

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

Treatment of Revocable Trusts (Continued)

- Changes made to a revocable trust that restrict or limit its use for the individual or spouse may be a transfer of assets.

When a portion of a revocable trust is treated as a transfer of assets for less than fair market value, the look-back period in OBRA-93 transfer policy is 60 months. The 60-month look back period for assets placed in a trust is not phased in as it is for other types of transfers handled under DRA rules.

Note: Home property placed in a revocable trust loses its excluded status if the client is in an institution.

304.03.02 TREATMENT OF IRREVOCABLE TRUSTS

Payment Can Be Made Under Terms of Trust

In the case of an irrevocable trust, where there are any circumstances under which payment can be made to or for the benefit of the individual from all or a portion of the trust, the following rules apply to that portion:

- Payments from income or from the corpus made to or for the benefit of the individual are treated as income to the individual, provided the payment is counted as income under SSI cash assistance rules;
- Income received by the trust which could be paid to or for the benefit of the individual is treated as a resource available to the individual;
- The portion of the corpus that could be paid to or for the benefit of the individual is treated as a resource available to the individual; and,
- Payments from income or from the corpus that are made but not to or for the benefit of the individual are treated as a transfer of assets for less than fair market value. The 60 month look back period for transfer of assets applies.

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Treatment Of Irrevocable Trust (Continued)

Payment Cannot Be Made Under Terms of Trust

If no payment can be made to or for the benefit of the individual from either all or a portion of the trust, treat the trust (or unavailable portion) as a transfer of assets under OBRA-93 transfer policy. In treating these portions as a transfer of assets, the date of the transfer is considered to be:

- The date the trust was established; or,
- If later, the date on which payment to the individual was foreclosed.

In determining for transfer of assets purposes the value of the portion of the trust which cannot be paid to the individual, do not subtract from the value of the trust any payments made, for whatever purposes, after the date the trust was established or, if later, the date payment to the individual was foreclosed. If the trustee or the grantor adds funds to that portion of the trust after these dates, the addition of those funds is considered to be a new transfer of assets, effective on the date the funds are added to that portion of the trust.

Thus, in treating portions of a trust which cannot be paid to an individual, the value of the transferred amount is no less than its value on the date the trust is established or payment is foreclosed. When additional funds are added to this portion of the trust, those funds are treated as a new transfer of assets for less than fair market value.

As indicated, when that portion of a trust which cannot be paid to an individual is treated as a transfer of assets for less than fair market value, **the look-back period is 60 months**. The value of the trust (or the value of the unavailable portion) is not a countable resource if it is being treated as a transfer of assets.