

CHAPTER 178. RESOURCE PROVISIONS FOR CATEGORICALLY NMP-MA AND MNO-MA

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Authority

The provisions of this Chapter 178 issued under section 403(b) of the act of June 13, 1967 (P. L. 31, No. 21) (62 P. S. § 403(b)), unless otherwise noted.

Source

The provisions of this Chapter 178 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3979, unless otherwise noted.

Notes of Decisions

Documentation

An application for Medical Assistance benefits was properly denied where the petitioner failed to provide documentation demonstrating that excess resources were applied towards the payment of medical expenses. *Bemowski v. Department of Public Welfare*, 582 A.2d 103 (Pa. Cmwlth. 1990).

Joint Tenancy Property

It is well established that a joint tenancy in real estate with the right of survivorship, unlike a tenancy by the entireties, is severable by the action, voluntary or involuntary, of either of the tenants. The deceased’s interest in the property, therefore, was a resource as defined by this regulation. Moreover, this resource was presumed available pursuant to 55 Pa. Code § 178.4 because, as a joint tenant, the deceased did not need the cotenant’s consent to alienate deceased’s interest. Thus, the hearing officer was correct in determining that the deceased’s resources exceeded Medical Assistance limits. *McArthur v. Department of Public Welfare*, 674 A.2d 779 (Pa. Cmwlth. 1996).

Trust Property

When the beneficiary of the trust was receiving public benefits at the death of the testator and testator knew it, the Court inferred that the testator did not intend that the trust utilize principal as an “available resource” in lieu of public benefits. *Snyder v. Department of Public Welfare*, 598 A.2d 1283 (Pa. 1991).

Cross References

This chapter cited in 55 Pa. Code § 140.221 (relating to conditions of eligibility); 55 Pa. Code § 140.271 (relating to income exempt by Federal statutes); 55 Pa. Code § 141.81 (relating to eligibility policy for Medically Needy Only); 55 Pa. Code § 181.81 (relating to items that are not income); 55 Pa. Code § 181.121 (relating to income exempt by Federal statutes); 55 Pa. Code § 181.123 (relating to unearned income exclusions); and 55 Pa. Code § 181.263 (relating to other types of income not counted for the TANF and GA categories).

**Subchapter A. GENERAL PROVISIONS FOR MA
RESOURCES COMMON TO ALL CATEGORIES OF MA**

GENERAL PROVISIONS FOR MA RESOURCES

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CATEGORIES OF MA

- 178.11. Categories of NMP-MA.
- 178.12. Categories of MNO-MA.

Cross References

This subchapter cited in 55 Pa. Code § 140.241 (relating to items that are not counted as income); 55 Pa. Code § 140.273 (relating to unearned income exclusions); 55 Pa. Code § 140.291 (relating to treatment of lump sum payments); 55 Pa. Code § 140.301 (relating to resource eligibility limitations); and 55 Pa. Code § 178.121 (relating to general).

GENERAL PROVISIONS FOR MA RESOURCES

§ 178.1. General policy on MA resources common to all categories of MA.

(a) An applicant/recipient is resource eligible for MA if his total resources considered in determining resource eligibility do not exceed the MA resource limit in Appendix A for the appropriate MA Program. Revisions to the MA Resource limits will be published as a notice in the *Pennsylvania Bulletin*, recommended for codification in the *Pennsylvania Code*. The MA resource limits are based on the following:

- (1) For aged, blind or disabled persons requesting NMP-MA, 42 CFR 435.721 (relating to general requirements) requires that the SSI resource limit at 20 CFR 416.1205 (relating to limitation on resources) be used.
- (2) For children and their parents requesting NMP-MA, 42 CFR 435.711 (relating to general requirements) requires that the state's AFDC resource limit at 45 CFR 233.20(a)(3)(i)(B) (relating to need and amount of assistance) be used.

(3) For individuals requesting NMP-MA who do not fall under the Federal categories, the GA resource limits at section 432.5 of the Public Welfare Code (62 P. S. § 432.5) are used.

(4) For persons requesting MNO-MA, 42 CFR 435.840 and 435.841 (relating to medically needy resource standards: General requirements; and medically needy resource standards: Reasonableness) require a reasonable standard approved by the Health Care Financing Administration.

(b) Resources are counted in determining resource eligibility for MA, unless specifically excluded in this chapter.

(c) An applicant/recipient is ineligible for MA on the date that his resources exceed the MA resource limit in Appendix A for the appropriate MA Program and he remains resource ineligible until his resources are equal to, or less than, the resource limit. The disposition of excess resources shall meet the fair consideration provisions for the appropriate program.

(d) Resources are considered at their equity value unless specified otherwise. The equity value of nonexcluded real property which is legally available to the applicant/recipient is a resource.

(e) A person receiving AFDC, GA, SBP or SSI and who is living in the household of a person applying for, or receiving, MA is not included in the determination of MA eligibility.

(f) Resources which are not excluded shall be reviewed to determine if they are actually available. Only those resources which are actually available are considered resources when determining MA eligibility.

(g) An applicant/recipient shall take reasonable steps to obtain and make available resources to which he is, or may be, entitled unless he can show good cause for not doing so.

(h) The reimbursement provisions of the cash assistance programs do not apply to MA.

(i) If an applicant/recipient converts or sells a resource, whether excluded or nonexcluded, the newly acquired cash or item is a resource and is subject to the appropriate resource criteria for continuing eligibility.

(j) Resources used by the applicant to pay for medical expenses during the retroactive eligibility period or the continuing eligibility period are not counted once the resources are used to pay the medical expenses.

Notes of Decisions

Total Resources

When real property is held by medical assistance recipient in joint-tenancy, each co-owner is entitled to an equal share of proceeds from sale of the real estate, regardless of who paid the mortgage, taxes, and all expenses. *LaFond v. Department of Public Welfare*, 933 A.2d 159, 163—164 (Pa. Cmwlth. 2007).

Applicant was not entitled to medical assistance long-term care benefit, where applicant's checking account, variable annuity, and excess burial reserve provided her with resources in excess of allowable limit. *Debone v. Department of Public Welfare*, 929 A.2d 1219, 1222 (Pa. Cmwlth. 2007).

Principal of discretionary support trust was available resource for purposes of determining applicant's eligibility for medical assistance long-term care benefits; applicant was sole life beneficiary, was not receiving public assistance at time trust was created, trustees could use principal for applicant's benefit, and division of assets between trust's two funds appeared to have been controlled by federal estate tax considerations, not by any particular intent to preserve portion of principal for remaindermen. *Debone v. Department of Public Welfare*, 929 A.2d 1219, 1224 (Pa. Cmwlth. 2007).

The Department properly terminated recipient's Medical Assistance after she received disability insurance proceeds that caused her resources to exceed the applicable eligibility limit. *Filoon v. Department of Public Welfare*, 819 A.2d 188 (Pa. Cmwlth. 2003).

§ 178.2. Definitions.

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

Annuity—An investment contract or policy which gives the right to receive fixed, periodic payments, either for life or a term of years.

Applicant/recipient—A person who is applying for, or receiving, MA or a group of related persons who are living together and who choose to apply for, or receive, MA as one group.

Assets—Income and resources of the individual and of the individual's spouse, including income or resources which the individual or the individual's spouse is entitled to but does not receive because of action by one of the following:

- (i) The individual or the individual's spouse.
- (ii) A person or a court or administrative body with legal authority to act in place of, or on behalf of, the individual or the individual's spouse.
- (iii) A person or a court or administrative body acting at the direction or upon the request of the individual or the individual's spouse.

Burial reserve—Funds or other resources, whether revocable or irrevocable, 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 or similar names.

Burial space—Conventional grave sites, crypts, burial drawers, mausoleums, urns and other repositories customarily used to deposit the remains of deceased persons.

Community spouse—The spouse living at home who has a spouse who had lived at home but is now an institutionalized spouse.

Disposition of property—The transfer of ownership of, or an interest in, a property. This can be accomplished by the sale, exchange or transfer of the title, or by diminishing the value of an interest through the placing of an encumbrance or by adding a person to the title.

Equity value—The FMV less legal encumbrances, including liens and mortgages.

FMV—Fair Market Value—The price which property can be expected to sell for on the open market or would have been expected to sell for on the open market in the geographic area in which the property is located.

Fair consideration—Compensation in cash or in kind which is approximately equal to the FMV of the transferred property.

IRC—Internal Revenue Code (26 U.S.C.A. §§ 1—1043).

Immediate family—The child, the biological or adoptive parent of a child under 21 years of age, the spouse of the parent, and the brother, sister, step-brother, step-sister, half-brother or half-sister who are under 21 years of age. The immediate family members must be living together.

Institutionalized individual/person—An individual who is receiving nursing facility care.

Institutionalized spouse—The spouse who is receiving skilled care, heavy care/intermediate services or intermediate care in a nursing facility or other medical institution, including services in an ICF/MR facility, for a period likely to last for at least 30 consecutive days.

Irrevocable trust—A trust which cannot, in any way, be revoked by the grantor.

Jointly-owned resources—Resources which have more than one owner.

LRR—Legally Responsible Relative—The spouse of a person, or the natural or adoptive parent of a child under the age of 21.

Liquid resources—Resources that are in cash or financial instruments which can normally be converted to cash. The term includes cash on hand, savings and checking accounts, stocks, bonds, mutual fund shares, money certificates, promissory notes and mortgages.

Look-back date/look-back period—The specified period of time immediately before the date of an institutionalized individual's application for MA benefits which determines the earliest date on which a transfer of assets for less than FMV can result in ineligibility for MA.

MCCA—The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, 102 Stat. 683) (July 1, 1988).

Motor vehicle—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 highways of this Commonwealth.

NFC—Nursing Facility Care—Skilled care, heavy care/intermediate services or intermediate care in a nursing facility or other medical institution.

Nonliquid resources—Real or personal property not considered liquid resources.

Nonresident property—Real property that is not used as the principal place of residence by the applicant/recipient, his spouse or his dependent minor or incompetent adult children.

Parent—The natural or adoptive parent.

Personal property—Privately owned possessions which are not real property. The term includes cash, bank accounts, stocks, bonds, mortgages, cash value of life insurance policies, household furnishings, personal effects, motor vehicles, 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 can be disproved or rebutted only by the applicant/recipient presenting evidence at a prehearing conference or a Departmental fair hearing. If the applicant/recipient presents no evidence at the prehearing conference or at the fair hearing to disprove the presumption, the presumption remains unrebutted and stands.

Resident property—Real property used as the principle place of residence by the applicant/recipient, his spouse or his dependent minor or incompetent adult children.

Resource—Real or personal property which a person has or can make available for partial or total support, including equitable interests and partial interests. The term does not include credit.

Revocable trust—A trust which can be revoked by the grantor, including a trust which provides that it can be modified or terminated only by a court, and a trust which is called irrevocable but will terminate if some action is taken by the grantor.

SSI—Supplemental Security Income—The benefit amount paid to an eligible person or to an eligible person and his eligible spouse under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383d).

Spouse—A person who is married to another by legal ceremony or by common-law.

Trust—An arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed or administered by the trustee for the benefit of the grantor or other designated individuals. The term also includes any legal instrument or device that is similar to a trust, but excludes trusts established by will, which are subject to § 178.4 (relating to treatment of resources for all categories of MA).

Trustee—An individual or entity such as an insurance company or bank that manages a trust.

UV—Uncompensated Value—The amount remaining after the FMV of a property at the time of transfer is reduced by the following amounts in the order listed:

- (i) The cost of sale/transfer and encumbrances.
- (ii) The amount of compensation received.

Undue hardship—Exists when denial of MA would deprive the individual of medical care and endanger the individual's health or life; also exists when the individual or a financially dependent family member would be deprived of food, clothing, shelter or other necessities of life.

Authority

The provisions of this § 178.2 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.2 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3979; amended August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432; amended December 23, 1994, effective December 24, 1994, and apply retroactively to January 4, 1991 and July 30, 1994, 24 Pa.B. 6423; amended June 15, 2001, effective June 16, 2001, 31 Pa.B. 3196. Immediately preceding text appears at serial pages (220367) to (220368) and (261249) to (261251).

Notes of Decisions

Fair Consideration

Nursing home resident's act of "lending" available assets to a trust for less than fair consideration warranted denial of her application for Medical Assistance, where the resident was surrendering her principal for 4 years on unsecured loans for a sizeable amount of money and was receiving what amounted to a 2% monthly interest payment in return; thus, it was not apparent how the resident

would receive any real benefit or consideration from the transaction (aside from the solace of transferring assets to her adult child, which is not of itself a protected transaction under the Medicaid law). *Pyle v. Department of Public Welfare*, 730 A.2d 1046 (Pa. Cmwlth. 1999).

Reasonable Steps

Election on behalf of an incapacitated husband against the provisions of his wife's will was in husband's best interests, where failure to take the election against the will could potentially compromise his entitlement to continued medical assistance in addition to denying him the benefit of the elective share. *Estate of Wyinegar*, 711 A.2d 492 (Pa. Super. 1998).

The principal of a testamentary discretionary support trust was an available resource to be considered in determining the beneficiary's eligibility for MA. *Commonwealth Bank and Trust Company, N.A. v. Department of Public Welfare*, 563 A.2d 1299 (Pa. Cmwlth. 1989), appeal granted, 569 A.2d 1370 (Pa. 1990); order affirmed 598 A.2d 1279 (Pa. 1991).

The determination of whether a trust is an available resource for MA eligibility can only be made by evaluating each trust instrument and the circumstances surrounding its execution to determine the intent of the settlor. *Snyder v. Department of Public Welfare*, 556 A.2d 31 (Pa. Cmwlth. 1989); affirmed 598 A.2d 1283 (Pa. 1991).

Cross References

This section cited in 55 Pa. Code § 178.71 (relating to burial spaces); 55 Pa. Code § 178.84 (relating to resources of children under 21 years of age and families with children under 21 years of age); 55 Pa. Code § 178.161 (relating to personal property exclusions); 55 Pa. Code § 178.163 (relating to resources of children under 21 years of age and families with children under 21 years of age); 55 Pa. Code § 178.101 (relating to disposition of property and fair consideration provisions for transfer during the period of January 4, 1991, through July 29, 1994); 55 Pa. Code § 178.104 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.124 (relating to resource eligibility for the institutionalized spouse); 55 Pa. Code § 178.161 (relating to personal property exclusions); 55 Pa. Code § 178.171 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994); and 55 Pa. Code § 178.174 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994).

§ 178.3. Resource reporting and verification for all categories of MA.

Verification of ownership, the value of resources and the disposition of resources is required of an applicant/recipient or the person acting on his behalf including, but not limited to, guardians and trustees.

- (1) An applicant/recipient shall report and provide verification of his resources including information about sources of third-party liability.
- (2) A person who is applying on behalf of an applicant/recipient including a guardian and trustee shall report and provide verification of the applicant's/recipient's resources.
- (3) An applicant/recipient shall report and provide verification, to the best of his ability, of resources of an LRR even if the LRR does not live in the household of the applicant/recipient.
- (4) Parents and specified relatives 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 in the household.

(5) Stepparents not applying for MA but living in the household are not required to report their resources when determining eligibility for their stepchildren.

(6) Failure to report resources may result in an overpayment of MA if the equity value of the resource would have caused ineligibility of the applicant/recipient.

(7) The value of personal property shall be verified by documentation appropriate for the type of property. Verification by documentation includes, but is not limited to:

(i) A written estimate of the FMV of a motor vehicle from a car dealer.

(ii) A statement from a representative of a cemetery or memorial garden verifying ownership of a burial resource, conditions of resale and value.

(iii) Titles of ownership.

(iv) Written statements from financial institutions.

(8) The cash value of a life insurance policy owned by applicants/recipients may be documented by presenting a policy which contains cash value charts or through a written statement from the insurance company.

(i) If a policy has a single cash value and insures the lives of more than one person, an equal share of the cash value is assigned to each insured person.

(ii) Money borrowed from the cash value of a life insurance policy is a resource only if it is retained as of the first of the month following the month of receipt.

(9) Documentation of the FMV of nonresident property includes estimates of value provided by a licensed real estate broker or a financial institution. Non-Departmental encumbrances are deducted when determining the equity value.

Cross References

This section cited in 55 Pa. Code § 140.311 (relating to verification requirements).

§ 178.3a. Clarification of disclosure requirement on ownership of annuities—statement of policy.

