Indiana Health Coverage Program Policy Manual	
Chapter: 2600 Resources	Section 2600.00.00.00 Table of Contents

2600.00.00 RESOURCES

2605.00.00 PRINCIPLES OF RESOURCES

2605.05.00 DEFINITION OF RESOURCES

2605.10.00 OWNERSHIP OF RESOURCES

2605.10.05 Joint Ownership of Resources

2605.10.10 Joint Ownership of Vehicles

2605.15.00 AVAILABILITY OF RESOURCES

2605.20.00 RESOURCE ELIGIBILITY DATE

2605.25.00 DETERMINING RESOURCE VALUE

2605.25.05 Vehicle Valuations

2605.25.10 Real Property Value

2605.25.10.05 Life Estate/Remainder Value

2605.25.10.10 Life Estate/Remainder Tables

2605.25.10.15 Mineral Rights Value

2605.30.00 CONVERSION OF RESOURCES

2605.35.00 VERIFICATION OF RESOURCES

2605.40.00 MONITORING OF RESOURCES

2610.00.00 RESOURCE LIMITS

2615.00.00 TYPES AND VALUE OF PERSONAL PROPERTY RESOURCES

2615.05.00 CASH

2615.10.00 BANK AND OTHER ACCOUNTS

2615.10.05 Savings And Checking Accounts

2615.10.05.05 Business Accounts (MED 1, 4)

2615.10.05.10 Dedicated Accounts for Individuals Under 18 (MED 1, 4)

2615.10.10 Time Deposits

2615.10.15 Safety Deposit Box

2615.15.00 RETIREMENT ACCOUNTS

2615.20.00 BURIAL RELATED RESOURCES

2615.20.05 Burial Accounts (MED 1, 4)

2615.20.10 Funeral Planning Programs (MED 1, 4)

2615.20.10.05 Prepaid Funeral Agreements (MED 2)

2615.20.15 Funeral Trusts

2615.20.21 Death Benefits (MED 1, 4)

2615.20.20.05 Burial Plots (MED 2)

2615.20.20.10 Burial Plots (MED 1, 4)

2615.25.00 INSURANCE

2615.25.05 Life Insurance

2615.25.05.10 Life Insurance Value

2615.25.05.15 Life Insurance Exemption (MED 1)

2615.25.05.20 Life Insurance Exemption (MED 4)

2615.25.10 Indemnity Health Insurance, VA Aid and Attendance Payments, and Casualty Insurance

2615.25.15 Long Term Care Program-Resource Disregard (MED 1, 4)

2615.30.00 HOUSEHOLD GOODS AND PERSONAL EFFECTS

2615.35.00 INCOME-PRODUCING PERSONAL PROPERTY

2615.35.10 Income-Producing Personal Property (MED 2)

2615.35.15 Income-Producing Personal Property (MED 1, 4)

2615.40.00 PERSONAL PROPERTY USED TO PRODUCE FOOD

2615.45.00 STOCKS, BONDS, AND MUTUAL FUND SHARES

2615.50.00 MORTGAGES, LOANS, AND PROMISSORY NOTES

2615.55.00 LAND SALES CONTRACT

2615.55.10 Land Sales Contract (MED 2)

2615.55.15 Land Sales Contract (MED 1, 4)

2615.60.00 VEHICLES

2615.60.05 Definition Of Vehicle

2615.60.15 Treatment of Vehicles (MED 2)

2615.60.20 Treatment of Vehicles Prior to June 1, 2014 (MED 1, 4)

2615.60.20.05 Treatment of Vehicles On and After June 1, 2014 (MED 1, 4)

2615.60.25 Recreational Vehicles And Equipment

2615.65.00 NON-RECURRING LUMP SUM PAYMENTS

2615.70.00 LIFE CARE CONTRACT (MED 1, 4)

2615.75.00 TRUST FUNDS

2615.75.05 Trust Funds Established Prior to August 11, 1993

2615.75.10 Trust Funds Established On and After August 11, 1993

2615.75.15 Certain Trusts Receiving Special Consideration

2615.75.20 Other Trusts Not Governed by OBRA-93

615.80.00 LEGAL GUARDIANSHIP/REPRESENTATIVE PAYEE (MED)

2615.90.00 PRORATED INCOME

2615.95.00 DISPOSITION OF NON-EXEMPT NON-LIQUID PERSONAL PROPERTY (MED 1)

2615.95.05 Presumption of Liquidity (MED 1)

2615.95.10 Agreement to Dispose / Offer For Sale of Non-Liquid Personal Property at Fair Market Value

2615.95.15 Good Cause Failure to Dispose, Rent, or Sell Non-Liquid Personal Property at Fair Market Value

2620.00.00 TYPES AND VALUE OF REAL PROPERTY RESOURCES

2620.05.00 REAL PROPERTY OWNERSHIP

2620.10.00 VERIFICATION OF REAL PROPERTY OWNERSHIP

2620.15.00 EXEMPT REAL PROPERTY RESOURCES

2620.15.10 The Home (MED 1, 4)

2620.15.10.05 Home Replacement (MED 1, 4)

2620.15.20 Income-Producing Real Property (MED 1, 4)

2620.15.25 Food-Producing Real Property (MED 1, 4)

2620.15.30 Real Property Owned By A Community Spouse (MED 1)

2620.20.00 TREATMENT OF NON-EXEMPT REAL PROPERTY

2620.20.10 Offering Property For Sale Or Rent (MED 1)

2620.20.10.05 Offering Property For Sale Or Rent (MED 4)

2625.00.00 PLAN FOR ACHIEVING SELF-SUPPORT

2625.10.00 PLAN FOR ACHIEVING SELF-SUPPORT (MED 1, 4)

2626.00.00 INDEPENDENCE AND SELF-SUFFICIENCY ACCOUNTS (MED 1)

2627.00.00 HEALTH SAVINGS ACCOUNTS

2630.00.00 RESOURCES EXEMPTED UNDER FEDERAL LAW

2630.05.00 BENEFITS UNDER FEDERAL NUTRITION PROGRAM

2630.05.05 WIC Benefits

2630.05.10 Older Americans Act

2630.05.15 Child Nutrition Act

2630.05.20 National School Lunch Act

2630.05.25 Food Stamps/Commodities

2630.10.00 HUD ASSISTANCE

2630.15.00 RELOCATION ASSISTANCE ACT PAYMENTS

2630.20.00 HOME ENERGY ASSISTANCE PAYMENTS

2630.25.00 ASSISTANCE FOR CERTAIN INDIAN TRIBES/ALASKAN NATIVES

2630.30.05 Compensation To Japanese/Aleuts (MED 1, 4)

2630.35.00 GERMAN REPARATION PAYMENTS (MED 1, 4)

2630.35.05 Crime Victim Payments (MED 1, 4)

2630.40.00 DOMESTIC VOLUNTEER SERVICE ACT COMPENSATION

2630.45.00 PAYMENTS TO STUDENTS

2630.55.00 DISASTER ASSISTANCE PAYMENTS

2630.60.00 RADIATION EXPOSURE ACT BENEFITS

2630.65.00 AGENT ORANGE SETTLEMENT ACT PAYMENTS

2630.95.00 INDIVIDUAL DEVELOPMENT ACCOUNT

2635.00.00 RESOURCE ELIGIBILITY DETERMINATION

2635.10.00 RESOURCE ELIGIBILITY DETERMINATION (MED 1)

2635.10.05 QMB, QDW, SLMB, and QI Resource Determinations (MED 4)

2635.10.10 Resources/Institutionalized/Community Spouse (MED 1)

2635.10.10.05 Resource Assessment And Spousal Share (MED 1)

2635.10.10.10 Resource Eligibility/Institutionalized Spouse (MED 1)

2635.10.10.15 Post Eligibility Protected Period (MED 1)

2635.10.20 Applicant/Recipient With Excess Resources (MED 1)

2635.10.20.05 Entitlement To Resource Spend-Down/SSI Determination

2635.10.20.10 Resource Spend-Down Determination

2635.10.20.15 Eligibility System Procedures When Resource Spend-Down Is Involved (MED 1)

2640.00.00 TRANSFERS OF PROPERTY

2640.10.00 TRANSFER OF PROPERTY LAW

2640.10.05 General Applicability of Transfer of Property Law

2640.10.10 Determining The Transfer Review Period

2640.10.15 Allowable Transfers of Property

2640.10.15.05 Transfers Of Homes And Income-Producing Real Property (MED)

2640.10.15.06 Home Equity Restriction

2640.10.15.10 DE MINIMIS TRANSFER Of PROPERTY ALLOWANCE

2640.10.16 Transfers Of Personal Effects And Household Goods

2640.10.20 Determining Adequacy Of Consideration

2640.10.20.05 Compensation In Cash

2640.10.20.10 Compensation In Real or Personal Property

2640.10.20.15 Compensation By Support/Maintenance

2640.10.20.20 Compensation By Services

2640.10.25 Determining Uncompensated Value

2640.10.25.05 Transfers Involving Life Estates

2640.10.25.10 Transfers Involving Annuities

2640.10.25.20 Establishing Joint Ownership (MED)

2640.10.25.25 Transfers Of Income

2640.10.25.30 Loans, Promissory Notes As Transfers of Assets

2640.10.25.35 Treatment of Continuing Care Retirement Community Entrance Fees

2640.10.25.40 Transfers Involving Funeral Trusts for Immediate Family Members

2640.10.30 Presumption of Intent In Transferring Property

2640.10.35 Determining the Transfer Penalty Period Begin Date

2640.10.35.05 Calculation of the Penalty Period

2640.10.35.10 Multiple Transfers of Property

2640.10.35.15 Transferred Property is Returned to the Original Owner

2640.10.35.20 Budgeting Procedures During A Transfer Penalty Period

2640.10.40 Transfer Penalty Hardship Exception

2600.00.00 RESOURCES

This chapter presents requirements for determining eligibility based on resources. The chapter contains the following main sections:

Principles of Resources (Section 2605)

Resource Limits (Section 2610)

Types and Value of Personal Property Resources (Section 2615)

Types and Value of Real Property Resources (Section 2620)

Plan For Achieving Self-Support (Section 2625)

Resources Exempted Under Federal Law (Section 2630)

Resource Eligibility Determination (Section 2635), and

Transfer of Property (Section 2640)

2605.00.00 PRINCIPLES OF RESOURCES

This entire chapter is inapplicable to MED 3 and TMA (MA F).

The resources owned by specific individuals must be identified and evaluated according to the requirements of each program. A distinction between resources and income must always be made so that proper consideration is given to each. Section 2605 outlines principles which apply to the consideration of resources in the determination of eligibility for assistance.

All property not specifically exempted in the following sections is countable as a resource. When there is an agreement to offer to dispose of excess resources, as in the case of real property or non-liquid personal property, the agreement should be considered to be effective for the purposes of the application (see 2615.95.10 and 2620.20.10).

2605.05.00 DEFINITION OF RESOURCES

Resources are real or personal property that is owned solely or jointly by an individual.

Real property is land, including buildings or immovable objects attached permanently to the land. Real property also includes

life estates, remainder interests, and mineral rights. (Refer to Sections 2605.25.10 and 2620)

Personal property includes all property that is not real property. The ICES resource screens identify the following types of personal property as liquid resources:

- Cash on hand
- Checking accounts
- Savings accounts, including Christmas Club
- Savings certificates
- Trust funds
- Individual retirement accounts
- Keogh plans
- Credit union accounts
- Burial accounts
- Prepaid funeral agreements
- Stocks
- Bonds
- Nursing home accounts

2605.10.00 OWNERSHIP OF RESOURCES

The owner of a resource is any individual who has the ability to liquidate or dispose of the resource. A resource can be solely or jointly owned.

2605.10.05 Joint Ownership of Resources

Joint ownership of resources, consisting of real or personal property, exists when the right to liquidate or dispose of the property is shared by more than one individual. Joint ownership is indicated by entering "Y" on the resource data collection screens (AERLA, AERVH, AERRP, and AERLI). The full amount is entered for each individual in the case who owns part of the resource. Then the joint ownership screen AERJO comes up for each joint owner. If the resource is jointly owned by a married couple, one-half of the resource is to be entered for each spouse on AERJO. Otherwise, the entry on AERJO depends on the type of resource, as explained below.

When any type of account held in a financial institution is jointly owned, the worker is to presume that all of the funds belong to each owner. The individuals are to be advised of this presumption and given the opportunity to rebut it. If an applicant/recipient rebuts, he is responsible for providing proof of ownership of the funds, which includes a record of deposits and withdrawals from the account. Following a successful rebuttal, the funds must be separated and placed in separate accounts. Only the funds actually belonging to the

applicant/recipient will then be counted as a resource to him and entered on screen AERLA.[1] This procedure applies whether or not the joint owners are all applying for or receiving assistance. If the funds are not separated, the balance is counted in its entirety by each joint owner.

In addition to bank accounts, other real and personal property may be jointly owned. If an applicant/recipient owns real property or non-liquid personal property with another applicant/recipient of any assistance program, AERRP is to be completed for each owner. Then proportionate shares of the property are to be assigned to the joint owners on screen AERJO. The percentage amount of the share owned by each individual is entered on screen AERJO. Refer to Section 2605.10.10 regarding the availability determination for jointly-owned vehicles.

When a non-recipient is one of the joint owners of real or personal property, the availability of the applicant's/recipient's proportionate share must be determined. If the individual has the unrestricted right, authority or legal ability to liquidate or dispose of the property or his share of it, his proportionate share is available to him. If the joint owners do not have unrestricted rights to sell their interest in real property according to the title or other legal document, statements must be obtained from all joint owners to determine if they are all willing to sell the property. If all joint owners are willing to sell, then the property will be considered available. The AV (available) question on screen AERRP is answered "Y" and screen AERJO will come up. The percentage amount of his share is to be entered on screen AERJO.

2605.10.10 Joint Ownership of Vehicles

This section addresses the determination of "availability" of jointly owned vehicles. If a vehicle is found to be available, refer to Section 2605.10.05 to determine how to complete AERJO.

A jointly owned vehicle is considered an available resource to the Assistance Group (AG) when:

- It is jointly owned with another, (one or more) applicant/recipient who may or may not be in the same AG, or living at the same address;
- It is jointly owned with a non-recipient who lives with the AG and either owner has physical possession and/or use of the vehicle and the non-recipient owner agrees to sell the vehicle;

[1] 7 CFR 273.8(d)

It is jointly owned with a non-recipient who does not reside with the AG but the AG has physical possession or use of the vehicle and the non-recipient owner agrees to sell the vehicle;

It is jointly owned with a non-recipient who does not live with the AG and the AG does not have physical possession or use of the vehicle but, the joint-owner is willing to sell the vehicle, thus enabling the client to obtain his share of the vehicle's value.

If the client cannot legally sell the vehicle or take action to remove his name from the title (for example a pending lawsuit prohibits this action) the vehicle will not be considered to be available even in the situations listed above. The client must provide proof that the vehicle is not legally available by presenting court or BMV documents.

Therefore, when a vehicle is found to be jointly owned with a non-recipient, the AG must be asked if the non-recipient is willing to sell the vehicle. If the non-recipient is not willing to sell, verification of the non-recipient's statement must be obtained. The recipient must cooperate in locating and obtaining verification from the non-recipient.

2605.15.00 AVAILABILITY OF RESOURCES

Resources are available if the owner has the unrestricted right, authority, or legal ability to liquidate or dispose of the property or his share of the property. Resources must be available in order to be counted in the eligibility determination.[2] Refer to Section 2605.10.10 regarding the availability determination of jointly-owned vehicles. Refer to Section 2615.45 regarding the availability determination of savings bonds for MED 1.

2605.20.00 RESOURCE ELIGIBILITY DATE

The resource eligibility determination is based on resources owned as of the first day of a month. Ownership of excess resources on the first day of the month renders an applicant or recipient ineligible for medical assistance for the entire month.[3] The first day of the month means the first moment of the first day. Therefore, a financial transaction occurring on the first day does not affect the first of the month resource amount.

---

[2] 405 IAC 2-3-14

[3] 405 IAC 2-3-15

For applicants, resources must be verified as of the first day of each retroactive month and the month of application. For a redetermination or a resource review, verification of the most current value of resources must be obtained. The value is then used to project resource eligibility for the following month.

For liquid resources, the worker must enter on screen AERLA the resource information for each retroactive month and the month of application, including a "begin date" and an "end date" if the amount differs on the first day of each of the months. Subsequent changes in the amounts during the application processing period must be entered accordingly.

2605.25.00 DETERMINING RESOURCE VALUE

The value of a resource must be determined in order to establish the amount that must be counted toward the resource limit. With a few exceptions, the amount of any resource to be counted is the equity value. Equity value is the current fair market value minus the total amount of liens against the property.[4] The exceptions to this procedure are vehicles (Section 2605.25.05) and, in certain instances, real property (Section 2605.25.10).

2605.25.05 Vehicle Valuations

The fair market value of a vehicle is the lowest "wholesale" value as listed in publications written for the purpose of providing guidance to automobile dealers and loan companies. The National Automobile Dealers Association's (NADA) used car guide book or the Red Book published by National Market Reports, Inc. may be used. If these publications are not available, any publication which provides guidance to automobile dealers and loan companies may be used provided they have been updated within the last six months. If the applicant/recipient disputes the "book value" a written statement must be obtained from a licensed automobile dealer.

The AG should be asked to acquire verification of the value of antique, custom made, or classic vehicles, if the worker is unable to make an accurate appraisal.

If a vehicle is especially equipped with apparatus for the handicapped, the book value is to be assigned as if the vehicle were not so equipped.

If a vehicle is no longer listed in a book due to the age of the vehicle, the AG's estimate of the value of vehicle is to be accepted, unless there is reason to believe that the estimate is

---

[4] 7 CFR 273.8(c)(2) - F; 45 CFR 233.20- C; 405 IAC 2-3-14 - MED 1, 4

incorrect. A written statement must be obtained from a licensed automobile dealer.

Vehicle verification must include verification of the following:

- Ownership
- License status
- Fair market value, and
- Amount owed

Workers must keep in mind that equity value will increase with each monthly loan payment. Also, the fair market value may decrease whenever the publication used to establish the value is published. For those recipients who are very close to the resource limit, the value of nonexempt vehicles may have to be verified monthly to ensure that the recipient does not have excess resources as of the first day of a month.

2605.25.10 Real Property Value

Fair market value is the reasonable price that real property can be expected to sell for on the open market in the particular geographic area involved. (Refer to 2605.05.00 for definition of real property and to 2620.)

The fair market (FMV) value of real property can be obtained through tax records or from an estimate by a knowledgeable source. When tax records are used, the most recent property tax assessment must be obtained. The fair market value is the assessed value divided by the assessment ratio. The tax assessment cannot be used if:

- It is more than one year old,
- It is under appeal,
- It is based on a fixed rate per acre method, or
- The taxing authority does not provide an assessment ratio, or only provides a range, for example, between 50% and 75%.

If the worker questions an estimate from a knowledgeable source, one or more additional estimates are to be obtained and averaged in order to establish the fair market value.

If the lesser value is accepted, it must be entered on screen AERRP in the EQUITY field. Since the eligibility system calculates the equity based on the worker entered FMV of property, the equity override (EO) field must be answered "Y" to

enable the lesser equity to be entered and used by the system in the eligibility determination.

2605.25.10.05 Life Estate/Remainder Value

Life Estate: A life estate conveys to an individual certain rights in property for his lifetime. The owner of a life estate generally has the right of possession and use of the property, as well as the right to obtain profits from the property and to sell his life estate interest.

Remainder Interest: When an individual conveys property to one person for life (life estate holder) and to a second person (the remainderman) upon the death of the life estate holder, both a life estate interest and a remainder interest are created in the property. A remainderman cannot sell his interest in the property while the life estate holder is alive unless otherwise specified in the deed. At the death of the life estate holder, the remainderman will hold full title.

The fair market value of a life estate or remainder interest is determined as follows:

Determine the fair market value of the property (Section 2605.25.10) in the usual manner,

Refer to the Life Estate and Remainder Interest Tables in Section 2605.25.10.10, and

Using the individual's age as of his last birthday, multiply the figure in the Life Estate or Remainder Interest column for that age by the fair market value of the property to obtain the value of the life estate or remainder interest.

Advise the individual or person acting on his behalf of the presumed value of the life estate obtained from the table and provide him the opportunity to submit documentation of a lesser value. Such documentation will be acceptable only if it is provided by a knowledgeable source based on an evaluation of the specific life estate in question.

If the lesser value is accepted, it must be entered on screen AERRP in the EQUITY field. Since the eligibility system calculates the equity based on the worker entered FMV of property, the equity override (EO) field must be answered "Y" to enable the lesser equity to be entered and used by the system in the eligibility determination.

2605.25.10.10 Life Estate/Remainder Tables

AGE	LIFE ESTATE	REMAINDER
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.0l019
5	.98938	.0l062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337
10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934

15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457

31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917
40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137

47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998

63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478
71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951

79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272

95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468
102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

2605.25.10.15 Mineral Rights Value

A mineral right is an ownership interest in certain natural resources such as coal, Sulphur, petroleum, sand, natural gas, and others which are usually obtained from the ground. If the individual owns the land to which the mineral rights pertain, the fair market value of the land can be assumed to include the value of the mineral rights. If the individual does not own the land to which the mineral rights pertain, a fair market value must be obtained from a knowledgeable source such as:

The Bureau of Land Management,

The U. S. Geological Survey, or

Any mining company that holds leases.

2605.30.00 CONVERSION OF RESOURCES

Whenever a resource is sold or converted from one form to another, the proceeds remain a resource rather than income. Verification concerning the new resource must be obtained.

