907 KAR 20:025. Resource standards for Medicaid other than Modified Adjusted Gross Income (MAGI) standards or for former foster care individuals.

RELATES TO: KRS 205.520, 205.619, 304.14-640, 304.14-642, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a, 1396b, 1396d, 1397jj(b), 1397p

STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 435.840, 435.843, and 42 U.S.C. 1396a(l)(3), 1396d

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the resource standards for determining eligibility for Medicaid benefits.

Section 1. Resource Limitations. (1) For an individual whose Medicaid eligibility is determined using a resource standard, the upper limit for resources for a family size of:

(a) One (1) shall be $2,000;

(b) Two (2) shall be $4,000; or

(c) Three (3) or more shall be $4,000 plus fifty (50) dollars added for each additional member over the initial two (2) members.

(2)(a) For a qualified disabled and working individual, resources shall be limited to the low income subsidy limits established by the Centers for Medicare and Medicaid Services pursuant to 42 U.S.C. 1395w-114(a)(3)(D).

(b) For a qualified Medicare beneficiary, a specified low-income Medicare beneficiary, or a Medicare qualified individual group 1(QI-1), resources shall be limited to three (3) times the allowable amount for the SSI program.

(3) Resources shall be limited to the amounts allowed in the SSI program for:

(a) A pass-through recipient, as established in 907 KAR 20:020;

(b) A person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 20:005; or

(c) A child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 20:005.

(4) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for Medicaid nursing facility services or other Medicaid long-term care services if the individual's equity interest in his or her home exceeds the amount established in 42 U.S.C. 1396p(f) unless:

(a) The individual has a spouse who is lawfully residing in the individual's home;

(b) The individual has a child under the age of twenty-one (21) who is lawfully residing in the individual's home; or

(c) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home.

(5) There shall be no resource test or standard for:

(a) An individual for whom a modified adjusted gross income is the Medicaid eligibility standard; or

(b) An individual between the age of nineteen (19) and twenty-six (26) years who:

1. Formerly was in foster care; and

2. Aged out of foster care while receiving Medicaid coverage.

Section 2. Resource Exclusions. (1)(a) A homestead, household or personal effects, or farm equipment shall be excluded from consideration without limitation on value.

(b) After permanent institutionalization, property shall cease to be a homestead unless:

1. A spouse or other dependent family member continues to reside there; or

2. A signed statement verifies that the permanently-institutionalized individual intends to return to the homestead.

(c) The signed statement shall:

1. Be signed by:

a. The permanently-institutionalized individual;

b. A representative payee;

c. A person who has power of attorney for the individual;

d. The individual's guardian; or

e. Another legal representative; and

2. Be renewed annually.

(2) For an adult Medicaid case, the requirements established in this subsection shall apply.

(a)1. Equity of $6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration.

2. The value of property, including the tools of a tradesperson or the machinery or livestock of a farmer, shall be excluded from consideration as a resource if the property:

a. Is essential for self-support for the individual or spouse, or family group in the instance of a family with a child; and

b. Is used in a trade or business or by the individual or member of the family group as an employee.

(b) Except as provided in paragraph (c) of this subsection, equity of $4,500 in automobiles shall be excluded from consideration.

(c) If an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or is specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.

(d) A payment or benefit from a federal statutory program, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(3) For an ABD Medicaid case:

(a) Real property or nonreal property shall be excluded from consideration if it can be demonstrated the individual is making a reasonable effort to sell the property at fair market value or for other valuable consideration.

(b)1. Property which previously was a homestead shall no longer be considered a homestead at the point an individual becomes permanently institutionalized.

2.a. Non-homestead property which was previously the homestead property of a permanently-institutionalized individual shall be excluded for six (6) months if there is a verified effort to sell the property at fair market value.

b. If a party on behalf of the permanently institutionalized individual demonstrates to the department, every six (6) months subsequent to the initial six (6)-month period, a continuing effort to sell the property referenced in clause a. of this subparagraph at fair market value, the department shall continue to exclude the property from resource consideration.

3. Reasonable effort to sell the property shall consist of:

a. Listing the property with a real estate agent if the agent:

(i) Places a "For Sale" sign on the property which is clearly visible from the nearest public road; and

(ii) Advertises the property in the local newspaper, a local television or radio station, or the internet; or

b. A combination of at least two (2) of the following actions:

(i) Advertising the property in the local newspaper or on local television or radio stations;

(ii) Placing a "For Sale" sign on the property which is clearly visible from the nearest public road;

(iii) Distributing fliers advertising the property for sale;

(iv) Posting notices regarding availability of the property on community bulletin boards; or

(v) Showing the property to interested parties on a continuing basis.