(a) Consistent with section 1917(e) of the Social Security Act (42 U.S.C.A. § 1396p(e)), regarding liens, adjustments and recoveries, and transfers of assets, effective for an application made on or after March 3, 2007, the Department will require as a condition of eligibility for payment for long-term care services that an applicant or recipient or spouse of an applicant or recipient disclose any interest the applicant or recipient or spouse of the applicant or recipient has in an annuity or similar financial instrument.

(b) Consistent with section 1917(e) of the Social Security Act, effective for an application made on or after March 3, 2007, the Department will inform the applicant or recipient or spouse of the applicant or recipient that the Department

shall be named as the remainder beneficiary in the first or second position under an annuity or similar financial instrument with a transaction date on or after February 8, 2006.

Source

The provisions of this § 178.3a adopted March 2, 2007, effective March 3, 2007, 37 Pa.B. 1043.

§ 178.4. Treatment of resources for all categories of MA.

(a) Resources which are available to the applicant/recipient are applied against the MA resource limit in Appendix A for the appropriate MA Program. This includes resources in which the applicant/recipient has only a partial ownership interest.

(b) A resource in which the applicant/recipient has an equitable interest with the right to use the property is considered a resource.

(c) Resources held in a trust established prior to July 30, 1994, are considered resources to the applicant/recipient to the extent that the trust permits use of those resources for the applicant's/recipient's food, clothing, shelter or medical care, regardless of whether the trust is in fact used for food, clothing, shelter or medical care. Trusts established on or after July 30, 1994, are subject to § 178.7 (relating to treatment of trust amounts for all categories of MA for trusts established on or after July 30, 1994), except for trusts established by will which continue to be subject to this section.

(d) Establishing the type of ownership is required to determine the availability and the value of the applicant's/recipient's resources.

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

(1) If an applicant/recipient is the sole owner, the resource is presumed available.

(2) If ownership is shared by persons who are applicants/recipients, the resource is presumed available.

(3) If ownership is shared by applicants/recipients and a person who is not an applicant/recipient and if the applicants/recipients have a separate legal interest which can be disposed of without the consent of the other owners, the applicants'/recipients' share of the resource is presumed available.

(4) If ownership is shared by applicants/recipients and a person who is not an applicant/recipient and the applicants/recipients have a legal interest which

can be disposed of only with the consent of the other owner and consent is not withheld, the applicants'/recipients' share of the resource is presumed available.

(5) If consent to dispose of resources is needed but withheld by a nonapplicant/nonrecipient, assume that the resource is not available. The shared ownership and the nonapplicant's/nonrecipient's refusal to dispose of the resource shall be verified. The unavailability of resources is verified at application and no less often than at each reapplication.

(f) Entireties property, which is property jointly owned by a husband and wife, is treated as follows:

(1) If the applicant/recipient is a person for whom only the husband or the wife is legally responsible and neither the husband nor the wife receive assistance benefits—AFDC, GA, SSI or MA—property owned by the entireties cannot be considered available without the consent of the spouse who is not an LRR. One spouse cannot, without his spouse's consent, liquidate the property to support children for whom both persons are not legally responsible. If the caretaker relative has remarried and his spouse has not adopted the caretaker's children, the CAO is required to first determine if a particular resource is held by the caretaker and his spouse as entireties property before considering it available.

(2) A bank account owned jointly by a 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. The legal rights of the parties are not wholly determined by the title of the account. The account title or caption determines the rights of the account in relation to the bank and not their rights in relation to each other. The CAO shall apply the following rebuttable presumptions to determine the availability of bank accounts:

- (i) The person whose name appears on the account title is the owner.
- (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 a written trust document exists. A tentative trust is owned by the trustee, and the beneficiary has no legal rights before the death of the trustee.

(g) Lump sum payments, whether received as a result of earned income, unearned income, personal damage award, inheritance or another source, are counted as resources, as of the date received unless one of the following applies:

- (1) It is excluded by other provisions.
- (2) It is more helpful to the applicant/recipient to have the lump sum treated as income under § 181.31 (relating to treatment of lump sum).

Authority

The provisions of this § 178.4 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.4 amended December 23, 1994, effective December 24, 1994, and apply retroactively to July 30, 1994, 24 Pa.B. 6423. Immediately preceding text appears at serial pages (171797) to (171799).

Notes of Decisions*Commercial Paper*

Department of Public Welfare did not err in determining that a petitioner failed to rebut the presumption of ineligibility for Medical Assistance/nursing home care benefits for her mother, where all available evidence suggested that petitioner's cashing in of her mother's certificates of deposit constituted a transfer of available resources for the purpose of qualifying for assistance. *Breitkrentz v. Department of Public Welfare*, 699 A.2d 1378, (Pa. Cmwlth. 1997).

Joint Tenancy Property

It is well established that a joint tenancy in real estate with the right of survivorship, unlike a tenancy by the entireties, is severable by the action, voluntary or involuntary, of either of the tenants. The deceased's interest in the property, therefore, was a resource as defined by this regulation. Moreover, this resource was presumed available pursuant to 55 Pa. Code § 178.4 because, as a joint tenant, the deceased did not need the cotenant's consent to alienate deceased's interest. Thus, the hearing officer was correct in determining that the deceased's resources exceeded Medical Assistance limits. *McArthur v. Department of Public Welfare*, 674 A.2d 779 (Pa. Cmwlth. 1996).

Trust Property

Principal of discretionary support trust was available resource for purposes of determining applicant's eligibility for medical assistance long-term care benefits; applicant was sole life beneficiary, was not receiving public assistance at time trust was created, trustees could use principal for applicant's benefit, and division of assets between trust's two funds appeared to have been controlled by federal estate tax considerations, not by any particular intent to preserve portion of principal for remaindermen. *Debone v. Department of Public Welfare*, 929 A.2d 1219, 1224 (Pa. Cmwlth. 2007).

The proceeds from the sale of a farm held in a joint account which were then placed in a trust account administered by the petitioner's son did not divest the petitioner of an interest in the proceeds in that such transfers were made and the funds were held by the petitioner's attorney-in-fact. The funds were properly considered in determining her eligibility for MA. *Park v. Department of Public Welfare*, 582 A.2d 1138 (Pa. Cmwlth. 1990).

Cross References

This section cited in 55 Pa. Code § 178.2 (relating to definitions); 55 Pa. Code § 178.7 (relating to treatment of trust amounts for all categories of MA for trusts established on or after July 30, 1994); and 55 Pa. Code § 181.31 (relating to treatment of lump sum).

§ 178.5. Treatment of irrevocable burial reserves for all categories of MA.

Irrevocable burial reserves are considered as follows:

(1) To be considered irrevocable, the burial reserve funds shall be deposited with a financial institution or a funeral director under a written agreement which provides that the funds cannot be withdrawn before the death of the named beneficiary.

(2) Interest earned on the burial reserve is counted as income if it can be and is withdrawn before the death of the applicant/recipient.

(3) If a burial reserve is in an irrevocable form, it is not a countable resource. For the aged, blind and disabled categories of MA it shall be considered under § 178.73(2)(ii) (relating to revocable burial reserve).

(4) Excess funds remaining from the irrevocable burial reserve after the burial expenses become a part of the deceased recipient's estate.

(5) The resource that was used to establish the irrevocable burial reserve, usually cash, is not excluded. The transaction establishing the irrevocable

burial reserve shall be reviewed to determine if the disposition of property and fair consideration requirements at § 178.101 or § 178.171 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994) or the requirements in § 178.104 or § 178.174 (relating to the disposition of assets and fair consideration provisions for transfers on or after July 30, 1994) are met.

(i) Fair consideration is established if the irrevocable burial reserve is not exorbitant in relation to the average cost of burial in the locality where the person lives. To allow for future increases in the cost of burial, an irrevocable burial reserve is not considered exorbitant if it does not exceed the average local costs by more than 25%.

(ii) Fair consideration for amounts above those in subparagraph (i) shall be documented, and if determined by the Department to be reasonable, the creation of the irrevocable burial reserve may meet the fair consideration requirements. The documentation shall demonstrate that the amount is not exorbitant for the person's situation and the higher amount is needed for things such as:

(A) The cost of transport of the body because burial is to be in a community many miles away.

(B) The person arranged for a priest, minister or rabbi who is a close friend or relative and lives some miles away to conduct the memorial services with the cost of travel, food, lodging and honorarium to be paid from the irrevocable burial reserve.

(C) Arrangements include a reasonable gift to the church or synagogue for the use of the facilities for the services.

(iii) If fair consideration is not established, the difference between the cost of the burial arrangements and the amount of the burial reserve and if applicable, the 25% factor in subparagraph (i), shall be counted as UV in accordance with § 178.101(h) and § 178.104(d) for the SSI-related categories or § 178.171(h) and § 178.174(d) for the AFDC-related/GA-related categories. If the application of the transfer of resources requirements at § 178.101, 178.104, 178.171 or 178.174 to an irrevocable burial reserve creates ineligibility, the person who created the irrevocable burial reserve or trust may be able to reform or revoke the reserve or trust.

Authority

The provisions of this § 178.5 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.5 amended December 23, 1994, effective December 24, 1994, and apply retroactively to January 4, 1991, 24 Pa.B. 6423. Immediately preceding text appears at serial page (171799).

Cross References

This section cited in 55 Pa. Code § 178.72 (relating to irrevocable burial reserve); and 55 Pa. Code § 178.161 (relating to personal property exclusions).

§ 178.6. Third-party liability for all categories of MA.

(a) An applicant/recipient may have sources other than MA that cover the cost of his medical services and care. The third-party liability sources which are available to pay for medical services and care shall be identified and used to the fullest extent possible before payment is made by MA. The Department is the payer of last resort.

(b) Third-party resources include, but are not limited to:

- (1) Blue Cross and commercial hospital insurance.
- (2) Health insurance benefits-Medicare.
 - (i) Hospital insurance.
 - (A) Inpatient hospital care.
 - (B) Skilled nursing care after hospitalization.
 - (C) Home health benefits after hospitalization.
 - (ii) Medical insurance.
- (3) Other hospital insurance paid to the person.
- (4) Medical insurance included as part of a support agreement.
- (5) Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).
- (6) Workers compensation.
- (7) Negligence action or other tort.
- (8) Institutional care contracts. This includes a contract between a person and a facility which gives the person the right to receive care at zero or reduced cost at the facility.
- (9) Payments made toward the cost of medical service by an LRR or other person.
- (10) LRRs, including spouses and parents of unemancipated minor children.
- (11) Long term care/nursing home care insurance.

§ 178.7. Treatment of trust amounts for all categories of MA for trusts established on or after July 30, 1994.

(a) Trusts established on or after July 30, 1994, except for trusts established by will, are subject to this section. Trusts established by will or established prior to July 30, 1994, are treated as set forth at § 178.4(c) (relating to treatment of resources for all categories of MA).

(b) A trust is established if the assets of the individual were used to form all or part of the corpus of the trust and one or more of the following persons establish the trust other than by a will:

- (1) The individual.
- (2) The spouse of the individual.

- (3) A person or a court or administrative body with legal authority to act in place of, or on behalf of, the individual or the spouse of the individual.
- (4) A person or a court or administrative body acting at the direction, or upon the request of the individual or the spouse of the individual.
- (c) When the corpus of the trust includes the assets of an individual, and the assets of other persons, the requirements of this section apply only to that portion of the trust attributable to the assets of the individual.
- (d) Unless the trust meets the requirements described in subsection (f), this section applies to all trusts without regard to the following:
 - (1) The purpose for which a trust is established.
 - (2) Whether the trustees have or exercise discretion under the trust.
 - (3) Restrictions on when or whether distributions are made from the trust.
 - (4) Restrictions on the use of distributions from the trust.
- (e) Whether, and to what extent, a trust is considered in an MA eligibility determination depends upon the specific characteristics of the trust. In determining eligibility for MA, the CAO shall apply the following:
 - (1) In the case of a revocable trust:
 - (i) The corpus of the trust shall be considered as a resource available to the individual.
 - (ii) Payments from the trust to or for the benefit of the individual shall be considered as income of the individual.
 - (iii) Other payments from the trust shall be considered as assets disposed of by the individual which are subject to a determination by the Department as to whether the disposition was for less than FMV on or after the look-back date specified in § 178.104(c) (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994).
 - (2) In the case of an irrevocable trust:
 - (i) If there are circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income to or for the benefit of the individual shall be considered income of the individual, and for other purposes shall be considered a transfer of assets by the individual which is subject to a determination by the Department as to whether the transfer was for less than FMV on or after the look-back date specified in § 178.104(c).
 - (ii) Any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust or, if later, the date on which payment to the individual was foreclosed, to be assets disposed of by the individual subject to a determination by the Department as to whether the disposition was for less than FMV on or after the look-back date specified in § 178.104(c), and the value of the trust shall be

determined by including the amount of payments made from any portion of the trust or income on the corpus after the date the trust was established or payment from the trust was foreclosed.

(f) The trust requirements of this section do not apply to the following:

(1) A trust containing the assets of an individual under 65 years of age who is disabled as defined by the SSI criteria in 42 U.S.C.A. § 1382c(a)(3), if the trust was established for the benefit of the individual by a parent, grandparent, legal guardian of the individual, or a court and the trust contains a provision that the Commonwealth will receive the amounts remaining in the trust upon the death of the individual, up to an amount equal to the total of MA benefits paid on behalf of the individual.

(2) A trust containing the assets of an individual who is disabled as defined by the SSI criteria in 42 U.S.C.A. § 1382c(a)(3) if the trust meets the following conditions:

(i) The trust is established and managed by a nonprofit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled based on the SSI criteria in 42 U.S.C.A. § 1382c(a)(3) by the parent, grandparent or legal guardian of the individual, by the individual, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the Commonwealth from the amounts remaining in the account an amount equal to the amount of MA benefits paid on behalf of the beneficiary.

(g) The Commonwealth will waive the requirements of this section with respect to an individual if the individual establishes that application of these requirements would cause undue hardship for the individual.

Authority

The provisions of this § 178.7 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.7 adopted December 23, 1994, effective December 24, 1994, and apply retroactively to July 30, 1994, 24 Pa.B. 6423.

Cross References

This section cited in 55 Pa. Code § 178.4 (relating to treatment of resources for all categories of MA); 55 Pa. Code § 178.104 (relating to deposition of assets and fair consideration provisions for transfers on or after July 30, 1994); 55 Pa. Code § 178.174 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994); and 55 Pa. Code § 258.3 (relating to property liable to repay the Department).

CATEGORIES OF MA**§ 178.11. Categories of NMP-MA.**

NMP-MA applicants or recipients shall meet the resource requirements of the category of NMP-MA for which they are eligible. The following explains the different NMP-MA categories:

- (1) The PA category designates an NMP person who is 65 years of age or older. This category is an SSI-related category.
- (2) The PJ category designates an NMP person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.
- (3) The PM category designates an NMP person who meets the eligibility conditions as a blind person. This category is an SSI-related category.
- (4) The PC category is a TANF-related category and designates an NMP individual who is one of the following:
 - (i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.
 - (ii) An individual 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the individual 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent level of a vocational or technical school and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to TANF deprivation of support or care requirements).
 - (iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).
- (5) The PU category is a TANF-related category and designates an NMP person who is one of the following:
 - (i) The parents in a two parent household that includes a dependent child as defined in paragraph (4) and an unemployed principal wage earner as defined in § 153.44(d).
 - (ii) A pregnant woman with no other children and the father of her unborn child, who constitute a two parent household with an unemployed principal wage earner, as defined in § 153.44(d).
- (6) The PD category is a GA-related category and designates an NMP person who is 21 years of age or older and under 65 years of age, who meets the eligibility requirements for GA and who chooses to receive only MA.

Authority

The provisions of this § 178.11 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)); 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; section 1902(a)(10)(A) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A)); and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 178.11 amended July 28, 2000, the provisions under Act 49 effective September 1, 1994, the provisions under Act 20 effective July 1, 1995, 30 Pa.B. 3779; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (268345) to (268346).

§ 178.12. Categories of MNO-MA.