2605.35.00 VERIFICATION OF RESOURCES

All verification of resources must be obtained from the source (for example, by the bank where the account is held) or through a source document. Verification of resources is required in all programs; however, the individual's signed statement as to the amount of cash on hand is sufficient (Refer to Section 2615.05.00). When resources are jointly owned, the portion belonging to the individual must be identified and verified.

2605.40.00 MONITORING OF RESOURCES

Each applicant/recipient must be advised of the resource limits of the assistance programs and his responsibility to report any changes in his resource amounts which may affect his eligibility for assistance.

Resources are verified at each redetermination and must be monitored more frequently if changes are anticipated or resources are close to the limit. When payments are being made on real property or vehicles, the equity value may require monitoring as each payment will increase the property's equity.

Special emphasis must be placed on the need for the recipient to keep his resources within the program's limits in order for assistance to continue. Additionally, workers are responsible for monitoring resources between redeterminations.

In cases where resources are close to the resource limits, the cases must be flagged to alert the worker to check resources frequently or on a monthly basis when necessary. Screen AEFEC - expected changes - should be used for this purpose. Monthly monitoring of the value of resources would not be required.

2610.00.00 RESOURCE LIMITS

The resource limit is the maximum value of nonexempt resources that the AG may retain without affecting eligibility. It is dependent on the composition and living arrangement of the AG and the specific rules that govern each program. An AG with countable resources in excess of the applicable resource limit is ineligible for benefits. Refer to Section 3005.00 for the specific resource limits.

2615.00.00 TYPES AND VALUE OF PERSONAL PROPERTY RESOURCES

This section describes the policy for determining the value of personal property resources. The different types of such resources and their consideration are discussed.

2615.05.00 CASH

Cash that is not part of a current month's income is counted as a resource. Cash includes money the individual owns, no matter where it is located. Cash on hand includes:

Amounts carried by the individual,

Amounts the individual has at home, and

Amounts being held for the individual elsewhere.

A signed statement from the individual owning the cash is sufficient verification.

2615.10.00 BANK AND OTHER ACCOUNTS

Bank accounts refer to funds in a bank, credit union, savings and loan association, or any other financial institution that are usually payable on demand. Bank accounts may be solely or jointly owned. Joint ownership exists when the right to liquidate the account is shared by more than one individual.

This section provides information on:

Checking and savings accounts,

Time deposits, including IRAs and Keogh Plans, and

Guardianship accounts.

2615.10.05 Savings And Checking Accounts

It is assumed that all of the funds in a savings or checking account are owned by and available to the individual designated as owner in the account title.

If the account is jointly owned, it is to be presumed that all of the funds belong to each owner. The individuals are to be advised of this presumption and given the opportunity to rebut it. If an applicant/recipient rebuts, he is responsible for providing proof of ownership of the funds, which includes a record of deposits and withdrawals from the account. Following a successful rebuttal, the funds must be separated and placed in separate accounts. Only the funds actually belonging to the applicant/recipient will then be counted as a resource to him.

The resource value of savings and checking accounts is the balance in the account as of the first moment of the first day in which eligibility is being determined. (Refer to Section 2605.20) However, when determining the balance of a checking account for resource eligibility purposes, any checks that have not cleared the bank as of the date on which eligibility is determined, are to be subtracted from the balance. The worker should also subtract any current month's income which has been deposited in the account before entering the amount on screen AERLA. This includes the "direct deposit" benefit check which is sometimes recorded by the bank at the end of one month instead of early in the next month, when it would normally be received. For example, a "direct deposit" RSDI (Social Security) check shown as a deposit on May 31, but which is truly the June check, will be considered as income for the month of June and will not become a resource until July.

The total value of all bank accounts must be verified at the time of application and at each redetermination. Bank accounts must be verified by documentation obtained directly from the financial institution. In addition to using a bank collateral form, monthly account statements can be utilized to verify bank account balances.

2615.10.05.05 Business Accounts (MED 1, 4)

When funds are in a bank account that has been properly identified as a business account, it is assumed that the funds are being used for the operation of the business and are not counted as a resource. If a business account is not clearly distinguishable from personal resources, such funds must be considered personal resources when determining resource eligibility.

2615.10.05.10 Dedicated Accounts for Individuals Under 18 (MED 1, 4)

When past-due SSI benefit payments are paid into a separate dedicated account established solely for the payment of past-due SSI benefits for an individual under 18, these benefits are to be excluded as a resource until all funds in the dedicated account are depleted or until the individual no longer receives benefits from the Social Security Administration (SSA), whichever occurs first.[5] This exclusion continues:

- when the child turns 18 years of age and continues to receive benefit payments from the SSA,
- the individual receives a new representative payee for the dedicated account, or
- during periods when benefits from the SSA have been temporarily suspended

A dedicated account may be a checking, savings or money market account.

A dedicated account cannot be in the form of certificates of deposit, mutual funds, stocks, bonds or trusts. However, if the lump sum(s) of past due benefits are deposited into either a Special Needs Trust or a Pooled Trust described in section 2615.75.15, the resources in that trust would be exempt.

2615.10.10 Time Deposits

Time deposits held by financial institutions may be solely or jointly owned. If a time deposit is solely owned, the availability of funds is the deciding factor in determining if the time deposit is a resource. A time deposit such as a savings certificate or certificate of deposit usually is available to the individual and is counted as a resource.

Verification is to be obtained from the financial institution involved.

When a time deposit is jointly owned and available, the worker is to presume that all of the funds belong to each owner. The individuals are to be advised of this presumption and given the opportunity to rebut it. If an applicant/recipient rebuts, he is responsible for providing proof of ownership of the funds, which includes a record of deposits and withdrawals from the time deposit account. Immediately following a successful rebuttal, the funds must be separated and placed in separate accounts. Only the funds actually belonging to the applicant/recipient

[5] 20 C.F.R. § 416.546

will then be counted as a resource to him. If funds are not separated, the balance is counted in its entirety by each joint owner.

Any interest penalties imposed for withdrawing the time deposit funds prior to maturity are deducted from the total amount when determining the value of the time deposit resource. Interest penalties may involve a reduction in the interest rate and/or loss of interest for a short period of time.

In rare instances time deposits cannot be withdrawn prior to maturity under any circumstances. Funds in this type of account are not included as an asset until they reach maturity and become available.

Verification of a time deposit certificate from the financial institution must include information on when the funds can be withdrawn and any penalties for early withdrawal.

2615.10.15 Safety Deposit Box

The applicant/recipient must present to the worker a signed statement listing all of the contents of a safety deposit box. The contents must then be evaluated in terms of their count ability as a resource.

2615.15.00 RETIREMENT ACCOUNTS

Retirement accounts are financial plans for providing income when employment ends. They may be in the form of Individual Retirement Accounts (IRAs), Keogh Plans, 401K Plans, pensions, annuities and work related plans. Also, some profit sharing plans may qualify as retirement accounts. Savings accounts, checking accounts and certificates of deposits held at banks or credit unions are not retirement accounts.

Except in the two situations listed below, a retirement account is an available resource to an individual if he has the option of withdrawing an amount for any reason, even though he is not yet eligible for periodic payments. However, a retirement account is NOT considered an available resource if an individual must terminate employment in order to obtain any payment.

Exceptions:

- Funds held in an Individual Retirement Account or work-related pension plan, including Keogh Plans, by a non-recipient spouse are not counted as resources. [6]

- For M.E.D. Works (MADW and MADI), all retirement accounts are exempt including those owned by the M.E.D. Works applicant/recipient. This exemption applies to such funds held by the applicant/recipient and also by the spouse.

The value of a retirement account is the amount that the individual can currently withdraw less any penalty for early withdrawal. Taxes due are not deducted from the retirement account's value. Verification is to be obtained from the administrator of the retirement plan. If there is a delay in payment due to reasons beyond the individual’s control because of the financial organization processing timeframe, it would affect the availability of the resource.

The retirement account is presumed available unless there is evidence showing the processing timeframe for a request to withdraw funds. If the timeframe is equal to or less than twenty working days, the account is considered available in all months. If the timeframe is more than twenty working days the account is considered available after the individual agrees to withdraw the funds from the account (refer to IHCPPM 2615.95) and documented timeframe has passed. If the individual refuses to withdraw the funds, the account is considered available upon the refusal.

Effective June 1, 2014, retirement accounts of an ineligible spouse or ineligible parent are not considered countable for MED 1. They have never been counted for MED 4.

Another type of retirement account is intended for self-employed individuals and is often referred to as a Keogh Plan. Funds on deposit in Keogh Plans are counted as resources if the plan does not involve a contractual obligation with anyone who is not an AG member. If the plan includes a contractual obligation with a non-AG member, the money may not be accessible to the AG member and, therefore, is an unavailable resource. The value is the total amount of the Keogh less any withdrawal penalty.

2615.20.00 BURIAL RELATED RESOURCES

Burial related resources include various methods for reserving funds for burial such as prepaid funeral agreements, funeral

[6] 20 CFR 416.1202

trusts, life insurance, and burial accounts on deposit in financial institutions. Each assistance program has specific requirements in regard to burial related resources.

2615.20.05 Burial Accounts (MED 1, 4)

A burial account refers to a revocable account in which funds are identified to be used for burial purposes. In order for funds or assets to be considered set aside for burial, the account titling must indicate such, or there must be a signed statement by the owner or guardian of the purpose for the funds and the date on which they were set aside. This type of account is available to the owner. If a burial arrangement is irrevocable, it is not to be identified as a burial account. Refer to the following sections on funeral trusts and prepaid funeral agreements which are irrevocable.

The policies contained in this paragraph apply to the MA A, MA B, and MA D categories of assistance, in the circumstance of an institutionalized spouse/community spouse. For each spouse, up to $1500 of any separately identifiable funds set aside and earmarked for burial in a revocable account are exempt, regardless of beneficiary designation. The $1500 maximum must be reduced by the amount in an irrevocable burial trust or by the face value of any life insurance policies whose cash surrender value (CSV) has been exempted because the face value is $10,000 or less and the beneficiary is the estate or funeral home.

EXAMPLE: Mr. Jones is in a nursing facility. Mr. and Mrs. Jones each have a burial account valued at $1500. Mrs. Jones also has a life insurance policy with a face value of $1000. Only $500 of Mrs. Jones' burial account can be exempted.

For other situations, not involving institutionalized/ community spouses, revocable burial accounts are countable resources.

For QMB (MA L), QDW (MA G), SLMB (MA J), and QI (MA I) up to $1500 of any separately identifiable funds in a burial account are exempt. The exemption applies to the applicant/recipient and to his spouse. The $1500 maximum must be reduced by the amount in an irrevocable burial trust or any irrevocable prepaid funeral agreement. It must also be reduced by the face value of any life insurance policies whose cash surrender value has been exempted because the face value does not exceed $1500 <u>regardless of the beneficiary designation</u>.

2615.20.10 Funeral Planning Programs (MED 1, 4)

There are various methods by which an individual may reserve funds for burial, such as burial accounts, prepaid funeral agreements, funeral trusts, and life insurance. In evaluating any of these entities as resources, workers must carefully apply resource eligibility principles applicable to each program. In most situations, the determination of availability of funds reserved by any type of prepaid funeral arrangement will be based on whether the contract is revocable or irrevocable. However, a prepaid funeral agreement does not become irrevocable until 30 days after the contract is signed by the purchaser and seller, unless the 30-day period is waived as described below. [7]During the 30 day waiting period the contract can be revoked, and a revocable contract is a countable resource except in the circumstances explained in the previous section. If the funeral agreement was established on or after July 1, 1997 and includes a waiver of the 30-day waiting period or similar language making the trust immediately irrevocable, the funds in the trust are unavailable and exempt beginning on the date the agreement is signed. When necessary, an FSSA attorney should be consulted.

EXAMPLE: Client signs a prepaid funeral agreement on 7/12. The contract is revocable for 30 days, so the value of the agreement is a countable resource for 8/1. The contract becomes irrevocable 30 days after signing, so the value is unavailable and, therefore, not a countable resource for 9/1.

When an irrevocable assignment of life insurance (an action which eliminates the owner's right to obtain the cash surrender value) is involved as a means of funding an irrevocable funeral trust, the worker must verify two dates:

- The date of the assignment, and
- The date the insurance company accepted the assignment

The date of a legally executed irrevocable assignment of a life insurance policy which will fund a funeral trust is the date that the cash surrender value is considered to be unavailable, provided that the home office of the insurance company subsequently accepts the assignment.

[7] IC 30-2-13-12;

2615.20.10.05 Prepaid Funeral Agreements (MED 2)

The cash value of a prepaid funeral agreement with a funeral home is exempt as a resource, up to a maximum of $1500. One such exemption is allowable for each member of the AG. The amount of cash value exceeding $1500 must be counted as a resource. [8]

However, any prepaid funeral agreement must be reviewed to verify not only its value, but its terms. A determination must be made as to whether the agreement is revocable or irrevocable. Per Indiana statute, a prepaid funeral agreement does not become irrevocable until 30 days after the contract is signed by the purchaser and seller.[9] During the 30 day waiting period the contract can be revoked. An FSSA attorney may be consulted in the determination of whether an agreement is revocable or irrevocable. The value of any type of prepaid funeral agreement is considered available to the individual if the contract is revocable, however, the $1500 exemption explained above is applicable. Refer to Section 2615.20.15 for information regarding funeral trusts.

Funds set aside in a financial institution and designated for burial are counted as a resource to the individual.

2615.20.15 Funeral Trusts

A valid irrevocable Indiana funeral trust is an exempt resource regardless of the value of the trust.[10]

Indiana's funeral trust statute is found at I.C. 30-2-10 et seq. and applies to funeral trusts established on or after July 1, 1982. I.C. 30-2-9 et seq. is applicable to funeral trusts established after June 30, 1978, but before July 1, 1982. The DFR must determine that an Indiana funeral trust is valid and irrevocable in accordance with the criteria specified in the applicable statute. The value of the trust must also be verified.

Interest earned on an irrevocable trust is also exempt if the interest accrues to the principal of the trust. Irrevocable funeral trusts may be reviewed by FSSA Legal if necessary.

A funeral trust established in a state other than Indiana must be evaluated in terms of that state's laws. Such a trust may or may not be irrevocable.

---

[8] 470 IAC 10.13-1

[9] IC 30-2-13-12

[10] 405 IAC 2-3-16

2615.20.21 Death Benefits (MED 1, 4)

Death benefits, including gifts and inheritances, received by an individual, to the extent that they are not income because they are to be spent on costs resulting from the last illness and burial of the deceased, are not resources for the calendar month following the month of receipt. However, such death benefits retained until the first moment of the second calendar month following their receipt are resources at that time.[11]

2615.20.20.05 Burial Plots (MED 2)

A burial plot for each participating member of the AG is exempt. This includes a conventional gravesite, crypt, mausoleum, or any other type of repository. [12]

2615.20.20.10 Burial Plots (MED 1, 4)

A burial space or agreement which represents the purchase of a burial space held for the burial of the individual, his or her spouse, or any other member of his or her immediate family is an exempt resource, regardless of value. [13]This includes a conventional gravesite, crypt, mausoleum, urn or any other type of repository.

2615.25.00 INSURANCE

Insurance policies owned by an individual may affect his eligibility and must be identified and evaluated. Some types of insurance that may be taken into consideration are:

- Life insurance,
- Casualty insurance, and
- Indiana Long Term Care Insurance

Sections 2615.25.05.05 through 2615.25.15 discuss how these types of insurance are treated in the eligibility determinations for the different assistance programs.

2615.25.05 Life Insurance

The following definitions are pertinent in the consideration of life insurance as a resource:

The insured is the individual whose life is covered by the policy.

---

[11] 20 CFR 416.1201 (4)

[12] 45 CFR 233.20

[13] 405 IAC 2-3-15

The beneficiary is the individual or entity named in the contract to receive the proceeds of the policy upon the death of the insured.

The owner is the individual who has all rights and privileges of the contract and has the absolute right to liquidate the policy, exercise policy loans, change beneficiary, elect settlement options, determine the manner in which dividends will be treated, or any other rights and privileges granted in the policy.

The face value is the amount stated as such on the face of the policy.

The cash surrender value (CSV) is the amount which the insurer will pay upon cancellation of the policy before death or maturity. This value usually increases as more premiums are paid toward the policy.

There are various types of life insurance. However, not all types of life insurance have cash value (for example, term insurance). Policies which have no cash value prior to payment of the death benefit are not counted in the resource determination.

The CSV of insurance is available to the owner unless assigned or in some other manner actually transferred on the records of the insurance company to the insured or another person. Therefore, insurance is to be considered a resource to the owner and not to the insured, if the specific assistance program takes the CSV into consideration.

2615.25.05.10 Life Insurance Value

The CSV of a life insurance policy is counted as a resource if the owner is the applicant/recipient or a person whose resources are deemed to the AG. An exception occurs when life insurance is exempt in accordance with the provision to exempt life insurance with a face value of $10,000 or less for the MA A, MA B, MA D, MADW, and MADI categories, when the beneficiary is the estate or a funeral home, as explained in Section 2615.25.05.15.

The owner of a life insurance policy may be indicated on the policy; however, verification of the CSV must be obtained from the insurance company. As this will usually take several weeks, workers must be sure to follow up and, whenever possible, should enlist the assistance of the applicant/recipient and the local insurance office or agent. Awaiting verification of the cash surrender value is a valid extenuating circumstance for pending a case beyond the time standard. If there is no possibility that the CSV will cause excess resources (for example, the policy has

been in force a short time and the person's other resources are minimal), the application can be approved prior to receipt of verification of the CSV. Efforts to obtain the CSV, however, must be continued.

The CSV must be verified at each redetermination. In cases where resources are close to the resource limits, the cases must be flagged to alert the worker to check resources frequently; at a minimum, on a monthly basis. Screen AEFEC - expected changes - should be used for this purpose. It is recommended that, at the time of application, workers request that the insurance company verify future cash surrender values as well as the current CSV.

2615.25.05.15 Life Insurance Exemption (MED 1)

Effective 7-1-99, when an applicant/recipient is insured by a life insurance policy with a face value of $10,000 or less and the beneficiary of the policy is the applicant's/recipient's estate or the funeral director who will be providing services, the cash surrender value is exempt.[14] This also applies if there is more than one policy and the total face value of all policies is $10,000 or less. If the face value of one or more policies (excepting term policies) exceeds $10,000, the cash surrender value must be considered, regardless of who is designated as the beneficiary.

Effective June 1, 2014, if the total value of an AG's irrevocable funeral trust, irrevocable prepaid funeral agreement, and the face value of one or more policies (excepting term policies) exceeds $10,000, the cash surrender value of the life insurance policy or policies that exceeds the $10,000 exception is countable, regardless of who is designated as the beneficiary of that policy.[15]

Each applicant/recipient is entitled to the $10,000 insurance exemption.

---

[14] 405 IAC 2-3-15; IC 12-15-2-17

[15] IC 12-15-2-17(e)

EXAMPLE 1:

Mr. and Mrs. Smith apply for assistance. He has a life insurance policy with a face value of $8,000, and she has one with a face value of $4,000. The beneficiary of both policies is Miller's Funeral Home. The cash surrender value of both policies is exempt because each policy has a face value of $10,000 or less.
The $10,000 limitation is reduced by any amount in an irrevocable burial trust or an irrevocable prepaid funeral agreement.

EXAMPLE 2:

The applicant has a $1000 irrevocable burial trust. Therefore, he is allowed a life insurance face value exemption of $9,000. ($10,000 - $1,000 = $9,000) He has a life insurance policy with a face value of $8,000, and the beneficiary is his estate. The cash surrender value is exempt.

EXAMPLE 3:

The applicant has a $10,500 irrevocable burial trust. Because this is in excess of $10,000, he is not entitled to a life insurance exemption. He has a life insurance policy with a face value of $1000, and the beneficiary is his estate. The cash surrender value is $800 and must be counted.

Before the CSV can be exempt, the worker must verify the face value, the owner, the beneficiary, and the insured.

Policies which insure the non-recipient spouse or parent of the applicant/recipient cannot be exempt under this provision.

2615.25.05.20 Life Insurance Exemption (MED 4)

The CSV of life insurance is exempt when the total face value (FV) of all policies (except term policies) does not exceed $1500, regardless of the beneficiary designation. If the total face value exceeds $1500, the CSV is a countable resource. Both spouses are entitled to have the CSV of life insurance exempted under this provision, whether or not they are both applicants/recipients.

2615.25.10 Indemnity Health Insurance, VA Aid and Attendance Payments, and Casualty Insurance

Payments made to covered persons under an indemnity health insurance plan intended to cover costs associated with health care costs incurred by the applicant/recipient are exempt as resources the month the payments are received and the following month. Any payments from the insurance policy that are not spent on health services during the exempted timeframe are deemed countable once this timeframe has passed.[16] This resource exclusion applies to income received for VA Aid and Attendance payments made to the applicant/recipient.

The proceeds (including interest earned) of casualty insurance received as a result of damage, destruction, loss, or theft of exempt real or personal property are not to be counted as a resource if the applicant/recipient demonstrates that the proceeds are being used to repair or replace the property.[17] For MED 1 and 4 only, the resource is exempt for a period not to exceed nine months from the date of receipt. If the proceeds from casualty insurance are retained by the applicant/recipient or his spouse or parent after the nine month period, they must be counted as a resource.

2615.25.15 Long Term Care Program-Resource Disregard (MED 1, 4)

This section applies to all of MED 1. Within MED 4, it applies only to QMB (MA L).

The Indiana Long Term Care Program (ILTCP) is jointly administered by the Family and Social Services Administration and the Department of Insurance. An individual, who purchases a long term care policy that is a qualifying policy under the ILTCP, as determined by the Department of Insurance, is allowed a special resource disregard in his Medicaid eligibility determination once policy benefits have been utilized.

