

5160:1-3-05.14 **Medicaid: resource exclusions.**

(A) This rule describes excluded resources for the purpose of determining medical assistance eligibility for the aged, blind, or disabled.

(B) Resource exclusions.

(1) Resources excluded by federal laws other than the Social Security Act, in accordance with 20 C.F.R. 416.1236 (as in effect October 1, 2020), unless otherwise noted. This list contains unspent income from exempt sources:

(a) Agent orange settlement payments received on or after January 1, 1989, under the Agent Orange Compensation Exclusion Act (Pub. L. No. 101-201).

(b) Restitution payments under the Civil Liberties Act of 1988, to U.S. citizens of Japanese ancestry and permanent resident Japanese non-citizens who were interned during World War II, or their survivors, in accordance with 50 U.S.C. 4215 (as in effect October 1, 2020).

(c) Restitution payments under the Aleutian and Pribilof Island Restitution Act in accordance with 50 U.S.C. 4236 (as in effect October 1, 2020).

(d) Payments to victims of Nazi persecution.

(e) Payments received under the Radiation Exposure Compensation Act of 1990 (Pub. L. No. 101-426).

(f) Austrian social insurance payments, based in whole or in part, on wage credits paid under paragraphs 500 through 506 of the Austrian General Social Insurance Act (as in effect October 1, 2020).

(g) Payments received from the Dutch government as a result of the Netherlands' Benefit Act for victims of persecution from 1940-1945 (Dutch acronym, WUV) (Pub. L. No. 103-286).

(h) Payments made to Native Americans as listed in section IV of 20 C.F.R 416 Subpart K Appendix (as in effect October 1, 2020).

(i) Payments from the Ricky Ray Hemophilia Relief Fund Act of 1998 (Pub. L. No. 105-369) or payments made from any fund established pursuant to a class settlement in the case of Susan Walker v. Bayer Corporation, 96-C-5024 (N.D. Ill).

(j) The first two thousand dollars per calendar year received as compensation for participation in clinical trials that meet the criteria detailed in section 1612(b)(26) of the Social Security Act (as in effect October 1, 2020).

(k) Payments made for supporting services or reimbursement of out-of-pocket expenses to volunteers participating in corporation for national and community service (CNCS, formerly ACTION) programs in accordance with 42 U.S.C. 1382a (as in effect October 1, 2020):

(i) AmeriCorps VISTA program; and

(ii) Special and demonstration volunteer program; and

(iii) Retired senior volunteer program (RSVP); and

(iv) Foster grandparents program; and

(v) Senior companion program.

(l) Payments received under the Energy Employees Occupational Illness Compensation Program Act of 2000 (Pub. L. No. 106-398). Interest received on any unspent payment is a countable resource.

(m) Student financial assistance received under the Higher Education Act of 1965 (as in effect October 1, 2020) or bureau of Indian affairs is excluded from income and resources, regardless of use:

(i) Pell grants; and

(ii) Student services incentives; and

(iii) Academic achievement incentive scholarships; and

(iv) Federal supplemental education opportunity grants; and

(v) Federal educational loans (Stafford loans, William D. Ford federal direct and direct PLUS loans, etc.); and

(vi) Upward bound; and

(vii) Gear up (gaining early awareness and readiness for undergraduate programs); and

(viii) State educational assistance programs funded by the leveraging educational assistance program; and

- (ix) Work-study programs.
- (n) Home energy assistance payments or allowances in accordance with 20 C.F.R. 416.1157 (as in effect October 1, 2020).
- (o) Contributions, matching funds, or interest in individual development accounts (IDAs), either demonstration project or TANF-funded, in accordance with 42 U.S.C. 604 (as in effect October 1, 2020).
- (p) Veterans affairs payments made to or on behalf of:

 - (i) Certain Vietnam veterans' natural children, regardless of age or marital status, for any disability resulting from spina bifida suffered by such children; and
 - (ii) Certain Korea service veterans' natural children, regardless of age or marital status, for any disability resulting from spina bifida suffered by such children; and
 - (iii) The natural children, regardless of age or marital status, with certain birth defects born to a woman who served in Vietnam.
- (q) Funds and interest held in an account under the Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014 (Pub. L. No. 113-295):

