

## 2304 - TREATMENT OF RESOURCES FOR ABD MEDICAID

<b>POLICY STATEMENT</b>	The treatment of resources is dependent upon several variables.
<b>BASIC CONSIDERATIONS</b>	
<b>Non-FBR COAs vs. FBR COAs</b>	<p>The following resources are treated differently for non-FBR and FBR A/Rs:</p> <ul style="list-style-type: none"> <li>• automobiles</li> <li>• burial contracts and burial space items</li> <li>• cemetery lots (refer to Section 2311, Burial Contracts/Burial Items)</li> <li>• funds set aside for burial</li> <li>• life insurance policies</li> <li>• accrued dividends earned on life insurance policies</li> <li>• life estate interests</li> <li>• income producing property</li> <li>• household goods and personal effects</li> <li>• promissory notes/loans/mortgages</li> </ul> <p><b>NOTE:</b> The above resources may be excluded under Non-FBR policy (refer to the Resource Chart in Section 2399): The exclusion only applies <b>IF</b> the resources are owned by the A/R, or transferred by the A/R to a spouse or into a trust. <b>IF</b> a resource excluded under Non-FBR policy is transferred to someone or something other than a spouse or a trust, a transfer of resource penalty should be developed. Refer to Section 2342, Transfer of Resources.</p> <p>All other resources are treated the same for all classes of assistance.</p> <p><b>EXCEPTION:</b> Refer to Absence from Homeplace in Section 2316, Homeplace: ABD Medicaid.</p>
<b>Special Exclusions</b>	Certain non-liquid resources that would normally be counted may be totally or partially excluded if specific conditions are met.
<b>Income Producing Property</b>	Personal or real property which <i>currently</i> (or is expected to resume) produces earned income, unearned income, goods, or services, may be partially or totally excluded. Refer to Section 2327, Property Essential to Self-Support.

**BASIC  
CONSIDERATIONS  
(cont.)****Undue Hardship  
Provision**

Undue hardship is defined as a situation wherein an individual would be deprived of medical care such that his/her health or life would be endangered; or would be deprived of food, clothing, shelter, or other necessities of life. Undue hardship does not exist if the individual is merely inconvenienced or restricted in lifestyle.

There are three conditions for use of the undue hardship provision, only one of which needs to be met:

- An institutionalized spouse who (or whose spouse) has resources will not be found ineligible for Medicaid where it is determined that denial of eligibility on the basis of having excess resources would create undue hardship.
- An individual for whom receipt of distribution from a Medicaid qualifying trust would cause ineligibility will not be found ineligible for Medicaid where it is determined that such denial would create undue hardship.
- An individual having transferred resources for less than fair market value, or having transferred resources into a trust, will not be found ineligible for Medicaid nursing facility services or home and community based services where it is determined that such denial would create undue hardship.

Undue hardship must be considered by the worker in each of the above situations; the A/R does not have to request it. For transfer of resource penalties, the notice concerning the penalty must contain a statement that undue hardship was considered and determined not to be applicable. See Section 2342, Transfer of Resources.

## PROCEDURES

**Bona Fide  
Effort to Sell**

Exclude personal or real property for any month in which the A/R is making a bona fide effort to sell the property.

Evidence of a *bona fide effort* to sell includes any of the following:

- listing the property with a realtor
- a *for sale* sign on the property
- advertisement in a newspaper
- has not refused a reasonable offer (2/3 of CMV).

**PROCEDURES**  
(cont.)

**Bona Fide  
Effort to Sale  
(cont.)**

If the real property for which a bona fide effort to sell is being made is non-homeplace, require the A/R to sign a statement that s/he has tried to sell, is trying to sell, or will try to sell the property within the next 30 days. Require the A/R to market the resource at current market value (CMV).

Verify/document that the A/R has not refused a reasonable offer on the property (2/3 of the CMV).

Verify/Document the A/R's past and continuous efforts to sell the property at the following intervals:

- prior to approval of the application
- 9 months after approval
- every three months thereafter.

**NOTE:** The A/R has 30 days to put the property on the market after signing a statement of intent to do so.

**Undue Hardship  
to Co-Owner**

Exclude jointly owned real property if the sale would cause undue hardship to the co-owner.

Consider that sale of the property would cause undue hardship to a co-owner if one of the following situation exists:

- The co-owner uses the property as his/her principal place of residence.
- The co-owner would have to move if the property were sold.
- The co-owner has no other readily available housing.

If the A/R alleges that the sale of certain real property would force a co-owner living on it to move, obtain the following documentation and verification:

- The individual's signed statement to that effect
- Evidence of joint ownership

Obtain a statement from the co-owner regarding whether he or she:

- Uses the property as his or her principal place of residence
- Would have to move if the property were sold
- Have other living quarters readily available.

**PROCEDURES****(cont.)****Undue Hardship  
to Co-owner  
(cont.)**

Accept any reasonable allegation from the co-owner that there is no readily available housing, no other affordable housing available or no other housing with necessary physical modifications for a handicapped individual.

**Restricted Allotted  
Indian Lands**

Consider restricted allocated land owned by an individual who is of Indian descent from a federally recognized Indian tribe to be an excluded resource if the individual cannot sell, transfer or otherwise dispose of it without permission from other individuals, his or her tribe, or an agency of the Federal Government.

If an individual alleges owning land that meets the criteria above, complete the following procedures:

- obtain a copy of any document or documents that might identify as such
- verify the allegation with the appropriate Indian agency.
- Document appropriately.

**Undue Hardship  
Provision**

Consider the undue hardship provision on every case, and apply the provision on a case by case basis. Determine the value of countable resources. Make a decision based on the facts present in the case. If a determination is made that the provision does not apply, the notice of the penalty to the A/R must include a statement that undue hardship was considered and determined not to be applicable.

Thoroughly and completely document the case record to support applying the undue hardship provision.

- document which of the three conditions is met.
- document how the condition is met including why the individual will suffer irrevocable harm if denied Medicaid.