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This chapter cited in 55 Pa. Code § 141.41 (relating to policy); 55 Pa. Code § 141.51 (relating to policy); 55 Pa. Code § 141.61 (relating to policy); 55 Pa. Code § 141.71 (relating to policy); 55 Pa. Code § 141.81 (relating to eligibility policy for Medically Needy Only); 55 Pa. Code § 171.81 (relating to policy); 55 Pa. Code § 183.98 (relating to unearned income and lump sum income deductions); and 55 Pa. Code § 205.1 (relating to policy).

GENERAL RESOURCE PROVISIONS FOR TANF/GA**§ 177.1. General requirements.**

(a) Resources of a budget group, LRRs and sponsors of aliens are considered when determining eligibility for cash assistance.

(b) Cash assistance is not used in place of legally available resources which an individual has available, or can make available, to meet basic living needs.

(c) An exempt or nonexempt resource that is converted into cash, at the point of conversion, is considered as a cash resource. A cash resource is not exempt and is counted against the resource limits regardless of whether the disposed resource had been previously exempted.

Authority

The provisions of this § 177.1 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 177.1 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893.

Cross References

This section cited in 55 Pa. Code § 108.7 (relating to requirements subject to waiver); and 55 Pa. Code § 183.105 (relating to increases in income).

§ 177.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Automobile—A passenger car, truck, motorcycle or other motor vehicle that can be used to transport persons or goods, and is of a type permitted to travel on public roads.

Budget group—One or more related or unrelated individuals who occupy a common residence or would occupy a common residence if they were not homeless and whose needs are considered together in determining eligibility for cash assistance under one category of assistance.

Burial reserve—Funds or other resources held in trust or under contract with a financial institution or a funeral director, and designated for burial expenses. The term may also be known as funeral reserves, funeral agreements, prepaid funeral agreements, burial funds, burial agreements, and the like.

Burial space—A conventional grave site, crypt, burial drawer, mausoleum, urn and another repository used to deposit the remains of deceased persons.

CWEP—The Community Work Experience Program under Chapter 166 (relating to employment and community work experience program).

Equity value—The fair market value, less encumbrances.

Fair market value—The price which property would sell for on the open market in the geographic area in which it is located.

Good faith effort to sell real property—Listing the real property with a licensed real estate broker or advertising the real property for sale in the local newspaper within 10 working days following an applicant's authorization of assistance or a recipient's reapplication, and accepting an offer of purchase which represents the fair market value or more for the real property.

LRR—legally responsible relative—A spouse, or the natural or adoptive parent of a TANF dependent child, of a GA unemancipated child 18 years of age or younger, or of a minor parent. The term does not include a putative father.

Legally available resource—Real or personal property or interest property which a person has, or can make available for his use. The term includes partial interest in property which a person has the right, authority and power to liquidate, and partial interest in property if the co-owners consent to disposition or liquidation.

Minor parent—A TANF-eligible person under 18 years of age who has never been married and is the natural parent of a dependent child living with the minor parent, or is pregnant or a GA-eligible person 16 or 17 years of age who has never been married and is the natural parent of a dependent child living with the minor parent, or is pregnant.

Nonresident property—A house, mobile home, building, burial plot or land which is not used as resident property by the applicant/recipient, the applicant or recipient's spouse or minor or incompetent adult children.

Personal property—A privately owned possession which is not real property. The term may include cash, bank accounts, stocks, bonds, mortgages, life insurance policies, household furnishings, personal effects, boats and Federal, State and local tax refunds.

Real property—Land, buildings, mobile homes and improvements thereto.

Rebuttable presumption—A rule of evidence which permits the Department to assume that when certain facts are true, other facts are true, without having proof of those other facts. The presumption is automatic, and may be disproved or rebutted only by the client presenting evidence at a prehearing conference or a fair hearing. If the client presents no evidence at a prehearing conference to disprove the presumption, the presumption remains unrebutted and stands.

Resident property—A house, mobile home or building, including the land on which it sits, which is lived in by the client, the client's spouse or minor or incompetent adult children.

Resource—Real or personal property.

Authority

The provisions of this § 177.2 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)); amended under sections 201 and 403(b) of the Public Welfare Code (62 P. S. §§ 201 and 403(b)).

Source

The provisions of this § 177.2 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893; amended April 12, 1991, effective May 1, 1991, 21 Pa.B. 1557; amended August 16, 1991, effective August 17, 1991, 21 Pa.B. 3699; amended August 14, 1998, effective immediately and apply retroactively to March 3, 1997, 28 Pa.B. 3939; amended July 28, 2000, the provisions under Act 35 retroactive to June 17, 1996, 30 Pa.B. 3779. Immediately preceding text appears at serial pages (247334) to (247335).

Cross References

This section cited in 55 Pa. Code § 177.21 (relating to personal property); 55 Pa. Code § 177.23 (relating to ownership); and 55 Pa. Code § 283.22 (relating to resources).

**IDENTIFICATION AND
VERIFICATION OF RESOURCES**

§ 177.11. Identification and verification of resources.

(a) Resources shall be identified and ownership and equity value verified. Failure to report and verify resources may result in ineligibility or an overpayment of assistance if the equity value of the resource would have exceeded the resource limit of the budget group.

