



# Petitioning the Court to Increase the CSRA and Allocate Income

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# Initial Medicaid Application — Allowances

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Minimum spousal allocation is \$2,289.00 with the possibility of a shelter allowance

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Maximum \$3,345.00 can be awarded at initial Medicaid interview

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Resources  $\frac{1}{2}$  of countable resources as of snapshot \$27,480/\$137,400.

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So what does a Community Spouse do that needs more income or has a reason to need an increase in the Community Spouse Resource Allowance?

42 U.S.C.  
1396r-5

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MCCA (1988) – spousal  
impoverishment rules

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Fair Hearing (30 days to occur)  
42 U.S.C. 1396r-5(e)(2)(A).

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Court Order

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See IC 12-15-2-24 & 25 for  
state statute

# Fair Hearing –Income & Resources

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Need Income above MMMNA (MMNA under Title 12)  
- Get denied and appeal

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Argue have exceptional circumstances resulting in  
significant financial distress

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In 2005 Indiana (OMPP) was supposed to promulgate  
rules under 4-22-2 regarding how this would be  
determined (did not do it)

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If not enough income to get to increased amount, can  
ask for resources- income first rule

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No idea how to exactly calculate resources needed –  
again Indiana did not promulgate rules (See IC 12-15-  
2-24 & 25).

42 U.S.C. 1386r-5(d)(5) provides that “if a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall not be less than the amount of the monthly income so ordered.



Note – no showing of exceptional circumstances required.

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## Court Order- Resources

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42 U.S.C. 1396r-5(f)(2) defines the CSRA and refers to an amount transferred under court order under 42 U.S.C. 1396r-5(f)(3). Amount can be amount set by court order.

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U.S.C. 1396 r-5(f)(3) refers to an amount entered by court order being the CSRA and not being subject to a transfer penalty under 42 U.S.C. 1396p.

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Note – exceptional circumstances not required.

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Is Notice  
Required  
for a Court  
Order

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Notice not required

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No federal statute or state  
statute requiring notice

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Give notice anyways

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Reserve right to object.

# Intervention

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Question as to whether FSSA can intervene

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See *In Re the Guardianship of Clarence Weber* (currently before Indiana Court of Appeals).

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Trial Rule 24 – Permissive joinder may be possible

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No mandatory right to intervene



# Action for Mandate

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FSSA/DFR – thru PAL has taken the position that court orders under 42 U.S.C 1396r-5 are “illegal” and simply refuse to honor them. This is not a proper response. Cannot refuse a court order.

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IC 34-27-3 et seq.

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Can file a mandate action to compel any inferior tribunal, corporation, public or corporate office or person to compel the performance of any act the law specifically requires” ... IC 34-27-3-1

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File verified complaint and issue summons

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Trial and damages and costs possible