(c) Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(4) A burial reserve of up to $1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, savings account, checking account, or other identifiable fund, shall be excluded from consideration.

(a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(5) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(6) An individual development account up to a total of $5,000, excluding interest accruing, shall be excluded from consideration as a resource.

(7) Disaster relief assistance shall be excluded from consideration.

(8) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(9) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(10) Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;

(b) Its sale is barred by a legal impediment; or

(c) The owner's reasonable efforts to sell by informing the public of his or her intention to sell the property at fair market value have been unsuccessful.

(11) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(12) An amount received which is a result of an underpayment or a retroactive payment of benefits from Retirement, Survivors, and Disability Insurance or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(13) A federal Republic of Germany reparation payment shall not be considered as an available resource.

(14) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(15) An Austrian social insurance payment based on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(16) An individual retirement account, Keogh plan, or other tax deferred asset shall be excluded as a resource until withdrawn.

(17) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(18) A payment received from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

(19) An annuity that is irrevocable and cannot be sold or transferred shall be excluded from consideration as a resource.

(20) Except for real property pursuant to subsection (10) of this section, a jointly held resource shall be considered as a countable resource for an applicant.

Section 3. Resource Exemptions. (1) A resource which is exempted from consideration for purposes of computing eligibility for SSI benefits shall be exempted from consideration by the department.

(2) Resources shall be excluded from consideration during a long-term care eligibility application process and subsequently protected from estate recovery due to payments rendered by a long-term care partnership insurance policy if the long-term care partnership policy is:

(a) Issued on or after July 6, 2009; and

(b) Approved by the Department of Insurance as a long-term care partnership insurance policy in accordance with KRS 304.14-120, 304.14-640, 304.14-642, 806 KAR 14:007, 806 KAR 17:081, and 806 KAR 17:083.

(3) The exclusion referenced in subsection (2) of this section shall be based on a one (1) dollar for one (1) dollar amount of benefits paid as a direct reimbursement to providers for long-term care expenses or benefits paid on a per diem basis issued directly to the individual.

(4) In accordance with 42 U.S.C. 1396a(r)(2), an individual shall not have to exhaust the benefits of the policy prior to applying for assistance through the department.

(a) This exclusion shall be limited to the amount paid to the applicant or on behalf of the applicant at the time of application for Medicaid benefits.

(b) An applicant shall identify the resources to be excluded equal to the benefit received from the policy when applying for long-term care services through the department.

(c) This exclusion shall not impact an applicant’s eligibility for payment for nursing facility services or other long-term care services if the individual’s equity interest in the individual's home property exceeds the limits established in 42 U.S.C. 1396p(f) and in Section 1(5) of this administrative regulation.

Section 4. Not Applicable to Individuals Whose Eligibility is Determined Using a Modified Adjusted Gross Income or to Individuals Between the Ages of Nineteen (19) and Twenty-six (26) Who Formerly Were in Foster Care and Aged out of Foster Care. Resources shall not be considered for eligibility purposes for an individual:

(1) For whom a modified adjusted gross income is the Medicaid eligibility standard pursuant to 907 KAR 20:100; or

(2) Between the age of nineteen (19) and twenty-six (26) years who:

(a) Formerly was in foster care;

(b) Aged out of foster care while receiving Medicaid coverage; and

(c) For whom the Medicaid eligibility standards are established in 907 KAR 20:075. (23 Ky.R.

1304; 1600; eff. 9-18-96; 24 Ky.R. 605; eff. 8-20-97; 25 Ky.R. 447; 867; eff. 9-16-98; 26 Ky.R. 1259; 1575; eff. 2-1-2000; 28 Ky.R. 968; 1416; eff. 12-19-01; 30 Ky.R. 1120; 1536 eff. 1-5-04; 33 Ky.R. 1173; 1862; 2317; eff. 3-9-2007; 34 Ky.R. 1853; 2125; eff. 4-4-2008; 35 Ky.R. 1640; 2749; eff. 7-6-2009; Recodified from 907 KAR 1:645, 9-30-2013; 40 Ky.R. 1169; 1773; 2160; eff. 4-4-2014; Crt eff. 12-6-2019.)