(b) An applicant and recipient shall report and provide verification of resources.

(c) An applicant and recipient shall report and provide verification, to the best of their ability, of resources of an LRR even if the LRR does not live in the household of the applicant or recipient.

(d) A parent and specified relative shall report and provide verification, to the best of their ability, of resources for themselves and minor children and LRRs, even if the LRR does not live with the budget group.

(e) A guardian and trustee applying on behalf of another person shall report and provide verification of the resources of the person.

(f) A stepparent who is not in the budget group but who resides in the home of the budget group is not required to report the stepparent's resources for determining eligibility for a stepchild.

(g) An LRR shall identify, utilize and liquidate a nonexempt resource under the requirements of this chapter as a condition of eligibility for dependents living with him. The spouse or parent cannot be relieved of this obligation by being removed from the budget group.

(h) A sponsored alien shall report the resources of the alien's sponsor in accordance with the following:

(1) *Sponsor is an individual.* If the sponsor is an individual, the following apply:

(i) *Deeming criteria.* For a period of 3 years following the alien's entry into the United States, resources are deemed and counted available to an alien from a sponsor and the sponsor's spouse if the following apply:

(A) The sponsor and the sponsor's spouse live together and do not receive AFDC, GA, SSI or SBP.

(B) The sponsor signed an affidavit of support or a similar agreement on behalf of the alien as a condition of the alien's entry into the United States.

(C) The alien filed an application for AFDC or GA for the first time since September 30, 1981.

(D) The alien has resided in the United States for purposes of permanent residency for less than 3 years.

(E) The alien is not a dependent child, stepchild or a spouse of the sponsor.

(F) The alien's admission to the United States is not as a result of the application of any of the following provisions of the Immigration and Nationality Act:

(I) Section 207, after March 31, 1980—Aliens Admitted as Refugees (8 U.S.C.A. § 1157).

(II) Section 203(a)(7), prior to April 1, 1980—Aliens Admitted as Conditional Entrant Refugees (8 U.S.C.A. § 1153(a)(7)).

(III) Section 208—Aliens Granted Political Asylum by the Attorney General (8 U.S.C.A. § 1158).

(IV) Section 212(d)(5)—Aliens Granted Temporary Parole Status by the Attorney General (8 U.S.C.A. § 1182(d)(5)).

(G) The alien's admission to the United States is not as a result of the application of section 501(e) of the Refugee Education Assistance Act of 1980 (8 U.S.C.A. § 1522 note), relating to Cuban and Haitian Entrants.

(ii) *Resident property owned by a sponsor of an alien.* Resident property owned by the sponsor of an alien or by the sponsor's spouse, if living together, is exempt when determining the eligibility of the alien and acknowledgement of liability of the real property is not required.

(iii) *Treatment of nonresident property and personal property resources owned by a sponsor of an alien.* The equity value of nonexempt, legally available nonresident and personal property owned by a sponsor of an alien and the sponsor's spouse, if living together, is counted in determining eligibility of the alien as follows:

(A) The TANF/GA resource exemptions contained in §§ 177.21(a) and 177.22(b) (relating to personal property; and real property) are applied to the nonresident property and personal property resources of the sponsor and the sponsor's spouse.

(B) One thousand five hundred dollars is deducted from the total equity value of nonexempt personal property and nonresident real property of a sponsor and the sponsor's spouse, if they are living together. The resulting total is deemed available to the sponsored alien and is added to the sponsored alien's own nonexempt resource total.

(C) If the resources of the sponsor are deemed available to two or more aliens, the resources are divided equally among the aliens but are not considered available to unsponsored members of the alien's family unless the sponsor agrees to make the excess resources available to the alien's unsponsored family members.

(D) The total of the deemed resources of the sponsor and sponsor's spouse, together with the total of the alien's own available resources are subject to the resource limit in § 177.31 (relating to resource limit).

(E) The amount of the resources which exceeds the alien's resource limit is not counted as a resource available to unsponsored members of the

family of the alien unless the sponsor agrees to make the excess resources available to the alien's unsponsored family members.

(F) The alien, the alien's sponsor and the sponsor's spouse are not required to acknowledge liability for reimbursement of assistance from the sponsor's deemed resources.

(2) *Sponsor is a public or private agency.* For a period of 3 years following the alien's entry into the United States, an alien sponsored by a public or private agency under paragraph (1)(i)(B) is eligible for assistance if the following conditions are met:

(i) The alien meets the requirements of paragraph (1)(i)(D)—(G).

(ii) The agency no longer exists or the alien provides documentation certified as correct by the agency's financial officer or a certified accountant that the agency's resources are not sufficient to meet the alien's needs.

Authority

The provisions of this § 177.11 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 177.11 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893.

Cross References

This section cited in 55 Pa. Code § 177.22 (relating to real property).

TREATMENT OF RESOURCES

§ 177.21. Personal property.

(a) *Applicants and recipients.* For an applicant and recipient, the following personal property is not counted in determining eligibility:

(1) Basic items essential to day to day living, such as the following:

(i) A household furnishing.

(ii) A major appliance.

(iii) An item used to provide, equip and maintain a household for the applicant or recipient.