 - (i) A contribution to an ABLE account by another individual or by a third party is neither income nor a resource to the ABLE account holder. If the individual who made the contribution later requests medical assistance for long-term care services, the contribution will be evaluated in accordance with rule 5160:1-6-06 of the Administrative Code.
 - (ii) A distribution from an ABLE account may be used to pay for a qualified disability expense (ODE). A ODE is any expense related to the blindness or disability of the individual and made for the benefit of the individual. ODEs include but are not limited to:

 - (a) Education; and
 - (b) Housing; and
 - (c) Transportation; and
 - (d) Employment training and support; and

(e) Assistive technology; and

(f) Health; and

(g) Prevention and wellness; and

(h) Financial management and administrative services; and

(i) Legal fees; and

(j) Expenses for ABLE account oversight and monitoring; and

(k) Funeral and burial; and

(l) Basic living expenses.

(iii) A distribution from an ABLE account with the intent of paying for a QDE, except for housing, is excluded as income and will be excluded as a resource while:

(a) The individual continues to maintain the ABLE account; and

(b) The distribution is unspent; and

(c) The distribution is identifiable even if commingled with non-excluded funds; and

(d) The individual's intent to use the distribution for a QDE, other than housing, has not changed.

(i) If the intent has changed and the individual spent the distribution for a non-QDE or for housing, the distribution is counted as a resource for the month in which the distribution was spent.

(ii) If the intent has changed and the individual has decided to use the distribution for a non-QDE or for housing, but has not yet spent the distribution, the retained portion of the distribution is a countable resource the first day of the month following the month in which the intent changed.

(iv) A distribution from an ABLE account with the intent of paying for a non-QDE or for a housing expense is:

(a) Not countable income.

(b) A countable resource if retained into the following month.

(2) Resources excluded by the Social Security Act, in accordance with 20 C.F.R. 416.1210 (as in effect October 1, 2020), unless otherwise noted:

(a) Household goods and personal effects of a reasonable value as described in rule 5160:1-3-05.10 of the Administrative Code.

(b) One automobile or other mode of transportation as described in rule 5160:1-3-05.11 of the Administrative Code.

(c) Life insurance policies as described in rule 5160:1-3-05.12 of the Administrative Code.

(d) The home considered the principal place of residence as described in rule 5160:1-3-05.13 of the Administrative Code.

(e) Real or personal property considered essential to the means of self-support as described in rule 5160:1-3-05.19 of the Administrative Code.

(f) Certain burial funds and contracts as described in rule 5160:1-3-05.6 of the Administrative Code.

(g) Value of a burial space as described in rule 5160:1-3-05.7 of the Administrative Code.

(h) Cash or in-kind replacement received from any source for purposes of replacing or repairing an excluded resource which is lost, damaged, or stolen. Any interest earned on such cash payments is not income. The total amount of cash (including interest earned) or the value of the in-kind replacement is excluded as a resource for a period of nine months from the date of receipt.

(i) If the exclusion time expires and the individual has not used all of the cash, any remaining cash (as well as interest earned on such cash) is a countable resource effective the first day of the month following the month in which the time period expires.

(ii) The exclusion time may be extended for good cause for a reasonable period not to exceed an additional nine months (a total of eighteen months from the date the cash is received).

- (iii) Good cause may be found if circumstances beyond the individual's control:

