

# Holocaust Reparations and Medicaid

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One of the most recent and tragic attacks on the Jewish people occurred during World War II when over six million were murdered at the hands of the German Nazi regime. Nothing can make up for what survivors and their families have gone through but, as a significant step in assisting survivors and their families, Germany (and sometimes Austria or France) pays reparations.

Medicaid counts almost all income and assets against eligibility. One of the few exceptions to Medicaid's financial eligibility rules is Holocaust reparations. This article explains how the reparations exception works and how to maximize the benefit of the exception.

At my law firm in South Florida, due to our location and our involvement in the Jewish community, I have had the privilege of working with many survivors of the Holocaust, their spouses and families. Their life stories include tragedy and ripples of generational effects, but they are also stories of survival and resilience, the resilience of an individual and the resilience of a people. We use the Holocaust reparations exception to allow these clients to obtain Medicaid.

Medicaid pays towards home care, assisted living and nursing home care in most states. Because long-term care costs tens or hundreds of thousands of dollars, even people with assets can become impoverished or depleted. It is possible to protect assets against the cost of long-term care by using the government's Medicaid rules and laws about what they can and cannot count. Part of this is knowing how to present transactions and documentation to the government. Medicaid breaks down its financial eligibility tests into income and assets. The income and asset caps change each year and are informed but not fixed by federal law. States vary on the numbers, but all states look at both income and assets for Medicaid's long-term care programs.

## ***Income***

For Holocaust reparations, the Medicaid case workers need to be educated on the exception. While most of the Medicaid case workers try their very best, I find that they are underpaid, overwhelmed and they do not get the training they want or deserve, even on their own rules and laws. This means that a Medicaid application involving Holocaust reparations must usually be accompanied by an explanation of the law. As fewer and fewer survivors are with us, most case workers have never seen an application involving reparations. Income should be the easy part. Recipients of reparations should accompany their Medicaid application with documentation from the [Conference on Jewish Material Claims Against Germany](#), known simply as the "Claims Conference." This documentation will show that the income payment is a reparation. It is important, though not required, to cite the state Medicaid manual provision. The case workers are not expected to be lawyers and so their rules and laws are distilled into case manuals. These are public record. As an example, Florida's rule on reparations, part of a larger section on income exceptions, is located at Rule 1840.0918 in the [Florida Medicaid Manual](#). You should be able to google your state's Medicaid manual. If not, you can contact your state's Medicaid office. Note that a pension check from Germany is not the same as reparations. Some of our clients, very few now, receive a reparation check plus a reparations check to signify a pension earned for forced labor. These can sometimes be excluded in addition to the reparations payments. See [SI 00830.711](#).

## **Assets**

It is possible to exclude accumulated reparations as non-countable assets. The Medicaid rules of most states specifically exclude Holocaust reparations as assets. Even if a state does not explicitly state the exception, lawyers can succeed with advocacy based on federal law. See [SI01130.610](#), SI 00830.711. The Holocaust reparations rule is more complicated for assets than for income.

To obtain an asset exception requires some basic knowledge of how the government defines “income” and “assets.” In lay language, “income” means payments as they are received. An “asset” is generally defined as anything owned by the individual. Income can become an asset when it is carried over to the next calendar month. For example, the applicant may receive \$1,300 in reparations each month. If all or some portion of that payment has not been spent on the first of the month following receipt, that money is now an asset. The problem most people have is tracking reparations which have been received for decades and which may have been comingled with other income and assets.

When income is segregated, it is much easier to track. Few people, however, have a separate account for their reparations checks and even if they do, it may be difficult to track what was spent and what remained. To have reparations treated as an excluded asset, the applicant must show the reparations, as opposed to other income, were carried over. For example, in Florida, the Medicaid manual, at Rule [1640.0593](#), states that “In order for these payments and benefits to be excluded from resources, such funds must be segregated and not commingled with other countable resources so that the excludable funds are identifiable.”

Rules and laws often make sense to those who write them but sometimes fail in practice. It is almost impossible for people to show a set-aside of funds when the reparations were comingled with, for example, their social security checks or who invested reparations money in the same account as other funds. Being a survivor of the Holocaust does not make one clairvoyant, and few would have thought to separate their income sources. Most people live their lives and I have not met anyone who was thinking about the interplay of the claims conference rules, the Medicaid eligibility rules and the [Victims of Nazi Persecution Act of 1994](#), when setting up their bank accounts. Indeed, some were receiving Holocaust reparations (1953) before Medicaid was even established (1965). If very few Holocaust survivors can meet this test of proof, this would be against the very public policy which established reparations as an exception. This is where lawyers come in.

## **Holocaust Reparations Trust**

To establish asset eligibility despite a reparations recipient being over the Medicaid Asset cap, an applicant may be able to create a Holocaust Reparations Trust to show a segregation of the funds, albeit well after, sometimes many years after, receipt. The amount which can go into the trust is based on the amount of total reparations received. These numbers can be obtained from the governmental entity making the payments. You can determine the appropriate payor by looking at letters and payment details from the bank. Sometimes the Claims Conference, Jewish Federation or Jewish Family Services can help. See “useful links” at the end of this article. The trust, the calculation and the account statements are provided to the government as part of the application process. When the rules and laws

are explained to the Medicaid case worker, along with the documentation, there should be a disregard of the assets in the trust.

Further vagaries exist in how to calculate the funding of the trust. How much should go in? How much of a person's current assets were generated by the reparations?

There is no clear answer in the law. There is, however, some guidance from the Social Security Administration (SSA) when addressing comingled funds. SSA says that exempt assets do not need to be "segregated," just "identifiable," and that when monies are spent, the government must assume that non-exempt funds are used first. [SI 01130.700](#). Even though this guidance is not in the context of Holocaust reparations specifically, it applies.

We can take this rule from the SSA and compound it with the other state and federal Medicaid laws to make a very good case that all or a significant amount of a person's assets should be excluded as accumulated Holocaust restitution payments. The applicant should also take the position that the assets are unable to be recovered under the states' otherwise broad right to recover assets after the death of a Medicaid recipient. [42 USC 1396p](#); [CMS State Medicaid Manual 3810](#).

A trust is not and should not be required but we know it helps. By placing the assets in a Holocaust Reparations Trust, we are identifying the subject funds. We are also segregating them. The Trustee can use these funds in an almost unrestricted manner so long as all distributions are for the benefit of the applicant or, in some instances, the applicant's spouse, widow or widower. The Trust should be titled as a Holocaust Reparations Trust to evidence the identification of the funds.

Let's take an example:

Harold has \$7,000 in a checking account and \$250,000 in a savings account. The Medicaid asset cap in Harold's state is \$2,000. If Harold does nothing, he will need to spend down to \$2,000 and then apply for Medicaid. If that is to happen, Harold will have nothing left and will be solely reliant on what the government will cover. Harold learns that survivors and non-survivors alike can legally protect assets and qualify for Medicaid but for Holocaust survivors like himself, widows, widowers and others eligible for reparations payments, there is a special exception. The attorney determines that Harold has received thirty-five years of payments for a total of \$325,000. Because the \$325,000 of restitution is greater than the assets funding the trust, the assets should be excluded from being counted against Medicaid eligibility and excluded from the government seeking recovery after death.

### *Summary*

Holocaust reparations are exempt as income for Medicaid eligibility purposes. It is also possible to exempt the assets which accumulated as a result of that income. By making use of the state and federal Medicaid rules and laws along with the Social Security rules and policy discussed in this article, a person may identify assets as being preserved reparations and have them excluded. This strategy can always be used when the applicant is the Holocaust survivor but, in some cases also, for a spouse, widow or widower.