(iv) A personal effect of limited value, including clothing, a child's toy, a wedding or engagement ring.

(v) Pets and family heirlooms.

(vi) A farm animal for domestic use.

(vii) A piece of farm equipment or a farm animal needed for employment.

(viii) A piece of equipment needed for employment, rehabilitation or to implement a self-care plan.

(2) The full value of one vehicle per TANF or GA budget group. The equity value of all other vehicles will be counted and applied toward the resource limit.

(3) A retroactive assistance payment received as a result of a prehearing conference, a fair hearing decision or a court order. This exemption will be only for the calendar month of receipt and the following calendar month. If an amount remains after the period of exemption, it is considered nonexempt and is subject to the resource limits under § 177.31 (relating to resource limit).

(4) A retroactive assistance payment authorized to correct underpayments to current recipients. The exemption will be only for the calendar month of receipt and the following calendar month. If an amount remains after the period of exemption, it is considered nonexempt and is subject to the resource limit under § 177.31.

(5) The value of food stamps received by a participant in the food stamp program.

(6) A Home Energy Assistance (HEA) benefit furnished in-kind by a private, nonprofit organization or furnished as cash or in-kind assistance by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis and regulated by the Pennsylvania Public Utility Commission or by a municipal utility providing home energy. HEA benefits may include payments for heating or cooling, storm doors, weatherization services, blankets or other items. HEA benefits do not include food or clothing.

(7) In-kind Support or Maintenance Assistance (SMA) benefits provided by a private, nonprofit organization. SMA benefits may include in-kind provisions of food, clothing, temporary emergency shelter, furniture, appliances or other items.

(8) Benefits received from the Low Income Home Energy Assistance Program (LIHEAP).

(9) A revocable burial reserve, as defined in § 177.2 (relating to definitions), of up to \$1500 for each member of the budget group.

(10) If a burial reserve is in irrevocable form under § 177.24(l)(i) (relating to determining value of resources), it has no effect on eligibility for assistance.

(11) An educational savings account established by an individual at a bank or other financial institution to pay for education expenses, including tuition, books and incidental expenses related to attendance at a vocational school, community college, college or university. The account shall be clearly identified as having been established for or restricted to payment of educational expenses.

(i) The savings account, its ownership, the account balance and the fact that the account is restricted for payment of educational expenses shall be verified by written documentation. Documentation may include, but is not

limited to, a copy of the passbook or a copy of the current account statement from the bank or other financial institution.

(ii) Moneys deposited in an account plus interest earned on the account shall be exempt in determining eligibility as long as the funds remain on deposit.

(iii) Moneys withdrawn to pay for educational expenses are exempt. Documentation shall be provided that verifies the expenses were incurred and related to attending school.

(iv) Moneys withdrawn from an educational savings account that are used for a purpose unrelated to education shall be added to the budget group's resource amount and used to determine eligibility beginning with the date of withdrawal.

(12) Savings accounts established and bonds purchased under the Tuition Account Program and College Savings Bond Act (24 P. S. §§ 6901.101—6901.701).

(13) Educational assistance in the form of loans, grants and scholarships, and work-study income.

(14) The face and cash surrender value of a life insurance policy.

(15) A family savings account established under Chapter 21 of the Job Enhancement Act (73 P. S. §§ 400.2101—400.2103).

(i) The account shall be clearly identified as a family savings account.

(ii) The savings account, its ownership and the account balance shall be verified by written documentation. Documentation may include a copy of the passbook or a current statement from the bank or other financial institution.

(iii) Moneys deposited into the account plus interest earned on the account shall be exempt in determining eligibility as long as the funds remain on deposit.

(iv) Moneys withdrawn to pay for expenses outlined in an approved savings plan for this account are exempt. Documentation shall be provided that verifies the expenses were incurred.

(v) Moneys withdrawn from a family savings account that are used for a purpose unrelated to the approved savings plan shall be added to the budget group's resource amount and used to determine eligibility beginning with the date of withdrawal. Exception: moneys withdrawn to pay for educational expenses shall be exempt.

(b) *SBP and SSI recipients.* Personal property of SBP and SSI recipients is considered exempt in determining eligibility of the budget group, even if the recipient is an LRR to a budget group member.

(c) *LRRs.* An LRR is eligible for the personal property exemptions in subsection (a). The following requirements apply:

(1) An LRR who resides with the budget group and is not receiving cash assistance will have nonexempt personal property counted in determining eligibility of the budget group.

- (2) An LRR who is not residing with the budget group will not have his nonexempt personal property resources counted when determining the eligibility of the budget group.
- (d) *Individual sponsor of an alien.* An individual sponsor of an alien is eligible for the personal property resource exemptions in subsection (a).
- (e) *Stepparents.* Personal property of a stepparent who is not included in the budget group is exempt in determining eligibility for stepchildren.

Authority

The provisions of this § 177.21 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 177.21 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; explained November 6, 1981, 11 Pa.B. 3954; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3972; amended July 9, 1982, effective July 10, 1982, 12 Pa.B. 2175; amended August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893; amended July 28, 2000, the provisions under Act 49 effective September 1, 1994, the savings for education exemption applicable to the TANF Program effective retroactive to March 3, 1997, 30 Pa.B. 3779; amended September 13, 2002, effective September 14, 2002, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (268338) to (268341).

