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RESOURCES

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TRUSTS/TRANSFERS OF ASSETS

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**F. STANDARD TRUSTS**

A standard trust is one that does not meet the definition of a Medicaid Qualifying Trust. Trusts or conservatorships established prior to 03/01/87 or testamentary trusts where the Medicaid client is the beneficiary are standard trusts. In all such cases listed below, a copy of the trust agreement or court documents must be obtained for review.

**1. Medicaid Client is Trustee**

Generally, a person who is appointed as a trustee cannot use any of the funds in the trust for his/her own benefit. Thus, an individual can be a trustee of a valuable trust and not be able to receive money from the trust since he/she has no access to the funds for his/her personal use. Under such circumstances, the trust is not a resource to the Trustee.

If, however, the eligible individual (client) is the trustee and has the legal ability to revoke the trust and use the money for his own benefit, consider the trust a resource to the client. This is true regardless of whose funds were originally deposited into the trust. Also, consider the trust a resource to the client if either the client or living-with spouse (eligible or ineligible) is the person who created the trust and has the right to dissolve it and use the funds for his own benefit. Where the trust principal is considered a resource to the trustee, any withdrawals made from the trust by the trustee are not income to him since the monies have already been counted as a resource. In this situation, any income which is earned from the trust principal (e.g., interest or dividends) is considered income to the client/trustee.

**2. Medicaid Client is Beneficiary**

If a client is the beneficiary of a trust and the client's access to the trust principal is restricted, meaning only the trustee or court can invade the principal, the principal of the trust does not count as a resource to the client. If the trust is not a resource, payments made to or on behalf of an eligible individual are counted as income.

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If the beneficiary has unrestricted access to the principal of the trust, the trust is counted as a resource. In this situation, payments from the trust to the beneficiary are not counted as income since it has already been counted as a resource. The payments from the trust are a conversion of a resource.

The authority for discretion by the trustee in the use of trust funds, including invasion of the principal for support and maintenance of the beneficiary, does not mean that the principal is available to the client/beneficiary and, as such, should not be counted as a resource. Only the income or resource(s) that are available to the client via the trustee's discretion can be counted for purposes of determining eligibility.

In cases where the trustee has "full discretion" in the use of trust funds, the trustee determines the beneficiary's access. Before eligibility can be determined in cases of this nature, the trustee must specify, by way of a written and signed statement for the case record, what arrangements exist or will be made to release funds or resource for the client's use. As outlined above, any payments made to or on behalf of the client are counted as income unless the trustee states the client has unrestricted access to use of trust funds in which case the funds are a countable resource.

**3. Conservatorships (Prior to 03-01-87)**

Conservators and legal guardians are court appointed and are usually court controlled. These types of legal arrangements are initiated when the competence of an individual is at issue. Technically, a legal guardian is appointed to serve over an individual and the individual's resources whereas a conservator is appointed only to handle an individual's resources. Regardless of either legal term used, an application or active case involving a conservator or legal guardian is handled as outlined below.

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In the absence of evidence to the contrary, conserved liquid and non-liquid resources held by a guardian or conservator on behalf of a Medicaid applicant or recipient are countable resources to the applicant/recipient. If the guardian/conservator manages and controls the conserved funds, the funds are considered available to the client. The fact that the guardian/conservator controls the funds (e.g., makes the actual withdrawals) does not alter the attribution of the resource to the client. Since the guardian/conservator legally acts on behalf of the incompetent individual, it is the same as if the individual is controlling or managing the resource.

"Evidence to the contrary" that may indicate a client does not have total access to conserved resources held by a guardian/conservator is a court order which specified the disbursement of funds and/or disposal of resources. If the court order or decree specifies the amount and frequency of funds which may be disbursed or restricts the disposal of resources, the court's decision in such matters determines the client's access. A "silent" court order, meaning one that does not specify disposition and/or availability of conserved resources, is not considered evidence to the contrary. Therefore, conserved funds controlled by a silent court order are considered available to the client.

In addition, the fact that a guardian/conservator must first petition the court in order to dispose of resources or disburse funds does not constitute "evidence to the contrary." In fact, State law requires such a petition in guardian/conservator cases making petitioning a standard practice. In all cases where petitioning is required, the conserved resources are considered available to the client unless or until the court is petitioned and rules as to the availability/disposition of assets.

When a signed and dated petition is presented as evidence that the court has been petitioned for disbursement of funds and/or disposal of resources, the petition is sufficient to exclude the resource(s) in question until the court renders a decision in the matter.

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**4. Eligibility  
Determinations  
Involving  
Conservatorships**

To determine how to handle a case involving a legal guardian or conservator, it is necessary to obtain a copy of the original decree appointing an individual as guardian or conservator in addition, obtain copies of any legal documents which may have subsequently been issued by the court to amend or change the original decree, if any have been issued. If a guardianship or conservatorship is in the process of being established, the client's resources are considered available until court documents are presented as outlined below:

- If the court order specifies disbursement of funds, any payments made to or on behalf of the client count as unearned income to the client.
- If the court order does not specify the disbursement of any non-liquid resources conserved by the court, consider the funds as a countable resource.
- If the court order specifies that conserved non-liquid resources, such as property, may be disposed of for the benefit of the client, consider the property, etc., as a countable resource. If the court order is silent on the subject of disposal of non-liquid resources, consider the resources countable unless or until the court is petitioned for disposal.
- A court order may specify the disbursement of liquid resources and not mention disposal of any conserved non-liquid resources or vice versa. In such a case, abide by the court's decision regarding the disbursement or disposal issue specified and count as a resource the unspecified resource. For example, a conservatorship court order specifies the release of \$100 per month from a savings account with a \$5000

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balance and fails to mention the disposal of 50 acres of property owned by the client. In such a case, the \$100 would be counted as income while the balance of the account is excluded as a resource. The property would be a countable resource until the court is petitioned for the purpose of disposing of the property.

- Court orders that are not specific on the availability of conserved resources result in the availability of the conserved resources to the client until the month the court is petitioned for use of the conserved funds or resources. A valid petition will exclude the resource provided the petition requests the court to rule as to the disposal and/or disbursement of conserved resources. The exclusion will apply until the court rules in the matter at which time the case must be reviewed in light of the court decision.