The amount of the disregard for the individual depends on the type of “asset protection” earned by the qualifying policy. There are two types of disregards depending on the policy: 1) total asset protection; and 2) dollar-for-dollar asset protection.

1) Total Asset Protection is available to the individual who purchased a policy or certificate that includes a maximum benefit equal to or greater than the State-Set dollar amount

[16] 20 C.F.R. § 416.1201(a)(3)
[17] 405 IAC 2-3-15; 470 IAC 10.1-3-1

in force on the original effective date of the policy (i.e. when there was a policy agreement).

a. To view the State Set dollar amounts for certain years, please, see the Total Asset Chart, http://www.in.gov/iltcp/2358.htm.

2) Dollar-for-Dollar Protection is available when the individual does not have Total Asset Protection. The amount of the resource disregard is applicable up to the limit on the policy.

This disregard is in effect for the lifetime of the individual.[18] This disregard only applies to the resources owned by the insured individual, not to any other person whose resources are included in the eligibility determination.

Policy benefits are payable for long term care services provided in a long term care facility or in the home.

Not all long term care insurance policies qualify for this "asset protection". Workers must verify that a policy is qualified under the ILTCP. Insurance companies who sell qualified ILTCP policies are responsible for documenting the amount of benefits paid on behalf of their clients. The first page of the policy will have boxed language stating the policy qualifies for Medicaid asset protection. The insurer must provide a quarterly report to the insured individual summarizing the amount of benefits paid during the quarter and cumulatively since benefits were first paid under the policy, as well as the amount of asset protection earned.[19] When an insured individual applies for Medicaid, the insurance company is required to provide the client with a service summary report.[20] This service summary is the required documentation that workers will need in order to verify that a policy is qualified under the ILTCP and the amount of the resource disregard to be applied in the Medicaid eligibility determination of an applicant/recipient.

---

[18] IC 12-10-9-8
[19] 760 IAC 2-20-39
[20] 760 IAC 2-20-40

Example 1 – Dollar for Dollar Policy

An individual purchases a dollar for dollar ILTCP policy which provides initial policy benefits of 100,000. She enters a nursing facility and the policy pays out a total of $109,000 (benefits increase due to inflation provision). She then applies to Medicaid and her resources are as follows:

Irrevocable funeral trust (exempt)	$4,000
Certificate of deposit	$50,000
Life insurance cash value	$15,000
Stocks	$25,500
Mutual Funds	$20,000
Total Resources	$110,500
ILTCP disregard	$109,000
Countable resources	$1,500
Resource Limit	$2,000

Applicant is resource eligible.

Example 2 – Dollar for Dollar Policy

An individual purchases a dollar for dollar ILTCP policy which provides initial policy benefits of $100,000. She enters a nursing facility and the policy pays out a total of $109,000 (benefits increase due to
Inflation provision). She then applies to Medicaid and her resources are as follows:

Irrevocable funeral trust (exempt)	$ 4,000
Certificate of deposit	$50,000
Life insurance cash value	$18,000
Stocks	$25,500
Mutual Funds	$20,000
Total Resources	$113,500
ILTCP disregard	$109,000
Countable resources	$4,500
Resource Limit	$2,000

Applicant has excess resources so application is denied.

Example 3 – Total Asset Policy

An individual purchased a total asset ILTCP policy which provides an initial policy benefit of $200,000 in 2005. Thereafter, she enters nursing facility and the insurance pays out the maximum benefits, which will be more than the initial benefits depending on when she entered the facility. She then applies to Medicaid and her resources are as follows:

Irrevocable funeral trust (exempt)	$4,000
Certificate of deposit	$120,000
Life insurance cash value	$15,000
Stocks	$25,500
Mutual Funds	$120,000
Total Resources	$280,500
ILTCP disregard	$225,000
Countable resources	$55,500
Resource Limit	$2,000

Applicant has excess resources but all excess resources are disregarded with a total asset policy, because $200,000 is greater than the State-Set amount in 2005, which was $196,994.

2615.30.00 HOUSEHOLD GOODS AND PERSONAL EFFECTS

Household goods and personal effects are exempt as resources.[21] Household goods are items of personal property customarily found in the home and used in connection with the maintenance and occupancy of the home. They include (but are not limited to) furniture, appliances, kitchen utensils, linens, and television sets.

Personal effects are those items of personal property which are worn or carried by an individual. Some examples are clothing, jewelry, and hobby items.

[21] 405 IAC 2-3-15

2615.35.00 INCOME-PRODUCING PERSONAL PROPERTY

Income-producing personal property consists of items such as farm machinery, livestock, tools, equipment, a vehicle used in a business, business inventory, and furnishings and appliances included with a rental unit.

Such personal property may be solely or jointly owned. If an applicant/recipient jointly owns personal property with another applicant/recipient of any assistance group (AG), for any program, proportionate shares of the property are to be assigned to the joint owners and considered as a resource in accordance with the program requirements. (Refer to Section 2605.10.05)

When a non-recipient is one of the joint owners of real or personal property, the availability of the applicant's/recipient's proportionate share must be determined. If the applicant's/recipient's proportionate share is available to him, it is to be considered a resource as required by the specific assistance category, as discussed in the following sections.

2615.35.10 Income-Producing Personal Property (MED 2)

The equity value of farm or business equipment is a countable resource.

2615.35.15 Income-Producing Personal Property (MED 1, 4)

Items of personal property utilized in the production of income are exempt resources.[22] Examples of such are farm machinery, livestock, tools, equipment, a vehicle used in a business inventory, furnishings, and appliances included with a rental unit. This exemption does not, however, include income-producing financial assets such as certificates of deposit, other interest bearing bank accounts, stocks, bonds, and so forth.

2615.40.00 PERSONAL PROPERTY USED TO PRODUCE FOOD

Personal property necessary for the production of food for home consumption is also exempt as a resource.[23] This would include such things as garden equipment, farm implements, chickens, and livestock.

2615.45.00 STOCKS, BONDS, AND MUTUAL FUND SHARES

Stocks, mutual fund shares, and bonds may be solely or jointly owned. If jointly owned, refer to Section 2605.10.05 for

---

[22] 405 IAC 2-3-15

[23] 470 IAC 10.1-3-1 - C; 405 IAC 2-3-15 - MED 1, 4

instructions regarding personal property. Stocks, mutual fund shares, and bonds are considered in the eligibility determination as follows:

> Stocks and Mutual Fund Shares: The current market value of shares of stock and mutual fund shares can be verified by reviewing the closing or "bid" price listed in the financial section of the newspaper, or by contacting a brokerage firm. The value to be considered as a resource is the current market value less the legitimate expenses related to the sale of the shares.
>
> Municipal, Corporate, and Government Bonds: A bond is a written obligation to pay a sum of money at a future specified date. It is a negotiable instrument and is transferable.

The worker must verify the current market value of bonds by contacting a securities dealer. As with stocks and mutual fund shares, expenses related to the sale of a bond must be deducted from the current market value in order to determine the cash value to be counted as a resource.

> United States Savings Bonds: A United States Savings Bond is an obligation of the federal government but, unlike other government bonds, it is not transferable in that it can only be sold back to the government.

Although many bonds have a table of values on the reverse side of the bond, it is often inaccurate because the interest rate may have changed since the bond was issued. Therefore, the worker should contact a bank to verify the current value. Also the Department of Treasury's web site can be used to calculate the value of bonds. www.publicdebt.treas.gov/

For determining eligibility under a MED 1 category for a month prior to June 1, 2014, savings bonds are considered immediately available if purchased on or after November 9, 2002.[24] This includes but is not limited to Series I and Series EE bonds. During the 6-month period following the date of issuance, bonds issued for face value are counted as a resource in the amount of the face value. Bonds issued at face value include Series I and Series HH bonds. Bonds such as Series EE which are issued at less than face value count as a resource in the amount of the purchase price. Bonds which were purchased prior to November 9, 2002 and are in the 6-month post-issuance period, become a countable resource in the sixth month after purchase. For example, a bond with an issue date in August becomes a countable resource in February; if the value of the bond causes excess

[24] 405 IAC 2-3-23

resources for the recipient, the worker would discontinue Medicaid effective February 1.

Effective June 1, 2014, Series EE U.S. Savings Bonds purchased after February 1, 2003 are not deemed to be available until the 13th month after the date of purchase.

2615.50.00 MORTGAGES, LOANS, AND PROMISSORY NOTES

A negotiable mortgage, loan, or promissory note held by an individual is a countable resource. Such items are negotiable when they can be sold (there is no legal barrier to the transfer of ownership). The value counted as a resource is the amount of the outstanding principal balance. Also, any payment received on the principal is a resource. The interest portion of any such payment is unearned income.

Prior to June 1, 2014, if the mortgage, loan, or note is non-negotiable, it is not a resource. In that case total payments received, whether principal or interest, are unearned income.

Effective June 1, 2014, if the mortgage loan or note is non-negotiable, it is not a resource. In that case, only the interest payments received are counted as unearned income.

A mortgage, loan, or promissory note should be reviewed by FSSA Legal to resolve questions of negotiability.

2615.55.00 LAND SALES CONTRACT

A land contract must be evaluated according to the requirements of each assistance category. Property which is being sold on contract is to be entered on screen AERRP.

2615.55.10 Land Sales Contract (MED 2)

When an applicant/recipient is the owner of a contract for the sale of real property, the equity value of the contract is counted toward the resource limit of the AG.

The equity value is equal to the principal balance remaining to be paid on the contract, which is referred to as a land contract or installment contract.

> **EXAMPLE:** A Refugee applicant contracted to sell a piece of real estate for $15,000. To date, $8700 has been paid on the principal. The remainder, $6300, is considered a resource to the applicant.

The equity value of a contract is to be considered a resource

Except when the contract contains a clause that prohibits the owner from selling or transferring the contract. In such an instance, the equity value is exempt. However, the portion of the periodic payment that represents payment toward the principal is counted as a resource.

2615.55.15 Land Sales Contract (MED 1, 4)

When property is being sold on land contract, the down payment is counted as a resource, and the ongoing payments are counted as income.

Effective June 1, 2014: Only the interest payments on loans are counted as income.[25] The value of the contract is exempt as a resource. The person selling property on contract, the promissory note or property agreement is a resource, unless the note or agreement is non-negotiable. The property itself is not a resource because the seller cannot legally convert it to cash while it is encumbered by the agreement. The outstanding principal on a negotiable agreement is considered a countable resource.

2615.60.00 VEHICLES

MED 1 & 4 have different requirements for considering vehicles than MED 2. Requirements may differ between the Medicaid categories. The following sections describe how to determine the resource value of vehicles.

2615.60.05 Definition Of Vehicle

A vehicle is any conveyance that provides transportation of persons or goods from place to place. Automobiles, trucks, vans, motorcycles, mopeds, boats, snowmobiles, and so forth are classified as vehicles.

2615.60.15 Treatment of Vehicles (MED 2)

Each AG is allowed an exclusion of $5000 of the equity in one vehicle. Equity is the vehicle's fair market value less any liens.

If more than one vehicle is owned, the equity in each vehicle is to be determined. Since the $5000 disregard can be applied to only one vehicle, it is to be applied to the vehicle with the highest equity value. No amount is excluded from the equity value of the remaining vehicle even if the value of the first vehicle is less than the $5000 disregard.

---

[25] 20 CFR 416.1103(f)

2615.60.20 Treatment of Vehicles Prior to June 1, 2014 (MED 1, 4)

This section explains the treatment of vehicles before June 1, 2014.

One vehicle of any value is exempt as a resource if, for the applicant/recipient or a member of his household:

- It is necessary for employment,
- It is necessary for regular medical treatment, or
- It is modified for operation by or transportation of a handicapped person

An applicant/recipient of QMB, QDW, SLMB, or QI is also entitled to have a vehicle exempted if:

- It is necessary because of climate, terrain, distance, or similar factors to provide necessary transportation to perform essential daily activities.

If more than one vehicle can be exempt, the one with the highest equity should always be the one that is exempt.

When the eligibility determination is made for an institutionalized individual with a community spouse, one vehicle is exempt without having to meet any conditions.

If no vehicle is exempt, $4500 of the fair market value of one vehicle is exempt. The excess market value over $4500 is counted as a resource. Equity is not a consideration in applying this exemption.

The equity value of other vehicles is counted as a resource. The equity value is the fair market value minus total liens. If the other vehicle is used in the production of income, however, it is exempt for that reason.

2615.60.20.05 Treatment of Vehicles On and After June 1, 2014 (MED 1, 4)

This section explains the treatment of vehicles on and after June 1, 2014.

One vehicle of any value is exempt as a resource for the applicant/recipient or a member of his household. If there is more than one vehicle, the one with the highest equity should always be the one that is exempt. The equity value of other vehicles is counted as a resource.

The equity value is the fair market value minus total liens. If the other vehicle is used in the production of income, however, it is exempt for that reason.

2615.60.25 Recreational Vehicles And Equipment

Recreational vehicles such as campers, trailers, and boats must be counted according to their current equity value. If the recreational or other vehicle serves as the AG's home, it should be evaluated according to the guidelines in Sections 2620.15.05 and 2620.15.10.

2615.65.00 NON-RECURRING LUMP SUM PAYMENTS

A lump sum payment may include retroactive benefits such as SSI, Social Security, and VA benefits. A lump sum may also be a refund of Medicare Part B premiums, an insurance settlement, an inheritance, or other such nonrecurring payment.

Retroactive lump sum payments from Social Security (i.e. SSI, RSDI, or SSDI) are exempt as resources for nine (9) months.[26]

Screen AERLS is scheduled when "yes" is answered to the lump sum payments question on screen AERRQ.

2615.70.00 LIFE CARE CONTRACT (MED 1, 4)

An individual may have entered into an agreement with an institution under which he transferred his available assets to the institution in exchange for full maintenance and medical care in the institution for life. Such individual would normally be ineligible for assistance, as the institution has a legal responsibility to provide care even if the individual's resources are exhausted.

However, in the event the facility claims that the conditions of the contract are no longer applicable because the facility is financially unable to fulfill its legal responsibilities under the contract, the facility must prove this allegation.

The DFR must require an accounting from the facility as to:

- The amount of income and resources the individual assigned to the facility upon admission,
- The cost of the individual's care as paid by the facility,
- Amount of assets refunded to the individual, and
- Amount of assets retained by the individual

[26] 20 CFR 416.1233

If such documentation proves the facility's allegation that the individual's funds have been expended on his care, then the individual can be eligible for Medicaid.[27]

2615.75.00 TRUST FUNDS

All trusts which involve a member of the AG must be carefully evaluated to determine whether or not the trust principal will be counted as a resource.

2615.75.05 Trust Funds Established Prior to August 11, 1993

The date on which a trust fund was established is a determining factor as to how the trust will be treated for Medicaid eligibility purposes. A change in federal law (OBRA-93) governs the treatment of trusts established on and after August 11, 1993 and is explained in next Section 2615.75.20.

A trust which was established prior to 8-11-93 by the applicant/recipient or his/her spouse as grantor with the applicant/recipient or spouse as the beneficiary is referred to as a "Medicaid qualifying trust". Unless such a trust was created in a will (i.e. a testamentary trust) or was created prior to 4-7-86 solely for the benefit of a mentally retarded individual residing in an ICF/MR, the principal of the trust is a countable resource. The amount to be counted as a resource is the maximum amount available to the beneficiary if the trustee were to exercise full discretion for distribution of the funds according to the terms of the trust. The trust is counted as a resource regardless of whether it is revocable or irrevocable, and whether or not the trustee actually exercises his/her full discretionary authority as allowed by the trust. A trust established by the individual's guardian or legal representative, who is acting on behalf of the individual, falls under the definition of a Medicaid qualifying trust.

In reviewing trust funds established prior to August 11, 1993 which do not meet the definition of a Medicaid qualifying trust, including testamentary trusts and those created prior to 4-7-86 for a mentally retarded individual residing in an ICF/MR, the DFR must determine the "availability" of the trust. Refer to Section 2605.15 for the definition of availability.

---

[27] 405 IAC 2-3-2

2615.75.10 Trust Funds Established On and After August 11, 1993

The policies in this section are applicable to trust funds established, other than by a will, on and after August 11, 1993, and are effective October 1, 1993. [28]

A trust fund is subject to the provision in this section if the trust is funded with assets of the applicant/recipient or spouse and is established by:

The applicant/recipient,

The spouse of the applicant/recipient,

Anyone, including a court or administrative body, with legal authority to act on behalf of the applicant/recipient or spouse, or

Anyone, including a court or administrative body, who is acting at the direction or request of the applicant/recipient or spouse

Refer to Section 2615.75.15 which explains the types of trust funds which are exempt from these provisions.

These provisions apply if assets of the applicant/recipient were used to fund all or part of the trust. If other person(s)' assets are included, the portion of the trust representing the individual's assets will be evaluated for resource eligibility purposes.

A revocable trust is considered as follows:

- The entire trust principal is an available countable resource.
- Any payments made from the trust to or for the benefit of the individual are counted as income.
- Any payments from the trust which are not made to or for the benefit of the individual must be evaluated as a transfer of property. The look-back period for a transfer in this circumstance is 60 months.

An irrevocable trust is considered in the following manner:

- If the terms of the trust allow for payments to or for the benefit of the individual, under any circumstances, the following rules apply to that portion of the trust:
    - Payments from trust income or principal are treated as income

[28] Section 1917(d) of the Social Security Act as added by P.L. 103-66, OBRA-93; 405 IAC 2-322

- Trust income which could be paid (but isn't being paid) is treated as an available resource

- The portion of the trust principal which could be paid (but isn't being paid) is treated as an available resource

- Payments made from the trust income or principal to another individual (and not for the benefit of the applicant/recipient or spouse) must be evaluated as a transfer of property. The look-back period for a transfer in this circumstance is 60 months

- If the terms of the trust do not allow part or all of the trust income or principal to be paid to or for the benefit of the individual under any circumstance, the value of that portion of the trust must be evaluated as a transfer of property. The look-back period in this situation is 60 months

Payments made from revocable or irrevocable trusts are considered as being paid to the individual if such payments are paid directly to the individual or to someone acting on his behalf such as a guardian.

A payment for the benefit of the individual is one from which the individual derives a distinguishable benefit. Some examples include the purchase of clothing and items for personal use such as a radio or television, and payment of the individual's utilities or rent. These payments are counted as income to the extent that they would ordinarily be counted as income for eligibility purposes. For example, if a trust pays the individual's medical expenses, the payment made directly to the medical provider is not countable income. Similarly, a payment to a utility company is income-in-kind, but only countable income-in-kind in accordance with Section 2815.15.

2615.75.15 Certain Trusts Receiving Special Consideration

The trust provisions explained in the preceding Section 2615.75.10 do not apply to certain special needs trusts and pooled trusts as well as Miller trusts defined below. The following trusts should not be considered countable resources.

<u>Special Needs Trust</u>

This is a trust containing the assets of a disabled applicant/recipient under age 65, which is set up by the applicant's/recipient's parent, grandparent, legal guardian or by a court, and is established for the sole benefit of the

applicant/recipient. The individual must be disabled according to SSI criteria. Such a trust must contain a provision specifying that, upon the death of the individual, the State will receive all amounts remaining in the trust up to the total amount of Medicaid benefits paid on the individual's behalf.

Pooled Trusts

A pooled trust is a trust containing the assets of a disabled applicant/recipient (disabled according to SSI criteria) which meets the following conditions:

- The trust is established and maintained by a non-profit association,
- A separate account is maintained for each of the beneficiaries, but for investment and management purposes the funds are commingled,
- The trust account is established by the applicant/recipient or his parent, grandparent, legal guardian or by a court for the sole benefit of the applicant/recipient,
- There is a provision which specifies that upon the death of the beneficiary, any funds not retained by the trust will be paid to the State up to the total amount of Medicaid benefits paid on the individual's behalf

Miller (Qualified Income Trusts)

A Miller Trust (or Qualified Income Trust (QIT)) is a unique trust that allows persons residing in long-term care facilities or receiving home-and-community-based-services through a 1915(c) waiver (see IHCPPM sections 3305.00.00 and 3320.10.00) who have personal income above the Special Income Level (SIL) (see IHCPPM sections 3455.14.00 and 3010.20.15) to be considered Medicaid eligible. A Miller Trust may be established for a Medicaid applicant/recipient who is a beneficiary of the trust by the applicant/recipient’s Authorized Representative for Medicaid eligibility purposes, legal guardian, power-of-attorney (POA), or family member if the applicant/recipient is incapacitated as shown with documentation from a licensed physician.

A Miller Trust is one that:

- Is funded only by the income of the beneficiary including accumulated interest on that income. The trust will not be funded with the beneficiary’s resources, nor income or resources of other persons, and

- Upon the death of the beneficiary, the State of Indiana will receive all remaining funds in the trust up to the amount of Medicaid expenditures paid on the individual’s behalf

2615.75.20 Other Trusts Not Governed by OBRA-93

Trusts established on or after August 11, 1993 that are not governed by OBRA-93 must be reviewed for the purpose of determining the "availability" of the trust. Some examples are trusts created by a will (testamentary trust) or by a third party other than a spouse or someone acting on behalf of the applicant/recipient, and funded with the assets of another person(s).

615.80.00 LEGAL GUARDIANSHIP/REPRESENTATIVE PAYEE (MED)

An individual who serves as legal guardian/representative payee for another person is responsible for administering that person's funds and will be listed in bank records as having access to his bank accounts.

