

## RESOURCES

### ASSESSMENT/DETERMINATION

institutionalization of the institutionalized spouse on or after September 30, 1989.

Regardless of which spouse's name the resources are in, all countable resources are combined and considered available to the institutionalized spouse. The community spouse is permitted to retain from the couple's countable resources an amount equal to the greatest of the following amounts: (1) \$74,820, the State minimum community spouse resource allowance amount; (2) the spousal share up to the federal maximum resource amount (see page **334**); or (3) the amount established by court order or fair hearing.

If the couple's combined countable resources are less than the state minimum community spouse resource allowance, the community spouse may retain all of the couple's countable resources. When the combined countable resources exceed the maximum community spouse amount, the excess is considered available to the institutionalized spouse. The institutionalized spouse is allowed the appropriate SSI-related resource level for one.

**NOTE:** A pension fund (see page 92) owned by an ineligible or non-applying community spouse is considered a countable resource when determining the maximum community spouse resource allowance. However, such a pension fund cannot be considered available to the institutionalized spouse. Any amount of the pension fund, which exceeds the maximum community spouse resource allowance, is not considered in determining the total countable combined resources owned by the couple.

After the month for which the institutionalized spouse is determined eligible for Medicaid, the community spouse's resources cannot be considered available to the institutionalized spouse, even if the community spouse's resources increase. The community spouse resource allowance must actually be made available to the community spouse in order for it to be excluded when determining the continuing eligibility of the institutionalized spouse. The community spouse resource allowance must be legally transferred to the community spouse or for his/her sole benefit within 90 days of the eligibility determination. The local social services district may allow a longer period for the transfer, when required.

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When a community spouse fails or refuses to provide information concerning his/her resources, the institutionalized spouse's eligibility cannot be determined and the A/R may be denied Medicaid. However, if such a denial would result in undue hardship and an assignment of support is executed or the institutionalized spouse is unable to execute an assignment, due to physical or mental impairment, Medicaid is authorized. The case is then referred to the district's legal staff for appropriate action.

Undue hardship is a situation where:

- (1) a community spouse fails or refuses to cooperate in providing necessary information about his/her resources;
- (2) the institutionalized spouse is otherwise eligible for Medicaid;
- (3) the institutionalized spouse is unable to obtain appropriate medical care without the provision of Medicaid; and
- (4) (a) the community spouse's whereabouts are unknown; or  
(b) the community spouse is incapable of providing the required information due to illness or mental incapacity; or  
(c) the community spouse lived apart from the institutionalized spouse immediately prior to institutionalization; or  
(d) due to the action or inaction of the community spouse, other than the failure or refusal to cooperate in providing necessary information about his/her resources, the institutionalized spouse will be in need of protection from actual or threatened harm, neglect, or hazardous conditions if discharged from an appropriate medical setting.

After a Medicaid eligibility determination for the institutionalized spouse is completed, if either spouse is dissatisfied with the determination of the community spouse resource allowance, s/he may request a fair hearing.