

5160:1-3-05.1

Medicaid: resource requirement.

(A) This rule describes how resources are treated for purposes of determining eligibility for medical assistance.

(B) Definitions.

(1) "Assets" include all income and resources of the individual and of the individual's spouse. This includes any income or resources the individual or the individual's spouse is entitled to, but does not receive, because of action taken to avoid receipt of the assets by:

(a) The individual or the individual's spouse; or

(b) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(c) Any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(2) "Countable resources" mean those resources remaining after all exclusions have been applied.

(3) An "encumbrance" means a claim, lien, charge, or liability attached to and binding on an identified piece of real or personal property.

(4) "Equity value" means the fair market value of a resource minus any encumbrance on it.

(5) "Essential person" means someone who:

(a) Has continuously lived in the individual's home since December 1973; and

(b) Was not eligible for state assistance in December 1973; and

(c) Has never been eligible for SSI benefits as an eligible individual or as an eligible spouse; and

(d) Under the state plan in effect June 1973, the state took that person's needs into account in determining the eligible individual's need for state assistance in December 1973.

(6) "Fair market value" of a resource means the going price, for which real or personal property can reasonably be expected to sell on the open market, in the particular geographic area involved.

- (7) "Personal property" means any property that is not real property. The term includes, but is not limited to, such things as cash, jewelry, household goods, tools, life insurance policies, automobiles, promissory notes, etc.
- (8) "Real property" means land, including buildings or immovable objects, attached permanently to the land.
- (9) "Resources" mean cash, personal property, and real property an individual and/or the individual's spouse has an ownership interest in, has the legal ability to access in order to convert to cash (if not already cash), and is not legally prohibited from using for support and maintenance.
- (a) An ownership interest in property, whether real or personal, is any interest recognized by law that can be protected or enforced in a court of law. Ownership interest includes either legal title or equitable interests. Access to property or a right to use property does not make that property a resource if there is no ownership interest.
- (b) Property cannot be a resource if the individual lacks the legal ability to access funds for spending or to convert noncash property into cash.
- (i) Property, or an interest in real or personal property, must have a cash value that is available to the individual upon liquidation or sale of the property.
- (ii) An individual has the legal ability to access property even when action can be taken only by an agent, any person with power of attorney, a guardian whether court appointed or not, or any other court appointed fiduciary such as a conservator of the individual. For purposes of medicaid eligibility, any action by an agent, a guardian whether court appointed or not, any person with a power of attorney, or any other court appointed fiduciary such as a conservator is deemed to be an action by the individual. This is true even if he or she is required to petition the court to withdraw funds for the individual's care.
- (c) Even with ownership interest and legal ability to access property, a legal restriction against the property's use for the owner's own support and maintenance means the property is not a resource.
- (10) "Resource limit" means the maximum combined value of all resources an individual can have an ownership interest in and still qualify for medicaid.
- (a) For an individual, the resource limit is one thousand five hundred dollars.
- (b) For a couple, whether both are eligible or one is ineligible, the resource

limit is two thousand two hundred fifty dollars.

(c) A child living with a parent is considered to be an individual and has a resource limit of one thousand five hundred dollars.

(11) "Trust" is defined in rule 5160:1-3-05.2 of the Administrative Code.

(C) Treatment of non-excluded resources and determination of resource availability.

(1) The administrative agency shall evaluate and calculate the value of all resources held by an individual and the individual's spouse. An individual is ineligible for medical assistance if he or she has an ownership interest in resources with an aggregate or total countable value greater than the resource limit. The following provisions govern that process.

(a) Receipt and retention of cash or in-kind items.

(i) An individual or the individual's spouse may receive cash or in-kind items during a calendar month (the "month of receipt"). The administrative agency must treat the cash or in-kind items as a possible source of countable income for the month of receipt under the rules governing income.

(ii) If the individual or the individual's spouse retains the cash or in-kind items beyond the month of receipt, the administrative agency shall determine the availability of the cash or in-kind items as a possible countable resource under the rules governing resources.

(iii) Receipt of cash or in-kind items from the sale or exchange of timber, minerals, or other like items that are part of the land must be governed by this provision.

(b) If the individual or the individual's spouse receives cash or in-kind items as the result of an exchange, sale, replacement, or conversion of a resource, the administrative agency must consider the availability of the cash or in-kind items under the rules governing the treatment of resources, even in the first calendar month.

(2) Changes in the value of resources.