Notes of Decisions

In order to prove that a vehicle has an encumbrance, an applicant for assistance must provide evidence that: (1) the money was borrowed for the purpose of purchasing a vehicle; (2) the lender expects repayment and the claimant acknowledges an obligation to repay the loan; and (3) a timetable and plan for repayment has been established. *Lambert v. Department of Public Welfare*, 631 A.2d 815 (Pa. Cmwlth. 1993).

The discontinuance of AFDC benefits to a recipient because of her failure to apply for state retirement funds is proper, given her agreement in an assistance application form to pay the Department such funds and the provisions of 55 Pa. Code §§ 177.21(b), 177.22 (relating to definitions), and 177.23(a)(1), (3) and (6) (relating to requirements). *Waller v. Department of Public Welfare*, 443 A.2d 1222 (Pa. Cmwlth. 1982).

The denial of benefits to an applicant because of her failure to apply for the railroad retirement benefits of her late husband serves to further the purpose of the welfare system, since the applicant is not a “needy” person which the program is designed to assist, and assistance is intended to supplement, not to replace, the resources of an individual. *Armlovich v. Department of Public Welfare*, 411 A.2d 893 (Pa. Cmwlth. 1980).

Since a hospital patient was eligible for both MA benefits and no-fault motor vehicle insurance benefits, the allegations of the patient that the hospital exercised unreasonable care in seeking no-fault insurance benefits for his expenses instead of MA benefits set forth a valid claim. *Harleysville Mutual Insurance Co. v. Yocolano*, 9 Pa. D. & C.3d 226 (1978).

Cross References

This section cited in 55 Pa. Code § 133.23 (relating to requirements); 55 Pa. Code § 177.11 (relating to identification and verification of resources); 55 Pa. Code § 177.23 (relating to ownership); and 55 Pa. Code § 177.24 (relating to determining value of resources).

§ 177.22. Real property.

(a) *Resident property owned by an applicant or recipient.* The equity value of resident property is not counted toward the resource limit. The owner shall acknowledge liability of the resident property for reimbursement of assistance received on behalf of himself and persons for whom he is an LRR as defined in § 257.24(b) (relating to procedures) by signing an agreement consenting to the placement of a lien against the property.

(1) The Department will not force the sale of, or execute on a lien against, resident property as long as the property is used as a home by the applicant or recipient owner or his spouse or minor or incompetent adult children.

(2) Although a lien is placed against resident property, the lien does not include assistance paid during the period the owner or someone else in the budget group worked in a CWEP assignment. The amount disregarded from the lien will equal the number of hours worked in a CWEP assignment multiplied by the hourly minimum wage at the time of the work assignment.

(b) *Nonresident property owned by an applicant or recipient.* Nonresident property, including a burial space, is considered in the following manner:

(1) One burial space for each household member is exempt. This exemption also applies to LRRs and sponsors of aliens.

(2) If nonexempt property is legally available, the equity value of the applicant's/recipient's interest in the property plus the equity value of other nonexempt resources is totaled and considered against the resource limits in § 177.31 (relating to resource limit).

(3) If the equity value of nonexempt property, either alone or in combination with other nonexempt resources, exceeds the resource limit, each separately deeded parcel of nonexempt property receives an exemption for 9 consecutive budget months beginning with the date assistance is authorized for applicants, and the date the resource becomes legally available for recipients, if the following requirements are met:

(i) The applicant or recipient makes a good faith effort to dispose of the property and shall sign an agreement acknowledging liability for reimbursement of assistance received on behalf of himself and persons in the budget group for whom he is an LRR.

(ii) In cases when the budget group has been unable to sell nonresident property for reasons beyond its control, the 9-month time limit for disposing of the property will be extended for additional 9-month periods as long as the Department determines that the budget group is continuing to make a good-faith effort to sell the property.

(iii) The applicant or recipient repays the amount of assistance received during the exemption period, not to exceed the net proceeds of the sale. The assistance received is treated as an overpayment.

(4) If the nonexempt property has not been sold within each of the 9-month exemption periods, and the budget group cannot substantiate that a good-faith effort to sell the property is still being made, the recipient and members of the budget group for whom he is an LRR are ineligible, and the assistance received is treated as an overpayment. If the assistance stops and restarts during the 9 consecutive month exemption period, the assistance received is treated as an overpayment.

(c) *Real property owned by an SSI or SBP recipient.* The equity value of real property of an SSI or SBP recipient is not counted in determining eligibility of a budget group, regardless of whether or not he is an LRR to the budget group. The SBP recipient shall acknowledge liability for reimbursement of assistance provided to members of the budget group for whom the SBP recipient is an LRR, and a lien in favor of the Department will be placed against only the resident property. The SBP recipient who is an LRR is subject to the requirements under subsections (a) and (b). The SBP recipient is not required to sell his resident property as a condition of eligibility of the budget group, nor will the Department force the sale of, or execute on, the lien against the property.

(d) *Resident property owned by an LRR.* The following requirements apply:

(1) The equity value of resident property of an LRR who resides with the budget group, and who does not receive cash assistance, is not counted when determining eligibility of the budget group. Subject to the requirements of subsection (a), the LRR shall acknowledge liability of the property for reimbursement of assistance received by members for whom he is legally responsible if the LRR sells the resident property.