Resources that are managed by an individual's legal guardian, representative payee, or other person acting as an agent on behalf of the applicant/recipient are counted as resources to the individual. The resources are not counted as being available to the guardian/payee for his own use. However, the resources must be held in a form that clearly shows they belong to another individual. For example, a bank account that is held by the guardian/payee must be clearly designated as being administered by the guardian/payee on another person's behalf.

2615.90.00 PRORATED INCOME

Income that is prorated (educational income, self-employment income) cannot be counted as a resource for any month during the prorated period.[29]

2615.95.00 DISPOSITION OF NON-EXEMPT NON-LIQUID PERSONAL PROPERTY (MED 1)

An applicant/recipient who meets all eligibility requirements but fails to meet the resources requirement due solely to excess resources, may be determined eligible for Medicaid benefits, if the individual were otherwise eligible if his non-liquid resources were excluded and he agrees to offer (or dispose) his non-liquid resources at fair market value.

---

[29] 7 CFR 273.8(e)(9)

2615.95.05 Presumption of Liquidity (MED 1)

Property is generally broken down into two types: liquid and non-liquid.

Liquid resources are cash or other assets, which can be converted to cash within 20 workdays.

Non-liquid resources consist of real and personal property, as well as financial instruments that cannot be converted to cash within 20 workdays. For treatment of non-exempt real property, refer to Section 2620.20.00.

For purposes of this section, it is assumed that the following types of personal property are non-liquid: automobiles, machinery, livestock, noncash business property, life insurance, and certain bonds (see IHCPPM 2615.45.00). It is presumed that all other types of personal property not contained in the list can be converted to cash within 20 workdays and are countable as resources.

A person may overcome this presumption with documentary evidence. For example, if a retirement account cannot be converted to cash within 20 working days from the date the person requests the funds from the account, there would need to be documentary evidence from the financial institution holding the retirement funds showing at what point such funds would be available after the request is made. Once the funds are withdrawn from that date, if retained, they would be considered countable upon the first moment of the first day of the following month.

2615.95.10 Agreement to Dispose / Offer For Sale of Non-Liquid Personal Property at Fair Market Value

In order for Medicaid Eligibility to be established on the disposition of non-liquid resources to be made, the applicant/recipient must sign an agreement to offer property for sale or rent, or dispose of property at current market value. When the agreement is signed, it is effective “for the purposes of the application”, that is, inclusive of retroactive months for that application date.

Once the agreement is signed, the property is no longer excluded after the property has been sold or disposed, but in no condition must the exclusionary period last longer than three months unless Good Cause is established as described in Section 2615.95.15.

Any transfer of assets below fair market value should be noted in the case record for transfer of property purposes. The

individual will be penalized only if the transfer occurs during the applicable look-back period. Refer to IHCPPM 2640.10.10.

2615.95.15 Good Cause Failure to Dispose, Rent, or Sell Non-Liquid Personal Property at Fair Market Value

If the property is not sold, rented, or disposed after an initial three-month exclusionary period has passed, a second three-month extension is possible if good cause can be established by a recipient.

Good Cause is established if the failure to dispose of a resource occurred despite reasonable and diligent efforts on the applicant/recipient's part due to circumstances beyond his control from disposing of the resource. The recipient must produce documentary evidence showing efforts taken to sell, rent, and/or dispose of the resource and proof of the circumstances with an explanation as to why the failure was beyond his control.

If the recipient has not reported the sale, rent, or disposal of a resource after two months from signing the agreement, the DFR must send a notice to the client informing him of his right to claim "Good Cause". If the form is not received within 20 days with the accompanying documentation showing reasonable and diligent efforts with an explanation as to the failure due to circumstances beyond his control, the non-exempt, non-liquid personal property is countable the fourth month after signing the agreement.

If Good Cause is claimed by a recipient, it will not be awarded if the individual failed to take diligent and reasonable efforts to dispose of the resource. Diligent and reasonable efforts may differ as to the type of non-liquid personal property under consideration. For example, if a person showed that a retirement account was non-liquid due to an inability to convert the retirement account within 20 working days from the date the request to withdraw funds was made, it will not be considered good cause if the individual failed to request the withdrawal of funds from the retirement account within thirty days of signing the agreement.

2620.00.00 TYPES AND VALUE OF REAL PROPERTY RESOURCES

Real property consisting of land, which includes buildings or immovable objects attached permanently to the land, is to be evaluated as a resource according to the requirements of each assistance category.

2620.05.00 REAL PROPERTY OWNERSHIP

Real property is to be considered as a resource according to the requirements of each assistance category and the type of ownership of the property. (Refer to Sections 2605.05.00 and 2605.25.10.) Ownership of real property can consist of an interest in the title as follows:

Sole Ownership:

When property is solely owned by one individual, only he or his legal guardian may sell the ownership interest without conditions imposed by others. He is legally entitled to all income which may be generated from the property.

Joint Ownership:

Joint ownership is the holding of property by two or more persons who have an equal interest in the whole property. At the death of one of two joint owners, the survivor usually becomes the sole owner. At the death of one of three or more joint owners, the survivors become joint owners.

If an applicant/recipient jointly owns real property with another applicant/recipient of any assistance program, proportionate shares of the property are to be assigned to the joint owners and considered as a resource in accordance with the program requirements.

When a non-recipient is one of the joint owners of real property, the availability of the applicant's/recipient's proportionate share must be determined. (Refer to Section 2605.15.00.) If the applicant's/recipient's proportionate share is available to him, it is to be considered a resource as required by the specific assistance program. If the applicant's/recipient's proportionate share is not available to him, the resource is exempt.

Ownership in Common:

An ownership in common is the holding by two or more persons of separate titles in the same real estate. Each owner has a divided interest in the whole property. There is no right of survivorship to an ownership in common. It is not a joint ownership.

Ownership by the Entirety:

Ownership by the entirety refers to property owned by a husband and wife whereby each member has ownership interest in the whole

property which is indivisible. Upon the death of one, the survivor becomes sole owner. When a marriage has been legally dissolved, the former spouses become owners in common of the property.

Ownership of real property can also consist of a legal right to the use of property without having title to it, as follows:

Life Estate:

A life estate conveys to an individual certain rights in property for his lifetime. The owner of a life estate generally has the right of possession and use of the property, as well as the right to obtain profits from the property, and to sell his life estate interest. However, the deed establishing the life estate may restrict one or more rights of the individual. Ownership of a life estate interest may affect eligibility for certain assistance programs. (Refer to Section 2605.25.10.05.)

Remainder Interest:

When an individual conveys property to one person for life (life estate holder) and to a second person (the remainderman) upon the death of the life estate holder, both a life estate interest and a remainder interest are created in the property. A remainderman cannot sell his interest in the property while the life estate holder is alive, unless otherwise specified in the deed. At the death of the life estate holder, the remainderman will hold full title. (Refer to Section 2605.25.10.05.)

Reversion Interest:

When an individual owner conveys property to another person for life (life estate holder) and to himself (the reversioner) upon the death of the life estate holder, both a life estate interest and a reversion interest are created in the property. A reversioner cannot sell the property while the life estate holder is alive. At the death of the life estate holder, the reversioner would hold full title. (Refer to Section 2605.25.10.05.)

2620.10.00 VERIFICATION OF REAL PROPERTY OWNERSHIP

Ownership of real property can be verified from one or more of the following sources:

- Deed
- Mortgage
- Property tax receipts (current only)

- County treasurer's records, or
- Title search

2620.15.00 EXEMPT REAL PROPERTY RESOURCES

Certain real property is exempt from being considered as a resource. This determination is program specific so that the exemption or non-exemption of real property must be in accordance with program requirements as explained in the following passages.

2620.15.10 The Home (MED 1, 4)

A home is exempt when it is the principal residence of:

The applicant/recipient,

The spouse of the applicant/recipient,

The parent of an applicant/recipient under age 18,

The biological or adoptive child under age 18 of the applicant/recipient, or

The biological or adoptive disabled or blind child age 18 or older of the applicant/recipient.[30]

The home is defined as the shelter in which the individual resides, the land on which the shelter is located, and related outbuildings. In order to be considered part of the home, the surrounding land must adjoin the plot on which the home is located and not be separated from it by intervening real property owned by others. (A road does not separate land.)

Such property remains exempt until it is verified that none of the persons listed above intends to reside there or is physically able to reside there.[31] Whenever there is a conflict between an individual's stated intent to return home and his apparent physical capability to do so, the worker is to obtain documentation from the individual's physician.

2620.15.10.05 Home Replacement (MED 1, 4)

The proceeds from the sale of an exempt home can also be exempt from consideration under certain conditions. If, within a specified time period, the proceeds are used (or obligated to be used) to purchase a replacement home and cover the costs incurred in occupying it, the proceeds can be disregarded. The individual must be committed to the transactions within the

---

[30] 405 IAC 2-3-15

[31] 405 IAC 2-3-15

"home replacement period", the time period beginning with the date of the receipt of the proceeds and ending on the last day of the third full month following receipt of the funds.

2620.15.20 Income-Producing Real Property (MED 1, 4)

Income-producing property is exempt if the income from it is greater than the expenses of ownership. This exemption also applies to property being sold on land contract. The ownership of income-producing property must be verified to determine who is legally entitled to the income from the property.

2620.15.25 Food-Producing Real Property (MED 1, 4)

Real property used for producing food for home consumption is exempt.[32] An example of such property would be a garden plot.

2620.15.30 Real Property Owned By A Community Spouse (MED 1)

For purposes of Medicaid eligibility, when the resources of an institutionalized spouse and a community spouse are assessed to establish the amount of combined resources for spousal share determination, the equity value of real property owned solely by the community spouse (or jointly with someone other than the institutionalized spouse) is not included. Additionally, such property is not considered in the resource eligibility determination of the institutionalized spouse.

2620.20.00 TREATMENT OF NON-EXEMPT REAL PROPERTY

Real property that is not classified as exempt is taken into consideration in the resource eligibility determination. Nonexempt real property must be considered under the requirements of each assistance program as explained in the following passages.

2620.20.10 Offering Property For Sale Or Rent (MED 1)

Non-exempt real property which is available must be offered for sale or rent at fair market value (FMV) as a condition of eligibility regardless of the value of the property unless the applicant/recipient is in a long term care facility and has a community spouse. In this situation, the provision requiring nonexempt real property to be offered for sale or rent can be invoked only if the equity value causes excess resources. This requirement is also applied to ownership of a life or remainder interest in the property. It also applies to a life or remainder interest in mineral rights.

---

[32] 405 IAC 2-3-15

When it is determined that the applicant/recipient or his financially responsible relatives own property which is not exempt and is available, the owner of the property must sign the form, FI 0118, Agreement to Offer Property For Sale or Rent and Repayment Agreement. If the owner of the property refuses to sign the form, the applicant/recipient is ineligible for Medicaid.

If the property owner complies and signs the form, FI 0118, he has 30 days from the date he signed the form or from the date the notice of eligibility is mailed, whichever is later, to offer the property for sale or rent at CMV. When the form is signed, it is effective “for the purposes of the application”, that is, inclusive of retroactive months for that application date. To be considered offered for sale or rent, a sign must be placed at a conspicuous location on the property, stating clearly that the property is for sale (or for rent) and giving the individual's name and address (or telephone number), or listing the property with a realtor.

When the AG owns property that is not exempt and is available, enter a "?" on screen AERRP in the "agree to sell" and "agree to rent" fields, unless the nonexempt property is currently for sale or rent. If the eligibility system determines that it must be offered for sale or rent, the case will be pended and indicated on screen AERED.

When the property owner is contacted and signs the Form 118, Agreement to Offer Property for Sale or Rent and Repayment Agreement, access screen AERRP, change the "?" to "Y" and enter the date it was signed. (If he refuses to sign it, enter "N" in the appropriate fields.) If "Y" was entered, screen AERED will then indicate the client has passed resource eligibility.

The eligibility system will monitor the 30 day period that is allowed to offer the property for sale or rent and the system will generate an alert. When the property owner signs the Form 118A, Report on Property for Sale or Rent, access screen AERRP and enter "Y" in the appropriate field. If the owner does not offer the property for sale or rent, enter "N" in the appropriate field and assistance will be discontinued.[33]

2620.20.10.05 Offering Property For Sale Or Rent (MED 4)

The provision requiring nonexempt real property to be offered for sale or rent as is explained in the preceding passage, 2620.20.10, can be invoked only if the equity value of the real

[33] 405 IAC 2-3-15

property causes excess resources. If the applicant/recipient is within the applicable resource limitation when the equity value of nonexempt real property is counted, the property owner is not required to agree to offer it for sale or rent. If the equity value does cause excess resources, the agreement to offer the real property for sale or rent must be signed.

When the AG owns nonexempt real property, enter a "?" on screen AERRP in the "agree to sell" and "agree to rent" fields, unless the nonexempt property is currently for sale or rent. If the eligibility system determines that it must be offered for sale or rent, screen AERED will display the amount of excess resources in the "sale/rent" field and the case will be pended. Follow instructions in Section 2620.20.10 regarding compliance with the requirement to offer the property for sale or rent.

2625.00.00 PLAN FOR ACHIEVING SELF-SUPPORT

There are two kinds of Plans for Achieving Self-Support (PASS). One is an SSI PASS which is approved by the Social Security Administration for SSI eligibility purposes. The other is a Medicaid PASS which is approved by the Division of Family and Children, Central Office, for Medicaid eligibility purposes. MED 1 and MED 4 have provisions to exempt resources specified in a PASS under certain circumstances as explained in the following two sections. Med 2 has no provisions to exempt a PASS.

2625.10.00 PLAN FOR ACHIEVING SELF-SUPPORT (MED 1, 4)

The policies explained in this section apply only to the MA B, MA G, MA L, SLMB (MA J), and QI (MA I) categories of assistance.

A PASS can be developed for an individual who needs to set aside a part of his resources for a specified period of time necessary to achieve an occupational objective. The resources could be used for current expenditures or saved for a later planned expenditure to achieve a work-related goal such as education, vocational training, starting a business, or purchasing work-related equipment.

For individuals in the MA B category (SSI recipients and non-SSI recipients) as well as non-SSI recipients in the MA L, MA G, MA J, and MA I categories, a PASS must be approved by the Office of Medicaid Policy and Planning (OMPP).[34] In order for a PASS to be approved, the DFR must submit a letter to the OMPP containing:

> The description and objectives of the plan as discussed with the applicant/recipient,

[34] 405 IAC 2-3-3

The source and amount of all income and/or resources and the amounts of each that are to be used in the plan,

The length of time the plan is to operate, and

Any other pertinent information including documentation from the Social Security Administration of an SSI recipient's approved PASS.

This letter is to be recorded in the case record with one copy being given to the applicant/recipient, one copy being sent to the OMPP Eligibility Unit at 402 W. Washington Street, MS 07, W374, Indianapolis, IN, 46204, and one copy being retained in the case record. The OMPP will forward a copy to the Blind and Visually Impaired Section of the DMHA for their recommendation. OMPP will then review the self-support plan and recommendation from the Blind and Visually Impaired Section of the Division of DMHA, and notify the DFR by letter of approval or disapproval. The DFR will then notify the applicant/recipient. If the plan is approved, the amount of income and resources disregarded and time period for the disregard, must be documented in the case record. A Medicaid approved PASS is coded in the eligibility system as PM.

In the QMB, QDW, SLMB, and QI eligibility determinations of SSI recipients who have a PASS approved by the Social Security Administration, a separate approval from the Central Office is not required. A copy of SSA's documentation should be obtained and filed in the case record. An SSI PASS is coded in the eligibility system as PS.

A PASS under the MA B category can be approved for a period not to exceed 12 months. For MA L, MA G, MA J, and MA I the PASS exemption will be for at least 18 months and may be extended up to 36 months.

2626.00.00 INDEPENDENCE AND SELF-SUFFICIENCY ACCOUNTS (MED 1)

This section applies to MADW and MADI.

Funds that have been set aside by the applicant/recipient for “independence and self-sufficiency” are disregarded as resources in an amount up to $20,000 as approved by the Central Office of the Family and Social Services Administration.[35] The purpose of an Independence and Self-Sufficiency Account (ISSA) is to allow the M.E.D. Works member to save money in order to purchase goods or services that will increase or maintain his employability or

[35] 405 IAC 2-9-4

independence. An ISSA will not be approved for any item or service that the person is entitled to receive under Medicaid or any other public program. Accounts for general savings or personal recreation will not be approved.

State Form 50929, “MED Works Request for Independence and Self-sufficiency Account”, is to be provided to any Medicaid applicant or recipient in MADW/I who answers “Y” to the question on AEDWI. A 30 day due date is to be specified; however a denial of an application or discontinuance of benefits for failure to turn in the ISSA form i.e., “failure to cooperate” is not appropriate. If the form is not submitted by the individual within 30 days, the response to the question must be changed from “Yes” to “No”. The applicant can submit the form at any time while the application remains pending. Workers should provide the State Form 50929 to any applicant/recipient who asks for it or who indicates the possibility of saving for an ISSA. However, a “yes” response should be entered on AEDWI only when the applicant/recipient answers the question definitively, or at some time after the interview submits a completed form.

EXAMPLE 1 Applicant #1 states in his application interview that he is saving money on a down payment for a car and he does want consideration for this as an ISSA. The worker completes the top portion of the form, enters the 30 day due date, signs and dates it, and gives it to him. A determination of excess resources cannot be made on #1’s application during the 30-day time frame or while the Central Office is reviewing the ISSA request.

EXAMPLE 2 During Recipient #2’s redetermination interview, she says she is thinking about how she might use an ISSA to help her get a better job. She doesn’t have definitive plans and does not have excess resources at the time. The worker completes the top portion of the form but does not give a due date, and enters “No” on AEDWI. Recipient #2 is determined to remain eligible and MADW is authorized. Several weeks later, the worker receives the completed Form 50929. She signs it, enters “yes” on AEDWI, and forwards the form to Central Office.

An ISSA does not have to be a separate account in order to be disregarded. The disregard will be applied to the person’s total liquid assets. It is applied only to resources owned by the applicant/recipient or owned jointly with the applicant’s/recipient’s spouse. The disregard cannot be applied to resources owned solely by the spouse.

- An approved ISSA must be reviewed by the worker at each redetermination. If the estimated date that the items/services were to be purchased has passed and the item/service has not been purchased, the recipient must submit an updated request Form 50929. If the recipient does not do so within 30 days, the worker is to send an e-mail to the PAL Mailbox on Outlook. It is not necessary for these e-mails to PAL to go through the Policy Contact Person at the local DFR office. The worker can send them directly by entering in the subject field "ISSA UPDATE". Do not include the recipient's name or case number in the subject field. The Central Office will then end date the ISSA, and it will no longer be an allowable resource disregard.

M.E.D. Works members have an obligation to report any changes in their ISSA. If their plans or goals change, they must report this to the DFR. If a request for an ISSA is disapproved or the amount is reduced, the individual has the right to appeal this determination. The letter of decision, that Central Office issues, will explain these obligations and appeal rights.

2627.00.00 HEALTH SAVINGS ACCOUNTS

Health Savings Accounts are exempt as a resource if the account is restricted to use for qualified medical expenses only. The terms of the Health Savings Account are required to be verified to determine if the account can be used for purposes other than qualified medical expenses.

2630.00.00 RESOURCES EXEMPTED UNDER FEDERAL LAW

Each program has specific resources which are exempt by federal law. These exemptions are discussed in the following sections.

2630.05.00 BENEFITS UNDER FEDERAL NUTRITION PROGRAM

Certain benefits which are intended to meet the nutritional needs of low-income individuals are exempt.[36]

2630.05.05 WIC Benefits

Benefits received through the Women's, Infant's, and Children's (WIC) Program is exempt.[37] These payments are usually made through vouchers and can be used to purchase specific items for pregnant or nursing women and young children.

---

[36] 7 CFR 273.8(e)(11); 45 CFR 233.20; 20 CFR 416.1236

[37] 7 CFR 273.8(e)(11)(iii); 45 CFR 233.20; 20 CFR 416.1236

2630.05.10 Older Americans Act

Benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965, as amended, are exempt.[38]

2630.05.15 Child Nutrition Act

The value of supplemental food assistance received under the Child Nutrition Act of 1966, as amended, is exempt.[39]

2630.05.20 National School Lunch Act

The special food service program for children under the National School Lunch Act, as amended, is exempt.[40]

2630.05.25 Food Stamps/Commodities

The value of food stamps and the value of United States Department of Agriculture donated foods (surplus commodities), are exempt.[41]

2630.10.00 HUD ASSISTANCE

Housing assistance paid directly or indirectly by HUD under the following is exempt:

the Housing Authorization Act of 1976 with respect to a dwelling unit under the United States Housing Act of 1937, as amended (Sections 8, 10, and 23 and the Experimental Housing Allowance Program),

The National Housing Act (loans for housing renovation, mortgage insurance, and investment insurance),

Title V of the Housing Act of 1949 (loans to elderly individuals, farmers, and developers for the construction, improvement, or replacement of farm homes and other buildings), and

Section 101 of the Housing and Urban Development Act of 1965 (payments to certain mortgagors on behalf of tenants with low income who are displaced by government action, age 62 or over, physically handicapped, living in substandard housing, present or past tenants of dwellings damaged or destroyed by disaster, or

---

[38] 45 CFR 233.20; 20 CFR 416.1236
[39] 45 CFR 233.20; 20 CFR 416.1236
[40] 45 CFR 233.20; 20 CFR 416.1236
[41] 45 CFR 233.20; 20 CFR 416.1236

whose head of the household is on active duty) with the armed forces).[42]

2630.15.00 RELOCATION ASSISTANCE ACT PAYMENTS

Relocation assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is exempt.[43]

2630.20.00 HOME ENERGY ASSISTANCE PAYMENTS

Payments received through the Home Energy Assistance Program (EAP) are exempt.[44]

2630.25.00 ASSISTANCE FOR CERTAIN INDIAN TRIBES/ALASKAN NATIVES

The following Section discusses federal law pertaining to Indian tribes and Alaska natives.