MNO-MA applicants or recipients shall meet the resource requirements of the category of MNO-MA for which they are eligible. The following explains the different MNO-MA categories:

- (1) The TA category designates an MNO person who is 65 years of age or older. This category is an SSI-related category.
- (2) The TJ category designates an MNO person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.
- (3) The TM category designates an MNO person who meets the eligibility conditions as a blind person. This category is an SSI-related category.
- (4) The TB category designates an MNO person who receives a SBP.
- (5) The TC category is a TANF-related category and designates an MNO individual who is one of the following:
 - (i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.
 - (ii) An individual 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the individual 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent level of a vocational or technical school and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to TANF deprivation of support or care requirements).
 - (iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).
- (6) The TU category is a TANF-related category and designates an MNO person who is one of the following:

(i) The parents in a two parent household that includes a dependent child as defined in paragraph (5)(ii) and an unemployed principal wage earner as defined in § 153.44(d).

(ii) A pregnant woman who is 21 years of age or older, with no other children, in a two parent household with an unemployed principal wage earner as defined in § 153.44(d).

(7) The TD category is a GA-related category and designates an MNO person who does not meet the requirements for another category of MNO.

Authority

The provisions of this § 178.12 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)); and section 1902(a)(10)(A) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A)).

Source

The provisions of this § 178.12 amended July 28, 2000, the provisions under Act 49 effective retroactive to September 1, 1994, the provisions under Act 20 effective retroactive to July 1, 1995, 30 Pa.B. 3779; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (268346) and (279709).

Subchapter B. AGED, BLIND AND DISABLED CATEGORIES OF MA

ADDITIONAL RESOURCE REQUIREMENTS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

Sec.
178.51. Additional resource requirements.

RESOURCE EXCLUSIONS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

- 178.61. Resources excluded by Federal statute.
- 178.62. Real property used as a principal place of residence.
- 178.62a. Clarification of disqualification for payment of long-term care services due to substantial home equity—statement of policy.
- 178.63. Real property not excluded as a home.
- 178.64. Property used in a trade or business essential to self-support.
- 178.65. Nonbusiness property essential to self-support.
- 178.66. Household goods and personal effects.
- 178.67. Motor vehicle.
- 178.69. Life insurance policies.
- 178.70. Term insurance policies.
- 178.71. Burial spaces.
- 178.72. Irrevocable burial reserve.

- 178.73. Revocable burial reserve.
- 178.74. Disaster relief assistance.
- 178.75. Replacement assistance.
- 178.76. Retroactive payment under SSI and Title II of the Social Security Act.
- 178.77. Proceeds from the sale of an excluded resident home.
- 178.78. Uniform Gifts to Minors Act.
- 178.79. Certain support and maintenance assistance.
- 178.80. Low income home energy assistance program.
- 178.81. German reparations payments.
- 178.82. Japanese-American and Aleutian restitution payments.
- 178.83. Agent orange settlement payments.
- 178.84. Resources of children under 21 years of age and families with children under 21 years of age.

**DEEMING OF RESOURCES FOR THE AGED, BLIND
AND DISABLED CATEGORIES OF MA**

- 178.91. Deeming of resources.

**DISPOSITION OF PROPERTY AND
FAIR CONSIDERATION PROVISIONS FOR THE
AGED, BLIND AND DISABLED CATEGORIES OF MA**

- 178.101. Disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994.
- 178.102. Presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994.
- 178.103. Reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994.
- 178.104. Disposition of assets and fair consideration provisions for transfers on or after July 30, 1994.
- 178.104a. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.
- 178.104b. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.
- 178.105. Presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994.
- 178.106. Reestablishment of MA eligibility after transfers made on or after July 30, 1994.

**RESOURCE ELIGIBILITY REQUIREMENTS FOR AN
INSTITUTIONALIZED SPOUSE WITH A COMMUNITY SPOUSE**

- 178.121. General
- 178.122. Determining the spousal share of resources if the institutionalized spouse is not applying for MA.

- 178.123. Determining the spousal share of resources at the same time the institutionalized spouse applies for MA.
- 178.124. Resource eligibility for the institutionalized spouse.
- 178.124a. Clarification of the “Income-First” rule—statement of policy.
- 178.125. Transfer of resources from the institutionalized spouse to the community spouse.
- 178.126. Resources received by the institutionalized spouse after MA eligibility is determined.

Cross References

This subchapter cited in 55 Pa. Code § 140.301 (relating to resource eligibility limitations).

ADDITIONAL RESOURCE REQUIREMENTS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

§ 178.51. Additional resource requirements.

(a) Nonresident real property which is not excluded, or which loses the status of an excluded property and which can be converted to cash, is considered available to the applicant/recipient. The applicant/recipient shall have a 6-month period in which to make a bona fide effort to sell the property. The 6-month period may be extended for an additional 3 months if the applicant/recipient can demonstrate good cause for not selling the property by the end of the 6-month period.

(b) If an applicant/recipient is a joint owner of liquid resources, such as but not limited to, a checking or savings account, each owner is considered to own a share proportional to his net contribution to the resource. The applicant/recipient shall verify net contributions. If there is no evidence of net contributions, each owner is presumed to own an equal share.

(c) If an applicant/recipient is living with a nonapplicant/nonrecipient spouse or other person and property is jointly owned with the nonapplicant/nonrecipient spouse or other person, the MA resource limit for the applicant/recipient is based on the number of persons who live together and jointly own the property.

Cross References

This section cited in 55 Pa. Code § 178.121 (relating to general).

RESOURCE EXCLUSIONS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

§ 178.61. Resources excluded by Federal statute.

(a) *Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act.* Money received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 4622—4638).

(b) *Indian tribe per capita judgment funds.* Judgment payments to members of certain Indian tribes referred to under the act of March 18, 1972 (25 U.S.C.A. §§ 1261—1264) and the act of October 18, 1976 (Pub.L. 94-540) (90 Stat. 2503).

(c) *Funds distributed or held in trust for Indian tribe members.* Funds distributed *per capita* to, or held in trust for, members of an Indian tribe under the act of October 19, 1973 (25 U.S.C.A. §§ 1401—1408).

(d) *Value of coupon allotment under the Food Stamp Act of 1964.* The value of the coupon allotment under section 7 of the Food Stamp Act of 1964 (7 U.S.C.A. § 2016(c)).

(e) *Value of assistance under the National School Lunch Act.* The value of assistance provided to children under the National School Lunch Act (42 U.S.C.A. §§ 1751—1769c).

(f) *Value of food assistance under the Child Nutrition Act of 1966.* The value of supplemental food assistance received under section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C.A. § 1780(b)).

(g) *Federal loans and grants to undergraduate students.* A grant or loan to undergraduate students made or insured under a program administered by the Commissioner of Education under section 507 of the Higher Education Amendments of 1968 (Pub.L. No. 90-575) (82 Stat. 1014).

(h) *Payments to volunteers under the Domestic Volunteer Services Act of 1973.* Payments to volunteers under section 404(g) of the Domestic Volunteer Services Act of 1973 (42 U.S.C.A. § 5044). These payments are for Vista, Service Learning Programs, and Special Volunteer Programs.

(i) *Payments under the Alaska Native Claims Settlement Act.* Tax exempt portions of payments received under section 21(a) of the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1620(a)).

(j) *Value of United States Department of Agriculture surplus food donation.* The value of United States Department of Agriculture donated foods-surplus commodities-distributed under section 32 of the act of August 24, 1935 (7 U.S.C.A. § 612c).

(k) *Housing assistance.* The value of assistance paid with respect to housing provided under the United States Housing Act of 1937 (42 U.S.C.A. §§ 1401—1437q), the National Housing Act (12 U.S.C.A. §§ 1701—1750g), section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C.A. § 1701s and 42 U.S.C.A. § 1451) or Title V of the Housing Act of 1949, as provided by section 2(h) of the Housing Authorization Act of 1976 (Pub.L. No. 94-375) (90 Stat. 1068).

(l) *Receipts distributed to certain Indian tribes.* Effective October 17, 1975 under section 6 of the act of October 17, 1975 (25 U.S.C.A. 459(e)), receipts distributed to members of certain Indian tribes referred to in section 5 of the act (25 U.S.C.A. § 459(d)).

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.62. Real property used as a principal place of residence.

Real property used as the principal place of residence by an applicant/recipient, the spouse, or dependent relatives and land and related outbuildings necessary to the operation of the home, regardless of their value, are excluded as long as the applicant/recipient, the spouse or relatives live in the property.

(1) Temporary absences from the home for such things as trips and hospitalizations do not affect the exclusion of the home if the applicant/recipient intends to return to the home. An absence from the home of at least 6 months may be an indication that the home is no longer the principal place of residence of the applicant/recipient.

(2) The home of an institutionalized applicant/recipient that had been used as his principal place of residence before he was institutionalized is excluded as a resource, if the institutionalized applicant/recipient states, in writing, that it is his intent to return to his home or if the home remains the principal place of residence of the institutionalized applicant's/recipient's spouse or dependent relative. If the person is incapable of providing the information, statements of intent to return are acceptable from a person with authority to act on behalf of the institutionalized applicant/recipient.

Cross References

This section cited in 55 Pa. Code § 178.63 (relating to real property not excluded as a home); 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.62a. Clarification of disqualification for payment of long-term care services due to substantial home equity—statement of policy.

(a) Consistent with section 1917(f) of the Social Security Act (42 U.S.C.A. § 1396p(f)), regarding liens, adjustments and recoveries, and transfers of assets, effective for an application made on or after March 3, 2007, an individual with equity value in the home in excess of \$500,000 is ineligible for payment of long-term care services unless one of the following circumstances exist:

(1) The home is the residence of the community spouse.

- (2) The home is the residence of a child who is under 21 years of age or a child who is blind or permanently and totally disabled as defined in section 1611(a)(3) of the Social Security Act (42 U.S.C.A. § 1382c(a)(3)), regarding definitions.
- (b) Consistent with section 1917(f) of the Social Security Act, an individual determined ineligible for payment of long-term care services due to excess home equity will continue to be reviewed for eligibility for Medicaid.
- (c) Consistent with section 1917(f)(4) of the Social Security Act, an individual determined ineligible for payment of long-term care services due to excess home equity and who is unable to access the excess home equity may have the ineligibility period waived in the case of a demonstrated hardship.
- (d) Consistent with section 1917(f)(1)(C) of the Social Security Act, the dollar amount specified in subsection (a) shall be increased, beginning January 1, 2011, from year to year based on the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average), rounded to the nearest \$1,000. Revisions to this amount, as required by Federal law and regulations, will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request.

Source

The provisions of this § 178.62a adopted March 2, 2007, effective March 3, 2007, 37 Pa.B. 1043; amended September 24, 2011, effective retroactive to January 1, 2011, 41 Pa.B. 5064. Immediately preceding text appears at serial pages (325969) to (325970).

§ 178.63. Real property not excluded as a home.

Real property not excluded as the principal place of residence under § 178.62 (relating to real property used as a principal place of residence) is considered a resource at its equity value, unless it is excluded as a property used in a trade or business essential to self-support under § 178.64 (relating to property used in a trade or business essential to self-support), or as a nonbusiness property essential to self-support under § 178.65 (relating to nonbusiness property essential to self-support).

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.64. Property used in a trade or business essential to self-support.

Property, whether real or personal, used in a trade or business or by the recipient as an employee, which is essential to self-support, regardless of value, is excluded.

Source

The provisions of this § 178.64 amended August 27, 1993, effective August 28, 1993, with the exception of the Agent Orange Settlement Payments requirement which is retroactive to January 1, 1989, 23 Pa.B. 4071. Immediately preceding text appears at serial page (171807) to (171808).

Cross References

This section cited in 55 Pa. Code § 178.63 (relating to real property not excluded as a home); 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.65. Nonbusiness property essential to self-support.

The following nonbusiness property so essential to the self-support of the applicant/recipient as to warrant its exclusion is excluded:

- (1) Property used exclusively to produce items for home consumption.
- (2) Tools, equipment, uniforms and similar items required by the applicant's/recipient's employer.

Cross References

This section cited in 55 Pa. Code § 178.63 (relating to real property not excluded as a home); 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.66. Household goods and personal effects.

Household goods and personal effects are excluded.

- (1) Household goods include furnishings and equipment which are commonly found in, or about, a house and are used in connection with the operation, maintenance and occupancy of the home. Personal effects include, but are not limited to, clothing, jewelry, items of personal care, recreational equipment, musical instruments and hobby items.
- (2) Also excluded are items required because of a person's physical condition, such as, but not limited to, prosthetic devices, dialysis machines, motorized wheel chairs, hospital beds and similar items regardless of the value.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.67. Motor vehicle.

Only one motor vehicle for an applicant/recipient or an applicant/recipient and his eligible or ineligible spouse is excluded. Other motor vehicles are counted at their equity value.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.69. Life insurance policies.

Life insurance owned by the applicant/recipient, up to a maximum face value of \$1,500 for each insured person is excluded. If the life insurance of an insured person has a total face value in excess of \$1,500, only the cash surrender value in excess of \$1,000 shall be considered a resource to the owner.

Cross References

This section cited in 55 Pa. Code § 178.70 (relating to term insurance policies); 55 Pa. Code § 178.73 (relating to revocable burial reserve); 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.70. Term insurance policies.

Term insurance or other life insurance which does not accumulate a cash value is excluded as a resource. The face value of these excluded insurance policies is not considered when the total face value is determined under § 178.69 (relating to life insurance policies).

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.71. Burial spaces.

Burial spaces, as defined in § 178.2 (relating to definitions), for the applicant/recipient and his immediate family are excluded. The immediate family consists of the spouse and the minor and adult children, including adopted and stepchildren of the applicant/recipient, the applicant's/recipient's brothers, sisters, parents and adoptive parents, and the spouses of these persons.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.72. Irrevocable burial reserve.

An irrevocable burial reserve is considered under § 178.5 (relating to treatment of irrevocable burial reserves for all categories of MA).

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.73. Revocable burial reserve.

Revocable burial reserves are considered as follows:

- (1) Up to \$1,500 in a revocable reserve for each applicant/recipient is excluded subject to the limitation in paragraph (2).
- (2) The maximum exclusion of \$1,500 is reduced by the total of one of the following:
 - (i) The face value of life insurance which accumulates cash value if the total face value does not exceed \$1,500.
 - (ii) The cash value of life insurance excluded under § 178.69 (relating to life insurance policies) if the face value exceeds \$1,500, and the value of the irrevocable burial reserve.
- (3) Interest earned on the burial reserve is also excluded if it is left to accumulate with the revocable burial reserve.
- (4) Funds, whether principal or interest, withdrawn and used for something other than the applicant's/recipient's burial expenses are counted as a resource.

Cross References

This section cited in 55 Pa. Code § 178.5 (relating to treatment of irrevocable burial reserves for all categories of MA); 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.74. Disaster relief assistance.

Disaster relief assistance and interest earned on the assistance which is received as a result of a major disaster under the Disaster Relief Act of 1974 (42 U.S.C.A. §§ 5121—5202), or other assistance provided under a Federal statute because of

a catastrophe which is declared to be a major disaster by the President of the United States, is excluded for a period beginning on the date the assistance is received and ending on the last day of the 9th full month following the month the cash was received.

(1) The initial 9-month period is extended for a reasonable period, up to an additional 9 months, when it is found that the applicant/recipient has good cause for not making the repairs, replacements or contracting for the repairs or replacement.

(2) An applicant/recipient is found to have good cause when circumstances beyond his control prevented the repair or replacement of a home or other kinds of property within the initial 9-month period.

(3) Cash and interest on the cash not used to repair or replace property destroyed in a disaster is considered a countable resource effective with the month following the expiration of the initial 9-month period or an approved extension of that initial period.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.75. Replacement assistance.

Assistance to replace an excluded resource that is lost, damaged or stolen is excluded.

(1) In-kind replacement received for the purpose of repairing or replacing an excluded resource is excluded.

(2) Cash and interest earned on the cash received for the purpose of repairing or replacing an excluded resource is excluded for the 9 calendar months after the date the assistance is received.

(i) Cash or interest on the cash not used to repair or replace the excluded resource is considered a countable resource effective with the month following the expiration of the 9-month period or approved extension of the initial 9-month period.

(ii) The initial 9-month time period is extended for a reasonable period up to an additional 9 months when it is found that the applicant/recipient had good cause for not replacing or repairing the resource or contracting for the repairs or replacement. An applicant/recipient is found to have good cause when circumstances beyond his control prevented the repair, replacement, contracting for the repair or replacement of the resource. Unused cash and interest on the cash is considered as a resource effective with the month following the month in which the good cause extension period ends.

