

DEPT. OF MEDICAL ASSISTANCE SERVICES

Related Cash Assistance Property Rules.

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12VAC30-110-630. Income-producing real property other than the home for aged, blind and disabled individuals.

A. Income-producing real property other than the home does not affect eligibility if:

1. It is used in a trade or business or is otherwise income producing;
2. The equity value (current market value less the balance of any recorded liens against the property) of the property does not exceed \$6,000; and
3. The property produces a net annual income to the individual of at least 6.0% of the property's equity value.

B. If the property produces less than the 6.0% net annual income, it may be excluded if its equity value does not exceed \$6,000 and it is used in a business or nonbusiness income-producing activity, and the following conditions are met:

1. Unusual or adverse circumstances, such as a fire, street repair in front of a store, or natural disaster, cause a temporary reduction in the rate of return;
2. The property usually produces net annual income of at least 6.0% of the equity value; and
3. The individual expects the property to again produce income at the 6.0% rate of return within 18 months of the end of the calendar year in which the unusual incident caused the reduction in the rate of return. When the property must be counted because the equity exceeds \$6,000 or because the net annual return to the individual is less than 6.0% or equity, the individual's equity over \$6,000 in the property is a countable resource.

12VAC30-110-650. Deeming of income and resources; responsibility of spouses.

A. If an individual and the spouse apply or are eligible for Medicaid as aged, blind, or disabled, and they cease to live together (separate), their income and resources are considered available (deemed) to each other for the time periods specified in this section. After the appropriate time period, income or resources actually contributed by the separated spouse to the individual are counted in determining the individual's eligibility.

B. [Reserved.]

C. If spouses separate for any reason other than institutionalization, their income and resources

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are deemed to each other during the month in which they cease to live together ~~[and during the six months following that month. However, if the deeming of their income or resources ceases them to be ineligible as a couple, each spouse's eligibility will be determined individually using the procedure in subsection D of this section .~~ When spouses cease to live together, their income and resources cease to be deemed to each other beginning the first month following the month the couple ceases to live together.

D. If only one spouse in a couple applies for Medicaid or only one meets the aged, blind, or disabled requirement, or if both spouses apply and are not eligible as a couple and they separate, only the income and resources of the separated spouse that are actually contributed to the individual are counted as available to the individual beginning with the month after the month in which they cease to live together.

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12VAC30-110-660. Deeming of income and resources; responsibility of parents for blind or disabled children.

~~A. If the blind or disabled child is under age 18, or under age 21 and regularly attending a school, college, university or is receiving technical training designed to prepare him for gainful employment, and living in the same household with a parent, the parents' income and resources are deemed available to the child.~~

A. If the blind or disabled child is living in the same household with a parent and is:

1. under age 18, or
2. under age 21 and regularly attending a school, college, university or is receiving technical training designed to prepare him for gainful employment,

the parents' income and resources are deemed available to the child.

B. Only the parent's income and resources which remain, after deducting appropriate disregards and amounts for the maintenance needs of the parents and other dependents in the household, are deemed as resources and unearned income available to the blind or disabled child.

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12VAC30-110-670. Aid to Dependent Children (ADC) Related Medically Needy Individuals.

A. [Reserved.]

B. Personal property.

1. Automobiles. The policy in §4 of Supplement 8b (was Supplement 12) to Attachment 2.6-A (12VAC30-40-290) applies.

2. Life Insurance. The policy in §5 of Supplement 8b (was Supplement 12) to Attachment 2.6-A (12VAC30-40-290) applies.

3. Burial Plots. The market value of burial plots owned by any member of the family unit are not counted toward the medical resource limit for the family.

4. Prepaid burial plans are counted as resources, except for the amounts of such funeral agreements that are disregarded under the Virginia ADC cash assistance program.

5. Assets which can be liquidated such as cash, bank accounts, stocks, bonds, and securities, are counted as resources.

C. The income eligibility determination methodology of the Virginia ADC cash assistance program applies.

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12VAC30-110-700. Transfer of assets.

A. Certain term life insurance policies purchased after April 7, 1993. When making eligibility determinations for institutional or community-based care to be paid for by the department, the department shall consider as an uncompensated transfer all resources that are used by an applicant to purchase any term life insurance policy that does not have a benefit payable at death that will equal or exceed twice the sum of all premiums paid for such policy if the policy was purchased within 30 months prior to the date of application for medical assistance unless the policy was purchased to fund a funeral in accordance with [§54.1-2820](#) of the Code of Virginia.

The purpose of the policy shall be determined by reviewing the policy. If the policy language specifies that the death benefits shall be used to purchase burial space items or funeral services then the purchase of such policy shall not be considered a transfer of assets; however, the Department of Medical Assistance Services shall initiate action to recover from the beneficiary the amount of any benefit paid under the provisions of the policy which exceed the actual expense of the funeral and burial of the insured.

B. Inter vivos trusts.

1. [Assets of inter vivos trusts available.](#) When determining eligibility for medical assistance, the assets of any inter vivos trust, both principal and interest, shall be considered available to the

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grantor who is an applicant for or recipient of medical assistance without regard to any provision of the trust which provides directly or indirectly for the suspension, termination, or diversion of the principal, income or other beneficial interest of the grantor if he should apply for medical assistance or if he should require medical, hospital or nursing care or long-term custodial, nursing or medical care. The amount of principal or interest to be considered available shall be that amount of income or principal of the trust to which the grantor is entitled if no application for assistance had been made except [~~that up to \$25,000 of the corpus of the trust shall not be a countable asset~~ for trusts created prior to August 11, 1993,].

2. Trust created prior to August 11, 1993. Up to \$25,000 of the corpus of an inter vivos trust created prior to August 11, 1993 shall not be a countable asset. If the grantor created more than one such trust, the corpora of the trusts shall be added together. If the sum of the corpora is less than \$25,000, no assets from any of the trusts shall be considered available. If the sum of the corpora exceeds \$25,000, then the total amount of the corpora less \$25,000 is a countable asset. In determining the amount of each trust to exempt, the \$25,000 exemption shall be prorated among the trusts.

In applying this section, if [prior to August 11, 1993,] the grantor has made uncompensated transfers as defined in §20-88.02 of the Code of Virginia within 30 months of applying for Medicaid and no payments were ordered pursuant to subsection D of that section, then no

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\$25,000 exemption shall be granted.

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12VAC30-110-710. Transfer of resources.

When determining the eligibility of an applicant, in cases where the state determines that denial of eligibility would work an undue hardship:

1. The individual must provide written documentation to substantiate the circumstances of the transfer and the claim of undue hardship.
2. The individual must provide written documentation that the resources transferred without adequate compensation cannot be recovered.
3. The individual must provide written documentation to clearly substantiate the immediate adverse impact of the denial of Medicaid coverage of nursing facility services due to the uncompensated transfer.
4. Undue hardship means denial of Medicaid eligibility would result in the individual being removed from the institution and unable to purchase life sustaining medical care.