

TO BE RESCINDED

5160:1-3-26

Medicaid: resource exemption.

(A) This rule describes exempt resources for the purpose of determining medicaid eligibility.

(B) Definitions.

(1) "Administrative agency" means the county department of job and family services, the Ohio department of job and family services, or other entity that determines eligibility for a medical assistance program.

(2) "Home" is defined in rule 5101:1-39-31 of the Administrative Code.

(3) "Individual" means an applicant for or recipient of a medical assistance program.

(4) "Principal place of residence" means the dwelling the individual considers his or her established or principal home and to which, if absent, he or she intends to return. It can be real or personal property, fixed or mobile, and located on land or water.

(5) "Proceeds" means the net amount the seller receives from the sale of an asset.

(C) The following are considered exempt resources:

(1) Household goods and personal effects of a reasonable value as defined in rule 5101:1-39-28 of the Administrative Code.

(2) Automobiles and other modes of transportation as defined in rule 5101:1-39-29 of the Administrative Code.

(3) Life insurance policies as defined in rule 5101:1-39-30 of the Administrative Code.

(4) The home lived in, owned by, and considered the principal place of residence by the individual, the couple, or the parents with whom the eligible child is living.

(a) Only one living place may be established as the principal place of residence.

- (b) A temporary absence of less than six months from the home does not affect the principal place of residence exemption so long as the individual has not established permanent residence elsewhere.
 - (c) The administrative agency must obtain a signed statement, declaring the principal place of residence, when there is an indication the individual resides in more than one place.
 - (d) Treatment of the home for institutionalized individuals is described in rule 5101:1-39-31 of the Administrative Code.
- (5) Real or personal property considered essential to the means of self-support as defined in rule 5101:1-39-33 of the Administrative Code.
 - (6) The value of a burial space as defined in rule 5101:1-39-32.2 of the Administrative Code.
 - (7) Certain prepaid burial contracts as defined in rule 5101:1-39-27.4 of the Administrative Code.
 - (8) Funds received as a result of the housing and urban development (HUD) settlement agreement of January 16, 1979, in the case of Underwood v. Harris, number 76-469 (district court for the District of Columbia, filed March 22, 1976), when any of the HUD settlement funds retained by the individual are kept separate from any other countable resources.
 - (9) Cash for in-kind replacement received from any source used for the replacing or repairing an exempt 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 from income and is also exempt as a resource for a period of nine months from the date of receipt.
 - (a) If the exemption 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 following month in which the time period expires.
 - (b) The exemption 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).

- (c) Good cause may be found if:
- (i) The individual made a reasonable effort to contract for or obtain replacement or repair of an exempt resource within the original nine-month period; and
 - (ii) The individual still intends to use any cash received for that purpose.
- (d) Any change of intent, which occurs during the extension period, will cause the exemption to end. Any cash and interest retained becomes a resource the first day of the month following the month in which the individual reports the change or intent, or the eighteen-month period ends, whichever comes first.
- (e) Temporary housing received by an individual whose home was destroyed or damaged is also exempt 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.
- (10) Funds held in plans for achieving a self-support (PASS) account in accordance with section 1613(a)(4) of the Social Security Act.
- (11) The accumulation of payments received under the Agent Orange Compensation Exclusion Act, Pub. L. No. 101-201, as in effect on December 6, 1989, received on or after January 1, 1989.
- (12) The accumulation of payments received under section 105 of Pub. L. No. 100-383, as in effect on August 10, 1988, by individuals of Japanese ancestry.
- (13) The accumulation of payments received under section 206 of Pub. L. No. 100-383, as in effect on August 10, 1988, by Aleuts.
- (14) The accumulation of German reparation (restitution) payments paid under the republic of Germany's federal law for compensation of nationalist socialist persecution to certain survivors of the holocaust, per Pub. L. No. 103-286, as in effect on August 1, 1994.

- (15) The accumulation of payments under the Radiation Exposure Compensation Act, Pub. L. No. 101-426, as in effect on October 15, 1990.
- (16) Federal earned income tax credit payments, either refunded or advanced by an employer, are exempt in the month of receipt and the month following in accordance with section 1613(a) of the Social Security Act.
- (17) The accumulation of payments received under the Maine Indian Claims Settlement Act, Pub. L. No. 96-420, as in effect on October 10, 1980, received on or after October 10, 1980.
- (18) The accumulation of Austrian social insurance payments paid under paragraphs 500 and 506 of the Austrian General Social Insurance Act, as in effect on September 1, 1991.
- (19) The accumulation of payments received under the Aroostook Bank of Micmacs Act, Pub. L. No. 102-171, as in effect on November 26, 1991, received on or after November 26, 1991.
- (20) Escrow accounts established and credited as the direct result of the individual's involvement in the family self-sufficiency program on or after May 13, 1992. These escrow accounts are only considered available when the individual is no longer receiving any federal, state or other public assistance for housing.
- (21) The accumulation of payments received under the Seneca Nation Settlement Act, Pub. L. No. 101-503, as in effect on November 3, 1990, received on or after November 3, 1990.
- (22) The accumulation of payments received as a result of the Netherlands' Act on Benefits for Victims of Persecution (1940-1945), as in effect on January 1, 1973.
- (23) The accumulation of payments received from any fund established pursuant to a class settlement in the case of *Susan Walker v. Bayer Corporation, et al*, 96-c-5024 (N.D. Ill), per the Balanced Budget Act of 1997, Pub. L. No. 105-33, as in effect on August 5, 1997.
- (24) Past-due benefits and other underpayments that exceed six times the monthly SSI payment deposited into a dedicated financial institution account and any accrued interest or other earnings on such an account are excluded as income and resources as defined in rule 5101:1-39-27.2 of the Administrative Code.

- (25) Any interests of the individual (or spouse) in trust or restricted lands, in accordance with 20 C.F.R. 416.1234, as in effect on February 23, 1994, if an individual or an individual's spouse is of native American Indian descent from a federally recognized native American Indian tribe. If an individual alleges an interest in trust or restricted lands, the administrative agency must obtain a copy of any document or documents that identify such interest and verify the allegation with the appropriate Indian agency.
- (26) Assistance received as a result of a catastrophe declared by the president of the United States as a major disaster, no matter if received from federal, state, or local government, or from a disaster assistance organization. This includes any interest earned on the assistance.
- (27) Any unspent payments received from a fund established by a state to aid victims of crime are exempt for nine months as identified in section 5031 of Pub. L. No. 101-508, as in effect on November 5, 1990.
- (28) Relocation assistance, under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, 42 U.S.C. 301, as in effect on January 2, 1971, provided to persons displaced by projects which acquire real property.
- (29) Grants, scholarships, fellowships, and gifts used to pay tuition, fees and other necessary educational expenses, in accordance with section 435 of the Social Security Protection Act of 2004, Pub. L. No. 108-203, s in effect on February 12, 2003, are exempt for nine months.
- (30) Funds received from the "Ricky Ray Hemophilia Relief Fund" under the Ricky Ray Hemophilia Relief Fund Act of 1998, Pub. L. No. 105-369, as in effect on March 11, 1997.

(D) Administrative agency responsibilities.

- (1) The administrative agency must consider interest received on exempt funds listed in paragraph (C) of this rule, banked with a financial institution, as non-exempt unless otherwise specified. The interest is counted as unearned income in the month received and as a countable resource the month after the month of receipt.
- (2) The administrative agency must consider any resource purchased with funds listed in paragraph (C) of this rule as not automatically exempt and subject to medicaid resource requirements.

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Certification

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