P.L. 92-203, section 29, dated 1/2/76, the Alaska Native Claims Settlement Act, and Section 15 of P.L. 100-241, 2/3/88, the Alaska Native Claims Settlement Act Amendments of 1987 - All compensation (including cash, stock, partnership interest, land, interest in land, and other benefits) received under this Act are excluded from income and resources.

P.L. 93-134, the Judgment Award Authorization Act, as amended by P.L. 97-458, Section 1407, 11/12/83 and P.L. 98-64, 8/2/83, the Per Capita Distribution Act. P.L. 97-458 required the exclusion of per capita payments under the Indian Judgment Fund Act (judgment awards) of $2000 or less from income and resources. The exclusion applies to each payment made to each individual. Initial purchases made with exempt payments distributed between 1/1/82 and 1/12/83 are excluded from resources to the extent that excluded funds were used. P.L. 98-64 extended the exclusion to cover per capita payments from funds which are held in trust by the Secretary of Interior (trust fund distributions).

P.L. 93-531, Section 22 - Relocation assistance payments to members of the Navajo and Hopi Tribes are excluded from income and resources.

---

[42] 45 CFR 233.20; 20 CFR 416.1238
[43] 45 CFR 233.20; 20 CFR 416.1237
[44] 460 IAC 10.1-3-4; 405 IAC 2-3-3

P.L. 94-114, Section 6 - Income derived from certain submarginal land held in trust for certain Indian tribes is excluded from income and resources. The tribes that may benefit are:

- Bad River Band of the Lake Superior Tribe of Chippewa Indians of Wisconsin
- Blackfeet Tribe
- Cherokee Nation of Oklahoma
- Cheyenne River Sioux Tribe
- Crow Creek Sioux Tribe
- Lower Brule Sioux Tribe
- Devils Lake Sioux Tribe
- Fort Belknap Indian Community
- Assiniboine and Sioux Tribes
- Lac Courte Oreilles Band of Lake Superior Chippewa Indians
- Keweenaw Bay Indian Community
- Minnesota Chippewa Tribe
- Navajo Tribe

P.L. 94-189, Section 6, 12/31/75 - Funds distributed per capita to the Sac and Fox Indians or held in trust are excluded from income and resources. The funds are divided between members of the Sac and Fox Tribe of the Mississippi in Iowa. The judgments were awarded in Indian Claims Commission dockets numbered 219, 153, 135, 158, 231, 83, and 95.

P.L. 94-540 - Payments from the disposition of funds to the Grand River Band of Ottawa Indians are excluded from income and resources.

P.L. 95-433, Section 2 - Indian Claims Commission payments made pursuant to this Public Law to the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation are excluded from income and resources.

P.L. 96-420, Section 9(c), 10/10/80, Maine Indian Claims Settlement Act of 1980 - Payments made to the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet are excluded from income and resources.

P.L. 97-403 - Payments to the Turtle Mountain Band of Chippewas, Arizona are excluded from income and resources.

P.L. 97-408 - Payments to the Blackfeet, Grosventre, and Assiniboine tribes, Montana, and the Papago, Arizona, are excluded from income and resources.

P.L. 98-123, Section 3, 10/13/83 - Funds distributed under this Act to members of the Red Lake Band of Chippewa Indians are excluded from income and resources. Funds were awarded in docket number 15-72 of the United States Court of Claims.

P.L. 98-124, Section 5 - Per capita and interest payments made to members of the Assiniboine Tribe of the Fort Belknap Indian Community, Montana, and the Assiniboine Tribe of the Fort Peck Indian Reservation, Montana, under this Act are excluded from income and resources. Funds were awarded in docket 10-81L.

P.L. 98-500, Section 8, 10/17/84, Old Age Assistance Claims Settlement Act, provides that funds made to heirs of deceased Indians under this Act shall not be considered as income or resources.

P.L. 99-146, Section 6(b), 11/11/85 - Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior are excluded from income and resources. Judgments were awarded in Dockets numbered 18-S, 18-U, 18-C and 18-T. Dockets 18-S and 18-U are divided among the following reservations:

Wisconsin

- Bad River Reservation
- Lac du Flambeau Reservation
- Lac Courte Oreilles Reservation
- Sokaogon Chippewa Community
- Red Cliff Reservation
- St. Croix Reservation

Michigan

- Keweenaw Bay Indian Community (L'Anse, Lac Vieux Desert, and Ontonagon Bands)

Minnesota

- Fond du Lac Reservation

- Grand Portage Reservation

- Nett Lake Reservation (including Vermillion Lake and Deer Creek)

- White Earth Reservation

Under Dockets 18-C and 18-T funds are given to the Lac Courte Oreilles Band of the Lake Superior Bands of Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin, the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, the Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, and the St. Croix Chippewa Indians of Wisconsin.

P.L. 99-264, White Earth Reservation Land Settlement Act of 1985, 3/24/86, Section 16 excludes moneys paid under this Act from income and resources. This Act involves members of the White Earth Band of Chippewa Indians in Minnesota.

P.L. 99-346, Section 6(b) (2) - Payments to the Saginaw Chippewa Indian Tribe of Michigan are excluded from income and resources.

P.L. 99-377, Section 4(b), 8/8/86 - Funds distributed per capita to the Chippewas of the Mississippi or held in trust under this Act are excluded from income and resources. The judgments were awarded in Docket Number 18-S. The funds are divided by reservation affiliation for the Mille Lac Reservation, Minnesota; White Earth Reservation, Minnesota; and Leech Lake Reservation, Minnesota.

P.L. 101-41, 6/21/89, the Puyallup Tribe of Indians Settlement Act of 1989, Section 10(b) provides that nothing in this Act shall affect the eligibility of the Tribe or any of its members for any Federal program. Section 10(c) provides that none of the funds, assets or income from the trust fund established in Section 6(b) shall at any time be used as a basis for denying or reducing funds to the Tribe

or its members under any Federal, State or local program. (The Puyallup Tribe is located in the State of Washington.)

P.L. 101-277, 4/30/90, funds appropriated in satisfaction of judgments awarded to the Seminole Indians in Dockets 73, 151 and 73-A of the Indian Claims Commission are excluded from income and resources except for per capita payments in excess of $2000. Payments were allocated to the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida and the independent Seminole Indians of Florida.

P.L. 101-503, Section 8(b), Seneca Nation Settlement Act of 1990, dated 11/3/90, provides that none of the payments, funds or distributions authorized, established, or directed by this Act, and none of the income derived therefrom, shall affect the eligibility of the Seneca Nation or its members for, or be used as a basis for denying or reducing funds under, any Federal program.

P.L. 93-134, Section 8, 10/19/73, the Indian Tribal Judgment Fund Use or Distribution Act, as amended by P.L. 103-66, Section 13736, 10/7/93, provides that interest of individual Indians in trust or restricted lands shall not be considered a resource and up to $2000 per year of income received by individual Indians that is derived from such interests shall not be considered income in determining eligibility for assistance under the Social Security Act or any other Federal or federally assisted program.

If other types, not on this list, are encountered, contact the Policy Answer Line for guidance.

2630.30.05 Compensation To Japanese/Aleuts (MED 1, 4)

Restitution payments by the U.S. Government to individual Japanese-Americans (or, if deceased, to their survivors) and Aleuts who were interned or relocated during World War II are exempt from income and resources. Also, restitution payments from the Canadian government to individual Japanese-Canadians who were interned or relocated during World War II are exempt resources.[45]

2630.35.00 GERMAN REPARATION PAYMENTS (MED 1, 4)

German reparation payments are payments made by the Republic of Germany to certain survivors of the Holocaust and may be

[45] 20 CFR 416.1236

received periodically or in a lump sum. They are exempt resources by federal law. [46]

2630.35.05 Crime Victim Payments (MED 1, 4)

Any amount of assistance received from federal funds administered from any state or local government program established to aid victims of crime is excluded from resources for a period of 9 months beginning with the month following the month of receipt. To be excluded from resources under this section, the individual (or spouse) must demonstrate that any amount received was compensation for expenses incurred or losses suffered as the result of a crime.[47]

2630.40.00 DOMESTIC VOLUNTEER SERVICE ACT COMPENSATION

The following is exempt as a resource by federal law:

> Compensation of any kind (including stipends, supportive services, remuneration for out-of-pocket expenses, and so forth) provided to individuals who are volunteers in programs administered directly or through sponsoring agencies by the United States action Agency under Titles I, II, and III of the Domestic Volunteer Service Act of 1973, is exempt. These programs include the Foster Grandparents Program, Retired Senior Volunteer Program (RSVP), Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), Action Cooperative Volunteer Program
>
> (ACV), Senior Companion Program, Volunteers in Service to America (VISTA), and University Year for Action (UYA).[48]

2630.45.00 PAYMENTS TO STUDENTS

Education grants and loans received under Title IV of the Higher Education Act or the Bureau of Indian Affairs (BIA) programs are exempt for undergraduate students Medicaid.[49] These exclusions are allowed for students in high school and GED programs as well as post-secondary education. Examples include:

> Basic Educational Opportunity Grants (BEOG),
>
> Supplemental Educational Opportunity Grants (SEOG),
>
> College Work Study,
>
> National Direct Student Loans (NDSL),

---

[46] Section 1902(r)(1) of the Social Security Act as amended by OBRA-90; P.L. 101-508
[47] 20 CFR 416.1229 (a) (b)
[48] P.L. 93-113, Sections 404(g) and 418; 20 CFR 416.1124(b)
[49] 45 CFR 233.20; 20 CFR 416.1236

Guaranteed Student Loans,

Pell Grants, and

Federal Perkins Loans

Refer to Section 2860.05 for a comprehensive listing.

2630.55.00 DISASTER ASSISTANCE PAYMENTS

Assistance received under the Disaster and Emergency Assistance Act of 1974[50] or another federal statute because of a presidentially declared major disaster is permanently exempted as a resource.

2630.60.00 RADIATION EXPOSURE ACT BENEFITS

Payments made from the Radiation Exposure Compensation Trust Fund established under the Radiation Exposure Compensation Act are exempt resources.[51]

2630.65.00 AGENT ORANGE SETTLEMENT ACT PAYMENTS

Payments made from the Agent Orange settlement fund or any fund established as a result of the Agent Orange product liability litigation, are exempt from resource consideration.[52]

2630.95.00 INDIVIDUAL DEVELOPMENT ACCOUNT

Individual Development Accounts (IDA) operated under the Assets for Independence Act (AFIA), Public Law 106-554, are established by or on behalf of eligible TANF recipients for the purpose of purchasing a home, attending postsecondary education or purchasing a business. Eligible individuals may receive matching funds for their IDA through a community development corporation (CDC). Any funds deposited in an IDA are exempt from being counted as a resource. (See also IPPM 2850.05.00)

2635.00.00 RESOURCE ELIGIBILITY DETERMINATION

Resource eligibility requirements for MED 1, 2, or 4 categories must be met for eligibility to be established. The worker is responsible for obtaining and verifying all pertinent information regarding the resources of the appropriate AG members. The consideration of resources will vary according to the age, marital status, and living arrangement of the AG

[50] P.L. 93-288; 20 CFR 416.1150
[51] P.L. 101-426 as amended by P.L. 101-510; 20 CFR 416.1236
[52] 20 CFR 416.1124(b); 20 CFR 416.1236(a)(15)

members. The following sections explain the methods used in determining resource eligibility.

2635.10.00 RESOURCE ELIGIBILITY DETERMINATION (MED 1)

In addition to eligibility requirements discussed in the preceding passages of this chapter, the following principles apply to the consideration of resources in the resource eligibility determination of all persons except institutionalized individuals who entered long term care facilities on or after September 30, 1989, and who have a community spouse.

All available resources owned by the applicant/recipient and his responsible relatives must be considered in regard to the resource limitations listed in Section 3005.15.00. Persons who qualify as "responsible relatives" are as follows:

- The spouse of the applicant/recipient if the couple is living together, or separated only for medical reasons such as nursing home placement. If the spouse of an applicant/recipient is absent from the home due to desertion or separation for reasons other than medical, the spouse's resources are not to be considered.

- The biological or adoptive parent(s) and stepparents living with an applicant/recipient under age 18[53], unless the child is receiving Home and Community-Based Services under any of Indiana's waivers. If the applicant/recipient child is institutionalized (including hospitalization) the parent(s)' resources are not considered in the month following the month of admission. If the non-recipient parent of the child applicant/recipient owns resources in excess of the resource limit, the excess is to be counted as a resource of the child.[54] However, excess resources of the child applicant/recipient cannot be counted as a resource to the parent. Also, excess resources of the recipient parent cannot be counted as a resource to the child.

Parents’ resources are considered through the month in which the child applicant/recipient reaches age 18 unless the child turns 18 on the first of the month.

When the applicant/recipient is a student between the ages of 18 and 21, the parent's resources are not counted.

Resources owned solely by the following individuals are exempt:

---

[53] 20 CFR 416.1202(b)

[54] 405 IAC 2-3-15

- Non-recipient children or siblings of the applicant/recipient,

- The stepparent of an applicant/recipient,

- parents of an institutionalized applicant/recipient beginning in the month following the month of admission, or beginning in the month of birth if the child remains institutionalized/hospitalized in the following month,[55]

- Parents of a child who has been determined eligible for Home and Community-Based Services (HCBS) Waiver.[56] See Chapter 3300.

2635.10.05 QMB, QDW, SLMB, and QI Resource Determinations (MED 4)

In addition to the eligibility requirements discussed in the preceding sections of this chapter, the following principles apply to the consideration of resources in the Qualified Medicare Beneficiary (QMB), Qualified Disabled Worker (QDW), Specified Low-Income Medicare Beneficiary (SLMB), and Qualified Individual (QI) eligibility determination:

Resources owned by the following individuals must be considered:

- The applicant/recipient, and

- The spouse of the applicant/recipient if the couple is living together.

Resources owned solely by the spouse of the applicant/recipient who does not live with him are not considered.

Resource limitations listed in Section 3005.25 must be met before resource eligibility can be established.

2635.10.10 Resources/Institutionalized/Community Spouse (MED 1)

The policies stated in this section apply only to the MA A, MA B, MA D, MADW, and MADI categories of assistance.

Special resource provisions apply to an institutionalized individual who has a community spouse or to a waiver applicant/recipient who has a community spouse, and are explained further in Sections 2635.10.10.05, 2635.10.10.10, and 2635.10.10.15.

- To qualify for consideration under these special provisions, an institutionalized spouse must be in a hospital, nursing facility,

---

[55] IC 12-15-3-4 as added by P.L. 2-1992, Sec. 9

[56] IC 12-15-3-4 as added by P.L. 2-1992, Sec. 9; 405 IAC 2-3-15

ICF/MR, or psychiatric facility for 30 consecutive days, or be likely to remain in such a facility for that period or longer. If an individual dies before the 30th consecutive day, the individual should be treated as though she would have resided in the institution for 30 consecutive days. The "community" spouse must be living in a setting other than one of the aforementioned facilities.

The special resource provisions apply only to individuals who are legally married to community spouses and who begin continuous periods of institutionalization on or after September 30, 1989.

An individual is in a "continuous period of institutionalization" until such continuity is broken by the absence from a hospital, nursing facility, ICF/MR, or psychiatric facility for at least 30 consecutive days.

These special resource provisions no longer apply beginning the month following the month in which circumstances change so that the couple no longer meets the criteria.

An individual living in a residential facility, such as one participating in the Room and Board Assistance (RBA) program, is not entitled to have eligibility determined under the special provisions. A resident of an RBA facility qualifies as a community spouse when the other spouse is institutionalized in a hospital, nursing facility, ICF/MR, or psychiatric facility.

2635.10.10.05 Resource Assessment And Spousal Share (MED 1)

The policies stated in this section apply only to the MA A, MA B, MA D, MADW, and MADI categories of assistance.

Institutionalized individuals who are married to community spouses and who meet the specific criteria in Section 2635.10.10 must have a resource assessment completed. The resource assessment is a very important process whereby the combined countable resources of the couple are determined as of the beginning (date of admission) of the institutionalized spouse's first continuous period of institutionalization which began on or after September 30, 1989.[57] From this information, a "spousal share" for the community spouse, equaling one-half of the couple's combined countable resources, is then established for use in determining the institutionalized spouse's resource eligibility.

[57] Social Security Act, Section 1924(c)(1)

Countable resources for assessment purposes are determined in the same manner as in regular situations with the following exceptions:

> Up to $2000 of any separately identifiable funds or assets which have been set aside for burial can be excluded. This exemption can be given to both spouses if applicable; however, the $2000 maximum must be reduced by the face value of any life insurance policies whose cash surrender value has been exempted, or by the amount in any irrevocable burial trust. [Please, note the exempted value prior to June 1, 2014, was $1,500]. In order for funds or assets to be considered set aside for burial, the account titling must indicate such, or there must be a signed statement by the owner or guardian of the purpose for the funds and the date on which they were set aside.
>
> One motor vehicle of any value is exempt.
>
> The equity value of nonexempt real property owned solely or jointly by the institutionalized spouse is a countable resource. (The "agree to sell" rule is applied only to eligibility determinations, <u>not</u> for purposes of calculating the spousal share.) The equity value of real property owned <u>solely</u> by the community spouse (or jointly with someone other than the institutionalized spouse) is not included when determining the amount of combined assets for spousal share purposes.

The resource assessment can be requested independently of an application for assistance by either spouse or their authorized representative. In that situation, the assessment request should occur promptly upon admission to the facility. DFR Offices are to provide Form 2060, <u>Resource Assessment Notice and Request</u>, to interested persons upon request and should provide a supply to facilities in the county. A completed Form 2060 can be mailed to FSSA Document Center or the local DFR office.

When a request for an independent resource assessment is received, the screener is to access ARRA, complete the screens, and schedule an appointment for the assessment interview. The interview can be conducted in person or by telephone. During the interview the worker is to complete Form 2061, <u>Resource Assessment for Medical Assistance to the Aged, Blind and Disabled</u>. The responsibility for providing the required documentation and verification rests entirely with the couple and any representative. The Form 2060 explains this fact and also lists the type of documentation which must be provided to the DFR. Workers are to give advice and guidance to the individual as to the most effective means of obtaining verification but are not required to obtain verifications

directly, although it is not prohibited when a properly signed consent has been obtained.

If the necessary documentation is not received by the DFR within 20 days of the date of the assessment request, the worker will receive an alert and is to send a reminder letter to both spouses and their representative listing the necessary documentation and asking for an update on the status of their verification process. At the end of 30 days, a second letter should be sent stating that the assessment cannot be completed until the verification is submitted.

- When the necessary documentation is received, the DFR is to proceed in an expedient manner to complete the assessment and determine the spousal share. Once completed, copies of the Form 2061 and the verifications must be provided to both spouses. If a representative has acted on behalf of either spouse, the DFR must provide him with a copy also. The worker is to access ARRA and enter the amount of the spousal share.

A copy of all complete or incomplete assessments, as well as the documentation and any correspondence, must be retained by the DFR as the spousal share, or the inability to establish one, is crucial information in the determination of the institutionalized spouse's eligibility when an application is filed. Copies of the independent resource assessments are to be retained indefinitely.

The spousal share cannot be appealed until an application for Medicaid is filed and the eligibility determination is completed. If a mathematical or keying error is made by the worker, ARRA can be accessed by the supervisor who can enter the correct spousal share.

If an individual not entitled to an independent resource assessment under the special resource provisions requests an assessment via the Form 2060, the DFR must advise the individual in writing of the reason the assessment will not be completed.

If the institutionalized spouse is applying for Medicaid, the resource assessment will be an integral part of the eligibility study. Do not complete ARRA. When a person is applying for Medicaid and needs a resource assessment as part of his eligibility determination, that individual will be entered into the system just like any other application. When the application is processed in AE, screens AERRA and AERRC are to be completed with the resource data necessary to determine the spousal share. When resources are jointly owned by the spouses, they are to be entered once on screen AERRA and AERRC in the institutionalized spouse's name. Then the spousal share can be correctly

calculated. Resource values for assessment purposes must be verified as of the first date of continuous institutionalization, whether it is in a hospital or a nursing facility.

When an assessment is being completed in conjunction with an application for assistance, the securing of necessary resource verification is a joint applicant/worker effort conducted in the usual manner.

2635.10.10.10 Resource Eligibility/Institutionalized Spouse (MED 1)

The policies stated in this section apply only to the MA A, MA B, MA D, MADW, and MADI categories of assistance and are applicable to institutionalized individuals who meet the specific criteria in Section 2635.10.10.

The community spouse resource limit is the greatest of the following:[58] (Refer to Section 3005.15.00 for current amounts)

The minimum current state standard,

The spousal share not exceeding the current maximum,

Any amount of resources ordered to be transferred by a court against the institutionalized spouse for the support of the community spouse, or

The amount established by an Administrative Law Judge as the result of an appeal.

The first of the month resource eligibility rule (refer to Section 2605.20.10) is applicable to resource eligibility determinations made under the special resource provisions for an institutionalized spouse with a community spouse. The special provisions are applicable beginning with the first month of institutionalization included in the possible Medicaid covered period (that is the three month retro period). The institutionalized spouse's resource eligibility for any month in which the special resource provision does not apply, (for example, the month before institutionalization), is to be determined using all of the regular resource methodologies and the resource limitation for a couple.