(iii) If an extension is made under the good cause provisions and the applicant/recipient changes his intent to repair or replace the excluded resource, funds previously held for replacement or repair are considered as a resource effective with the month in which the applicant/recipient reports the change of intent.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.76. Retroactive payment under SSI and Title II of the Social Security Act.

Retroactive payments under SSI and Title II of the Social Security Act (42 U.S.C.A. §§ 401—433) are excluded for 6 months after the month in which the retroactive payment is received. Any amount which remains after the sixth month is considered a resource. This exclusion does not apply to items purchased with the money even if the 6 month period has not expired.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.77. Proceeds from the sale of an excluded resident home.

The proceeds from the sale of an excluded resident home which are used, or obligated, to purchase another excluded home and to pay the costs incidental to occupying the new residence are excluded. Incidental costs include, but are not limited to, moving expenses.

- (1) The proceeds are the net payments received by the seller after satisfaction of encumbrances and sales expenses.
- (2) This exclusion does not apply to that portion of the net proceeds of the sale of the original home that is in excess of the costs of the purchase, move to, and occupancy of the new home.
- (3) Interest earned on the proceeds is treated as income under Chapter 181 (relating to income provisions for NMP-MA and MNO-MA).
- (4) Mortgage payments made on the new home for any period after occupancy are not considered a purchase and occupancy cost for purposes of this exclusion.

(5) The purchase of the new excluded home shall be made within 3 months. The 3 month replacement period begins on one of the following schedules:

- (i) On the date MA eligibility begins for the person who received the proceeds before applying for MA.
- (ii) On the date of receipt of the proceeds for the person who receives the proceeds while an MA recipient.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.78. Uniform Gifts to Minors Act.

A gift made to a person under 21 years of age under 20 Pa.C.S. §§ 5301—5310 (relating to Pennsylvania Uniform Gifts to Minors Act) is excluded as a resource until the person attains 21 years of age.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.79. Certain support and maintenance assistance.

In-kind support or maintenance benefits furnished in-kind by a private, non-profit 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. Support and maintenance assistance includes home energy assistance (HEA). HEA benefits may include, but are not limited to, payments for heating or cooling, storm doors, weatherization services and blankets. HEA benefits do not include food or clothing.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.80. Low income home energy assistance program.

Benefits received from the low income home energy assistance program (LIHEAP) are excluded.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.81. German reparations payments.

Payments made under the republic of Germany's federal law for compensation of National Socialist persecution—German Restitution Act—to certain survivors of the Holocaust are excluded. The payments may be made periodically or in a lump sum.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.121 (relating to general); 55 Pa. Code § 178.122 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA); and 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA).

§ 178.82. Japanese-American and Aleutian restitution payments.

Restitution payments made by the United States government to eligible Japanese-Americans and Aleuts who were interned or relocated during World War II are excluded. If the eligible Japanese-Americans are deceased at the time of payments, payments will be made to certain of their survivors as specified under the Civil Liberties Act of 1988 (50 App. 1989b and 1989b-1—1989b-9). This payment is also excluded. This section does not apply to eligible Aleuts who are covered under the Aleutian and Pribilof Islands Restitution Act (50 App. 1989c and 1989c-1—1989c-8). The exclusion as a resource only continues as long as the retained funds are kept identifiable. If real or personal property is purchased, the new resource is not excluded unless otherwise exempt. Interest received on retained restitution payments is also not excluded but is subject to the usual regulations governing interest in Chapter 181 (relating to income provisions for categorically needy NMP-MA and MNO-MA).

Source

The provisions of this § 178.82 adopted March 22, 1991, effective upon publication in the *Pennsylvania Bulletin*, and applies retroactively to August 10, 1988, 21 Pa.B. 1182.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources).

§ 178.83. Agent orange settlement payments.

Payments made from the Agent Orange Settlement Fund or another fund established pursuant to the settlement in the agent orange product liability litigation are excluded.

Source

The provisions of this § 178.83 adopted August 27, 1993, effective August 28, 1993, with the exception of the Agent Orange Settlement Payments requirement which is retroactive to January 1, 1989, 23 Pa.B. 4071.

Cross References

This section cited in 55 Pa. Code § 178.91 (relating to deeming of resources).

§ 178.84. Resources of children under 21 years of age and families with children under 21 years of age.

The resources of the SSI-related child under 21 years of age and SSI-related applicant/recipient immediate families with children under 21 years of age are excluded. If the child who is under 21 years of age is living with a caretaker who is not immediate family as defined in § 178.2 (relating to definitions) and who exercises care and control of the child, the resources of the caretaker are excluded.

Authority

The provisions of this § 178.84 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.84 adopted June 15, 2001, effective June 16, 2001, 31 Pa.B. 3196.

**DEEMING OF RESOURCES FOR THE AGED, BLIND AND
DISABLED CATEGORIES OF MA****§ 178.91. Deeming of resources.**

(a) The deeming of resources is the assumption that the resources of an eligible person include the resources of the nonapplicant or ineligible spouse, including common-law, living with the eligible person regardless of whether the resources are made available to him.

(b) The deeming of resources is applicable only in situations where an eligible person is living in the same household with his nonapplicant or ineligible spouse, including common-law.

(c) The deeming of resources ends on the first day of the month following the month in which the persons are no longer living together.

(d) The persons are living together if the eligible person or the spouse is temporarily absent for economic reasons, emergency reasons, vacations or visits, and returns in the same month or the following month.

(e) The deeming of resources does not apply to pension funds owned by an ineligible spouse. Pension funds are defined as monies held in a retirement fund under a plan administered by an employer or union, or an individual retirement account—IRA—or Keogh Account as described by the Internal Revenue Code (26 U.S.C.A. §§ 1—7872).

(f) Deeming of resources does not apply when one or both of the persons are living in an institution even when sharing a room. They are not considered to be living in a household.

(g) In deeming from one spouse to the other, the resources of those two persons are considered as if they were applying together and their total resources are subject to the two person MA resource limit in Appendix A for the appropriate MA Program.

(h) The resources of an applicant/recipient living with his nonapplicant or ineligible spouse—including common-law—are considered to include resources of the nonapplicant or ineligible spouse not excluded under the following provisions:

- (1) Section 178.61 (relating to resources excluded by Federal statute).
- (2) Section 178.62 (relating to real property used as a principal place of residence).
- (3) Section 178.63 (relating to real property not excluded as a home).
- (4) Section 178.64 (relating to property used in a trade or business essential to self-support).
- (5) Section 178.65 (relating to nonbusiness property essential to self-support).
- (6) Section 178.66 (relating to household goods and personal effects).
- (7) Section 178.67 (relating to motor vehicle).
- (8) Section 178.69 (relating to life insurance policies).
- (9) Section 178.70 (relating to term insurance policies).
- (10) Section 178.71 (relating to burial spaces).
- (11) Section 178.72 (relating to irrevocable burial reserve).
- (12) Section 178.73 (relating to revocable burial reserve).
- (13) Section 178.74 (relating to disaster relief assistance).
- (14) Section 178.75 (relating to replacement assistance).
- (15) Section 178.76 (relating to retroactive payment under SSI and Title II of the Social Security Act).
- (16) Section 178.77 (relating to proceeds from the sale of an excluded resident home).
- (17) Section 178.78 (relating to Uniform Gifts to Minors Act).
- (18) Section 178.79 (relating to certain support and maintenance assistance).

- (19) Section 178.80 (relating to low income home energy assistance program).
- (20) Section 178.81 (relating to German reparations payments).
- (21) Section 178.82 (relating to Japanese-American and Aleutian restitution payments).
- (22) Section 178.83 (relating to agent orange settlement payments).
 - (i) The eligible applicant/recipient and his nonapplicant or ineligible spouse are considered a couple and their resources are subject to the two person MA resource limit in Appendix A for the appropriate MA Program.
 - (j) The resources are considered whether or not they are made available to the applicant/recipient.

Source

The provisions of this § 178.91 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3979; amended March 22, 1991, effective upon publication in the *Pennsylvania Bulletin*, and applies retroactively to August 10, 1988, 21 Pa.B. 1182; amended August 27, 1993, effective August 28,

1993, with the exception of the Agent Orange Settlement Payments requirement which is retroactive to January 1, 1989, 23 Pa.B. 4071. Immediately preceding text appears at serial pages (171815) to (171816).

Cross References

This section cited in 55 Pa. Code § 178.121 (relating to general); and 55 Pa. Code § 178.124 (relating resource eligibility for the institutionalized spouse).

DISPOSITION OF PROPERTY AND FAIR CONSIDERATION PROVISIONS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

§ 178.101. Disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994.

(a) If property was disposed of during the period of January 4, 1991, through July 29, 1994, §§ 178.102 and 178.103 (relating to presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994; and reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994) and this section apply to an applicant/recipient who is applying for or receiving NFC as defined in § 178.2 (relating to definitions), including services in an ICF/MR facility, if the property was transferred for less than FMV.

(b) An institutionalized applicant/recipient who transferred property for less than FMV is ineligible only for NFC for a period not to exceed 30 months from the date of the transfer. The person continues to be eligible for other MA services.

(c) A transfer of property by the community spouse to a person other than the institutionalized spouse is treated, and affects the eligibility of the institutionalized spouse, the same as transfers by the institutionalized spouse.

(d) The CAO shall evaluate a transfer completed during or after the 30-month period immediately before the date:

(1) The person is institutionalized, if the person was MA eligible on that date.

(2) The person applies for MA while institutionalized.

(e) The transfer of excluded personal property is not subject to the fair consideration provisions. The applicant/recipient shall promptly report the transfer and the compensation received shall be verified and treated as a resource subject to other resource requirements in this chapter.

(f) The transfer of the resident property is subject to the fair consideration provisions. The institutionalized person does not lose eligibility for payment of nursing facility services or ICF/MR services because of the transfer of the resident property if the resident property was transferred to:

(1) The spouse.

- (2) A child who is under 21 years of age or a child who is blind or permanently and totally disabled regardless of age.
- (3) A sibling who has equity interest in the resident property and who resided in the resident property for at least 1 year immediately before the person was admitted to the nursing facility or ICF/MR.
- (4) A son or daughter, other than those described in paragraph (2), who resided in the resident property for at least 2 years immediately before the parent's admission to a nursing facility and who provided care during the 2-year period which permitted the parent to stay in the resident property rather than be admitted to the nursing facility or ICF/MR.
- (i) Sufficient evidence shall be presented by the child and the parent, or the parent's representative, for the Department to determine if the conditions are met.
- (ii) Otherwise, a written statement from the parent's physician, a visiting nurse or other health professional familiar with the case is needed to determine if the conditions are met.
- (g) An institutionalized person does not lose eligibility for payment of nursing facility or ICF/MR services because of a transfer of resources for less than fair consideration if one of the following applies:
- (1) The transfer was to, or for the benefit of, the community spouse, or to a child who is blind or permanently and totally disabled regardless of age, or to another person for the sole benefit of the person's spouse if the spouse does not transfer the resource to another person other than the institutionalized spouse for less than fair consideration.
- (2) The person, a family member or someone else acting on behalf of the person can show that:
- (i) The transfer was with the intention of receiving FMV or other valuable consideration.
- (ii) The transfer was exclusively for a purpose other than to qualify for MA.
- (3) The Department determines that the denial would cause undue hardship.
- (h) The period of ineligibility for MA nursing facility services begins with the month of transfer and is the lesser of:
- (1) Thirty months.
- (2) The number of months, rounded to the next lowest whole month, arrived at by dividing the UV by the average monthly cost of private NFC in this Commonwealth. The average monthly private rate for nursing facility services is available upon request at the CAOs.
- (i) During the period of ineligibility for MA nursing facility services, the nursing facility may charge the private pay rate.

Authority

The provisions of this § 178.101 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.101 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3979; amended August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432; amended December 23, 1994, effective December 24, 1994, and apply retroactively to January 4, 1991, 24 Pa.B. 6423. Immediately preceding text appears at serial pages (171817) to (171818).

Cross References

This section cited in 55 Pa. Code § 178.5 (relating to treatment of irrevocable burial reserves for all categories of MA); 55 Pa. Code § 178.103 (relating to reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994); 55 Pa. Code § 178.121 (relating to general); and 55 Pa. Code § 178.125 (relating to transfer of resources from the institutionalized spouse to the community spouse).

§ 178.102. Presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994.

(a) If the presumption of disposition to qualify for MA is made by the Department, the applicant/recipient is notified of the finding, in writing, and is advised of his right to rebut this presumption within 15 days from the date the written notice is mailed.

(b) If the applicant/recipient does not respond to the written notification within 15 days from the date the written notice is mailed, the application/reapplication for MA is completed using the UV as a resource over the 30-month period from the date of the property transfer, and the total resources are determined on that basis.

(c) If the applicant/recipient responds to the written notification within the 15 days from the date the written notice was mailed that he wishes to rebut the presumption, the CAO shall explain to the applicant/recipient that it is his responsibility to present within 10 calendar days the required verification and convincing evidence that the resource was transferred solely for some purpose other than to qualify for MA. Convincing evidence includes documentary and nondocumentary evidence which provides proof of the circumstances surrounding the transfer, including the following:

- (1) The purpose for transferring the resource.
- (2) The attempts to dispose of the resources at its FMV.
- (3) The reasons for accepting less than FMV for the resource.
- (4) The means of, or plans for, self-support after the transfer.
- (5) The applicant's/recipient's relationship to the person to whom the resource was transferred.

(d) If the evidence is received within the 10 calendar day period established in subsection (c), a decision on the success of the rebuttal of the applicant/recipient is made. If the establishment of MA eligibility is viewed as part of the reason for the transfer, even if another purpose has been established, the property was not transferred solely for some purpose other than to qualify for MA and the rebuttal is not successful. The presumption is rebutted only if the applicant/recipient proves that the transfer was solely for some purpose other than to qualify for MA such as:

(1) If, after the transfer of the property, the applicant/recipient became disabled or had an unexpected loss of other resources, or an unexpected loss of income, the presumption is rebutted. The disability or unexpected loss of income or resources, shall be verified.

(2) If the resources of the applicant/recipient would have been below the MA resource limit in Appendix A for the appropriate MA Program, during each of the preceding 30 months had the resource been retained, the presumption is rebutted. The applicant/recipient shall provide verification of the resource value during the period in question.

(3) If the transfer was the result of a court order or written settlement of a legal action, the presumption is rebutted. A copy of the court order or the written settlement is required.

(e) The determination of whether the presumption is rebutted is made by the Executive Director of the CAO or a delegate. The applicant/recipient is given written notice of the determination and of the right to appeal.

(f) If the presumption is rebutted, the transfer has no effect on the MA eligibility determination.

(g) If the presumption is not rebutted, it is presumed that the property transfer was for the purpose of qualifying for MA and the following apply:

(1) The UV is considered a resource for 30 months from the date of the property transfer.

(2) The UV is added to other resources that are considered. If the total exceeds the MA resource limit in Appendix A for the appropriate MA Program, the applicant/recipient is not eligible for MA.

(3) If the transferred resource is returned to the applicant/recipient, the UV is not considered a resource as of the date the transferred resource was returned. If the transferred resource is cash or a liquid resource, the UV is reduced by the value of the resource that was returned.

(4) A returned resource is evaluated as a resource.

(5) Additional compensation received in the form of cash after the transfer of the property further reduces the UV by the amount of cash received as of the date the cash was received.

Authority

The provisions of this § 178.102 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.102 amended December 23, 1994, effective December 24, 1994, and apply retroactively to January 4, 1991, 24 Pa.B. 6423. Immediately preceding text appears at serial pages (171818) to (171820).

Cross References

This section cited in 55 Pa. Code § 178.101 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994); 55 Pa. Code § 178.103 (relating to reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994); and 55 Pa. Code § 178.121 (relating to general).

§ 178.103. Reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994.

An applicant/recipient who is not eligible for MA under §§ 178.101 and 178.102 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1994, through July 29, 1994; and presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994) remains ineligible until one of the following occurs and the changes are reviewed based on the resource requirements in this chapter:

- (1) The presumption of intent to qualify for MA is successfully rebutted at a prehearing conference, at a hearing or through a court order.
- (2) The property is reconveyed to the applicant/recipient.
- (3) The UV of the property is subsequently given to the applicant/recipient.
- (4) Thirty months or a shorter period as established under § 178.101(h) has elapsed between the time of the transfer and the reapplication for MA. The period of ineligibility may be less than 30 months if:
 - (i) The applicant/recipient transferred a home for less than FMV during or after the 30-month period immediately before applying for MA.
 - (ii) The UV of the house was less than the average amount payable under the MA Program for 30 months of NFC. The period during which the UV shall be considered is the number of months arrived at by dividing the UV by the average monthly payment rate for NFC.

