

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

306.06.06 Transfers by a Spouse

Transfers made by the Community Spouse (CS) will create a penalty for the Institutionalized Spouse (IS). Transfers by the CS **after** the IS has been determined eligible will also create a penalty for the IS.

If the CS becomes institutionalized and applies for Medicaid during the penalty period, the penalty must be apportioned between both spouses. However, if the IS has already served the penalty in full, it will not be applied a second time. If one member of the couple should leave the facility or die, the remaining portion of the penalty must be served by the remaining institutionalized spouse.

306.06.07 Transfers of Jointly-Held Assets

In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

Under this provision, merely placing another person's name on an account or asset as a joint owner might not constitute a transfer of assets subject, of course, to the specific circumstances of the situation. In such a situation, the individual may still possess ownership rights to the account or asset and thus have the right to withdraw all of the funds in the account or possess the asset at any time.

Thus, the account or asset is still considered to belong to the individual. However, actual withdrawal of funds from the account or removal of the asset by the other person removes the funds or property from the control of the individual and so constitutes a transfer of assets.

Also, if placing another person's name on the account or asset actually limits the individual's right to sell or otherwise dispose of the asset (e.g., the addition of another person's name requires that the person agree to the sale or disposal of the asset where no such agreement was necessary before), such placement constitutes a transfer of assets.

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Transfers of Jointly-Held Assets (Continued)

Use regular Medicaid rules to determine what portion of a jointly held asset is presumed to belong to an applicant or recipient. This portion is subject to a transfer penalty if it is withdrawn by a joint owner.

306.06.08 Personal Service Contracts/Agreements

A personal service contract/agreement should be a written contract between the recipient/applicant and the personal services provider. The contract should be executed prior to the date any payments have been made to the provider. If payments have been made prior to the date of the contract these payments should be considered as transfers.

Once an individual begins receipt of Medicaid Long Term Care (LTC) services, the individual's personal and medical needs are considered to be met by the LTC provider. Payments to other individuals for services received after the individual enters LTC are considered an uncompensated transfer for Medicaid purposes.

The contract should be very specific as to the services to be provided and the payment to be paid for the services. Each service/duty should be listed with the number of hours for each service with the amount charged for each service. If the contract calls for a payment of a specific amount per hour, this amount should be reasonable. For example, nursing charges will not be allowed for non-nurses and CPA charges will not be allowed for persons who are not CPA's. Documentation of the services performed and the number of hours for each service should be submitted. All charges will be evaluated based on usual and customary charges for services in the community.

The contract must not provide for payment of compensation for future services. All payments should be made only as the services are actually rendered. Any payments made for future services should be considered as transfers. Contracts indicating a prior date but no payments have ever been made should be questioned as to why the payments for services were not made when the services were performed. This type of arrangement indicates services were provided for free. Services provided for free are not under obligation to be paid at a future unknown date.