 - (a) Prevent repair or replacement of the lost, damaged, or stolen property; or
 - (b) Keep the individual from contracting for such repair or replacement.
- (iv) Any cash and interest retained become a resource the first day of the month following the month in which the eighteen-month period ends.
- (v) Temporary housing received by an individual whose home was destroyed or damaged is also excluded for a period of nine months beginning with the month the temporary housing is first provided. For purposes of this rule, temporary housing includes the value of support and maintenance. When a home is damaged or destroyed and temporary housing is furnished to an individual who owned the home, any form of in-kind support and maintenance is not counted as income.
- (i) Funds held in a plan to achieve self-support (PASS) account in accordance with section 1613(a)(4) of the Social Security Act (as in effect October 1, 2020).
- (j) Federal tax refunds and advance tax payments with respect to refundable credits received on or after January 1, 2010, are excluded for twelve months beginning the month following the month of receipt under the American Taxpayer Relief Act of 2012 (Pub. L. No. 112-240).
- (k) Funds or interest held in a dedicated account in a financial institution for an individual under the age of eighteen, that is maintained by a representative payee, from past-due supplemental security income (SSI) benefits that exceed six times the monthly SSI payment which are allowed to be deposited into such an account, and the use of which is restricted by section 1631(a)(2)(F) of the Social Security Act (as in effect October 1, 2020), are excluded as income and resources as defined in rule 5160:1-3-05.4 of the Administrative Code.
- (l) Payments received from a fund established by a state to aid victims of crime are excluded for nine months beginning the month following the month of receipt in accordance with section 1613(a)(9) of the Social Security Act

(as in effect October 1, 2020). Interest earned on any unspent payment is a countable resource.

(m) Relocation assistance in accordance with section 1613(a)(10) of the Social Security Act (as in effect October 1, 2020).

(i) Payments under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 (Pub. L. No. 91-646) provided to individuals displaced by projects in the acquisition of real property are excluded with no time limits.

(ii) Relocation assistance payments from a state or local government are excluded for nine months.

(iii) Interest earned on unspent relocation assistance is a countable resource.

(n) Grants, scholarships, fellowships, and gifts used or intended to be used to pay the cost of tuition, fees, or other necessary educational expenses, in accordance with section 1613(A)(15) of the Social Security Act (as in effect October 1, 2020) are excluded for nine months.

(o) Filipino veteran equity compensation fund payments in accordance with section 1002 of the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5). Interest earned on the payment is a countable resource.

(p) Value of food or assistance provided under federal food and nutrition programs.

(q) Unspent portion of retroactive SSI and retirement, survivors, and disability insurance (RSDI) payments are excluded for nine months following the month of receipt in accordance with section 1613(a)(7) of the Social Security Act (as in effect October 1, 2020).

(r) Payments provided for flood mitigation activities under section 1324 of the National Flood Insurance Act of 1968 (Pub. L. No. 109-64).

(s) Payments received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. No. 100-707) and assistance provided under any federal statute because of a presidentially-declared disaster in accordance with section 1613(a)(6) of the Social Security Act (as in effect October 1, 2020).

(t) The value of federal housing assistance in accordance with section 1613(a)(8) of the Social Security Act (as in effect October 1, 2020) provided by:

(i) The office of housing and urban development (HUD); or

(ii) The U.S. department of agriculture's rural housing service (RHS), formally known as the farmers home administration (FHA).

(u) Gifts to children with life-threatening conditions in accordance with section 1613(a)(13) of the Social Security Act (as in effect October 1, 2020) from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, within the following limitations:

(i) In-kind gifts not converted to cash.

(ii) The first two thousand dollars of any cash gifts within a calendar year.

(iii) Interest or dividends earned on any gift is a countable resource.

(v) Restitution payments for misused benefits for beneficiaries of RSDI, special benefits for certain world war II veterans, and SSI are excluded for nine months following the month of receipt in accordance with section 1613(a)(14) of the Social Security Act (as in effect October 1, 2020). Payments are made to the beneficiary or the beneficiary's representative payee in the amount equal to the benefits misused in the following situations:

(i) The misuse resulted from the negligent failure of the social security administration (SSA) to investigate or monitor a representative payee; or

(ii) An organization or individual payee misused the benefits, without regard to whether SSA was negligent.

(w) A state annuity paid by a state, to an individual and/or the individual's spouse, on the basis of the state's determination that the individual is a veteran and is blind, disabled, or aged in accordance with section 1613(a)(16) of the Social Security Act (as in effect October 1, 2020).

(C) Payments or benefits listed in this rule that have been commingled with countable resources need to be identifiable in order to be excluded as a resource.

(D) Administrative agency responsibilities.

- (1) Evaluate interest received on excluded resources in accordance with rule 5160:1-3-05.9 of the Administrative Code.
- (2) Consider any resource purchased with funds listed in this rule as not automatically excluded and subject to medicaid resource requirements.

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