Authority

The provisions of this § 178.103 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.103 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3979; amended August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432; amended December 23, 1994, effective December 24, 1994, and apply retroactively to January 4, 1991, 24 Pa.B. 6423. Immediately preceding text appears at serial page (171820).

Cross References

This section cited in 55 Pa. Code § 178.101 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994); and 55 Pa. Code § 178.121 (relating to general).

§ 178.104. Disposition of assets and fair consideration provisions for transfers on or after July 30, 1994.

(a) If assets are disposed of on or after July 30, 1994, §§ 178.105 and 178.106 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994; and reestablishment of MA eligibility after transfers made on or after July 30, 1994) and this section apply to an institutionalized individual who is applying for or receiving MA for NFC as defined in § 178.2 (relating to definitions), including services in an ICF/MR, or a level of care in an institution equivalent to NFC, or home or community-based services furnished under a Title XIX waiver and the individual or the individual's spouse transfers assets for less than FMV.

(b) An institutionalized individual who disposes of assets for less than FMV on or after the look back date in subsection (c) is ineligible for MA for NFC which includes the services set forth in subsection (a). A transfer of assets by the community spouse to a person other than the institutionalized spouse is treated and affects the eligibility of the institutionalized spouse the same as a transfer by the institutionalized spouse.

(c) The look-back date shall be 36 months from the date on which the individual is both institutionalized and has applied for MA, except in the case of payments from a trust, or portions of a trust, as described in § 178.7(e)(1)(iii) and (2)(ii) (relating to treatment of trust amounts for all categories of MA for trusts established on or after July 30, 1994) which are considered assets disposed of for less than FMV by the individual. In this instance, the look-back date shall be 60 months.

(d) The number of months of ineligibility for the institutionalized individual who disposes of assets for less than FMV shall be equal to the total cumulative UV of all assets transferred by the individual or the individual's spouse on or after the look-back date divided by the average monthly cost to a private patient of NFC in effect in the Commonwealth at the time of application.

(e) An individual will not be ineligible for payment for NFC if:

(1) The assets were the resident property and title to the home was transferred to:

(i) The spouse of the individual.

(ii) The individual's child who is under 21 years of age, or blind or permanently and totally disabled as determined under § 140.81 (relating to deductions from earned income), or is blind or disabled based on SSI criteria as specified in 42 U.S.C.A. § 1382c(a)(3).

(iii) A sibling of the individual who has an equity interest in the home and who resided in the individual's home for at least 1 year immediately before the date the individual became an institutionalized individual.

(iv) A son or daughter of the individual, other than a child described in subparagraph (ii), who resided in the individual's home for at least 2 years immediately before the date the individual became an institutionalized individual and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

(2) The assets were transferred to one of the following:

(i) The individual's spouse or to another for the sole benefit of the individual's spouse.

(ii) To another for the sole benefit of the individual's spouse, from the individual's spouse.

(iii) The individual's child described in paragraph (1)(ii), or to a trust, including one described in § 178.7(f), established solely for the benefit of the individual's child.

(iv) A trust, including a trust described in § 178.7(f), established solely for the benefit of an individual under 65 years of age who is disabled based on SSI criteria as specified in 42 U.S.C.A. § 1382c(a)(3).

(3) The individual, the individual's spouse or someone else acting on behalf of the individual can show that one of the following applies:

(i) The individual intended to dispose of the assets either at FMV or for other valuable consideration.

(ii) The assets were transferred exclusively for a purpose other than to qualify for MA.

(iii) The assets transferred for less than FMV were returned to the individual.

(4) The Commonwealth determines that denial of eligibility would cause undue hardship as defined in § 178.2.

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

(g) If a transfer by the individual's spouse results in a period of ineligibility for MA, the Commonwealth will apportion the period of ineligibility or any portion of the period between the individual and the individual's spouse if the spouse otherwise becomes eligible for MA for NFC.

(h) During the period of ineligibility for MA payment for NFC, the nursing facility or other provider may charge the private pay rate.

Authority

The provisions of this § 178.104 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.104 adopted December 23, 1994, effective December 24, 1994, and apply retroactively to July 30, 1994, 24 Pa.B. 6423.

Notes of Decisions*Burden of Proof*

This regulation squarely places the burden on the applicant to establish that he or she “intended” to dispose of the assets for fair market value or for other valuable consideration, or that the assets were transferred “exclusively” for a purpose other than to qualify for Medical Assistance. *Ptashkin v. Department of Public Welfare*, 731 A.2d 238 (Pa. Cmwlth. 1999).

Disposition of Assets

The Department did not misapply the exception regarding disposition of assets; since at the time of the transfer the applicant and his spouse suffered ailments that could eventually render them in need of nursing home care, and when the only explanation for the transfer of real property to children for \$1.00 was to keep the property in the family, the Department determined that the petitioner had failed to satisfy his burden to show that the transfer was made for a purpose other than to qualify for Medical Assistance. *Godown v. Department of Public Welfare*, 813 A.2d 954 (Pa. Cmwlth. 2002).

Where a couple converts otherwise countable assets into an irrevocable, actuarially sound commercial annuity for the sole benefit of the community spouse, the annuity is not a countable resource in calculating the CSRA. The transfer may not be used to impose a period of ineligibility. *Mertz v. Houston*, 155 F. Supp. 2d 415 (E.D. Pa. 2001).

Husband’s use of funds transferred from his wife, who is a nursing home resident, to purchase an annuity from an irrevocable trust established by the couple’s adult daughters was not a permissible spending down of the couple’s money, where the purchase of the annuity was for less than fair consideration, was made with the intent to qualify the wife for Medical Assistance, and was contrary to the provisions and intent of the Medicare Catastrophic Coverage Act. *Bird v. Department of Public Welfare*, 731 A.2d 660 (Pa. Cmwlth. 1999).

Fair Consideration

The applicant failed to carry her burden of proving her eligibility for Medical Assistance by showing that the disputed funds were transferred for fair market value or exclusively for a purpose other than to qualify for Medical Assistance, where the applicant presented absolutely no evidence other than the promissory notes themselves, and where the Department of Public Welfare presented evidence that it had discovered that the applicant had sold her home and received net proceeds of \$28,815, but that she, instead of applying these funds for her nursing home care, transferred them to her adult children in exchange for two promissory notes, and that she is only receiving \$48 per month for 9 years until she receives the principal, plus accrued interest, in a lump sum due past her life expectancy. *Ptashkin v. Department of Public Welfare*, 731 A.2d 238 (Pa. Cmwlth. 1999).

Husband’s use of money transferred from his wife, who is a nursing home resident, to purchase an annuity for \$143,000 that would, over a period of 6 years, should he live that long, reap a return of \$144,000, or \$600 in interest, but if he died before reaching the end of his purported life expectancy, his estate forfeits any further return on his investment, was not for fair consideration. *Bird v. Department of Public Welfare*, 731 A.2d 660 (Pa. Cmwlth. 1999).

Multiple Transfers

Where a Medicaid applicant made three consecutive transfers of \$9,000 each, the Department of Public Welfare correctly calculated the period of ineligibility by considering the total of the cumulative uncompensated value of the transferred assets instead of viewing each transfer separately. *Hefelfinger v. Department of Public Welfare*, 789 A.2d 349 (Pa. Cmwlth. 2001).

Cross References

This section cited in 55 Pa. Code § 178.5 (relating to treatment of irrevocable burial reserves for all categories of MA); 55 Pa. Code § 178.7 (relating to treatment of trust amounts for all categories of MA for trusts established on or after July 30, 1994); 55 Pa. Code § 178.105 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994); 55 Pa. Code § 178.106 (relating to reestablishment of MA eligibility after transfers made on or after July 30, 1994); and 55 Pa. Code § 178.175 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994).

§ 178.104a. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.

(a) Consistent with section 1917(c)(1)(B)(i) of the Social Security Act (42 U.S.C.A. § 1396p(c)(1)(B)(i)), regarding liens, adjustments and recoveries, and transfers of assets, effective for an application made on or after March 3, 2007, the look-back period for assets transferred on or after February 8, 2006, shall be 60 months.

(b) Consistent with section 1917(c)(1)(D) of the Social Security Act, effective for an application made on or after March 3, 2007, in the case of a transfer of assets for less than Fair Market Value (FMV) made on or after February 8, 2006, by an applicant or spouse of an applicant, the penalty period shall commence on the date the applicant would otherwise be eligible for Medicaid based on an approved application for these services.

(c) Consistent with section 1917(c)(1)(D) of the Social Security Act, effective with transfers of assets for less than FMV made on or after March 3, 2007, by a recipient, the beginning date of a period of ineligibility for payment of long-term care services shall commence on the first day of the month following the date specified in the Appeal and Fair Hearing section of the Advance Notice provided to the recipient.

(d) Consistent with section 1917(c)(1)(E)(iv) and (H) of the Social Security Act, effective for an application made on or after March 3, 2007, a period of ineligibility for payment of long-term care services will result when an applicant or spouse of an applicant disposes of assets for less than FMV on or after February 8, 2006. The period of ineligibility shall be determined by dividing the total cumulative uncompensated value of all assets disposed of by the applicant or the applicant's spouse on or after the look-back date, by the average daily private pay rate in effect at the time the application is processed.

(e) Consistent with section 1917(c)(1)(E)(iv) and (H) of the Social Security Act, effective March 3, 2007, a period of ineligibility for payment of long-term care services will result when a recipient disposes of assets for less than FMV on or after March 3, 2007. The period of ineligibility shall be determined by dividing the total cumulative uncompensated value of all assets disposed of by the recipient on or after the look back date, by the average daily private pay rate in effect at the time the period of ineligibility is determined.

(f) Consistent with section 1917(c)(1)(I) of the Social Security Act, effective for an application made on or after March 3, 2007, the outstanding balance due on a promissory note, loan or mortgage purchased on or after February 8, 2006, that does not meet all of the following requirements will be treated as a transfer of assets for less than FMV:

- (1) The repayment terms must be actuarially sound.
- (2) The terms must provide for payments in equal amounts throughout the term, with no deferral of payments and no balloon payments.
- (3) The terms must prohibit cancellation of the balance upon death of the lender.

(g) Consistent with section 1917(c)(1)(J) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of a life estate interest in another individual's home made on or after February 8, 2006, shall be considered a transfer of assets for less than FMV unless the purchaser resided in the home for at least 1 year after the purchase date.

(h) Consistent with section 1917(c)(1)(F) and (G) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of an annuity by an applicant or applicant's spouse on or after February 8, 2006, that does not meet all of the following requirements, will be treated as a transfer of assets for less than FMV:

- (1) The annuity must be irrevocable and nonassignable.
- (2) The annuity must be actuarially sound.
- (3) The annuity must provide for payments in equal amounts, with no deferral and no balloon payments made.
- (4) The annuity must name the Department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid by the Department on behalf of the recipient. The annuity must name the Department as beneficiary in the second position when there is a community spouse (CS), minor child, or blind or permanently and totally disabled child for at least the total amount of Medical Assistance paid by the Department on behalf of the recipient and must name the Department in the first position if the CS or a representative of a minor child, or a representative of a permanently and totally disabled child disposes of any remainder for less than FMV.

(i) Consistent with section 1917(c)(1)(F) and (G) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of a nonqualified annuity on or after February 8, 2006, by the spouse of an applicant, that does not name the Department as beneficiary in the first position will be treated as a transfer of assets for less than FMV.

(j) The provisions in this statement of policy do not prevent the Department from treating an annuity owned by an applicant or recipient or the spouse of an applicant or recipient that satisfies the requirements in subsection (h) or the requirement in subsection (i), as either income or a resource in the eligibility determination for long-term care services under the Medicaid Program.

(k) The provisions in this statement of policy do not prevent the Department from treating an outstanding balance due on a promissory note, loan or mortgage satisfying the requirements in subsection (f), as either income or a resource in the eligibility determination for long-term care services under the Medicaid Program.

Source

The provisions of this § 178.104a adopted March 2, 2007, effective March 3, 2007, 37 Pa.B. 1043.

§ 178.104b. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.

(a) For the purposes of this statement of policy, an undue hardship exists when application of the transfer of assets penalty provision would deprive the individual of one of the following:

(1) Medical care so that the individual's health or life would be endangered.

(2) Food, clothing, shelter or other necessities of life.

(b) Consistent with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C.A. § 1396p(c)(2)(D)), regarding liens, adjustments and recoveries, and transfers of assets, effective with applications made on or after March 3, 2007, the Department will provide undue hardship waiver guidelines to an individual who is determined ineligible for payment of long-term care services due to a transfer of assets for less than fair market value made on or after February 8, 2006. The undue hardship waiver guidelines provide for the following:

(1) A notice to the individual that an undue hardship waiver exception exists.

(2) A timely process for determining whether an undue hardship waiver will be granted.

(3) A process under which an adverse determination can be appealed.

(c) Consistent with section 1917(c)(2)(D) of the Social Security Act, the undue hardship waiver request guidelines will permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.

(d) Until the Secretary of Health and Human Services establishes the demonstrated hardship process, the Department will apply the undue hardship process for an individual whose equity interest in the individual's home exceeds \$500,000. Consistent with section 1917(f)(1)(C) of the Social Security Act, this dollar amount shall be increased beginning January 1, 2011, from year to year based on the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average), rounded to the nearest \$1,000. Revisions to this amount, as required by Federal law and regulations, will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request.

Source

The provisions of this § 178.104b adopted March 2, 2007, effective March 3, 2007, 37 Pa.B. 1046; amended September 23, 2011, effective retroactive to January 1, 2011, 41 Pa.B. 5064. Immediately preceding text appears at serial page (325975).

§ 178.105. Presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994.

(a) If a presumption of disposition of assets to qualify for MA is made by the Department, the individual will be notified in writing by the CAO of the finding and of the right to rebut this presumption within 15 days from the date the notice is mailed.

(b) If the individual does not respond to the notice within 15 days from the date it is mailed, the CAO will complete the application/reapplication for MA using the UV as an asset available to the individual over the applicable look-back period from the date of the transfer of the asset and the total assets will be determined on that basis.

(c) If the individual responds to the written notice within 15 days from the date it was mailed that he wishes to rebut the presumption, the CAO shall explain to the individual that it is his responsibility to present within 10 calendar days the required verification and convincing evidence that the assets were transferred solely for some purpose other than to qualify for MA. Convincing evidence includes documentary and nondocumentary evidence which provides proof of the circumstances surrounding the transfer, including the following:

- (1) The purpose for transferring the asset.
- (2) The attempts to dispose of the asset at its FMV.
- (3) The reasons for accepting less than FMV of the asset.
- (4) The means of, or plans for, self-support after the transfer.
- (5) The individual's relationship to the person to whom the asset was transferred.

(d) If the evidence is received within the 10 calendar day period established in subsection (c), a decision on the success of the rebuttal of the individual will be made. If the establishment of MA eligibility is determined to be part of the reason for the transfer, even if another purpose has also been established, the asset was not transferred solely for some purpose other than to qualify for MA and the rebuttal is not successful. The presumption is rebutted only if the individual proves that the transfer was solely for some purpose other than to qualify for MA such as:

- (1) If after the transfer of the asset, the individual either becomes disabled or has an unexpected loss of assets and this results in the need to apply for MA the presumption is rebutted. The unanticipated disability or unexpected loss of assets shall be verified.
- (2) If the assets of the individual would still have been below the income and resource limits for the appropriate MA Program during each of the months in the period of ineligibility which would otherwise apply under § 178.104(d) (relating to disposition of assets and fair consideration provisions for transfers

on or after July 30, 1994), had the asset been retained, the presumption is rebutted. The individual shall provide verification of the asset value during the period in question.

(3) If the transfer was the result of a court order or written settlement of a legal action, the presumption is rebutted. A copy of the court order or written settlement is required.

(e) The determination of whether the presumption is rebutted is made by the executive director of the CAO or a delegate. The individual is given written notice of the determination and of the right to appeal.

(f) If the presumption is rebutted, the transfer has no effect on the MA eligibility determination.