(a) The administrative agency shall review any change (increase or decrease), in the total value of an individual's resources, if the change may affect the individual's eligibility for medical assistance.

(b) The review may be initiated by an eligibility worker based upon information derived from any reliable source indicating the value of an

individual's available resources has increased or decreased.

(c) The administrative agency shall conduct the review of any changes as soon as possible.

(3) Discovery of previously unknown ownership interests.

(a) Any individual alleging lack of knowledge of an ownership interest in a resource must provide a signed statement attesting to the lack of knowledge and explaining the circumstances resulting in its discovery.

(b) The individual shall obtain supporting documentation, which may include signed statements from other individuals who are familiar with the individual's situation, that confirms the individual's claim.

(c) If the administrative agency obtains both the signed statement and adequate supporting documentation from the individual, the administrative agency will not count an individual's ownership interest as an available resource during any period in which the individual was unaware of the ownership interest.

(d) The administrative agency shall treat previously unknown ownership interests, including any monies (interest, dividends, or other earnings) that have accumulated on it, in the same manner as the receipt or retention of cash or in-kind items under this rule.

(e) If either the signed statement or the supporting documentation is not provided, the administrative agency shall count an individual's ownership interest as an available resource during any period in which the individual claimed to be unaware of the ownership interest. The administrative agency shall treat the ownership interest, including any monies (interest, dividends, or other earnings) that have accumulated on it, in the same manner as the receipt or retention of cash or in-kind receipts under this rule. When appropriate, the administrative agency may refer the case to the administrative agency's benefit recovery unit.

(4) Shared ownership.

(a) If the individual shares ownership with another person (co-owner), the resources are treated in the following manner:

(i) If the co-owner is not the individual's spouse, parent (if the individual is under age eighteen), or child under age eighteen, and the co-owner intends to block the individual's use or disposal of the resource, the individual is required to pursue legal action to make the resource available. The individual shall provide written verification of legal action.

(ii) If the written response indicates a legal action can make part or all of the resource available, the individual is required to pursue such a legal action.

(iii) If the individual is unwilling to take legal action to make the resource available, the application is denied or the case is terminated for failure to cooperate.

(iv) If the individual is unable to make the resource available because one of the owners cannot be located, the cost of a legal action is prohibitive, or the individual was unsuccessful in a legal action, the resource is not counted. Availability of the resource is reexamined at each eligibility review.

(b) If the co-owner is the individual's spouse, parent (if the individual is under age eighteen), or child under age eighteen, the ability to use or dispose of the resource is assumed to exist unless the individual can provide documentation of the contrary.

(5) Continuing verification.

(a) The administrative agency shall verify the value of real and personal property with each application or reapplication and any time information is provided that indicates that a change in the individual's resources may have occurred.

(b) The administrative agency shall record the verification and place all supporting documents in the case record.

(6) Property that has not been sold.

(a) This provision governs real and personal property that has not been sold. If an individual owns property that affects eligibility and the property has not been sold, it will not be counted as an available resource as long as the individual continues to list the property for sale at an amount equal to the market value determined by the county auditor.

(b) Real property that was the principal place of residence must first be considered in accordance with rule 5160:1-3-05.15 of the Administrative Code before the provisions of this paragraph are applied.

(c) The inability to sell property may result from legal technicalities, general economic conditions in the community, or the inability to find a buyer. Before property will be determined to be excluded as a countable asset, the individual has the burden of producing reliable documentation

establishing either of the following.

(i) The individual may produce documentation from two different types of knowledgeable sources in the geographic area that agree that although the property is listed for sale, the property has not been sold due to an attribute of the property or the market or both.

(a) In cases involving real property, knowledgeable sources are limited to the following: the county auditor, real estate brokers, the local office of the farmer's home administration for rural land, the local office for the agricultural stabilization and conservation service for rural property, banks, savings and loan associations, mortgage companies and similar lending institutions, and the county extension service.

(b) In the case of personal property, knowledgeable sources are limited to the following: any professional, business owner or operator, or expert who has experience in the sale, trade, restoration, or valuation of the type of personal property in question.

(ii) Alternatively, the individual may produce documentation showing that an actual but unsuccessful sale attempt has been made.

(a) If real property, the documentation must show that the property has been, and is currently, listed for sale with a real estate agent or real estate firm in the geographic area. The property is a countable resource until it is listed for sale.

(b) The property must be listed for sale at an amount equal to the market value determined by the county auditor.