(2) Subject to the requirements under subsection (a), the LRR who owns resident property but is not residing with the budget group shall acknowledge liability for assistance received by members for whom the LRR is responsible. Failure by the LRR to agree to acknowledge liability does not affect the eligibility of the budget group.

(e) *Nonresident property owned by an LRR.* The following requirements apply to nonresident property owned by an LRR:

(1) For an LRR who resides in the home of the budget group and who is not receiving cash assistance, SSI or SBP and who has an ownership interest in nonresident property, his equity value of the property plus the equity value of other nonexempt resources of those members for whom the LRR is responsible are totaled and counted against the resource limit found in § 177.31. The conversion requirements of subsection (b) apply to the LRR. If the property is not legally available, the value of the property is not counted. The LRR shall acknowledge liability for reimbursement of the assistance received by budget group members for whom the LRR is legally responsible under subsection (b).

(2) For an LRR who is absent from the home, the procedures at § 257.24(a)(4) apply.

(f) *Real property owned by a stepparent.* Real property or a portion of real property owned by a stepparent is exempt when determining the eligibility of the stepchild. It is not subject to acknowledgement of liability for reimbursement of assistance received by the stepchild.

(g) *Real property owned by the sponsor of an alien.* Real property owned by a sponsor of an alien is treated under § 177.11(h)(1)(ii) and (iii) (relating to identification and verification of resources).

Authority

The provisions of this § 177.22 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); the Support Law (62 P. S. §§ 1971—1977); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 177.22 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; explained November 6, 1981, 11 Pa.B. 3954; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3969; amended July 9, 1982, effective July 10, 1982, 12 Pa.B. 2175; amended August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (247341) to (247343).

Notes of Decisions

The discontinuance of AFDC benefits to a recipient because of her failure to apply for state retirement funds is proper, given her agreement in an assistance application form to pay the Department such funds and the provisions of 55 Pa. Code §§ 177.21(b) (relating to policy), 177.22, and 177.23(a)(1), (3), and (6) (relating to requirements). *Waller v. Department of Public Welfare*, 443 A.2d 1222 (Pa. Cmwlth. 1982).

Cross References

This section cited in 55 Pa. Code § 177.11 (relating to identification and verification of resources); 55 Pa. Code § 177.23 (relating to ownership); 55 Pa. Code § 177.24 (relating to determining value of resources); and 55 Pa. Code § 177.31 (relating to resource limit).

§ 177.23. Ownership.

(a) *Legally available resources.* Only resources which are legally available, or are deemed available in the case of sponsors of aliens, to the client are applied toward the resource limitation. See § 177.2 (relating to definitions).

(1) When consent to dispose of resources is needed, but is withheld by a person who is not a member of the budget group or by an LRR who does not reside in the home, the resource is not available. The shared ownership and the

person's refusal to dispose of the resource shall be verified. The unavailability of resources shall be verified at application and no less often than each reapplication.

(2) Special requirements for the disposal of real or personal property owned by an LRR are contained in §§ 177.11(g), 177.21(b) and (c) and 177.22 (c)—(e) (relating to identification and verification of resources; personal property; and real property).

(3) Entireties property is property owned jointly by a husband and wife. One spouse cannot, without the other's consent, liquidate the property to support children for whom both persons are not legally responsible.

(b) *Establishing ownership.* Real and personal property can have more than one owner. Establishing the type of ownership is essential in determining the availability and the value of the budget group's resources.

(1) The following rebuttable presumptions apply in determining the availability of real and personal property resources:

(i) If a budget group member is the sole owner, assume that the resource is available.

(ii) If ownership is shared by persons who are budget group members, it is assumed that the resource is available.

(iii) If ownership is shared by a budget group member and a person who is not an applicant or recipient, the type of shared ownership shall be established to determine availability and the following rebuttable presumptions apply:

(A) If the budget group member has a separate legal interest which can be disposed of without the consent of the other owners, assume the budget group member's share of the resource is available.

(B) If the budget group member has a legal interest which can be disposed of only with the consent of the other owners, and consent is not withheld, assume that the budget group member's share of the resource is available.

(2) A bank account owned jointly by husband and wife is not entireties property unless a contrary intent is clearly shown, or the account predates September 1, 1976. A bank account may be held in many forms, including "A and B," "A or B," "A and B, or both" and "A in trust for B." The legal rights of the parties are not wholly determined by the title of the account. The account title or caption merely determines the rights of the account vis-a-vis the bank and not their rights vis-a-vis each other. The following rebuttable presumptions are applied in determining the availability of bank accounts:

(i) The persons whose names appear on the account title are the owners.

(ii) Persons who own an account jointly—for example, and, or, and/or—own the account in proportion to their contributions.

(iii) If contributions cannot be determined, each owner of a joint account owns an equal share.

(iv) If an account is titled “in trust for,” the account is a tentative trust, unless written trust documents exist. A tentative trust is owned by the trustee, and the beneficiary has no legal rights before the death of the trustee.