(g) If the presumption is not rebutted, it is presumed that the asset transferred was for the purpose of qualifying for MA and the following apply:

(1) The UV is considered an asset for 36 or 60 months, as applicable, from the date on which the individual is both an institutionalized individual and has applied for MA.

(2) The UV is added to other assets that are considered. If the total exceeds the MA income or resource limits in Appendix A or Chapter 181 Appendix B, for the appropriate MA Program, the individual is not eligible for MA.

(3) If the transferred asset is returned to the individual, the UV is not considered an asset as of the date the transferred asset was returned. If the transferred asset is cash or liquid assets, the UV is reduced by the value of the asset that was returned.

(4) A returned asset is evaluated as an asset.

(5) Additional compensation received in the form of cash after the transfer of the asset further reduces the UV by the amount of cash received as of the date the cash was received.

Authority

The provisions of this § 178.105 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.105 adopted December 23, 1994, effective December 24, 1994, and apply retroactively to July 30, 1994, 24 Pa.B. 6423.

Notes of Decision

Disposition of Assets

Medical Assistance applicant petitioned for review of decision of administrative law judge (ALJ) who refused to consider her attempt to rebut presumption that she transferred resources for the purpose of qualifying for Medical Assistance. The ALJ found that she received an overpayment of Medical Assistance benefits when she transferred resources to daughters of late husband without fair consideration during lookback period; while Department of Public Welfare presumes transfers are made to qualify for assistance, based on Department's regulations, ALJ is required to give applicant an opportunity to rebut that presumption. *Gilroy v. Department of Public Welfare*, 946 A.2d 194, 196-197 (Pa. Cmwlth. 2008)

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Where a couple converts otherwise countable assets into an irrevocable, actuarially sound commercial annuity for the sole benefit of the community spouse, the annuity is not a countable resource in calculating the CSRA. The transfer may not be used to impose a period of ineligibility. *Mertz v. Houston*, 155 F. Supp. 2d 415 (E.D. Pa. 2001).

Cross References

This section cited in 55 Pa. Code § 178.104 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994); and 55 Pa. Code § 178.106 (relating to reestablishment of MA eligibility after transfers made on or after July 30, 1994).

§ 178.106. Reestablishment of MA eligibility after transfers made on or after July 30, 1994.

An individual who is not eligible for MA under §§ 178.104 and 178.105 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994; and presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994) remains ineligible until one of the following occurs:

- (1) The presumption of intent to qualify for MA is successfully rebutted at a prehearing conference, at a hearing or through a court order.
- (2) The property is reconveyed to the individual.
- (3) The UV of the property is subsequently given to the individual.
- (4) The period of ineligibility has elapsed between the time of the transfer and the reapplication for MA. The period of ineligibility is as determined in § 178.104(d) unless the transfer meets the conditions of § 178.104(e).

Authority

The provisions of this § 178.106 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.106 adopted December 23, 1994, effective December 24, 1994, and apply retroactively to July 30, 1994, 24 Pa.B. 6423.

Cross References

This section cited in 55 Pa. Code § 178.104 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994).

**RESOURCE ELIGIBILITY REQUIREMENTS FOR AN
INSTITUTIONALIZED SPOUSE WITH A COMMUNITY SPOUSE**

§ 178.121. General.

(a) This section and §§ 178.122—178.126 apply when an institutionalized spouse has a community spouse.

(b) Except as modified by this section and §§ 178.122—178.126, the requirements in Subchapter A (relating to general provisions for MA resources common to all categories of MA) and §§ 178.51, 178.61—178.81, 178.91 and 178.101—178.103 apply to married couples with one member in an institution.

(c) These requirements apply to persons institutionalized for a continuous period of institutionalization beginning on or after September 30, 1989. The requirements do not apply if the continuous period of institutionalization began on or before September 29, 1989, and the person is still institutionalized on and after September 30, 1989.

(d) A continuous period of institutionalization is a period of NFC including services in an ICF/MR facility that is uninterrupted and likely to last at least 30 days. Continuity is broken by absences from the institution of 30 or more consecutive days.

(e) If the person is discharged for at least 30 consecutive days and is readmitted to an institution, the requirements in subsection (a) apply beginning with the date of the new admission.

(f) The requirements for an institutionalized spouse as defined in § 178.2 (relating to definitions) with a community spouse as defined in § 178.2 no longer apply beginning the first full calendar month following changes in circumstances which end the community spouse/institutionalized spouse relationship.

(g) A spousal share of resources is determined by the Department upon a request from either member of the couple or a person acting on behalf of either spouse. The spousal share is one half of the total countable verified resources owned by the couple when one of them is admitted to an institution for NFC including services in an ICF/MR facility and is set within minimum and maximum limits as specified by section 303(a) of the MCCA (42 U.S.C.A. § 1396r-5). This determination is called a resource assessment.

(h) Resources of the community spouse are not deemed available to the institutionalized spouse beginning the month following the month of the initial eligibility determination as specified in § 178.91(c) (relating to deeming of resources).

Source

The provisions of this § 178.121 adopted August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432.

§ 178.122. Determining the spousal share of resources if the institutionalized spouse is not applying for MA.

(a) The central assessment unit computes the spousal share of resources if the institutionalized spouse is not applying for MA at the same time a resource assessment is requested.

(b) The request for an assessment of the couple's resources may be made by the institutionalized spouse, the community spouse or a person acting on behalf of either spouse, by submitting a properly completed resource assessment form to the central assessment unit.

(c) The central assessment unit determines the spousal share of the resources and provides written notification within 45 calendar days of the request to the institutionalized spouse, the community spouse, and when applicable, the person acting on behalf of either spouse. The notification provides the amount of the total countable verified net resources, the amount of the spousal share and the right to a fair hearing if either spouse disagrees with the Department's findings when an application is made for MA.

(d) Resources that are excluded in determining the total countable resources of the couple are specified in §§ 178.61—178.81 (relating to resource exclusions for the aged, blind and disabled categories of MA).

(e) It is not necessary to determine the legal share of resources owned by each spouse when determining the spousal share of resources as long as the information establishes the combined total. It will be necessary to determine the individual legal share if the institutionalized spouse applies for MA.

(f) The spousal share determination is based solely on the information and documentation presented with the resource assessment form.

(g) The resource assessment form, the supporting documentation and a copy of the decision letter are retained by the central assessment unit.

(h) If the institutionalized spouse applies for MA, the community spouse may retain resources up to an amount equal to the spousal share without affecting the resource eligibility of the institutionalized spouse.

Source

The provisions of this § 178.122 adopted August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432.

Cross References

This section cited in 55 Pa. Code § 178.121 (relating to general); and 55 Pa. Code § 178.124 (relating to resource eligibility for the institutionalized spouse).

§ 178.123. Determining the spousal share of resources at the same time the institutionalized spouse applies for MA.

(a) The CAO is responsible for determining the spousal share of resources if one of the following exists:

- (1) The spousal share of resources was not determined by the central assessment unit before the MA application.
- (2) The total countable verified resources owned by the couple at the time of the MA application is more than the standard community spouse resource standard plus the resource limit in Appendix A for the appropriate MA Program.
- (b) The spousal share determination is based on the total countable verified resources owned by the couple when the spouse was institutionalized for NFC or services in an ICF/MR facility.
- (c) The spousal share and each spouse's individual legal share shall be determined before the authorization of an MA NFC or services in an ICF/MR facility payment.
- (d) Resources that are excluded in determining the total countable resources of the couple are specified in §§ 178.61—178.81 (relating to resource exclusions for the aged, blind and disabled categories of MA).
- (e) Each spouse and, when applicable, the person acting on behalf of either spouse, is notified in writing on the Department's approved notification form of the spousal share amount and the right to a fair hearing if either spouse disagrees with the Department's spousal share decision.

Source

The provisions of this § 178.123 adopted August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432.

Cross References

This section cited in 55 Pa. Code § 178.121 (relating to general); and 55 Pa. Code § 178.124 (relating to resource eligibility for the institutionalized spouse).

§ 178.124. Resource eligibility for the institutionalized spouse.

- (a) *Determining initial resource eligibility.*
 - (1) The couple's countable verified resources are totaled at the time of the MA application.
 - (2) If the spousal share determined under § 178.122 or § 178.123 (relating to determining the spousal share of resources if the institutionalized spouse is not applying for MA; and determining the spousal share of resources at the same time the institutionalized spouse applies for MA) is equal to, or more than, the couple's total countable verified resources at the time of the MA application, the institutionalized spouse is resource eligible.
 - (3) If the spousal share determined under § 178.122 or § 178.123 is less than the couple's total countable resources at the time of the MA application, deduct from the couple's countable verified resources at the time of the MA application, the greater of the following amounts:
 - (i) The community spouse share, not to exceed the maximum community spouse resource standard in 42 U.S.C.A. § 1396r-5(f)(2)(A) subject to

adjustment under 42 U.S.C.A. § 1396r-5(g) in years after 1989 effective January 1 of each year based on the same percentage as the percentage increase in the Consumer Price Index (CPI) for all urban consumers—all items, United States city average—between the period of September to September of the previous year. Revisions required by Federal law and regulations to the amount will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request at the CAOs.

(ii) The standard community spouse resource standard in 42 U.S.C.A. § 1396r-5(f)(2)(A)(i) subject to adjustment under 42 U.S.C.A. § 1396r-5(g) in the years after 1989 effective January 1 of each year based on the same percentage as the percentage increase in the CPI for all urban consumers—all items, United States city average—between the period of September to September of the previous year. Revisions required by Federal law and regulations to the amounts will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request at the CAOs.

(iii) The amount of the resources in excess of the maximum community spouse resource standard transferred by the institutionalized spouse to the community spouse under a court support order. The fair consideration requirements at 42 U.S.C.A. 1396p do not apply to amounts of resources transferred under an order of support.

(iv) The amount designated by a Departmental hearing decision.

(4) Compare the remaining resources to the one person resource limit in Appendix A for the appropriate MA program.

(5) If the remaining resources are equal to, or less than, the appropriate MA resource limit in Appendix A for the appropriate MA program, the institutionalized spouse is resource eligible.

(6) The institutionalized spouse is not ineligible for MA on the basis of excess resources if the CAO determines that the denial of MA would cause undue hardship as defined in § 178.2 (relating to definitions).

(b) *Allowance revision.* The community spouse resource allowance may be revised if either spouse establishes at a Departmental hearing, based on evidence acceptable to the Department, that:

(1) The spousal share determination was not correct.

(2) Income generated by the community spouse resource allowance is not sufficient to raise the community spouse's income to the monthly standard community spouse maintenance need allowance amount described in § 181.452(c)(2)(ii) (relating to posteligibility determination of income available from an MA eligible person toward his cost of care). The Department hearing officer will establish a resource amount adequate to assure that the community spouse has income up to the community spouse maintenance need allowance amount. This applies only if the institutionalized spouse actually gives the community spouse maintenance need allowance to the community spouse.

(3) The initial spouse share determination was based on inaccurate information.

(c) *Resource reapplications for the institutionalized spouse.*

(1) After the initial resource eligibility for MA has been determined, resource eligibility at reapplication is based on resources owned solely by the institutionalized spouse.

(2) Resources of the community spouse are not deemed available to the institutionalized spouse beginning the month following the month of the initial eligibility determination as specified in § 178.91(c) (relating to deeming of resources).

(3) Resources owned by the institutionalized spouse are compared to the one person resource limit in Appendix A for the appropriate MA program.

Source

The provisions of this § 178.124 adopted August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432.

Cross References

This section cited in 55 Pa. Code § 178.121 (relating to general); and 55 Pa. Code § 178.125 (relating to transfer of resources from the institutionalized spouse to the community spouse).

§ 178.124a. Clarification of the “Income-First” rule—statement of policy.

(a) For the purposes of this statement of policy, the Department will define the Community Spouse Monthly Maintenance Needs Allowance (CSMMNA) as defined in section 1924(d) of the Social Security Act (42 U.S.C.A. § 1396r-5(d)), regarding the treatment of income and resources for certain institutionalized spouses.

(b) Consistent with section 1924(d)(6) of the Social Security Act, effective for an application made on or after March 3, 2007, the institutionalized spouse’s (IS) available income shall be used to fund the CSMMNA. If the community spouse (CS) still needs additional income to fully fund the CSMMNA, resources may be allocated to the CS to provide the difference between the CSMMNA and the gross monthly income available to the CS.

Source

The provisions of this § 178.124a adopted March 2, 2007, effective March 3, 2007, 37 Pa.B. 1043.

§ 178.125. Transfer of resources from the institutionalized spouse to the community spouse.

(a) Once initial MA eligibility for the institutionalized spouse has been determined, the institutionalized spouse may transfer resources to the community spouse, or to someone else for the sole benefit of the community spouse, to assure the protection of the greatest amount of resources possible for the community spouse. The amount that may be protected may not exceed the spousal share

subject to the maximum community spouse resource standard described in § 178.124(a)(3)(i) (relating to resource eligibility for the institutionalized spouse) or the minimum standard community spouse standard described in § 178.124(a)(3)(ii). Amounts in excess of the spousal share are subject to transfer of resource regulations in § 178.101 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994) unless § 178.124(a)(3)(iii) applies.

(b) The institutionalized spouse or someone acting on his behalf is given 90 calendar days from the date MA NFC eligibility or eligibility for services in an ICF/MR facility is established to complete the transfer, to initiate court action for a transfer or to petition for the appointment of a guardian or trustee under the requirements in Chapter 163 (relating to guardians and trustees). The transfer period may be longer than 90 calendar days in situations where the court is, or will be, involved in assigning property through support action. The period may also be extended in situations involving the appointment of a guardian or trustee if the person or someone acting on the person's behalf can show that the appointment and the transfer of the property cannot be completed within 90 calendar days for a reason over which he has no control. Cases involving the appointment of a guardian or trustee will be reviewed on a case-by-case basis.

(c) The institutionalized spouse or someone acting on his behalf shall indicate, in writing, the intent to transfer the resources to the community spouse.

(d) Resources for which no written intent to transfer has been provided or resources not transferred within the 90 calendar day period, or an extended period for resources pending court action, are counted in determining the MA resource eligibility of the institutionalized spouse.

(e) Resources transferred to the community spouse under this section are not counted in determining the continuing MA eligibility of the institutionalized spouse.

Source

The provisions of this § 178.125 adopted August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432.

Cross References

This section cited in 55 Pa. Code § 178.121 (relating to general).

§ 178.126. Resources received by the institutionalized spouse after MA eligibility is determined.

The institutionalized spouse shall promptly report the receipt of a resource following the initial determination of MA eligibility. The resource does not affect MA eligibility if:

(1) The new resource is retained by the institutionalized spouse and, when combined with the other resources of the institutionalized spouse, does not exceed the MA resource limit in Appendix A for the appropriate MA program.

(2) The new resource is transferred to the community spouse within 90 calendar days from its receipt and the resources of the community spouse remain below the maximum amount that can be protected for the community spouse as a result of the transfer.

Source

The provisions of this § 178.126 adopted August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432.

Cross References

This section cited in 55 Pa. Code § 178.121 (relating to general).

Subchapter C. TANF-RELATED AND GA-RELATED CATEGORIES OF MA

ADDITIONAL RESOURCE REQUIREMENTS FOR TANF-RELATED AND GA-RELATED CATEGORIES OF MA

Sec.

178.151. Additional resource requirements.

RESOURCE EXCLUSIONS FOR THE TANF-RELATED AND GA-RELATED CATEGORIES OF MA

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- 178.172. Presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994.
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- 178.174. Disposition of assets and fair consideration provisions for transfers on or after July 30, 1994.
- 178.174a. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.
- 178.174b. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.
- 178.175. Presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994.
- 178.176. Reestablishment of MA eligibility after transfers made on or after July 30, 1994.

ADDITIONAL RESOURCE REQUIREMENTS FOR TANF-RELATED AND GA-RELATED CATEGORIES OF MA

§ 178.151. Additional resource requirements.

(a) As a condition of MA eligibility for dependents living with him, a spouse and the natural or adoptive parent of an unemancipated minor child shall identify nonexcluded resources, which shall be considered, used and liquidated as though the spouse or parent were receiving MA. The spouse or parent cannot be relieved of this obligation by being a nonapplicant/nonrecipient. Only the resources actually contributed to a child who is 18 years of age or older and under 21 years of age by his parents are counted in determining the MA eligibility of a child in a MNO-MA category.