(c) The real estate agent or firm must verify that no offer to purchase has been received. The "geographic area" is the area covered by radio, television, newspaper, and other media serving the area where the individual lives and where the property is located.

(d) If the individual receives an offer for the property that is less than ninety per cent of the current market value established by the county auditor, the low offer may be an indication that the value is incorrect.

(e) If it appears that the stated value is incorrect, either the individual or the administrative agency may obtain an appraisal from a second source to set a more accurate value.

A second appraisal is not necessary when the purchase offer is so low that it is obviously unreasonable.

(f) The individual has the right to rebut the value by obtaining an appraisal of the property.

(7) Property that can be accessed only through legal action.

(a) If the applicant is unable to access or liquidate property due to a legal impediment or due to conduct of another person, the administrative agency shall refer the individual to legal aid services or the prosecuting attorney's office to determine if they can assist in making the resource available. A written response to the referral is required.

(i) A failure or refusal by the prosecuting attorney or legal aid service to provide a written response shall not result in a denial for medical assistance; or

(ii) A delay in the eligibility determination by the administrative agency.

(b) If the written response indicates that a legal action can make part or all of the resource available, the individual is required to pursue such a legal action.

(c) If the individual is unwilling to take legal action to make the resource available, the application is denied or the case is terminated for a failure to cooperate.

(d) If the individual is unable to make the resource available because the cost of a legal action is prohibitive, or if the individual is unsuccessful in their legal action, the resource is not counted. Availability of the resource is reexamined at each redetermination for medical assistance.

(D) Resources of family members, households, essential persons, and aliens.

(1) The resources of spouses residing together are addressed in accordance with the deeming of resources in rule 5160:1-3-05.20 of the Administrative Code.

(2) In non-institutional settings, the administrative agency shall apply the resource limitation for an individual effective with the month following the month a couple separates or divorces or one member dies. Reference rules 5160:1-3-06.1 and 5160:1-3-06.2 of the Administrative Code for the treatment of resources for individuals receiving long term care services in a long term care facility, under a home and community-based services (HCBS) waiver program, or under the program of all-inclusive care for the elderly (PACE).

(3) The resources of a child under the age of eighteen are addressed in accordance with the deeming of resources in rule 5160:1-3-05.20 of the Administrative Code.

(4) The resources of an individual include those of his or her essential person.

(5) The resources of an alien and sponsor(s) are addressed in accordance with the sponsor-to-alien deeming requirements in Chapter 5101:1-2 of the Administrative Code.

(E) Institutionalization on or prior to December 31, 1989.

(1) An individual who entered a medical institution on or prior to December 31, 1989, and has continuously resided in the institution, is considered to have been living apart from his or her family effective the month following the month of institutionalization.

(2) All resources, in the name of the institutionalized individual, must be considered in the determination of eligibility for medical assistance.

(3) Any resource, owned solely by a spouse or parent living outside the institution, is not considered available to the spouse/child residing in the institution. Only those resources that are actually being contributed (e.g., share of savings account) shall be used in the determination of resource eligibility.

(4) The availability of a resource owned jointly.

(a) If a resource is jointly owned and listed with names connected by "and" or "or", the total amount of the resource is considered available to the institutionalized individual unless the individual provides documentation verifying the portion contributed by the other owners. Only the portion the individual contributed is considered a resource.

(b) Resources of parents are not considered available to a child who is institutionalized when the institutionalization is not temporary, even if the child returns to the home for periodic visits.

(F) Couples separated by institutionalization on or after January 1, 1990, must have resources assessed in accordance with rules 5160:1-3-06.2 to 5160:1-3-06.5 of the Administrative Code.

(G) Couples separated by institutionalization on or prior to December 31, 1989, but the institutionalized individual returned to a community setting for thirty days or longer on or after January 1, 1990 and then is separated by another period of institutionalization, must have resources assessed in accordance with rules 5160:1-3-06.2 to 5160:1-3-06.5 of the Administrative Code. The first date of

institutionalization on or after January 1, 1990 must be considered the first continuous period of institutionalization.

(H) Resources determined excluded from the applicable resource limit for medical assistance remain excluded at the time of the individual's death. Excluded resources are part of the deceased individual's estate and are subject to the estate recovery provisions in accordance with section 5162.21 of the Revised Code.

(I) For purposes of determining or redetermining eligibility for medical assistance on or after February 8, 2006, the entrance fee for individuals residing in a continuing care retirement community or a life care community must be considered an available resource in accordance with rule 5160:1-3-02.7 of the Administrative Code.

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