- Beginning with the first month in which the special resource provisions apply, the procedure outlined below is required. This procedure establishes the initial month of eligibility, which is

[58] SSA 1924(f)(2)

the point at which the community spouse's resources are no longer considered.

The couple's combined countable resources are determined by applying all of the regular resource methodologies, except as follows:

- Up to $1500 of separately identifiable burial funds is disregarded.[59] This exemption can be given to both spouses if applicable. However, the $1500 maximum must be reduced by the amount in an irrevocable burial trust or by the face value of any life insurance policies whose cash surrender value has been exempted because the face value is $1500 or less and the beneficiary is the estate or funeral home,

- One motor vehicle is exempt regardless of value or purpose,

- The equity value of real property owned solely by the community spouse (or jointly with someone other than the institutionalized spouse) is exempt,

- Nonexempt real property owned solely or jointly by the institutionalized spouse is not subject to the requirement to offer it for sale or rent, unless the total value of the couple's countable resources, including the real property, exceeds their combined resource standards.

The total value of the couple's non-exempt resources, including real property owned by the institutionalized spouse, is compared to their combined resource limit (the community spouse limit plus the standard for a single individual). If countable resources are equal to or less than the current standard, the institutionalized spouse is eligible for assistance for that month, which is the initial month of special resource eligibility for the institutionalized spouse. For subsequent months during the continuous period of institutionalization, resources owned solely by the community spouse are exempt.

If the countable resources exceed the current standard, and ownership of real property is not involved, the institutionalized spouse is ineligible for that month.

The process is repeated for subsequent months. If a month of eligibility does not occur, the application is to be denied.

If the countable resources, including non-exempt real property, are greater than the current standard, the next step is to subtract the equity value of the real property. If there still are excess resources in personal property, the applicant is

[59] Social Security Act, Section 1924(c)(5)(A) as amended by OBRA-90

ineligible. If not, the applicant must agree to offer the real property for sale or rent as a condition of eligibility.

If, for the initial month of eligibility under this provision, resources in the name of the institutionalized spouse exceed the single individual standard, a post-eligibility transfer of resources will be required within a specified time limit as explained in Section 2635.10.10.15.

If the institutionalized spouse assigns to the State of Indiana his rights for support from the community spouse, the institutionalized spouse cannot be determined ineligible due to resources under this section.

2635.10.10.15 Post Eligibility Protected Period (MED 1)

The policies stated in this section apply only to the MA A, MA B, MA D, MADW, and MADI categories of assistance and are applicable only to individuals who meet the specific criteria in Section 2635.10.10.

Once initial resource eligibility has been established, any amount of the community spouse resource standard spousal share which is not already solely in the community spouse's name, can be transferred to him by the institutionalized spouse and not be counted in determining the institutionalized spouse's continuing resource eligibility.[60] The institutionalized spouse must indicate a willingness to transfer resources into the community spouse's name sufficient to reduce his resources to the allowable single individual standard.

He will have a period of 90 days in which to complete this transfer. This protected period begins with the date of the notice of eligibility which approves assistance. The worker must enter on screen AEFEC the expected date of the end of the 90 day period. During this protected period, the amount subject to transfer (the difference between the community spouse resource standard and the actual amount of resources solely owned by the community spouse) will not be counted as a resource of the institutionalized spouse.

Once the DFR determines that an institutionalized spouse/applicant is resource eligible for an initial month, but that the community spouse does not actually own resources equal to the community spouse resource standard, the institutionalized spouse, community spouse, and any representative must be advised in writing of the amount to be transferred to the community

[60] Social Security Act, Section 1924(f)(1) as amended by OBRA-90 (P.L. 101-508)

spouse and the deadline for doing so. This letter will be a part of the eligibility system-generated approval notice.

The DFR must monitor the couple's resources monthly through the end of the protected period to ensure that the transfer actually takes place. When it does, this is to be documented in the case record. Should the transferor need more time than the 90 day protected period to complete the transfer, he should contact the DFR and report this. More time must be granted by the DFR if the transfer is being pursued but has been delayed in whole or part by circumstances beyond the institutionalized spouse's control, such as a court order requirement, uncooperative insurance company, and so forth. If the protected period is extended by the DFR, access screen AEFEC and change the expected date of the end of the 90 day protected period. Monthly resource monitoring must continue until the transfer is completed.

If there is no extension and the 90 day period ends without the transfer having occurred, the DFR must contact the institutionalized spouse or his representative relative to the status of transfer activity. If the transfer is not being pursued or there is no good cause for an extension, the protected assets immediately become countable again as resources of the institutionalized spouse and assistance will be discontinued.

2635.10.20 Applicant/Recipient With Excess Resources (MED 1)

This section and its following subsections named below apply to MA A, MA B, and MA D for months when eligibility is determined prior to June 2014.

Whenever an applicant/recipient has resources in excess of the applicable limitation in Section 3005.15.00, the worker must complete an off-line evaluation of the person's entitlement to "resource spend-down". This provision is required in accordance with the Indiana Supreme Court ruling in the case of Indiana Department of Public Welfare v. Hazen Payne. The policy and procedures to be applied in determining eligibility are explained in the following sections.

2635.10.20.05 Entitlement to Resource Spend-Down/SSI Determination

2635.10.20.10 Resource Spend-Down Determination

2635.10.20.15 Eligibility System Procedures When Resource Spend-Down Is Involved

2635.10.20.20 Processing Appeal Cases Remanded Under IDPW v. Payne

2635.10.20.05 Entitlement To Resource Spend-Down/SSI Determination

This section applies to MA A, MA B, and MA D.

The first step in determining an applicant's/recipient's resource eligibility when his resources exceed the applicable limitation (and no other reason for ineligibility exists), is to determine whether or not the person meets SSI requirements for each month under consideration. An applicant/recipient who does not meet SSI requirements is not entitled to the resource spend-down provision. If the applicant/recipient received SSI benefits, he is entitled to resource spend-down consideration. For those not receiving SSI benefits, the worker must determine if the applicant/recipient meets SSI requirements.

The SSI resource policies which differ from Medicaid are explained below.

1. The SSI resource limits effective 1/1/89 are:

   $2000 for an individual

   $3000 for a married couple

2. The cash surrender value (CSV) of life insurance is exempt if the total face value of policies owned by the individual (excluding term insurance and burial insurance) does not exceed $1500, regardless of beneficiary designation. This exemption applies to the applicant/recipient and his spouse. The maximum face value exemption is reduced by the amount in an irrevocable pre-paid funeral contract/trust.

3. Up to $1500 of funds in a revocable account earmarked for burial is exempt. This exemption is available to the applicant/recipient and his spouse, or parent/stepparent. The $1500 maximum burial fund exclusion is reduced by the amount of exempt life insurance in #2 above, and/or the amount of an irrevocable funeral contract/trust.

4. Resources of the stepparent of a child applicant/recipient under age 18 are deemed to the child, unless the child's natural/adoptive parent is deceased or the couple is divorced.

5. Pension or retirement funds, including Keogh plans and IRAs owned by an ineligible spouse or ineligible parent are exempt.

6. Resources owned by the community spouse of an institutionalized applicant/recipient are exempt beginning the month after the month of admission.

7. The unspent portion of a retroactive RSDI or SSI payment is exempt for six months if it is identifiable from other resources.

8. Any unspent portion of a Federal tax refund or advanced Earned Income Tax Credit payment is exempt for one month following the month of receipt.

9. Funds remaining from assistance paid by the Violent Crime Compensation program are exempt for nine months after the month of receipt of the payment.

10. Proceeds from the sale of an excluded home are exempt for three months after the month of receipt if the individual plans to purchase another exempt home.

11. If an allocation is budgeted for an essential person, the resources of the essential person are included. If doing so causes ineligibility, the essential person allocation is removed from the budget.

12. Resources set aside under a Plan for Achieving Self-Support (PASS) by an applicant/recipient in the Blind or Disabled category are exempt. The PASS must be approved by the Central Office in the same manner as a Medicaid PASS as explained in Section 2625.10.00.

13. Non-business real property, such as rental property, is subject to the "6000/6% rule". Up to $6000 in equity is excluded if the net annual income generated from the property is at least 6% of the excluded equity. If the income is less than 6% the entire equity is a countable resource. If the individual owns more than one piece of non-business income-producing property, each property must meet the 6% test in order to be exempt, and the $6000 equity limit applies to the total equity value of all properties.

14. The principal balance of a land contract is a countable resource. The interest portion of the installment payment is income. (Note: This policy is the same as TANF policy concerning land contracts. Refer to Section 2875.10.10.)

15. Resources owned by the sponsor of an alien applicant/recipient are deemed for three years after entry into the United States. If this situation is present in a particular case, the DFR

should contact the Policy Answer Line for guidance on the deeming methodology.

16. Resources which have been disregarded under the asset protection provision of the Indiana Long Term Care Program (ILTCP) are counted in the resource spend-down/SSI determination. Refer to Section 2615.25.15 for a discussion of the ILTCP.

The SSI income policies which differ from MA are explained below.

1. The income standards are the same as those for Medicaid listed in Manual Section 3010.20.05. However, they are effective in January of the year in which the Medicaid standards are effective.
2. The general income disregard is $20.
3. Income of the stepparent of a child applicant/recipient under age 18 is deemed to the child unless the child's natural/adoptive parent is deceased or the couple is divorced.
4. VA pension payments are counted in full without deducting the $20 general income disregard.
5. Up to $400 of earned income a month, not to exceed $1620 in a calendar year, is disregarded for the applicant/recipient under age 18 who is a student.
6. Parental income is not deemed to the applicant/recipient who is age 18 or older.
7. One-third of the amount of child support payments made on behalf of an applicant/recipient under age 18 is disregarded.
8. Court-ordered child support payments or support enforced under Title IV-D are allowed as a deduction from the income of an ineligible spouse or ineligible parent.
9. Income set aside under a Plan for Achieving Self-Support (PASS) by an applicant/recipient in the Blind or Disabled category is exempt. The PASS must be approved by the Central Office in the same manner as a Medicaid PASS as explained in Section 2625.10.00.
10. A deduction is allowed from the earned income of an applicant/recipient under the Blind category for work-related expenses. Allowable expenses are those that are reasonably attributable to the earning of the income and that are not subject to reimbursement. Examples are:

- Medical services, equipment, and supplies which are not covered by Medicaid or a third party,

- Income and FICA taxes withheld from paychecks,

- Expenses associated with care and maintenance of a guide dog,

- Professional association dues,

- Union dues,

- Mandatory payroll deductions such as pension and disability contributions,

- Meals consumed during work hours

- Work-related equipment specially designed to accommodate the person's visual impairment.

Non-allowable expenses are:

- Those deducted under another provision such as PASS,

- Life maintenance expenses such as meals consumed outside of work hours, self-care items which are cosmetic rather than work-related, general educational development,

- Savings plans including voluntary contributions to a pension plan,

- Life and health insurance premiums,

- Expenses claimed on a self-employment tax return

11. Income of the sponsor of an alien applicant/recipient is deemed for three years after entry into the United States. If this situation is present in a particular case, the DFR should contact the Policy Answer Line for guidance on the deeming methodology.

The worker should complete State Form 45885, Budgeting Worksheet, to determine SSI income eligibility. The methodology and order of deductions are the same. If there are blind work expenses, these are to be deducted from the "Countable Earned Income" figure on Line 18 and the result is added to the

"Countable Unearned Income" amount on Line 10 to arrive at "Total Countable Income". If total countable income (after deducting a P.A.S.S., if appropriate) is less than the income standard, the applicant/recipient meets SSI requirements.

The results of the off-line SSI determination must be documented in the hard copy case file and also in Running Records Comments. If the applicant/recipient meets SSI income and resource eligibility requirements, the worker is to complete the resource spend-down determination as explained in the next section, 2635.10.20.10.

2635.10.20.10 Resource Spend-Down Determination

This section applies to MA A, MA B, and MA D.

For each month in which the applicant/recipient is either receiving SSI or is determined to meet SSI eligibility requirements, the Medicaid determination is to be made by taking resource spend-down into consideration. The surplus income amount (on AEBMB) and the excess resource amount (from AERED) are added together. His spend-down amount is the sum of the surplus income and the excess resources, rounded down to the next whole dollar.

If the applicant/recipient is in a long term care facility, the eligibility determination, as explained above, is to be completed. If the individual is eligible, the amount of the resource spend-down (excess resources rounded down to next whole dollar) is added to the liability calculated in the post-eligibility step to arrive at the actual liability for the month. If the final liability amount exceeds the facility's private rate, the liability is treated as a spend-down. (Note: this is the same procedure which is always applied whenever the liability exceeds the private rate.)

The following examples illustrate how eligibility is determined when taking resource spend-down into consideration. Calculations are based on the income standard, general disregard and resource limit in effect 01-01-08. Current standards can be found in Chapter 3000.

EXAMPLE 1: $656 income $1902.45 resources -15.50 general disregard -1500.00 resource limit = 640.50 = 402.45 excess resources -637.00 income standard + 3.50 surplus income = $3.50 surplus income $ 405.95 total Applicant is eligible enrolled for this month with a spend-down of $405. If the applicant is in LTC, the liability would be $1009. ($656 - $52 personal needs = $604 + $405 resource spend-down)

EXAMPLE 2: $653.00 income $ 1625 resources - 15.50 general disregard - 1500 limit = 637.50 =$ 125 excess resources - 637.00 income standard = $.50 The spend-down is $125 for this month and the applicant/recipient is enrolled with the resource spend-down, even though there is no income spend-down.

If the excess resources have not been reduced by the time the application is ready to be authorized, establish the income/resource spend-down for the recurring month.

2635.10.20.15 Eligibility System Procedures When Resource Spend-Down Is Involved (MED 1)

The procedures in this section apply to MA A, MA B, and MA D.

When an applicant/recipient fails eligibility due to excess resources, the internal reason code of 480 or 483 will be set by the system on AEWAA. If there is no other reason for ineligibility, the AG cannot be authorized until the off-line determination is made concerning the applicant's/recipient's entitlement to the resource spend-down provision explained in the previous sections. If the AG is ineligible for any other reason in addition to excess resources, the AG should be denied/closed as usual. If the worker attempts to deny or close an AG who fails with reason code 480 or 483, the error message "determine resource spend-down and enter RC" will appear. If the applicant/recipient is not entitled to resource spend-down because he does not meet SSI requirements as explained in Section 2635.10.20.05, enter reason code 476.

When the worker determines that an applicant/recipient is eligible with a resource spend-down, fiat is required to establish the correct spend-down or liability amount.

2640.00.00 TRANSFERS OF PROPERTY

The transfers of certain real or personal property to another individual must be considered in relation to the law and/or regulations in effect on the date that the transfer occurred. The specific policy for transfers of property varies by program and is explained in Sections 2640.05.00 through 2640.10.35.05.

Screen AERRQ contains the transfer of property question. When the answer is "yes", screen AERRT must be completed with the transfer information.

2640.10.00 TRANSFER OF PROPERTY LAW

The Medicaid eligibility of an individual who transfers property on or after August 11, 1993, is governed by federal law. Section 1917(c) of the Social Security Act (42 U.S.C. 1396 p-C), as amended by OBRA-93 requires a penalty period of reduced Medicaid coverage for persons found to have made a property transfer for less than fair market value and for the purpose of becoming eligible for Medicaid.

The following sections explain the procedures for consideration of transfers of property occurring on or after August 11, 1993. State regulations, as amended, at 405 IAC 2-3-1.1 and 405 IAC 2-3-1.2 are applicable to certain transfers effective June 1, 2002 regarding annuities, income transfers, and failure to take action to receive assets. Additional provisions are effective July 1, 2003 regarding the start of a transfer penalty, penalty periods for successive transfers, and transfers of income producing real property.

2640.10.05 General Applicability of Transfer of Property Law

The transfer of property provision is applicable to applicants/recipients who are:

- Inpatients of nursing facilities or other medical institutions in which they are receiving equivalent nursing facility services, or
- Receiving Home and Community-Based Services (HCBS)

If an applicant/recipient does not meet one of the above conditions a transfer penalty is not invoked. If such an individual has transferred property, the worker is to record the occurrence but will not require verifications nor attempt to determine whether the transfer was violative. However, if the individual later enters a nursing facility or begins receiving HCBS, the worker would then be required to determine whether the transfer was violative.

Transfers are potentially violative made by the:[61]

- Applicant/recipient,
- The spouse of the applicant/recipient,
- Anyone with legal authority to act on behalf of the applicant/recipient or spouse, such as a parent or legal guardian (including a court or administrative body),
- Anyone acting at the direction or request of the applicant/recipient or spouse (including a court or administrative body).

[61] 405 IAC 2-3-1.1(a)

Federal law defines assets as both income and resources (real and personal property) owned by the applicant/recipient and spouse. Refer to Section 2640.10.15.05 regarding transfers of homes and income-producing real property.

Also included as an asset are income and resources, which the applicant/recipient is entitled to receive but doesn't because of his actions or those of his spouse, a person with legal authority to act on his or his spouse's behalf, including a court or administrative body, or any other person, court or administrative body acting at the direction or request of the individual.

Examples of actions which would cause income or resources not to be received are:

Irrevocably waiving pension income,

Waiving the right to receive, or failing to take the necessary action to receive an inheritance,

Not accepting injury settlements.

Each individual circumstance of an individual failing to take an action to obtain assets must be carefully examined, as this may not always be considered a violative transfer. A transfer of property penalty will not be imposed in the following circumstances:[62]

(a) The applicant/recipient, or the person with the legal authority to act on behalf of the applicant/recipient is unaware of the right to receive assets, or becomes aware after the deadline for taking action has passed. If the DFR or other division of FSSA informs the individual of his right to receive assets prior to the deadline for taking action, the individual will be presumed to be aware of his rights.

(b) A physician who is knowledgeable of the medical condition of the applicant/recipient provides a written statement that the applicant/recipient is not capable of taking the necessary action to receive the asset. A physician’s statement can only be used for this purpose if the applicant or recipient has no legal guardian or other person who has the authority to act on the individual’s behalf in whatever action is needed to receive the assets.

[62] 405 IAC 2-3-1.1(i)

(c) The expense of collecting the assets would exceed the value of the assets.

(d) In the case of a surviving spouse who fails to take a statutory share of a deceased spouse’s estate, a penalty is not imposed if the deceased spouse made other equivalent arrangements to provide for the surviving spouse’s needs, including but not limited to setting up a trust.

2640.10.10 Determining The Transfer Review Period

As stated in the preceding section, the transfer of property law is made an active consideration only by the applicant/recipient being or becoming institutionalized in a nursing facility (or receiving Home and Community-Based Services). When this factor is present in a case situation, the worker must then determine the time period that must be reviewed, during which transfers made could be violative. This time period is the "review period", or “look-back” period.

The review period for looking at a transfer involving non-trust property prior to November 1, 2009, is 36 months prior to the first date when the individual was institutionalized and had applied for Medicaid, and continues indefinitely thereafter.

Upon November 1, 2014, the review period for looking at a transfer involving non-trust property is 60 months prior to the first date when the individual was institutionalized and had applied for Medicaid, and continues indefinitely thereafter. (This date is referred to as the baseline date.)

The review period for looking at a transfer involving non-trust property between November 1, 2009, and November 1, 2014, extends back to November 1, 2009, when the individual was institutionalized and had applied for Medicaid, and continue indefinitely thereafter.

The review period for transfers involving trust funds in the circumstances explained in Section 2615.75.15 is 60 months prior to the baseline date defined above and continues indefinitely thereafter.

When a Medicaid recipient becomes institutionalized or begins receiving Home and Community-Based (HCBS) waiver services, the baseline date is the date when both conditions, i.e., an application and institutionalization, or HCBS, are met. This would be the date of institutionalization or effective date of waiver services.

EXAMPLE: Individual living at home transfers property on January 10, 1995. She applies for Medicaid on April 7, 1995 and enters a nursing facility on September 11, 1995. The baseline date is September 11. Therefore, the transfer took place within the review period.

2640.10.15 Allowable Transfers of Property

If it is determined that a transfer occurred within the review period, the next step is to determine whether the transfer automatically qualifies as allowable. No transfer of property penalty can be invoked when an individual makes a transfer to:

His spouse (or to another for the sole benefit of the spouse), or

The applicant's/recipient's child who is blind or disabled, according to SSI criteria, or to a trust fund for such a child.

Additionally, the transfer of a home to certain individuals as explained in Section 2640.10.15.05 is allowable.

Transfers on and after 8-11-93, to certain types of trust funds, as defined in section 2615.75.15, for disabled individuals are allowable.

2640.10.15.05 Transfers Of Homes And Income-Producing Real Property (MED)

There is no transfer of property penalty if a home, as defined in section 2620.15.10, is transferred to:

A spouse,

Children under age 21 of the applicant/recipient,

Blind or disabled (according to SSI criteria) children of the applicant/recipient,

a sibling of the applicant/recipient who has equity interest in the home and who was residing in the home for at least one year prior to the individual's nursing facility admission, or

A child of the applicant/recipient who was living in the home at least two years prior to the individual's admission to the nursing facility and who provided care that was necessary to permit the individual to remain at home rather than be institutionalized. In these situations, documentation of the individual's condition and the extent of care provided by the child is required in the case record.

An individual who transfers his home to a person not specified above remains subject to a transfer of property penalty.

For transfers of income-producing real property on and after 7-1-03, the following rules apply:

(1) $6,000 of the equity value can be transferred without penalty if the property produces at least $360 a year in income. [63]The uncompensated value is the equity over $6,000. If the property does not produce at least $360 per year in income, the entire equity is the uncompensated value. The transfer of the income must be evaluated based on the fair market value of the income in accordance with Section 2640.10.25.20.