(b) The cash value of life insurance is considered a resource to the applicant/recipient group only if the applicant/recipient or an LRR living in the home is the owner of the policy or has the authority to cash in the policy.

(c) If an applicant or recipient or LRR owns nonexcluded real property, he shall have a 9-month period in which to make a bona fide effort to sell the property and additional 9-month periods as long as the applicant or recipient or LRR can demonstrate good cause for not selling the property.

(d) That portion of a gift that exceeds \$50 per individual in a calendar quarter as determined under § 181.263(8) (relating to other types of income not counted for the TANF and GA categories) is a countable resource.

(e) If a pregnancy is medically verified, the unborn child is counted as a member of the applicant/recipient group when establishing the resource limit. If multiple births are expected and verified, each unborn child is counted.

Authority

The provisions of this § 178.151 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)); 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; section 1902(a)(10)(A) and (C) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A) and (C)); and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 178.151 amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (279715) to (279716).

**RESOURCE EXCLUSIONS FOR TANF-RELATED AND GA-RELATED
CATEGORIES OF MA**

§ 178.161. Personal property exclusions.

The following personal property is excluded:

(1) *Basic items essential to day-to-day living.* Basic items essential to day to day living such as:

- (i) Household furnishings.
- (ii) Major appliances.
- (iii) Items used to provide, equip and maintain a household for the applicant/recipient.
- (iv) Personal effects of limited value including clothing, children's toys, wedding and engagement rings.

- (v) Farm animals for domestic use.
 - (vi) Pets and family heirlooms.
 - (vii) Farm equipment or farm animals needed for employment.
 - (viii) Equipment needed for employment, rehabilitation or to implement a self-care plan.
- (2) *Motor vehicle.* Only one motor vehicle for an applicant/recipient group is excluded. Other motor vehicles are counted at their equity value.
- (3) *Retroactive assistance payments.* Retroactive assistance payments received as a result of a prehearing conference, a fair hearing decision or a court order. This exemption is only allowed for the calendar month in which it is received and the following calendar month. If an amount remains after the exemption period, it is considered a resource.
- (4) *Value of Food Stamps.* The value of food stamps received by a participant in the Food Stamp Program.
- (5) *Personal property of an SSI or SBP recipient.* Personal property of an SSI or SBP recipient is excluded even if the SSI or SBP recipient is an LRR to an applicant/recipient group member.
- (6) *Home Energy Assistance benefits.* Home Energy Assistance (HEA) benefits 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 and blankets. HEA benefits do not include food or clothing.
- (7) *Support and Maintenance Assistance Benefits.* In-kind Support or Maintenance Assistance (SMA) benefits provided by a private, nonprofit organization. SMA benefits may include in-kind provision of food, clothing, temporary emergency shelter, furniture, toys and appliances.
- (8) *Low Income Home Energy Assistance Program.* Benefits received from the Low Income Home Energy Assistance Program.
- (9) *Burial space.* One burial space, as defined in § 178.2 (relating to definitions), for each member of the applicant/recipient group. Burial plots include graves, burial drawers, mausoleums or other property held for final interment.
- (10) *Revocable burial reserve.* A revocable burial reserve up to \$1,500 for each applicant/recipient.
- (11) *Irrevocable burial reserve.* An irrevocable burial reserve is considered under § 178.5 (relating to treatment of irrevocable burial reserves for all categories of MA).
- (12) *Uniform Gifts to Minors Act.* A gift made to a person 20 years of age or younger under 20 Pa.C.S. §§ 5301—5310 (relating to Pennsylvania Uniform Gifts to Minors Act) is excluded as a resource until the person attains 21 years of age.

(13) *Life insurance policies.* The face and cash surrender value of all life insurance owned by the applicant or recipient.

(14) *Japanese-American and Aleutian restitution payments.* Restitution payments made by the United States government to eligible Japanese-Americans and Aleuts who were interned or relocated during World War II are excluded. If the eligible Japanese-Americans are deceased at the time of payments, payments will be made to certain of their survivors as specified under the Civil Liberties Act of 1988 (50 App. 1989b-1—1989b-9). This payment is also excluded. This paragraph does not apply to eligible Aleuts who are covered under the Aleutian and Pribilof Islands Restitution Act (50 App. §§ 1989c and 1989c-1—1989c-8). The exclusion as a resource only continues as long as the retained funds are kept identifiable. If real or personal property is purchased, the new resource is not excluded unless otherwise exempt. Interest received on retained restitution payments is also not excluded but is subject to the usual regulations governing interest as specified in Chapter 181 (relating to income provisions for categorically needy NMP-MA and MNO-MA).

(15) *Agent orange settlement payments.* Payments made from the Agent Orange Settlement Fund or another fund established pursuant to the settlement in the agent orange product liability litigation.

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

(17) *Family savings account.* 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 applicant or recipient 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.

Authority

The provisions of this § 178.161 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)); 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; section 1902(a)(10)(A) and (C) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A) and (C)); and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 178.161 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3979; amended March 22, 1991, effective upon publication in the *Pennsylvania Bulletin*, and applies retroactively to August 10, 1988, 21 Pa.B. 1182; amended August 27, 1993, effective August 28, 1993, with the exception of the Agent Orange Settlement Payments requirement which is retroactive to January 1, 1989, 23 Pa.B. 4071; amended September 13, 2002, effective September 14, 2002, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (279716) to (279718).

§ 178.162. Real property exclusions.

The following real property is excluded:

- (1) Resident property owned by an applicant/recipient.
- (2) Real property owned by a SSI or SBP recipient.

§ 178.163. Resources of children under 21 years of age and families with children under 21 years of age.

The resources of the TANF-related and GA-related child under 21 years of age and TANF-related and GA-related immediate families with children under 21 years of age are excluded. If the child who is under 21 years of age is living with a caretaker who is not immediate family as defined in § 178.2 (relating to definitions) and who exercises care and control of the child, the resources of the caretaker are excluded.

Authority

The provisions of this § 178.163 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.163 adopted June 15, 2001, effective June 16, 2001, 31 Pa.B. 3196.

ADDITIONAL RESOURCE EXCLUSIONS FOR GA CATEGORIES OF MA

§ 178.165. Educational savings accounts.

(a) For GA categories of MA, 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 is not counted in determining eligibility.

- (1) The account shall be clearly identified as having been established for or restricted to payment of educational expenses.
- (2) The savings account, its ownership, the account balance and the fact that the account is restricted for payment of educational expenses shall be veri-

fied by written documentation. Documentation may include, but is not limited to, a copy of the passbook or a copy of a current account statement from the bank or other financial institution.

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

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

(5) 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.

(b) For GA categories of MA, savings accounts established and bonds purchased under the Tuition Account Program and College Savings Bond Act (24 P.S. §§ 6901.101—6901.701) are not counted in determining eligibility.

Authority

The provisions of this § 178.165 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)); 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; section 1902(a)(10)(A) and (C) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A) and (C)); and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 178.165 adopted July 28, 2000, the provisions under Act 49 effective September 1, 1994, 30 Pa.B. 3779; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial page (279119).

DISPOSITION OF PROPERTY AND FAIR CONSIDERATION PROVISIONS FOR THE TANF AND GA CATEGORIES OF MA

§ 178.171. Disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994.

(a) If property was disposed of during the period of January 4, 1991, through July 29, 1994, §§ 178.172 and 178.173 (relating to presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994; and reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994) and this section apply to an applicant/recipient who is applying for or receiving NFC as defined in § 178.2 (relating to definitions), including services in an ICF/MR facility, if the property was transferred for less than FMV.

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(b) An institutionalized applicant/recipient who transferred property for less than FMV is ineligible only for NFC for a period not to exceed 30 months from the date of transfer. The person continues to be eligible for other MA services.

(c) A transfer of property by the community spouse to a person other than the institutionalized spouse is treated, and affects the eligibility of the institutionalized spouse, the same as transfers by the institutionalized spouse.

(d) The CAO shall evaluate a transfer completed during or after the 30-month period immediately before the date:

- (1) The person is institutionalized, if the person was MA eligible on that date.
- (2) The person applies for MA while institutionalized.

(e) The transfer of excluded personal property is not subject to the fair consideration provisions. The applicant/recipient shall promptly report the transfer and the compensation received shall be verified and treated as a resource subject to other resource requirements in this chapter.

(f) The transfer of the resident property is subject to the fair consideration provisions. The institutionalized person does not lose eligibility for payment of nursing facility services or ICF/MR services because of the transfer of the resident property if the resident property was transferred to:

- (1) The spouse.
- (2) A child who is under 21 years of age or a child who is blind or permanently and totally disabled regardless of age.
- (3) A sibling who has equity interest in the resident property and who resided in the resident property for at least 1 year immediately before the person was admitted to the nursing facility or ICF/MR.
- (4) A son or daughter, other than those described in paragraph (2), who resided in the resident property for at least 2 years immediately before the parent's admission to a nursing facility and who provided care during the 2-year period which permitted the parent to stay in the resident property rather than be admitted to the nursing facility or ICF/MR.

(i) Sufficient evidence shall be presented by the child and the parent, or the parent's representative, for the Department to determine if the conditions are met.

(ii) Otherwise, a written statement from the parent's physician, a visiting nurse or other health professional familiar with the case is needed to determine if the conditions are met.

(g) An institutionalized person does not lose eligibility for payment of nursing facility services or ICF/MR services because of a transfer of resources for less than fair consideration if one of the following applies:

(1) The transfer was to, or for the benefit of, the community spouse, or to a child who is blind or permanently and totally disabled regardless of age, or to another person for the sole benefit of the person's spouse if the spouse does not transfer the resource to another person other than the institutionalized spouse for less than fair consideration.

(2) The person, a family member or someone else acting on behalf of the person can show that:

(i) The transfer was with the intention of receiving FMV or other valuable consideration.

- (ii) The transfer was exclusively for a purpose other than to qualify for MA.
- (3) The Department determines that the denial would cause undue hardship.
- (h) The period of ineligibility for MA nursing facility services begins with the month of transfer and is the lesser of:
 - (1) Thirty months.
 - (2) The number of months, rounded to the next lowest whole month, arrived at by dividing the UV by the average monthly cost of private NFC in this Commonwealth. The average monthly private rate for nursing facility services is available upon request at the CAOs.
- (i) During the period of ineligibility for MA nursing facility services, the nursing facility may charge the private pay rate.

Authority

The provisions of this § 178.171 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.171 amended December 23, 1994, effective December 24, 1994, and apply retroactively to January 4, 1991, 24 Pa.B. 6423. Immediately preceding text appears at serial pages (181735) and (171831).

Cross References

This section cited in 55 Pa. Code § 178.5 (relating to treatment of irrevocable burial reserves for all categories of MA); and 55 Pa. Code § 178.173 (relating to reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994).

§ 178.172. Presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994.

- (a) If the presumption of disposition to qualify for MA is made by the Department, the applicant/recipient is notified of the finding, in writing, and is advised of the right to rebut this presumption within 15 days from the date the written notice is mailed.
- (b) If the applicant/recipient does not respond to the written notification within 15 days from the date the written notice is mailed, the application/reapplication for MA is completed using the UV as a resource over the 30-month period from the date of the property transfer, and the total resources are determined on that basis.
- (c) If the applicant/recipient responds to the written notification within the 15 days from the date the written notice was mailed that he wishes to rebut the presumption, the CAO shall explain to the applicant/recipient that it is his responsibility to present within 10 calendar days the required verification and convincing

evidence that the resource was transferred solely for some purpose other than to qualify for MA. Convincing evidence includes documentary and nondocumentary evidence which provides proof of the circumstances surrounding the transfer, including the following:

- (1) The purpose for transferring the resource.
- (2) The attempts to dispose of the resource at its FMV.
- (3) The reasons for accepting less than FMV for the resource.
- (4) The means of, or plans for, self-support after the transfer.
- (5) The applicant's/recipient's relationship to the person to whom the resource was transferred.

(d) If the evidence is received within the 10 calendar day period established in subsection (c), a decision on the success of the rebuttal of the applicant/recipient is made. If the establishment of MA eligibility is viewed as part of the reason for the transfer, even if another purpose has been established, the property was not transferred solely for some purpose other than to qualify for MA and the rebuttal is not successful. The presumption is rebutted only if the applicant/recipient proves that the transfer was solely for some purpose other than to qualify for MA such as:

(1) If the applicant/recipient became disabled or had an unexpected loss of other resources, or an unexpected loss of income after the transfer of the property, the presumption is rebutted. The disability or unexpected loss of income or resources, or both, shall be verified.

(2) If the resources of the applicant/recipient would have been below the MA resource limit in Appendix A for the appropriate MA Program, during each of the preceding 30 months had the resource been retained, the presumption is rebutted. The applicant/recipient shall provide verification of the resource value during the period in question.

(3) If a transfer was the result of a court order or written settlement of a legal action, the presumption is rebutted. A copy of the court order or the written settlement is required.

(e) The determination of whether the presumption is rebutted is made by the Executive Director of the CAO or a delegate. The applicant/recipient is given written notice of the determination and of the right to appeal.

(f) If the presumption is rebutted, the transfer has no effect on the MA eligibility determination.

(g) If the presumption is not rebutted, it is presumed that the property transfer was for the purpose of qualifying for MA, and the following apply:

(1) The UV is considered a resource for 30 months from the date of the property transfer.

(2) The UV is added to other resources that are considered. If the total exceeds the MA resource limit in Appendix A for the appropriate MA Program, the applicant/recipient is not eligible for MA.

(3) If the transferred resource is returned to the applicant/recipient, the UV is not considered a resource as of the date the transferred resource was returned. If the transferred resource is cash or a liquid resource, the UV is reduced by the value of the resource that was returned.

(4) A returned resource is evaluated as a resource.

(5) Additional compensation received in the form of cash after the transfer of the property further reduces the UV by the amount of cash received as of the date the cash was received.

Authority

The provisions of this § 178.172 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.172 amended December 23, 1994, effective December 24, 1994, and apply retroactively to January 4, 1991, 24 Pa.B. 6423. Immediately preceding text appears at serial pages (171831) to (171833).

Cross References

This section cited in 55 Pa. Code § 178.171 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994); and 55 Pa. Code § 178.173 (relating to reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994).

§ 178.173. Reestablishment of MA eligibility after transfers made during the period of January 4, 1991, through July 29, 1994.

An applicant/recipient who is not eligible for MA under §§ 178.171 and 178.172 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994; and presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994) remains ineligible until one of the following occurs and the changes are reviewed based on the resource requirements in this chapter:

- (1) The presumption of intent to qualify for MA is successfully rebutted at a prehearing conference, at a hearing or through a court order.
- (2) The property is reconveyed to the applicant/recipient.
- (3) The UV of the property is subsequently given to the applicant/recipient.
- (4) Thirty months or a shorter period as established under § 178.171(h) has elapsed between the time of the transfer and the reapplication for MA. The period of ineligibility may be less than 30 months if:
 - (i) The property transferred for less than fair consideration was the home of the applicant/recipient.
 - (ii) The UV of the home was less than the average amount payable under the MA Program for 30 months of NFC. The period during which the

UV shall be considered is the number of months arrived at by dividing the UV by the average monthly payment rate for NFC.

Authority

The provisions of this § 178.173 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.173 adopted August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432; amended December 23, 1994, effective December 24, 1994, and apply retroactively to January 4, 1991, 24 Pa.B. 6423. Immediately preceding text appears at serial pages (171833) to (171834).

Notes of Decisions

The proceeds from the sale of a farm held in a joint account which were then placed in a trust account administered by the petitioner's son did not divest the petitioner of her interest in the proceeds in that such transfers were made and the funds were held by her attorney-in-fact. The funds were properly considered in determining her eligibility for MA. *Park v. Department of Public Welfare*, 582 A.2d 1138 (Pa. Cmwlth. 1990)

Cross References

This section cited in 55 Pa. Code § 178.171 (relating to disposition of property and fair consideration provisions for transfers during the period of January 4, 1991, through July 29, 1994).

§ 178.174. Disposition of assets and fair consideration provisions for transfers on or after July 30, 1994.

(a) If assets are disposed of on or after July 30, 1994, §§ 178.175 and 178.176 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994; and reestablishment of MA eligibility after transfers made on or after July 30, 1994) and this section apply to an individual who is applying for or receiving NFC as defined in § 178.2 (relating to definitions), including services in an ICF/MR, or a level of care in an institution equivalent to NFC, or home or community-based services furnished under a Title XIX waiver and the individual or the individual's spouse transfers assets for less than FMV.