Authority

The provisions of this § 177.23 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)); amended under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 177.23 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended January 4, 1980, effective March 5, 1980, 10 Pa.B. 43; explained November 6, 1981, 11 Pa.B. 3954; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3969; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3972; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3973; amended July 9, 1982, effective July 10, 1982, 12 Pa.B. 2175; corrected July 23, 1982, effective July 10, 1982, 12 Pa.B. 2324; amended August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893. Immediately preceding text appears at serial pages (108898) to (108904).

Notes of Decisions

The Department properly applied its “name-on-the-instrument” rule attributing entire pension to petitioner for purposes of computing his patient pay amount; wife has no present ownership interest in pension although it is marital property subject equitable distribution upon divorce. *Buck v. Department of Public Welfare*, 566 A.2d 1269 (Pa. Cmwlth. 1989).

Petitioner failed to prove that transfer of funds was for fair consideration and there was insufficient record evidence to rebut presumption that such transfer was for the purpose of defrauding the Commonwealth, where there were inconsistent statements with regard to transfer of funds from petitioner to ex-spouse, and where handwritten documents were offered as evidence only after County Assistance Office investigated. *Feldbauer v. Department of Public Welfare*, 525 A.2d 837 (Pa. Cmwlth. 1987).

Although an applicant for Medical Assistance has the burden of showing that any transfer of property was not primarily for the purpose of acquiring or retaining eligibility for assistance, it is clear from the regulations that a transfer of property may be made to avoid the payment of inheritance tax. *Goughenour v. Department of Public Welfare*, 514 A.2d 993 (Pa. Cmwlth. 1986).

The fact of a sale of a home with a market value of \$3,809.97 to a son and daughter for a price of \$2,205.70 shortly before the seller applies for AFDC benefits, constituted sufficient evidence to apply a rebuttable presumption of intent to defraud such that the denial of AFDC benefits under subsection (b) (1) was sustained. *Mortimer v. Department of Public Welfare*, 468 A.2d 522 (Pa. Cmwlth. 1983).

A former Commonwealth employe may not claim assistance under 55 Pa. Code § 177.23 during the period that she is engaged in efforts to compel the Commonwealth to reinstate her in her position of employment. *Waller v. Department of Public Welfare*, 443 A.2d 1222 (Pa. Cmwlth. 1982).

The discontinuance of AFDC benefits to a recipient because of her failure to apply for state retirement funds is proper, given her agreement in an assistance application form to pay the Department such funds and the provisions of 55 Pa. Code §§ 177.21(b) (relating to policy), 177.22 (relating to definitions) and 177.23. *Waller v. Department of Public Welfare*, 443 A.2d 1222 (Pa. Cmwlth. 1982).

The presumption found at 55 Pa. Code § 177.23(b)(1)(i)(B)(II) applies to property settlements in dissolutions if the property is bargained for between the married couple, but not if a spouse is allegedly bargaining on behalf of her parents. *Washabaugh v. Department of Public Welfare*, 410 A.2d 1327 (Pa. Cmwlth. 1980).

If an applicant transfers real estate back to her parents upon dissolution of her marriage one and one half months before applying for assistance and it is clear that services rendered by the parents during her marriage were neither made in contemplation of a return of the property nor were equal in value to that of the property, then the transfer was clearly without fair consideration. *Washabaugh v. Department of Public Welfare*, 410 A.2d 1327 (Pa. Cmwlth. 1980).

If an applicant transfers real estate back to her parents upon dissolution of her marriage one and one half months before applying for assistance and it is clear that services rendered by the parents during her marriage were neither made in contemplation of a return of the property nor were equal in value to that of the property, then the transfer was clearly suspicious enough to warrant the application of 55 Pa. Code § 177.23(b)(1)(i)(C). *Washabaugh v. Department of Public Welfare*, 410 A.2d 1327 (Pa. Cmwlth. 1980).

An applicant who is required by a DPW order as a condition of eligibility for assistance to elect to take the railroad retirement benefits of her late husband in lump sum form has not violated the provisions of 55 Pa. Code § 177.23(b)(1) (relating to requirements), since she would receive fair consideration for the benefits and would not be defrauding the Commonwealth. *Armlovich v. Department of Public Welfare*, 411 A.2d 893 (Pa. Cmwlth. 1980).

The denial of benefits to an applicant because of her failure to apply for the railroad retirement benefits of her late husband serves to further the purpose of the welfare system, since the applicant is not a “needy” person which the program is designed to assist, and assistance is intended to supplement, not to replace, the resources of an individual. *Armlovich v. Department of Public Welfare*, 411 A.2d 893 (Pa. Cmwlth. 1980).

§ 177.24. Determining value of resources.

Unless specifically exempt under § 177.21 or § 177.22 (relating to personal property; and real property), the equity value of real and personal property is subject to the resource limits in § 177.31 (relating to resource limit).

(1) *Determining value of personal property.* An applicant, recipient, guardian, trustee or sponsor of an alien shall provide documentation verifying value of personal property. This documentation includes a written estimate from a car dealer of the fair market value of a motor vehicle, a title of ownership and a written statement from financial institutions. Special requirements regarding certain personal property resources are as follows:

(i) An irrevocable burial reserve shall be in a form which restricts the use of the money to the client’s burial, and shall provide that no part of the burial reserve may be withdrawn prior to the death of the client. If the interest earned on the reserve can be withdrawn, the interest is treated as income. If the CAO questions whether the document supports irrevocability, the Executive Director will send a copy of the document through proper channels for a review by the Office of Legal Counsel.