If the real property has equity of less than $6,000, the property can be transferred without penalty if it produces income that is at least 6% of the equity value. If it produces income that is less than 6% of the equity, the entire equity is the uncompensated value. Refer to Section 2640.10.25.20 regarding transfer of the income.

The $6,000 transfer exemption is a single, one-time exemption that applies to the total value of all income-producing real property transferred by the individual during the individual's lifetime.

(2) Income producing real property that is used in a trade or business can be transferred without application of the $6,000/6% limitation. In order to qualify as a trade or business, the property must be actively managed or operated by the applicant/recipient.

(3) Income-producing real property for which the individual owns a government permit or license, or other governmental authority to engage in income-producing activity is not subject to the $6,000/6% limitation. Examples of this are commercial fishing permits and tobacco crop allotments issued by the USDA. (This does not include crop subsidies and soil banks.) Both of these circumstances are very uncommon in Indiana, therefore, if DFR is processing a case in which the individual claims to own such property, the Policy Answer Line must be contacted. When contacting PAL, be sure to explain what type of license or permit the individual submitted as verification.

EXAMPLE 1

Medicaid applicant in nursing facility owned rental property with an equity value of $50,000. She received $2,400 per year in rent. The month before applying for Medicaid, she gave it away to a relative with no consideration received and did not show that she made the transfer for any purpose other than qualifying for Medicaid. The uncompensated value is $44,000 plus the amount of income that was transferred based on her life expectancy at

EXAMPLE 2

Medicaid applicant in nursing home owned farmland with an equity value of $100,000 which she cash rented to her son who paid all of the expenses and gave her $100 a year income. The uncompensated value is $100,000 (plus the amount of income that was also transferred) because the property did not produce at least $360 annual income for her.

EXAMPLE 3

Medicaid recipient in a nursing facility owns a 25% share as tenancy in common, in rental property valued at $200,000. Her share is $50,000 and she receives FMV rent of $2,100 per year. She gave her share of the property away to her son and received no consideration. The uncompensated value is $44,000 plus the amount of the income that was transferred.

2640.10.15.06 Home Equity Restriction

A penalty consisting of ineligibility for LTC services is invoked due to the *ownership* of the home if the applicant's equity interest or his share of equity interest, in his or her home is greater than the home equity limit:

11-01-09 $500,000
01-01-11 $506,000
01-01-12 $525,000
01-01-13 $536,000
01-01-14 $543,000

The penalty starts on the date that the applicant is otherwise eligible for Medicaid and would be receiving LTC services under Medicaid were it not for the equity restriction provision, but not before 11-01-09. The penalty continues as long as the equity value remains over the home equity limit.

The home is the applicant's principal place of residence prior to requiring LTC services. A hospitalization, visit with friends or family, or other absence from the home does not change the

home designation for the purpose of this provision. Income-producing home property is subject to the equity restriction.

This restriction does not apply if the individual's spouse, dependent child under the age of twenty-one (21), or blind or disabled (per SSI standards) child of any age, is lawfully residing in the home. Additionally, the amount of equity that would fall under the asset protection of a long term care partnership policy reduces the amount of the equity in excess of the limitation.

The equity value of a home is the current fair market value (FMV) minus any encumbrance against the property. An encumbrance is a legally binding debt against the home. This can be a mortgage, reverse mortgage, home equity loan, or other debt secured by the home. The current property tax assessment must be obtained as verification of the FMV. Any such assessment other than the most current one is unacceptable. If the individual disputes the property tax assessment, a current arm's length, independent professional appraisal can be submitted and will be used in lieu of the assessment. Arm's length means that there can be no special relationship, directly or indirectly, between the appraiser and the applicant/recipient so that the interests of both are independent of each other.

If there is an encumbrance against the property such as a mortgage, home equity loan, reverses mortgage, etc., the date that the encumbrance was established must be verified for the purposes of eligibility and whether or not an improper transfer occurred. If, for example, a home equity loan was taken out within the review period, the loan transaction in and of itself may not be a violative transfer. However any subsequent transaction involving the proceeds from the loan must be evaluated for determination of whether an improper transfer occurred.

The equity restriction works in conjunction with the existing eligibility provisions regarding the treatment of real property, not in lieu of them. Even if all other eligibility provisions are met, the home equity restriction may still be a factor in whether or not LTC services will be paid for on the individual's behalf.

Example:
Single individual entered a nursing facility on 10-15-13 and listed her home for sale with a realtor. She applies for Medicaid on 11-11-13. Her home is valued at $800,000. For resource eligibility purposes, the value of the home which is up for sale at fair market value is exempt. However she is subject to the home equity restriction penalty beginning the

first of the month in which she is otherwise eligible for LTC services under Medicaid. Her first retro month is 07-13. She meets all other eligibility requirements and her application is approved with Medicaid effective 07-01-13. Her LTC penalty starts 10-01-13, the month in which she was otherwise eligible for LTC.

This provision applies to individuals who apply for Medicaid on and after November 1, 2009, and for these individuals, any subsequent redeterminations that occur as the result of seeking LTC services as well as the annual scheduled redeterminations.

Example:
Single individual entered a nursing facility on 10-15-13 and listed her home for sale with a realtor. She applies for Medicaid on 11-11-13. Her home is valued at $800,000. For resource eligibility purposes, the value of the home which is up for sale at fair market value is exempt. However she is subject to the home equity restriction penalty beginning the first of the month in which she is otherwise eligible for LTC services under Medicaid. Her first retro month is 07-13. She meets all other eligibility requirements and her application is approved with Medicaid effective 07-01-13. Her LTC penalty starts 10-01-13, the month in which she was otherwise eligible for LTC.

This provision applies to individuals who apply for Medicaid on and after November 1, 2009, and for these individuals, any subsequent redeterminations that occur as the result of seeking LTC services as well as the annual scheduled redeterminations.

2640.10.15.10 DE MINIMIS TRANSFER Of PROPERTY ALLOWANCE

Beginning with applications filed on 10-1-09, an annual transfer amount is allowed that will not invoke a transfer penalty and will be excluded from the total uncompensated value of an improper transfer under the circumstances explained below. This is referred to as the de minimis transfer allowance and the amount is $1200 per year.[64]

[64] IC 12-15-2-23 as added by P.L.14-2009

The de minimis transfer allowance is applicable if the gift is made by the applicant, during the review period directly to:

A family member who is related to the applicant by blood, adoption, or existing marriage, or

A nonprofit organization qualified under Section 501(c) of the Internal Revenue Code as amended, which gives the organization tax-exempt status, and

The application for Medicaid long term care services (Medicaid facility or HCBS waiver services) is filed on or after 10-01-09.

The de minimis allowance is subtracted after any and all transfers have been evaluated in terms of being permissible or improper. Up to $1200 per year is deducted from the uncompensated value of transfers that are otherwise improper.

Example 1
Applicant in nursing facility applies for Medicaid on 10-15-09 and reports the following transfers: $10,000 to an irrevocable funeral trust, $1200 to his son. The purchase of the funeral trust was permissible without penalty and the gift to the son was determined to be for the purpose of becoming eligible for Medicaid without adequate consideration. The gift to the son does not invoke a transfer penalty because it did not exceed the de minimis allowance and was made to a family member. No penalty is imposed.

The de minimis allowance is an annual total for all otherwise improper transfers, regardless of how many individuals received gifts from the applicant.

Example 2
$800 is given to applicant’s grandson, and $900 is given to a non-profit charity during one year. The 2 gifts are combined for a total of $1700. The $1200 is subtracted from the total gifted amount, resulting in an improper transfer amount of $500.

The de minimis transfer allowance does not apply to transfers made by the applicant’s spouse.

Example 3
Applicant gives $400 to his son. His spouse gives $600 to her sister. The de minimis transfer allowance is $400, because the de minimis allowance does not apply to the transfer made by the applicant's spouse.

The year of calculation for de minimis gifting is based upon the established baseline date and each calendar year of the review period. Any excess over $1200 in a calendar year does not carry over to a subsequent year. The de minimis allowance can be applied to more than one qualifying individual or non-profit organization in a given year. However, not more than $1200 in any one calendar year is allowed.

To allow a de minimis transfer allowance, the applicant is required to establish the relationship of the individual being claimed as a family member and the tax exempt status of any organization to which a gift was made. Required Documentation in the Case File:

- The name, date of birth, and relationship lineage of a family member must be provided by the applicant. Signed statements from the applicant and family member(s) will suffice unless contradicting information is known to the worker, in which case clarifying information must be provided. For example, documentation of a gift to a grandson would include a statement that the grandson is the son of the applicant's daughter, giving his birth date, and his and his mother's names.

- Collateral documentation of the 501(c) tax exempt status of an organization must be provided by the applicant. It is customary practice for these organizations to give receipts for gifts so that donors will have documentation for their own tax purposes. This type of receipt is sufficient documentation. Information about the organization should reveal its status as well, if the receipt is not available, such as brochures, websites, etc. In addition, proof of payment to the organization whose status is being documented must be provided. For example, if a gift is reported to Charity #1 and a cancelled check to Organization #2 is provided, the de minimis allowance cannot be applied until the discrepancy is reconciled.

Documentation of the proof necessary to apply a de minimis transfer allowance is the responsibility of the applicant/recipient. It is the agency's responsibility to

explain what type of documentation is required and follow existing procedures for obtaining documentation.

2640.10.16 Transfers Of Personal Effects And Household Goods

The following items can be transferred without receipt of adequate consideration and without imposition of a transfer penalty:

- One wedding ring of the applicant/recipient and spouse,
- One engagement ring of the applicant/recipient and spouse,
- Medical equipment required due to the applicant's/recipient/s physical condition, which are not used extensively or primarily by others,
- $2000 of equity in other personal effects and household goods.

If personal effects and household goods not exempted above are given away without receipt of adequate consideration, a violative transfer has occurred.[65]

Wedding rings and engagement rings are those purchased by one spouse for the other spouse (or intended spouse in the case of engagement ring). If a ring is purchased by someone after marriage and labeled an engagement or wedding ring upon giving it away, a violative transfer has occurred. The uncompensated value is the equity value in excess of $2000.

2640.10.20 Determining Adequacy Of Consideration

If a transfer cannot be determined automatically non-violative in accordance with the preceding sections, the DFR must proceed to determine whether or not adequate consideration was received.

Consideration is whatever compensation the individual received in return for the transferred property. In order to determine a transfer as non-violative, the individual must have received adequate consideration. Consideration is adequate when the fair market value minus loans, mortgages or other encumbrances, of the transferred property is equal to the consideration received. Fair market value is the current market value of the property at the time of the transfer.

The applicant/recipient is required to supply any necessary records, documentation and information which verify the fair market value and consideration received.

The value of the consideration received is based on the agreement and expectation of the parties <u>at the time of the</u>

[65] Social Security Act, Section 1917(e)(5)

transfer. The value of consideration is the gross amount paid by the purchaser, and it may be paid in one or more forms such as those discussed in the following sections. (Other forms of consideration may also be possible.) The compensation received for an asset must be in a tangible form with intrinsic value. For example, love and affection does not constitute adequate consideration because there is no dollar value attributable to love and affection.

2640.10.20.05 Compensation In Cash

Compensation in the form of cash is the total amount of cash paid or agreed to be paid in exchange for the property.

2640.10.20.10 Compensation In Real or Personal Property

Compensation in the form of real or personal property is valued according to the fair market value of that property at the time of the property transfer.

2640.10.20.15 Compensation By Support/Maintenance

The value of compensation in the form of support and/or maintenance provided, or agreed to be provided, is based on the fair market value and duration of the support and/or maintenance.

EXAMPLE: Mrs. Pierce has transferred a sum of money to a retirement community with the expectation that they will provide her with support and maintenance for a period of time.

2640.10.20.20 Compensation By Services

The value of services provided, or agreed to be provided, in exchange for the property is based on the market value of such services and the frequency and duration of the services. In order for services to have adequate consideration, there must have been agreement at the time the services were provided that compensation was to be paid in return for the services.

2640.10.25 Determining Uncompensated Value

If inadequate consideration was received, the DFR must determine the uncompensated value. The uncompensated value is the difference between the fair market value, minus loans, mortgages, or other encumbrances, and the consideration received by the individual. When the transferred property was jointly

owned, the uncompensated value is the difference between the individual's share of the fair market value and the consideration received by the individual.

2640.10.25.05 Transfers Involving Life Estates

When an individual who owns real property transfers ownership of the property to another person and retains a life estate, the uncompensated value must be determined. The uncompensated value is the fair market value of the property, less the amount of loans, mortgages, or other encumbrance, minus the value of the life estate and minus any other consideration received. The value of the life estate is determined in accordance with Section 2605.25.10.05.

EXAMPLE The applicant, age 66, owned a home valued at $235,000. She transferred the title to her daughter for $20,000 and retained a life estate. Using the Table in Section 2605.25.10.10, the life estate value is $156,394.85 ($235,000 x .66551). The total compensation received is $176,394.85 ($156,394.85 + $20,000). The uncompensated value is $58,605.15.

When an individual purchases a life estate interest in real property in the home of another person, a transfer penalty is imposed, using the full amount of the purchase price, when an individual purchases a life estate interest in another individual’s home and does not reside in that home for at least one full year after the date of the purchase. The year of residence in the home begins with the month after the documented purchase and continues for 12 consecutive months. This 12-month period is not a waiting period. The individual must establish and provide documentation of residence in the property and live there for the one year period. Otherwise, a transfer penalty will be imposed. The penalty cannot be prorated or shortened in any fashion based on fewer months of residence. The start date of the penalty and length of the penalty period is determined the same as described previously for post-11/1/09 transfers.

In addition under resource eligibility policy, if the purchased life estate is not producing income and is no longer the person’s home, then the life estate interest will have to be offered for sale or rent at FMV as a condition of Medicaid eligibility. Any transfer or otherwise disposal of the life estate must be evaluated as a transfer of property. This provision applies to individuals who purchase a life estate in another individual’s home on and after November 1, 2009.

2640.10.25.10 Transfers Involving Annuities

An annuity is an investment product, policy, certificate, contract, or other arrangement between two or more parties. One party pays a sum of money or other valuable consideration to the other party in return for the right to receive future payments. The term “annuity” includes any financial instrument that claims to be an annuity, as well as any instrument that meets the definition of an annuity. Annuities are generally purchased by individuals from financial institutions, insurance companies, or non-profit organizations. However, “private annuities" exist that are arrangements between non-commercial, non-organizational entities such as family members, friends, or other individuals.

Different companies may use slightly varied terminology for their products. However, there are basic and common definitions that apply to annuities in general:

A. A deferred annuity allows interest to accumulate until the purchaser elects monthly payments to begin. Income payments often start many years after purchase.

B. With an immediate annuity, payments start no later than one year after the premium is paid.

C. The annuitant is the person on whose life expectancy the annuity payments will be calculated.

D. Annuitize is when the accumulated value of the annuity is converted into a guaranteed stream of income. At this point, the annuitant decides how the payments will be received. He could choose monthly fixed or variable payments, or a balloon payment at the end of the term, for example.

The purchase of an annuity is a transfer of property and, therefore, it is necessary to determine whether or not adequate consideration was (will be) received.

For annuities purchased on or after June 1, 2002; or annuitized on or after June 1, 2002, regardless of the purchase date, adequate consideration (will be) received if all of the following criteria are met:

A. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business, or from a tax-exempt non-profit organization,

B. The annuity provides monthly payments of interest and principal so that, for a specific year, the total

payments for the year do not differ by more than five percent from the total paid in the previous year, and

C. The annuity must return the full purchase price to the purchaser or the purchaser’s spouse within the annuitant’s life expectancy using the Life Expectancy Tables that appear later in this section. If the individual does not (will not) receive compensation in the amount of the full purchase price within his lifetime (or within the contract’s specified time period if shorter than the life expectancy), the uncompensated amount is the difference between the purchase price and the amount that the annuity will pay out to the individual within the individual’s life expectancy, or term of the contract if shorter than life expectancy.

If an annuity is not purchased from a company that regularly sells such financial products or not purchased from a non-profit organization, the uncompensated amount is the entire purchase price. An example is the purchase of a private annuity from a family member. The purchase of a private annuity is a violative transfer of property.

If the annuity pays (will pay) a lump sum balloon payment or if the total annual payments vary by more than five percent, then the uncompensated amount is the entire amount of the purchase price.

If an annuity does not meet any of the criteria that render it automatically a violative transfer of property, then a determination of whether adequate consideration will be received must be made by the DFR. The value of the expected income is determined by multiplying the monthly income by the individual's life expectancy (or term of the annuity, if shorter). Convert years to months using the figure for the person's age at the time of purchase. The uncompensated value is the difference between the purchase price of the annuity and the amount of income expected to be received by the purchaser or his spouse, during the lifetime of the annuitant, or term of the annuity if shorter.

EXAMPLE 1 Female applicant, age 85, purchases a $50,000 immediate annuity from a life insurance company. She elects to receive income payments of $375 per month. Per the Life Expectancy Table for females, her life expectancy is 6.63 years or 79.56 months. $375 x 79.56 = $29,835. The applicant is not expected to receive in payments what she transferred

in principal. The uncompensated value is $20,165. ($50,000 - $29,835).

EXAMPLE 2 Male applicant, age 60, purchases a $100,000 annuity on June 1, 2002 from an insurance company and will receive equal income payments of $500 per month. Per the Life Expectancy Table for males, his life expectancy is 18.42 years or 221.04 months. $500 x 221.04 = $110,520. The applicant is expected to receive income greater than the purchase price. Adequate consideration will be received.

EXAMPLE 3 Male applicant, age 90, purchases a $20,000 annuity from an insurance company on July 1, 2002 and will receive 45 payments of $250 per month. Since the annuity was purchased after June 1, 2002 and the individual will receive a balloon payment, the uncompensated amount is $20,000 – the full purchase price of the annuity.

For annuities that have been annuitized prior to June 1, 2002, adequate consideration was (will be) received if the annuity will return to the individual the full purchase price within the individual's life expectancy (or within the contract's specified time period if shorter than the life expectancy). These annuities do not have to be purchased from a commercial company or a non-profit organization. The total annual payments do not have to be equal and lump sum or deferred payments toward the end of the individual's life expectancy may be made. The uncompensated amount is the difference between the purchase price and the amount that the annuity will return within the annuitant's life expectancy.

For annuities purchased, annuitized, or where certain specified changes were made on or after November 1, 2009, the following provisions apply:

The new provisions require disclosure of annuities, specify the circumstances in which a purchase or transaction involving an annuity will be treated as an improper transfer, and require the State to be beneficiary. The new provisions apply to purchases and certain transactions as described below occurring on and after November 1, 2009.

Transactions that are subject to the new provisions include any action taken by the individual that changes the course of payment to be made by the annuity, or the treatment of the income or principal of the annuity, including such actions taken

on annuities purchased before November 1, 2009. These actions include:

- additions of principal
- elective withdrawals
- requests to change the distribution of the annuity
- elections to annuitize the contract
- a change in ownership, or
- any other non-routine action not listed below.

The following types of changes and events would not subject an annuity purchased prior to November 1, 2009 to treatment under the new rules:

- Routine transactions such as notification of an address change, notification of death or divorce of a remainder beneficiary, and other similar circumstances,
- Changes that occur based on terms of the annuity which existed prior to November 1, 2009 and which do not require a decision, election or action to take effect, or
- Changes beyond the control of the individual, such as a change in law, a change in the policy of the issuer, or a change in the terms based on other factors, such as the issuer's economic condition.

Any interest in an annuity must be reported. The requirement to disclose all resources when applying for Medicaid has always been in effect for LTC applicants/recipients. These new provisions specifically require disclosure of any interest that the LTC applicant/recipient and or spouse have in annuities. The failure to disclose and provide all necessary documentation will result in denial or closure due to failure to cooperate. At minimum, the applicant/recipient must provide a copy of the complete annuity contract and documentation of transactions that occur after the purchase. The application and redetermination forms have been revised to allow for annuity disclosure as required by federal law.

The State must be beneficiary. Annuities purchased and transactions made on annuities owned by the applicant/recipient and spouse must name the State as a remainder beneficiary in accordance with the rules that follow below. If these rules regarding the beneficiary assignment in the correct position are not met, the full purchase price of the annuity is considered an improper transfer and a penalty must be imposed.

1. An annuity must name the State as the remainder beneficiary in the first position unless there is a community spouse and/or a minor or disabled child. A disabled child is one who meets the SSI or SSDI disability criteria.

2. If there is a community spouse and/or minor or disabled child, the State must be named as the remainder beneficiary in the second position after the community spouse or minor or disabled child.

3. If the State has been named as a remainder beneficiary after a community spouse and/or a minor or disabled child, and any of those individuals or their representatives dispose of any of the remainder of the annuity for less than fair market value, the State must then be named beneficiary in the first position.

4. The requirement is waived if the individual has purchased a long-term care insurance policy that protects the annuity as approved by the Indiana Long-Term Care Partnership (ILTCP).

As remainder beneficiary, the State is entitled to receive the total amount of medical assistance paid on behalf of the applicant for medical assistance.

Additional Criteria Applicable ONLY to the person in LTC The rules explained below do not apply to annuities owned by or transactions made by community spouses. There are 2 separate sets of criteria that, if met by the terms of the annuity, will not result in a transfer penalty. The first set will be referred to as “soundness” criteria. The second set will be referred to as “class exceptions”. The annuity does not have to meet both sets of criteria – it has to meet the criteria from either set.

