200.03.14 PROCEEDS OF A LOAN

Bona Fide Loan

The proceeds of a bona fide loan are not income to the borrower because of the borrower's obligation to repay. Money received as repayment of the principal of a bona fide loan is not income to the lender; however, the interest received on money loaned is income to the lender. A bona fide loan is an agreement that is legally valid and made in good faith. The agreement must have been in effect at the time of the transaction. Money given with no obligation to repay cannot become a loan at a later date. The repayment plan must be feasible. The loan agreement must be in writing and include:

- The borrower's acknowledgment of his obligation to repay, with or without interest.
- Schedule and plan for repayment, e.g., borrower plans to repay when he receives anticipated income in the future, and
- Borrower's express intent to repay by pledging either real or personal property or anticipated future income.

Non Bona Fide Loan

If the loan is not bona fide, the proceeds received in the transaction are unearned income to the borrower in the month received. If the loan is not bona fide, payments toward principal and interest are unearned income to the lender. As indicated above, the interest received by the lender on money loan is unearned income whether the loan is bona fide or not.

200.03.15 PROMISSORY NOTES AND PROPERTY AGREEMENTS

For the Medicaid client who is the borrower, under both SSI and liberalized policy, cash paid by the lender to the borrower is not income if a promissory note or property agreement is bona fide, but it may be a resource the following month. Also under both policies, if the agreement is non-bona fide or non-negotiable, cash paid by the lender to the borrower is income in the month received by the borrower and any retained cash (or property received) may be a resource the following month.

A promissory note is a written, unconditional agreement where one person promises to pay another party a specific amount at a specific time (or on demand). It can be repayment for goods, money loaned or services rendered.

PROMISSORY NOTES AND PROPERTY AGREEMENTS (Continued)

A property agreement, also known as a mortgage, deed of trust, real estate contract, etc., exists when a piece of property is used to secure payment of a debt or performance of services within a specified period of time. A bona fide agreement is on which is legally valid and made in good faith. An agreement is assumed to be negotiable if there is no legal bar to its sale.

SSI Policy – Medicaid Client is Lender

Under SSI policy, a bona fide, negotiable promissory note or property agreement is a resource. The goods or money represented in the agreement are not a resource because they are not accessible. The interest portion of the payment on a bona fide, negotiable agreement received by the Medicaid client who is the lender is unearned income. If the agreement is non-bona fide or non-negotiable, both principal and interest paid to the lender are income.

Liberalized Policy – Medicaid Client is Lender

For coverage groups subject to liberalized resource policy, a bona fide, non-negotiable promissory note or agreement can be excluded as a resource if it produces at least a 6% net annual return of the principal balance. For this exclusion to apply to the non-institutionalized client, the income must be received by the client/spouse and counted as income. For all institutionalized individuals in either SSI or liberalized programs, the agreement may be excluded as a resource if it produces at least a 6% net annual return of the principal balance and meets all of the following criteria:

- The repayment terms of the note or agreement are actuarially sound; the institutional client must reasonably expect to receive full payoff of the note or agreement during his lifetime. The average number of years of life expectancy remaining based on the Annuity Life Expectancy charts must coincide with the payout of the note or agreement
- Principal and interest portions of payments are of uniform rate, with no deferred or balloon payments and
- The agreement must not state the debt is cancelled upon death of the lender.