(ii) An irrevocable burial reserve owned by an applicant or established by a recipient is exempt. The value of a revocable burial reserve shall be counted as a resource available to the TANF or GA budget group under § 177.21(a).

(iii) The establishment of an irrevocable or revocable burial reserve from excess resources does not reduce the individual's liability to repay the Department for the assistance granted during the time that the individual's total resource equity value exceeded the resource limit.

(2) *Determining value of nonresident property.* Documentation of the fair market value of nonresident property includes the estimate of value provide by value based property tax bills, by a licensed real estate broker or a financial institution—or, in the case of burial spaces, a statement from a representative of a cemetery or memorial garden—verifying ownership, conditions of resale and value. An encumbrance is deducted from the fair market value to determine the equity value.

Authority

The provisions of this § 177.24 amended under sections 201(2), 403(b) and 432 of the Public Welfare Code (62 P. S. §§ 201(2), 403(b) and 432); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 177.24 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (247346) to (247347).

Cross References

This section cited in 55 Pa. Code § 133.23 (relating to requirements); 55 Pa. Code § 177.21 (relating to personal property); and 55 Pa. Code § 451.3 (relating to requirements).

§ 177.25. Disposition of property.

(a) *General.* The disposal of exempt or nonexempt property by its owner, whether or not the owner is an applicant or recipient, may affect the eligibility of the owner's spouse and his minor children when they are living with the owner. Disposal may be accomplished by a transfer of title, sale or exchange of property, by diminishing the value of an interest through the placing of an encumbrance or by adding a person to the title. The proceeds from the sale or exchange of exempt or nonexempt property during the month of application or following authorization of assistance are counted against the resource limits found in § 177.31 (relating to resource limit).

(b) *Exempt personal property.* The sale or transfer of exempt personal property shall be reported, and the value received is used to determine eligibility under § 177.31.

(c) *Real property and nonexempt personal property.* The intended sale or transfer of real property or nonexempt personal property shall be reported prior to the sale or transfer. Even though there may be an acknowledgement of liability for reimbursement, the rights of the Commonwealth may be affected if ownership of the property is transferred. The value received for nonresident real property and nonexempt personal property is used to determine eligibility under § 177.31.

(d) *Conversion of excess resources into exempt resources.* Excess resources within a budget month result in ineligibility for assistance for that month even if the excess resources are converted to an exempt type of resource during the same month.

Authority

The provisions of this § 177.25 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 177.25 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893.

RESOURCE LIMIT

§ 177.31. Resource limit.

The resource limit is \$1,000 for TANF budget groups and GA budget groups of two or more persons. The resource limit is \$250 for a GA single person budget group. The effect of resources on determining eligibility is as follows:

(1) *Resources at or under limit.* If the total equity value of nonexempt personal property and nonresident real property equals or is less than the appropriate limit, the budget group is eligible. If all resources are at or under the resource limit, no acknowledgement of liability is required except for acknowledgement of liability for resident real property.

(2) *Personal property resources over the limit.* If the total equity value of nonexempt personal property exceeds the resource limit, the budget group is ineligible during each calendar month in which the resource total exceeds the limits.

(3) *Nonresident real property resources over the limit.* If the equity value of nonexempt, nonresident real property resources either alone, or when combined with nonexempt personal property which is under the limit, exceeds the resource limit, the budget group is ineligible unless the budget group acknowledges liability and agrees to convert the nonexempt nonresident real property under § 177.22(b)(3) (relating to real property).

Authority

The provisions of this § 177.31 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 177.31 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893.

Cross References

This section cited in 55 Pa. Code § 177.11 (relating to identification and verification of resources); 55 Pa. Code § 177.21 (relating to personal property); 55 Pa. Code § 177.22 (relating to real property); 55 Pa. Code § 177.24 (relating to determining value of resources); 55 Pa. Code § 177.25 (relating to disposition of property); 55 Pa. Code § 257.23 (relating to requirements); and 55 Pa. Code § 257.24 (relating to procedures).

§ 177.73. [Reserved].**Source**

The provisions of this § 177.73 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893. Immediately preceding text appears at serial page (124084).

§ 177.81. [Reserved].**Source**

The provisions of this § 177.81 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893. Immediately preceding text appears at serial page (124084).

Cross References

This section cited in 55 Pa. Code § 289.4 (relating to procedures).

§ 177.82. [Reserved].**Source**

The provisions of this § 177.82 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893. Immediately preceding text appears at serial pages (124084) to (124085).

Notes of Decisions

The definition of “available resources” set out in this section does not compel distribution of funds from a discretionary trust set up for benefit of individual client and other siblings to pay for individual client’s institutionalized care. *Lang v. Department of Public Welfare*, 528 A.2d 1335 (Pa. 1987).