The purchase of an annuity or transactions completed will not result in a transfer of property penalty if the following conditions, referred to as soundness criteria, are met:

1. The annuity is irrevocable and non-assignable in that it cannot be cashed in nor ownership transferred to another individual or entity, *and*

2. The annuity is actuarially sound in that it is expected to return full principal and interest within the institutionalized individual’s life expectancy, *and*

3. The annuity provides payments in approximately equal amounts with no deferred or balloon payments. To determine actuarial soundness for promissory notes, loans and annuities use the Life Expectancy Table at the end of this document.

If the individual does not (will not) receive compensation in the amount of the full purchase price within his lifetime (or within the contract's specified time period if shorter than the life expectancy), the uncompensated amount is the difference between the purchase price and the amount that the annuity will pay out to the individual within the individual's life expectancy, or term of the contract if shorter than life expectancy.

Ownership of an annuity in one of the following classes of retirement annuities will not result in a transfer of property penalty:

1. An individual retirement annuity (according to Sec. 408(b)) of the Internal Revenue Code of 1986 (IRC), or

2. A deemed Individual Retirement Account (IRA) under a qualified employer plan (according to Sec. 408(q) of the IRC), or

3. The annuity is purchased with proceeds from a traditional IRA (IRC Sec. 408a), or

4. The annuity is purchased with proceeds from certain accounts or trusts which are treated as traditional IRAs (IRC Sec. 408 §(c)), or

5. The annuity is purchased with proceeds from a simplified retirement account (IRC Sec. 408 §(p)),

6. The annuity is purchased with proceeds from simplified employee pension (IRC Sec 408 §(k))

7. The annuity is purchased with proceeds from a Roth IRA (IRC Sec. 408A).

To determine that an annuity is established under any of the various provisions of the Internal Revenue Code that are referenced above, rely on verification from the financial institution, the employer or the employer association that issued the annuity. The burden of proof is on the applicant or recipient (or his/her authorized representative) to produce this documentation.

The life expectancy tables for males and females are listed below and are effective January 1, 2016. The life expectancy is provided in years.

LIFE EXPECTANCY TABLES

TABLE 1 - MALE	TABLE 2 - FEMALE
Average Number of Years	Average Number of Years

	Age of Life Remaining	Age of Life Remaining
55	25.41	28.74
56	24.61	27.88
57	23.82	27.01
58	23.03	26.16
59	22.25	25.31
60	21.48	24.46
61	20.72	23.62
62	19.97	22.78
63	19.22	21.95
64	18.48	21.13
65	17.75	20.32
66	17.03	19.52
67	16.32	18.73
68	15.61	17.95
69	14.92	17.18
70	14.24	16.43
71	13.57	15.68
72	12.92	14.95
73	12.27	14.23
74	11.65	13.53
75	11.03	12.83
76	10.43	12.16
77	9.85	11.50
78	9.28	10.86
79	8.73	10.24
80	8.20	9.64
81	7.68	9.05
82	7.19	8.48
83	6.72	7.94
84	6.27	7.42
85	5.84	6.92
86	5.43	6.44
87	5.04	5.99

88	4.68	5.57
89	4.34	5.17
90	4.03	4.80
91	3.74	4.45
92	3.47	4.13
93	3.23	3.84
94	3.01	3.57
95	2.82	3.34
96	2.64	3.12
97	2.49	2.93
98	2.36	2.76
99	2.24	2.60
100	2.12	2.45
101	2.01	2.30
102	1.90	2.17
103	1.80	2.03
104	1.70	1.91
105	1.60	1.78
106	1.51	1.67
107	1.42	1.56
108	1.34	1.45
109	1.26	1.35
110	1.18	1.26
111	1.11	1.17
112	1.04	1.08
113	0.97	1.00
114	0.90	0.92
115	0.84	0.85
116	0.78	0.78
117	0.72	0.72
118	0.67	0.67
119	0.61	0.61

2640.10.25.20 Establishing Joint Ownership (MED)

When property is converted from individual ownership to joint ownership on or after July 1, 1996, a transfer of property has occurred. The amount considered to be transferred is the proportionate value of the new owner(s) share of the property.

When evaluating this kind of a transfer workers should keep in mind that the joint interests might not all be equal. The deed or contract should specify the proportionate interests of each owner, but if it is not clear or the worker has questions, an FSSA attorney should be consulted for assistance.

EXAMPLE 1
Property value = $60,000. One equal joint owner is added. $30,000 was transferred.

EXAMPLE 2
Property value = $80,000. Two joint owners are added and all 3 have equal interests. $53,333.34 was transferred. (The 2 new owners' value of the property.)

If property is jointly owned and additional new owners are added, the amount transferred is the difference between individual's interest before the transfer and after the transfer.

EXAMPLE 3
Property valued at $90,000 is jointly owned by the applicant and his son. His interest is $45,000. He adds his daughter as another joint owner, and all 3 have equal shares. His interest is now $30,000, so the amount transferred is $15,000. ($45,000 - $30,000).

If the property which has been converted to joint ownership has a lien or mortgage, the amount transferred is the proportionate equity value.

EXAMPLE 4
Applicant owns real property valued at $150,000 and has a $70,000 mortgage. She adds her son as an equal joint owner. The amount transferred is $40,000. ($150,000 - $70,000 = $80,000 equity value. $80,000 - $40,000, new owner's share of the equity, = $40,000).

2640.10.25.25 Transfers Of Income

This section applies to transfers of income that occur on and after June 1, 2002.[66]

When an individual transfers a stream of income or the right to receive income, the uncompensated value is the difference between the actual amount of income received, and the fair market value (FMV) of income that should be received. The FMV of the income that should be received is determined by multiplying the FMV by the life expectancy of the individual based on the Tables in Section 2640.10.25.10. Any income that the property was producing, or was capable of producing, is included in the definition of assets for purposes of the transfer law. The resource that was transferred may have been exempt or non-exempt.

In the situation of a transfer of income-producing, non-home real property, the value of the property in excess of $6,000 is considered an uncompensated transfer. See Section 2640.10.15.05 for instructions on calculating the uncompensated value of income-producing real property. In addition, the value of the income that the property was producing or was capable of producing is a transfer. The uncompensated value is the fair market value of the income that the property could reasonably be expected to produce multiplied by the person’s life expectancy at the time of the transfer.

If an individual rents real property for less than FMV, the uncompensated amount is the difference between the FMV of the rent and the amount of rent being received, based on the person’s life expectancy.

EXAMPLE 1

A 75 year old recipient in a nursing home owns rental property with an equity value of $50,000, and is receiving $500 a month in rent. This rental amount is consistent with other similar properties in the neighborhood, and is therefore considered the fair market value. After subtracting allowable rental expenses, he has $400 rental income in his Medicaid budget. His legal guardian transfers full title to the property to himself. The uncompensated value of the transfer of the income is $400 x 110.88 months (9.24 years obtained from the life expectancy tables, $44,352. This is added to the uncompensated value of the property in excess of $6,000 for a total

[66] 405 IAC 2-3-1.1

uncompensated value of $88,352. ($44,000 real property plus $44,352 income.)

EXAMPLE 2
A 70 year old Medicaid recipient moves into a nursing home and signs the agreement to put her home up for sale or rent at fair market value. She hires a realtor who assesses the value at $95,000 with a rental value of $800 per month. Two months later, she rents the property to her son for $10 dollars a month. He will pay the allowable expenses which amount to $150 per month. The uncompensated value is $640 ($800 - $150 - $10) x 184.20 months (15.35 years), $117,888.

2640.10.25.30 Loans, Promissory Notes As Transfers of Assets

This provision applies to loans established on and after November 1, 2009. It applies to individuals who loan money directly to another as well as those who may purchase a loan or promissory note that was originally entered into between 2 other persons. The likelihood of the latter may be small, however given the concern that many private loans are merely gifts appearing to be loans, it is important to understand the possible transactions that may occur by someone trying to shelter assets to become eligible for Medicaid.

Whenever an individual has a promissory note, loan agreement, or mortgage as presumed evidence that a transfer of money was not a gift but was made with the expectation of full repayment, the arrangement will be considered an improper transfer unless all of the following criteria are met:

a) The repayment term is actuarially sound in accordance with the Life Expectancy Table included at the end section 2640.10.25.10,

b) The agreement provides for payments to be made in equal amounts during the term of the loan, with no deferral of payments and no balloon payments, and

c) The promissory note, loan, or mortgage prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan or mortgage, that does not satisfy the requirements above and is established on or after 11-1-09, the value of such contract considered as an improper transfer will be the outstanding balance due as of the date of the individual’s application for Medicaid or date of LTC admission, whichever is later. In the case of HCBS, the balance

to be used is the amount as of the date of the Cost Comparison Budget approval.

When determining if the loan is actuarially sound, refer to the person’s age on the Life Expectancy Table as of the date the loan is established. If the loan cannot be repaid within the person’s life expectancy, it is not actuarially sound, and is therefore an improper transfer.

The interest amount of the loan payments are countable income.

2640.10.25.35 Treatment of Continuing Care Retirement Community Entrance Fees

A Continuing Care Retirement Community (CCRC) or similar life care community typically provides a variety of living arrangements, from independent living through skilled nursing care. In many cases, potential residents must provide extensive information about their finances, including their assets and income, before being accepted for admission. In addition, they frequently must pay substantial entrance fees and sign detailed contracts before moving to the community.

Effective with contracts entered into on and after November 1, 2009, entrance fees paid by an individual to a CCRC or similar life care community are counted as an available non-exempt resource of the individual for Medicaid eligibility determinations when all of the following 3 conditions apply:

1. The person has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, even in part, to pay for care if the person’s other resources or income are insufficient to pay for their care. It is not necessary for the CCRC to provide a full, lump sum refund of the entrance fee to the resident. If even a portion of the fee can be refunded or applied to pay for care as required, this condition would be met.

2. The person is eligible for a refund of any remaining entrance fee when the person dies or terminates the contract and leaves the community.

   In order to meet this second condition, it is not necessary for the resident to actually receive a refund of the entrance fee or deposit. This second condition is met as long as the resident could receive a refund were the contract to be terminated or if the resident dies.

3. The entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

Ownership interest generally means the right to possess and convey property. Therefore, the resident will be required to verify whether or not they have an ownership interest in a CCRC or life care community by presenting documentation from the facility to that effect. If the CCRC or life care community confirms that the entrance fee does not confer an ownership interest to the resident, then the third condition described above is met.

For Medicaid eligibility determinations, all spousal impoverishment protection rules regarding income and asset allocations for a community spouse are applicable when one spouse resides in the skilled nursing care section of the facility, and the other spouse (the community spouse) resides in an independent living setting. CCRC and similar life care community contracts are required by federal law to account for spousal impoverishment income and asset allocations to a community spouse before determining the amount of resources that a resident must spend on his or her own care.

2640.10.25.40 Transfers Involving Funeral Trusts for Immediate Family Members

Pursuant to FSSA v. Culley, irrevocable funeral trusts purchased with assets owned by applicants or recipients that name an immediate family member as the beneficiary of the funeral trust are not considered improper transfers that invoke a penalty period. Immediate family members of applicants and recipients include spouses, children, stepchildren, and spouses of children or stepchildren.

2640.10.30 Presumption of Intent In Transferring Property

Once the uncompensated value for a transfer of property has been established, this figure will be used to determine a penalty period unless a satisfactory showing is made to the DFR that the property was transferred exclusively for a purpose other than to qualify for Medicaid, or that the individual intended to transfer the property at fair market value. DFR will presume Medicaid eligibility to be the motive and must give the individual the opportunity to rebut this presumption.

If the individual wishes to rebut this presumption, he is responsible for presenting convincing evidence to the DFR in support of his contention that the property was transferred exclusively for some other purpose or that he intended to transfer the property at fair market value.

If the individual chooses to rebut the presumption, he must provide a statement concerning the circumstances of the

transfer. The statement should cover, but need not be limited to the:

- Purpose for transferring the property,
- Attempts to dispose of the property at fair market value,
- Reason for accepting less than fair market value for the property,
- Means of or plans for supporting himself after the transfer, and
- Relationship (for example: familial or business) to the person to whom the property was transferred.

In addition, the individual must submit any and all pertinent documentary evidence such as legal documents, realtor listing agreements, relevant correspondence, and so forth, to the DFR. An allegation by the individual that the property transfer was done to avoid Medicaid estate recovery will not be accepted as a satisfactory showing that the property was transferred exclusively for a purpose other than to become eligible for Medicaid. Clearly, an individual who makes this claim has the intention of becoming eligible for Medicaid, or estate recovery would not even be an issue. Furthermore, a simple statement made by or on behalf of a recipient who has transferred property, that the transfer did not affect eligibility and is therefore allowable, does not constitute a satisfactory showing. The individual may be trying to protect all future eligibility. Again the avoidance of estate recovery may be the intent and will not suffice.

If the DFR finds the individual has made a satisfactory showing that the resource was not transferred to attain Medicaid eligibility, or that he intended to transfer it for fair market value, a penalty period will not be established.

2640.10.35 Determining the Transfer Penalty Period Begin Date

An unsuccessful rebuttal of the presumption of intent combined with a determination of inadequate consideration will result in the DFR invoking a penalty period. During a transfer of property penalty period, the recipient is ineligible for nursing facility services and home and community-based services.

For transfers on and after 8-11-93 but prior to July 1, 2003, the penalty period will begin with the month of the transfer (if that month is not a part of another penalty period) and continues for the full number of penalty months determined by dividing the uncompensated value by the nursing facility private pay rate in effect as of the application month. (Refer to

Section 3006.00.00 for the private pay rate). The process of rounding down the number of penalty months is no longer valid policy and the procedure is now prohibited.

The penalty start date for transfers of property occurring on and after 11/01/2009, the penalty period will begin on the **later** of:

- The date on which the individual would be otherwise eligible for Long Term Care Services under Medicaid based on an approved application were it not for the imposition of the penalty period, OR
- The first day of a month during which assets have been transferred for less than fair market value (FMV), AND
- The penalty does not occur during any other transfer of property penalty.

Please, note that advance notice of an adverse action is applicable for individuals who have been determined eligible for Medicaid. IHCPPM 2232.00.00. Therefore, if the calculation of the penalty period based on the criteria previous stated in this section would have any portion of the penalty period cover month(s) where the individual was previously determined eligible for and received Medicaid long-term care services, a claim for benefit recovery must be initiated to recover the portion of the nursing home per diem paid for by Medicaid during the calculated penalty period the individual incorrectly received. Please, refer to IHCPPM Chapter 4600 for Benefit Recovery. The notice of the benefit recovery action serves as the notice for advanced notice of adverse action in this instance.

If the individual residing in a long-term care facility is a new applicant whose eligibility requires a transfer penalty period, the begin date will most often be the first month the person is otherwise eligible.

Example:
Individual entered LTC facility on 10/15/2009.

12/05/2009	Gifted Money
05/10/2010	Apply for Medicaid

The months covered by the application are February, March April and continuing. During the eligibility process it is determined that the gifting was an improper transfer, and that the applicant had excess resources for the months of February and March.

Therefore, Medicaid is effective 04/01/2010 and a transfer penalty is imposed starting the same date, 04/01/2010. Assume the penalty period is 5 full months. The penalty begins on 04/01/2010 and ends on 08/31/2010.

Under the old rules, the transfer penalty would have begun on 01/01/2010, the month after the month of transfer and ended on 05/31/2010.

2640.10.35.05 Calculation of the Penalty Period

All improper transfers occurring on and after 11-01-09 are accumulated into one total amount to determine the penalty period. The facility rate as of the date of application, not the date of transfer, is used in the calculation. Refer to IPPM 3006.00. The uncompensated value determination must take into consideration the de minimis transfer allowance as explained in IPPM 2640.10.15.10. Transfer penalties using the specific method explained below may end on any date in a month not just the last day of a month.

Two standard values are used in the penalty period calculation:

- Monthly Standard of days in a month - 30.42 days. (365 days divided by 12).
- Average Monthly Facility Private Rate - Refer to IPPM 3006.00 for the applicable rate to use based on the date of an application.

Once the final uncompensated value (UV) of all improper transfers made on and after 11-01-09 has been determined, the steps below are to be followed to determine the length of the penalty period:

1) Divide the UV by the current Facility Private Rate. Round up at 2 decimal places. (For example, 2.26216807 are 2.27 months.) This result is the length of the penalty period.

2) If the above division happens to result in whole months, the calculation of the penalty is complete.

3) If the length of the penalty period as calculated above includes a fractional month, the next step is to convert the fractional month into days. Multiply the partial month by 30.42 and round up to determine the number of days in last month of the penalty period.

Example:
UV = 10,129.24 Private Rate = $4,611

$10,129.24 divided by $4611 = 2.1967555 2.20 months

Partial month .20 x 30.42 Standard of days = 6.084 7 days
Penalty period is 2 months, 7 days.

2640.10.35.10 Multiple Transfers of Property

For transfers occurring on or after November 1, 2009: If multiple transfers occurred during a person's look-back review period that require a transfer of property penalty period, there is to be one overall penalty period that is a cumulative total of all the improper transfers.

Example:
Individual admitted to Long Term Care facility on 10/08/09 with application filed 11/20/2010.

Facility Private Rate is $4,826. Refer to IHCPPM 3006.00.00.

First month of eligibility is 10/2010. (Applicant ineligible for August and September due to excess resources)
Transfers:

11/03/2009: $10,000 cash gift to sister
11/09/2010: $800 cash gift to son
11/14/2010: $20,000 cash to best friend

Evaluation:
All transfers are determined to be improper and subject to penalty. Because the application was filed after 10/01/2009, the $1200 de minimis transfer allowance rule applies to each year of transfers. The $10,000 transfer is reduced to $8,800 because the gift was to a family member. $8,800 divided by $4826 = 1.823 = 1.83 months. Convert. The partial .23 months to days: 30.42 x .83 = 24.2486 days = 25 days. The penalty begins 11/01/2010 and ends 12/25/2010.

The uncompensated value of the transfer in 2010 = $20,800. Only the $800 gift to a family member is subject to the de minimis; the gift to the friend is not reduced. The uncompensated value subject to penalty is $20,000.

$20,000 divided by $4,826 = 4.1442 months = 4.15 months. Convert the .15 partial months to days: 30.42 x .15 = 4.563 days = 5 days.

Penalty period is 4 months 5 days. Combined with the other penalty period, this penalty extends from 12/26/2010 and ends on 4/30/2011.

For transfers involving trusts occurring before November 1, 2009, but within the client's look-back review period, multiple transfers are handled differently. For multiple transfers involving trusts before November 1, 2009, that occur in the same month or in consecutive months, the total cumulative value of the transfers will be considered one transfer for purposes of calculating the penalty. The penalty period begins with the month following the first transfer.

Multiple transfers involving trusts before November 1, 2009, that are not made in consecutive months will result in separate penalty periods. Each penalty period will begin in the month following the month of transfer or, if that month is already part of a penalty period, in the month after the prior period ends. Penalty periods do not overlap.

2640.10.35.15 Transferred Property is Returned to the Original Owner

If the transferred property is returned in its entirety, no penalty can be established. If a penalty has already been established, and then the property is returned to the individual, this transaction nullifies the penalty. It has the effect of restoring ownership of the property to the individual back to the month of the transfer. It does not necessarily restore full Medicaid coverage to the individual. The worker must redetermine Medicaid for the months in question by considering the value of the property. When only a portion of the property or its equivalent value is returned, the penalty period is to be reduced proportionately.

2640.10.35.20 Budgeting Procedures During A Transfer Penalty Period

During the penalty period, "eligibility step" budgeting is to be used. Before June 1, 2014, refer to IHCPPM 3455.05.25. For months, including June 2014 and thereafter, the "eligibility step" is the comparison of individual income to the Special Income Level (SIL). Refer to IHCPPM 3455.14.00. The post-eligibility step is never completed.

Once the penalty period has been served, the post-eligibility calculation to determine the liability amount is to be effective the <u>month after the last month of the penalty period</u>. Caseload

controls must be in place to ensure that desk reviews are completed for appropriate action immediately after the penalty period expires.

2640.10.40 Transfer Penalty Hardship Exception

The hardship procedures explained in this section are used when a transfer penalty has been imposed on an individual for a transfer of property occurring on and after November 1, 2009, except when the penalty is due to an annuity purchase. There is no hardship exception for an annuity purchase.

POLICY

When a penalty is imposed, the eligibility system generated notice will explain that an appeal based on the merits of the penalty determination can be filed, *or* a hardship exception can be requested if the individual alleges and can document that such a hardship exists. Procedures for filing the Request for Hardship Exception-Transfer of Property directly to the FSSA Office of Medicaid Policy & Planning (OMPP) are explained in the notice. (The text of the hardship language on the eligibility notice is at the end of this section.) The request for an undue hardship exception will serve as admission by the individual that a transfer of assets for less than adequate consideration was made and that the agency's penalty determination was correct.

The penalty will be removed or modified under a hardship exception if documentation substantiates that the recipient's health is endangered as result of the penalty or that the recipient will be deprived of food, clothing, shelter, or other necessities of life.

PROCEDURE

A hardship exception request must be filed within 30 days of the notice imposing the transfer penalty. The following persons can apply for a hardship exception:

- The recipient,
- The recipient's authorized representative, or
- The nursing facility in which the recipient currently resides, if written consent from the recipient or the recipient's personal representative is given for the nursing facility to file the request.

The OMPP will make the decision to waive all or a portion of the transfer penalty based solely on the evidence submitted with the request. The Notice of Decision on Transfer of Property Hardship Exception Request will be issued by OMPP to the requestor within 45 days of receiving a request for an exception. A denial of a

hardship exception is subject to administrative appeal. A copy of the Notice of Decision on Transfer of Property Hardship Exception Request will be sent to the Division of Family Resources.

An approval of a hardship exception must be acted upon by the Division within 10 days (normal change processing requirements) to remove or shorten the penalty as approved.