(b) An institutionalized individual who disposes of assets for less than FMV on or after the look-back date is ineligible for MA NFC which includes the services in subsection (a). A transfer of assets by the community spouse to a person other than the institutionalized spouse is treated and affects the eligibility of the institutionalized spouse the same as a transfer by the institutionalized spouse.

(c) The look-back date shall be 36 months from the date on which the individual is both institutionalized and has applied for MA, except in the case of payments from a trust, or portions of a trust, as described in § 178.7(e)(1)(iii) and (2)(ii) (relating to treatment of trust amounts for all categories of MA for trusts

established on or after July 30, 1994) which are considered as assets disposed of for less than FMV by the individual. In this instance, the look-back date shall be 60 months.

(d) The number of months of ineligibility for the institutionalized individual who disposes of assets for less than FMV shall be equal to the total, cumulative uncompensated value of the assets transferred by the individual or the individual's spouse, on or after the look-back date, divided by the average monthly cost to a private patient of nursing facility services in effect in this Commonwealth at the time of application.

(e) An individual will not be ineligible for nursing facility services if:

(1) The assets were a home and title to the home was transferred to one or more of the following:

(i) A spouse of the individual.

(ii) The individual's child who is under 21 years of age, or is blind or permanently and totally disabled, as determined under § 140.81 (relating to deductions from earned income) for persons not eligible for SSI benefits, or is blind or disabled based on SSI criteria as specified in 42 U.S.C.A. § 1382c(a)(3).

(iii) A sibling of the individual who has an equity interest in the home and who resided in the individual's home for at least 1 year immediately before the date the individual became an institutionalized individual.

(iv) A son or daughter of the individual, other than a child described in subparagraph (ii), who resided in the individual's home for at least 2 years immediately before the date the individual became an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

(2) The assets were transferred to one of the following:

(i) The individual's spouse or to another for the sole benefit of the individual's spouse.

(ii) To another for the sole benefit of the individual's spouse from the individual's spouse.

(iii) The individual's child described in paragraph (1)(ii) or to a trust, including one described in § 178.7(f), established solely for the benefit of the individual's child.

(iv) A trust, including a trust described in § 178.7(f) established solely for the benefit of an individual under 65 years of age who is disabled based on SSI criteria as specified in 42 U.S.C.A. § 1386c(a)(3).

(3) The individual, the individual's spouse or someone else acting on behalf of the individual can show that one or more of the following applies:

(i) The individual intended to dispose of the assets either at FMV, or for other valuable consideration.

(ii) The assets were transferred exclusively for a purpose other than to qualify for MA.

(iii) The assets transferred for less than FMV were returned to the individual.

(4) The Commonwealth determines that denial of eligibility would cause an undue hardship as defined in § 178.2.

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

(g) If a transfer by the individual's spouse results in a period of ineligibility for MA, the Commonwealth will apportion the period of ineligibility or any portion of the period between the individual and the individual's spouse if the spouse otherwise becomes eligible for MA for nursing facility services.

(h) During the period of ineligibility for MA nursing facility services, the nursing facility may charge the private pay rate.

Authority

The provisions of this § 178.174 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.174 adopted December 23, 1994, effective December 24, 1994, and apply retroactively to July 30, 1994, 24 Pa.B. 6423.

Notes of Decisions

Transfer of Assets

The Department of Public Welfare did not err in interpreting the resources of a "couple" as referring not only to resources owned jointly by institutionalized wife and her noninstitutionalized husband, but also to resources owned by wife alone, and by husband alone, in its determination that the transfer of resources that wife made to her husband had no effect on wife's eligibility for those benefits. *Oriolo v. Department of Public Welfare*, 705 A.2d 519 (Pa. Cmwlth. 1998).

Cross References

This section cited in 55 Pa. Code § 178.5 (relating to treatment of irrevocable burial reserves for all categories of MA); 55 Pa. Code § 178.175 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994); and 55 Pa. Code § 178.176 (relating to reestablishment of MA eligibility after transfers made on or after July 30, 1994).

§ 178.174a. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.

(a) Consistent with section 1917(c)(1)(B)(i) of the Social Security Act (42 U.S.C.A. § 1396p(c)(1)(B)(i)), regarding liens, adjustments and recoveries, and

transfers of assets, effective for an application made on or after March 3, 2007, the look-back period for assets transferred on or after February 8, 2006, shall be 60 months.

(b) Consistent with section 1917(c)(1)(D) of the Social Security Act, effective for an application made on or after March 3, 2007, in the case of a transfer of assets for less than Fair Market Value (FMV) made on or after February 8, 2006, by an applicant or spouse of an applicant the penalty period shall commence on the date the applicant would otherwise be eligible for Medicaid based on an approved application for these services.

(c) Consistent with section 1917(c)(1)(D) of the Social Security Act, effective with transfers of assets for less than FMV made on or after March 3, 2007, by a recipient, the beginning date of a period of ineligibility for payment of long-term care services shall commence on the first day of the month following the date specified in the Appeal and Fair Hearing section of the Advance Notice provided to the recipient.

(d) Consistent with section 1917(c)(1)(E)(iv) and (H) of the Social Security Act, effective for an application made on or after March 3, 2007, a period of ineligibility for payment of long-term care services will result when an applicant or spouse of an applicant disposes of assets for less than FMV on or after February 8, 2006. The period of ineligibility shall be determined by dividing the total cumulative uncompensated value of all assets disposed of by the applicant or the applicant's spouse on or after the look-back date, by the average daily private pay rate in effect at the time the application is processed.

(e) Consistent with section 1917(c)(1)(E)(iv) and (H) of the Social Security Act, effective March 3, 2007, a period of ineligibility for payment of long-term care services will result when a recipient disposes of assets for less than FMV on or after March 3, 2007. The period of ineligibility shall be determined by dividing the total cumulative uncompensated value of all assets disposed of by the recipient on or after the look-back date, by the average daily private pay rate in effect at the time the period of ineligibility is determined.

(f) Consistent with section 1917(c)(1)(I) of the Social Security Act, effective for an application made on or after March 3, 2007, the outstanding balance due on a promissory note, loan or mortgage purchased on or after February 8, 2006, that does not meet all of the following requirements will be treated as a transfer of assets for less than FMV:

(1) The repayment terms must be actuarially sound.

(2) The terms must provide for payments in equal amounts throughout the term, with no deferral of payments and no balloon payments.

(3) The terms must prohibit cancellation of the balance upon death of the lender.

(g) Consistent with section 1917(c)(1)(J) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of a life estate interest in another individual's home made on or after February 8, 2006, shall be

considered a transfer of assets for less than FMV unless the purchaser resided in the home for at least 1 year after the purchase date.

(h) Consistent with section 1917(c)(1)(F) and (G) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of an annuity by an applicant or applicant's spouse on or after February 8, 2006, that does not meet all of the following requirements, will be treated as a transfer of assets for less than FMV:

(1) The annuity must be irrevocable and nonassignable.

(2) The annuity must be actuarially sound.

(3) The annuity must provide for payments in equal amounts, with no deferral and no balloon payments made.

(4) The annuity must name the Department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid by the Department on behalf of the recipient. The annuity must name the Department as beneficiary in the second position when there is a community spouse (CS), minor child, or blind or permanently and totally disabled child for at least the total amount of Medical Assistance paid by the Department on behalf of the recipient and must name the Department in the first position if the CS or a representative of a minor child, or a representative of a permanently and totally disabled child disposes of any such remainder for less than FMV.

(i) Consistent with section 1917(c)(1)(F) and (G) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of a nonqualified annuity on or after February 8, 2006, by the spouse of an applicant, that does not name the Department as beneficiary in the first position will be treated as a transfer of assets for less than FMV.

(j) This statement of policy does not prevent the Department from treating an annuity owned by an applicant or recipient or the spouse of an applicant or recipient that satisfies the requirements in subsection (h) or the requirement in subsection (i), as either income or a resource in the eligibility determination for long-term care services under the Medicaid Program.

(k) This statement of policy does not prevent the Department from treating an outstanding balance due on a promissory note, loan or mortgage satisfying the requirements in subsection (f), as either income or a resource in the eligibility determination for long-term care services under the Medicaid Program.

Source

The provisions of this § 178.174a adopted March 2, 2007, amended March 3, 2007, 37 Pa.B. 1043.

§ 178.174b. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.

(a) For the purposes of this statement of policy, an undue hardship exists when application of the transfer of assets penalty provision would deprive the individual of one of the following:

- (1) Medical care so that the individual's health or life would be endangered.
- (2) Food, clothing, shelter or other necessities of life.
- (b) Consistent with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C.A. § 1396p(c)(2)(D)), regarding liens, adjustments and recoveries, and transfers of assets, effective with applications made on or after March 3, 2007, the Department will provide undue hardship waiver guidelines to an individual who is determined ineligible for payment of long-term care services due to a transfer of assets for less than fair market value made on or after February 8, 2006. The undue hardship waiver guidelines provide for the following:
 - (1) A notice to the individual that an undue hardship waiver exception exists.
 - (2) A timely process for determining whether an undue hardship waiver will be granted.
 - (3) A process under which an adverse determination can be appealed.
- (c) Consistent with section 1917(c)(2)(D) of the Social Security Act, the undue hardship waiver request guidelines shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.
- (d) Until the Secretary of Health and Human Services establishes the demonstrated hardship process, the Department will apply the undue hardship process for an individual whose equity interest in the individual's home exceeds \$500,000. Consistent with section 1917(f)(1)(C) of the Social Security Act, this dollar amount shall be increased beginning January 1, 2011, from year to year based on the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average), rounded to the nearest \$1,000. Revisions to this amount, as required by Federal law and regulations, will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request.

Source

The provisions of this § 178.174b adopted March 2, 2007, amended March 3, 2007, 37 Pa.B. 1046; amended September 23, 2011, effective retroactive to January 1, 2011, 41 Pa.B. 5064. Immediately preceding text appears at serial page (325988).

§ 178.175. Presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994.

- (a) If the presumption of disposition of assets to qualify for MA is made, the individual is notified of the finding, in writing, and is advised of his right to rebut this presumption within 15 days from the date the written notice is mailed.
- (b) If the individual does not respond to the written notification within 15 days from the date the written notice is mailed, the application/reapplication for MA is completed using the UV established in § 178.174(c) (relating to disposition of assets and fair consideration provisions for transfer) and as an asset over

the look-back period beginning the first date on which the individual is both institutionalized and applies for MA.

(c) If the individual responds to the written notification within 15 days from the date the notice is mailed that he wishes to rebut the presumption, the CAO shall explain to the individual that it is his responsibility to present within 10 calendar days the required verification and convincing evidence that the assets were transferred solely for some purpose other than to qualify for MA. Convincing evidence includes documentary and nondocumentary evidence which provides proof of the circumstances surrounding the transfer, including the following:

- (1) The purpose for transferring the asset.
- (2) The attempts to dispose of the asset at its FMV.
- (3) The reasons for accepting less than the FMV of the asset.
- (4) The means of, or plans for, self-support after the transfer.
- (5) The individual's relationship to the person to whom the asset was transferred.

(d) If the evidence is received within the 10 calendar day period established in subsection (c), a decision on the success of the rebuttal is made. If the establishment of MA eligibility is viewed as part of the reason for the transfer, even if another purpose has been established, the asset was not transferred solely for some purpose other than to qualify for MA and the rebuttal is not successful. The presumption is rebutted only if the individual proves that the transfer was solely for some purpose other than to qualify for MA such as:

(1) If, after the transfer of the asset, the individual either becomes disabled or has an unexpected loss of assets and this results in the need to apply for MA the presumption is rebutted. The unanticipated disability or unexpected loss of assets shall be verified.

(2) If the assets of the individual would still have been below the income and resource limits for the appropriate MA Program during each of the months in the period of ineligibility which would otherwise apply under §§ 178.104(d) and 178.174(d) (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994) had the asset been retained, the presumption is rebutted. The individual shall provide verification of the asset value during the period in question.

(3) If the transfer was the result of a court order or written settlement of a legal action, the presumption is rebutted. A copy of the court order or written settlement is required.

(e) The determination of whether the presumption is rebutted is made by the executive director of the CAO or a delegate. The individual is given written notice of the determination and the right to appeal.

(f) If the presumption is rebutted, the transfer has no effect on the MA eligibility determination.

(g) If the presumption is not rebutted, it is presumed that the asset transferred was for the purpose of qualifying for MA and the following apply:

(1) The UV is considered an asset for 36 or 60 months, as applicable, from the date on which the individual is both an institutionalized individual and has applied for MA.

(2) The UV is added to other assets that are considered. If the total exceeds the MA income or resource limits in Appendix A or Chapter 181, Appendix B for the appropriate MA Program, the individual is not eligible for MA.

(3) If the transferred asset is returned to the individual, the UV is not considered an asset as of the date the transferred asset was returned. If the transferred asset is cash or liquid assets, the UV is reduced by the value of the asset that was returned.

(4) A returned asset is evaluated as an asset.

(5) Additional compensation received in the form of cash after the transfer of the asset further reduces the UV by the amount of cash received as of the date the cash was received.

Authority

The provisions of this § 178.175 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.175 adopted December 23, 1994, effective December 24, 1994, and apply retroactively to July 30, 1994, 24 Pa.B. 6423.

Cross References

This section cited in 55 Pa. Code § 178.174 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994); and 55 Pa. Code § 178.176 (relating to reestablishment of MA eligibility after transfers made on or after July 30, 1994).

§ 178.176. Reestablishment of MA eligibility after transfers made on or after July 30, 1994.

An individual who is not eligible for MA under §§ 178.174 and 178.175 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994; and presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994) remains ineligible until one of the following occurs:

(1) The presumption of intent to qualify for MA is successfully rebutted at a prehearing conference, at a hearing or through a court order.

(2) The property is reconveyed to the individual.

(3) The UV of the property is subsequently given to the individual.

(4) The period of ineligibility has elapsed between the time of the transfer and the reapplication for MA. The period of ineligibility is as determined in § 178.174(d) unless the transfer meets the conditions of § 178.174(e).

Authority

The provisions of this § 178.176 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 178.176 adopted December 23, 1994, effective December 24, 1994, and apply retroactively to July 30, 1994, 24 Pa.B. 6423.

Cross References

This section cited in 55 Pa. Code § 178.174 (relating to disposition of assets and fair consideration provisions for transfers on or after July 30, 1994).

APPENDIX A*NMP-MA RESOURCE LIMITS*

The resource limits against which nonexcluded resources are considered for NMP-MA persons, whether institutionalized or noninstitutionalized, are:

(a) *Aged, Blind and Disabled*

| | |
|-------------|---------|
| One person | \$2,000 |
| Two persons | \$3,000 |

(b) *AFDC*

Regardless of the number of persons in the applicant/recipient group

| | |
|--|---------|
| | \$1,000 |
|--|---------|

(c) *GA*

| | |
|---------------------|---------|
| One person | \$ 250 |
| Two or more persons | \$1,000 |

MNO-MA RESOURCE LIMITS

The resource limits against which nonexcluded resources are considered for MNO-MA persons, whether institutionalized or noninstitutionalized, are:

| | |
|------------------------|---------|
| One person | \$2,400 |
| Two persons | \$3,200 |
| Each additional person | \$300 |

RESOURCE LIMITS FOR PREGNANT WOMEN

If a pregnancy is medically verified, the unborn child is counted as a member of the applicant recipient group when establishing the NMP-MA or MNO resource limit.

Source

The provisions of this Appendix A amended December 30, 1988, effective January 31, 1989, 18 Pa.B. 5798. Immediately preceding text appears at serial page (130564).

Cross References

This appendix cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.102 (relating to presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994); 55 Pa. Code § 178.105 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994); 55 Pa. Code § 178.123 (relating to determining the spousal share of resources at the same time the institutionalized spouse applies for MA); 55 Pa. Code § 178.124 (relating to resource eligibility for the institutionalized spouse); 55 Pa. Code § 178.126 (relating to resources received by the institutionalized spouse after MA eligibility is determined); 55 Pa. Code § 178.172 (relating to presumption of disposition of property to qualify for MA for transfers during the period of January 4, 1991, through July 29, 1994); and 55 Pa. Code § 178.175 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994).

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