

## OTHER ELIGIBILITY REQUIREMENTS

### OWNERSHIP AND AVAILABILITY

examples of entitlement benefits. The local district has a responsibility to assist the A/R, as needed, in obtaining such entitlement benefits.

Garnisheed income is generally considered available and is included when determining the A/R's gross income. Local districts may assist the A/R in attempting to have a garnishment removed.

When a member of a communal group or religious order receives income, such as social security benefits or wages for employment, that income is considered available to the A/R, even though the A/R elects to turn over the income to the communal group or religious order.

When a legally responsible relative, not living in the A/R's household, is determined able to support an A/R, the contribution is not budgeted until and unless it is actually received.

When an A/R is living with a person to whom s/he is not married the ability and willingness of the person to support the A/R is evaluated. If the A/R is actually receiving income from this person, that income is considered.

When an A/R has a guardian, trustee, representative payee or other person/institution responsible for managing his/her funds, the local district considers the funds available for the A/R's care. If the A/R has a guardian or other fiduciary who is not meeting his/her obligations, it may be appropriate for the local district to take legal action to compel him/her to utilize funds for the A/R's medical care and services, to have him/her replaced, or to seek a money judgment against the fiduciary or an order of contempt.

Currently unavailable income from any source is reviewed to determine the likelihood of it affecting the continued eligibility of a recipient. For example, if the recipient is expected to receive income in six months, the situation is reviewed after six months.

#### Ownership:

In order to determine whether or not resources are available to the A/R, it is necessary to determine who owns the resource.

When the A/R and one or more persons jointly own a resource (financial institution accounts, real estate, stocks, bonds, etc.) the general rule is that such property is considered available to the

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A/R to the extent of his or her interest in the property. In the absence of documentation to the contrary, it is presumed that all joint owners possess equal shares. However, there are special rules for SSI-related A/Rs concerning the availability of financial institution accounts. Generally, for such SSI-related A/Rs it is presumed that all of the funds in a joint account belong to the SSI-related A/R (see page 252 for details).

It is not unusual for non-legally responsible relatives to own life insurance on the life of an A/R. A parent may own a policy on the life of an adult child. When someone other than the A/R owns the policy and has the redemption rights, the life insurance is not considered an available resource of the A/R. See page 264 for further details on the treatment of insurance.

When the A/R is a member of a communal organization or a religious order, the resources of the communal organization or religious order are not countable resources when determining the A/R's eligibility for Medicaid. However, if the A/R transfers his/her resources to the organization or order, the transfer is evaluated to determine if a transfer penalty applies. (See page 353.)

Availability:

All resources owned by the Medicaid A/R are considered available unless there is a legal impediment that precludes liquidation. If there is a legal impediment to the disposal of the resources, the resources are not counted in determining resource eligibility until the legal impediment does not exist.

A legal impediment exists when an A/R is legally prohibited from, or lacks the authority to liquidate the resource. For example, a legal impediment exists when an A/R needs the consent of a co-owner of a jointly owned resource in order to sell the resource, and the co-owner refuses to give consent.

When an A/R is living with a legally responsible relative (LRR), the LRR's income and resources are generally considered available to the A/R.

When an **A/R is residing** in the community **with an LRR** and the LRR asserts that his/her income/resources are not available to the A/R, the eligibility determination depends on whether: (a) the LRR provides financial information; or (b) the LRR refuses to provide

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the requested financial information.

- (a) When the LRR provides information, but refuses to make his/her income/resources available to the A/R, eligibility for the A/R is determinable. When completing a budget, only the income/resources actually available to an A/R are counted.
- (b) When the LRR refuses to provide financial information, eligibility is generally indeterminable. However, if the A/R provides complete information concerning his/her own income and resources, including any jointly held resources, eligibility is determined based on the available information. If an LRR refuses to make his/her income and/or resources available for the A/R's medical care a dollar amount is budgeted for any non-medical needs that the LRR is meeting. For example, the LRR may be providing the A/R with food, shelter, and clothing. The value of these items would be considered income. The non-contributing LRR is not included in the household size.

The resources of a legally responsible relative, residing with the A/R, are considered in the eligibility process. However, if the legally responsible relative refuses to make his/her resources available to the A/R, Medicaid is provided to the A/R, if s/he is otherwise eligible. The provision of assistance to such persons creates an implied contract with the legally responsible relative and the local social services district may initiate legal action to recover the cost of medical care provided. For childless couples (S/CC), the resources of the LRR living in the same household are considered available to the A/R whether or not they are being made available (see page 424).

For married couples, at the time of initial eligibility, when one is an institutionalized spouse (see page 228), all countable resources are combined and considered available to the institutionalized spouse, regardless of which spouse owns the resource. The community spouse is allowed to retain resources up to the maximum community spouse resource allowance. The resources, which comprise the community spouse resources allowance are then transferred to the community spouse. These resources are no longer considered available to the institutionalized spouse. After the month eligibility is established for the institutionalized spouse, none of the community spouse's resources are considered available to the institutionalized spouse.

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When the value of an A/R's countable resources exceed the appropriate resource level, the A/R is ineligible for Medicaid. See page 339 for the treatment of excess resources.

Generally, no grant or loan to an undergraduate student for educational purposes is considered an available resource. There are some variations on this policy according to the category of the A/R. (See pages 129, 150, 174 and 210.)

When an A/R has a guardian, trustee, representative payee or other person/institution responsible for managing his/her funds, the local district reviews the terms of the trust or other agreements/documents to assure that the A/R's resources are actually available for his/her care. If a trust was created from the A/R's funds, and, if the trustee has any discretion to expend any of the trust income for the benefit of the A/R, then all of the trust principal which could be expended in any way to benefit the A/R is considered available. In instances where the client has a formal fiduciary and the fiduciary is uncooperative, the local district commences a recovery proceeding under SSL 104.

If an A/R is alleged to be incapable of managing his/her own finances and there is no one with the legal authority to make decisions concerning the A/R's income/resources, the A/R's income/resources are considered unavailable from the time a petition to appoint a guardian is filed until the court appoints a guardian. The income and resources are considered unavailable to the A/R prospectively and for a retroactive period of three months.

Where there is a question of availability, the local social services district documents why the resource is not considered available and any actions taken to secure the resource for the A/R.

If the A/R jointly owns a home, but s/he is out of the home due to an informal separation and the spouse in the home refuses to sell, the A/R's share is an unavailable resource.

- When to Verify Status:**
- (a) When the A/R indicates that s/he has a joint financial institution account;
  - (b) When the A/R indicates joint ownership of assets;
  - (c) When the A/R indicates that an LRR has available assets;