§ 177.83. [Reserved].**Source**

The provisions of this § 177.83 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 291; amended July 21, 1978, effective August 21, 1978, 8 Pa.B. 2062; amended July 28, 1978, effective July 1, 1978, 8 Pa.B. 2103; amended February 9, 1979, effective March 12, 1979, 9 Pa.B. 505; corrected March 2, 1979, effective March 12, 1979, 9 Pa.B. 745; amended July 20, 1979, effective July 1, 1979, 9 Pa.B. 2397; amended January 11, 1980, effective January 12, 1980, 10 Pa.B. 129; amended February 22, 1983, effective February 23, 1983, 10 Pa.B. 851; amended March 28, 1980, effective January 1, 1980, 10 Pa.B. 1391; amended July 4, 1980, effective February 23, 1980, 10 Pa.B. 2882; amended December 19, 1980, effective December 20, 1980, 10 Pa.B. 4724; amended April 17, 1981, effective June 17, 1981, 11 Pa.B. 1322; amended May 22, 1981, effective January 1, 1981, 11 Pa.B. 1803; corrected June 5, 1981, effective January 1, 1981, 11 Pa.B. 1941; amended October 15, 1982, effective January 1, 1982, 12 Pa.B. 3737; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893. Immediately preceding text appears at serial pages (124085) to (124087), (108912), (124918) and (124089) to (124090).

Notes of Decisions

Department properly applied its “name-on-the-instrument” rule attributing entire pension to petitioner for purposes of computing his patient pay amount; wife has no present ownership interest in pension although it is marital property subject to equitable distribution upon divorce. *Buck v. Department of Public Welfare*, 566 A.2d 1269 (Pa. Cmwlth. 1989).

Petitioner’s available resources were determined by allowing \$1,500 exemption for nursing home care. *Groblewski v. Department of Public Welfare*, 528 A.2d 1084 (Pa. Cmwlth. 1987).

It is not necessary to demonstrate intent to determine whether MA applicant, who transferred funds to son several weeks prior to application and after hospitalization, did so for purpose of acquiring eligibility for medical assistance, since under relevant section of Welfare Code (62 P.S. § 441.2), requirement that transfer was result of bona fide arm’s length transaction was not demonstrated, and law presumes son’s services were rendered gratuitously. *Groblewski v. Department of Public Welfare*, 528 A.2d 1084 (Pa. Cmwlth. 1987).

There is no exemption set forth under this section for funds which are the result of a personal injury award, even where Commonwealth is involved as a tortfeasor. *Lozada Department of Public Welfare*, 522 A.2d 1192 (Pa. Cmwlth. 1987).

Where recipient has provided documentation that she tried but was unable to find counsel to file petition for release of daughter’s trust fund monies, the recipient has provided “documentation that steps have been taken to convert the resource” as required by § 177.23(a) and (b). *Pitts v. Department of Public Welfare*, 512 A.2d 761 (Pa. Cmwlth. 1986).

The income level of approximately \$479.00 per month is not below the minimum level of living for a family of six, and the inclusion of Social Security disability benefits as income is not improper in computing eligibility for MA benefits. *Belmonte v. Department of Public Welfare*, 409 A.2d 920 (Pa. Cmwlth. 1979).

OASDI benefits paid to a parent as representative payee of her children may be considered as a resource available to the family’s support for MA eligibility purposes, and the inclusion of such income is not a denial of equal protection. *Korbel v. Department of Public Welfare*, 408 A.2d 910 (Pa. Cmwlth. 1979).

The court would have difficulty concluding that an innocent and indigent ward would be ineligible for assistance because her guardian stole the estate. *Griffith v. Department of Public Welfare*, 399 A.2d 1191 (Pa. Cmwlth. 1979).

Since it appeared that the asserted insolvent condition of an incompetent ward's estate was contrived by her guardian-daughter so as to qualify the ward for medical assistance, the ward was ineligible for such assistance. *Griffith v. Department of Public Welfare*, 399 A.2d 1191 (Pa. Cmwlth. 1979).

The property of a patient will be valued in excess of \$1500 despite the fact that DPW produced two differing market value figures, since both values exceeded \$1500 and there was no countervailing evidence of a value less than \$1500. *Skinner v. Department of Public Welfare*, 399 A.2d 811 (Pa. Cmwlth. 1979).

DPW is required by Federal law to take into account resources of the patient, and since these benefits are controlled by Federal law, it is the duty of the DPW to comply with Federal law or risk losing the benefits entirely. *Skinner v. Department of Public Welfare*, 399 A.2d 811 (Pa. Cmwlth. 1979).

In authorizing full payment for inpatient hospitalization care for a person who was eligible for both MA benefits and no-fault motor vehicle insurance benefits, the Department's use of the words "subject to damage claim" meant only that MA payments would not be made if the hospital had taken the assignment of any claims which the patient had against third parties under 55 Pa. Code § 177.83(c)(5) (relating to requirements). *Harleysville Mutual Insurance Co. v. Yocolano*, 9 Pa. D. & C.3d 226 (1978).

Cross References

This section cited in 55 Pa. Code § 133.83 (relating to requirements); and 55 Pa. Code § 255.84 (relating to procedures).

§ 177.84. [Reserved].

Source

The provisions of this § 177.84 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 291; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3893. Immediately preceding text appears at serial pages (124090) to (124091).

[Next page is 178-1.]