owned and the amount of jointly-owned resources that are available to the individual - no deeming - not more than \$10,580.00 after exemptions¹²

The MBIWD eligibility criteria do not address living arrangement in any manner. Even if all Medicaid ABD rules were applicable to MBIWD eligibility, which they are not, ICFs-MR are defined as “an appropriate living arrangement” for eligibility, and Medicaid ABD rules expressly state that people who live in ICFs-MR may be eligible for that program.¹³

People who live in ICFs-MR may also be denied participation in the MBIWD program in error on other grounds related to, but not expressly because of, their residency in ICFs-MR. For example:

Denial based on SSA non-payment status

JFS workers may mistakenly believe that an MBIWD applicant who is in SSI or SSDI non-payment status, or who has not yet applied for or not yet been found eligible for SSI or SSDI, may be ineligible for those reasons. As the rule is stated, MBIWD eligibility criteria do not require an applicant to have applied for or to have been determined eligible for SSI or SSDI. The MBIWD rule only requires applicants to meet SSA’s definition of disability, whether or not earnings have reached substantial gainful activity (SGA).

Denial based on payments to ICFs-MR

JFS workers may mistakenly believe that payments to ICFs-MR for costs on behalf of an MBIWD applicant constitute unearned income, so that countable income mistakenly exceeds the 250% FPL eligibility criterion. Payments to ICFs-MR are not income. The MBIWD rule defines “income” as “gross earned

⁹ O.A.C. 5101:1-41-30(E).

¹⁰ O.A.C. 5101:1-41-30(C),(1)(g).

¹¹ O.A.C. 5101:1-41-30(D)(1).

¹² O.A.C. 5101:1-41-30(D)(2)(a).

¹³ O.A.C. 5101:1-39-04(D).

income and gross unearned income”¹⁴ and defines “earned income” as “salary, wages, royalties, honoraria, or ‘net earnings from self-employment’ as defined in rule 5101:1-39-15 of the Administrative Code.”¹⁵ The MBIWD rule defines “unearned income” only as “all income that is not earned income.”¹⁶ This definition of unearned income mirrors the definition in the Medicaid ABD rule.¹⁷ That rule states that “[a]n assistance group must actually be receiving the payment in order to have it included as income.”¹⁸ Therefore, payments for ICF-MR costs are neither earned nor unearned income and should not be counted in MBIWD income eligibility determinations. (However, ICF-MR costs may be applied to meet Medicaid monthly spenddown amounts.¹⁹)

Furthermore, people who live in ICFs-MR normally can only keep "forty dollars plus up to an additional sixty-five dollars of gross earnings received as a result of employment, up to a combined maximum of one hundred five dollars[.]”²⁰ The MBIWD rule states, "Individuals eligible for MBIWD are not subject to a patient liability as described in rule 5101:1-39-24 or 5101:1-39-24.1 of the Administrative Code."²¹ This exception is a strong work incentive, because without the MBIWD program people who live in ICFs-MR can keep no more than one hundred five dollars each month, even if they earn much more.

Denial based on deemed resources

JFS workers may mistakenly believe that spouse’s or another person’s resources are deemed, or counted as belonging to, an MBIWD applicant in order to determine resource eligibility. Medicaid ABD deeming rules do not apply to the MBIWD program. The MBIWD rule expressly authorizes JFS workers to count only the individual’s own resources or the portion of jointly-owned resources that is available to the applicant.²²

Denial based on insufficient employment

JFS workers may mistakenly believe that an MBIWD applicant’s limited employment does not satisfy the “be working” eligibility criterion. “Part-time employment” is not defined within the MBIWD rule or by reference to a Medicaid ABD rule. What constitutes “part-time employment” could be an arguable challenge on appeal. Perhaps reasonable accommodation in the part-time employment criterion could also be pursued to allow a person living in an ICF-MR with only limited employment to participate in the MBIWD program. However, no

¹⁴ O.A.C. 5101:1-41-30(B)(9).

¹⁵ O.A.C. 5101:1-41-30(B)(6).

¹⁶ O.A.C. 5101:1-41-30(B)(22).

¹⁷ O.A.C. 5101:1-39-16(A).

¹⁸ *Id.*

¹⁹ O.A.C. 5101:1-39-10(A)(1)(a).

²⁰ O.A.C. 5101:1-39-24(C)(2)(c)(ii)

²¹ O.A.C. 5101:1-41-30(H)(1).

²² O.A.C. 5101:1-41-30(D)(2)(A).

employment at all would be a legitimate basis to deny participation in the MBIWD program.

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Do you, or does someone you know, live in an ICF-MR and want to participate in the MBIWD program, so that you can work and earn more without losing health care coverage? Have you, or has someone you know, been denied participation in the MBIWD program because of residence in an ICF-MR?

For assistance, contact:

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Intake Department
50 West Broad Street, Suite 1400
Columbus, Ohio 43215-5923
Phone: 614-466-7264 or 1-800-282-9181 (Toll free in Ohio only)
TTY: 614-728-2553 or 1-800-858-3542 (Toll free in Ohio only)
Fax: 614-644-1888
Online form: <http://olrs.ohio.gov/other/OLRSIntakeForm.pdf>