

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

304.03.04 PLACEMENT OF EXCLUDED ASSETS IN TRUST

Section 1917(e) of the Act provides that, for trust and transfer purposes, assets include both income and resources. Section 1917(e) of the Act further provides that income has the meaning given that term in Section 1612 of the Act and resources has the meaning given that term in Section 1613 of the Act (income and resources as defined in SSI policy). The only exception is home property of institutionalized individuals, as explained below.

Transferring an excluded asset (either income or a resource, with the exception of the home of an institutionalized individual) for less than fair market value does not result in a penalty under the transfer provisions because the excluded asset is not an asset for transfer purposes. Similarly, placement of an excluded asset in a trust does not change the excluded nature of that asset; it remains excluded.

The only exception is the home of an institutionalized individual. Transfer of title to the home of an institutionalized individual to a revocable trust results in the home becoming a countable resource. Transfer of title to the home property of an institutionalized individual to an irrevocable trust results in a transfer of assets. However, if there are circumstances where payment from the irrevocable trust could be made to or for the benefit of the individual, those payments are treated as a countable resource to the individual. The terms of the trust must be evaluated to make this determination.

304.03.05 UNDUE HARDSHIP PROVISION

When application of the Trust provisions would work an undue hardship, the provisions will not apply.

Undue hardship exists when:

- Application of the trust provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered.
- Application of the trust provisions would deprive the individual of food, clothing shelter, or other necessities of life causing severe deprivation.
- The applicant or spouse or representative has exhausted all legal action to have the transferred assets that caused the penalty returned.