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## **Transfer of Resources - Introduction**

Transferring ownership of a **resource** may affect the value of an individual's countable resources which in turn can affect AG eligibility. Therefore, when an individual alleges that a resource has been transferred within 36 months prior to his/her application for AG or within his/her eligibility period, it is necessary to develop the issue to determine the effect on AG eligibility.

It is important to assure that the individual uses his/her resources to meet his/her own needs. Transferring ownership of a resource **for less than current market value** reduces the amount of resources the individual has to meet his/her needs and increases his/her need for AG. A penalty may be applied in these situations. The penalty period will be based on the uncompensated value of the transferred resource.

**Note:** AG transfer procedures differ from Medicaid guidelines in that AG only evaluates transfers of **resources**; items that meet the specific definition of resources as stated in Chapter E - 1. AG does not evaluate transfers of assets that do not meet the resource definition and it does not evaluate income transfers. Medicaid evaluates the transfer of all assets, including income.

### **1. Transfers**

A resource transfer is any action by an individual or other person that reduces or eliminates the individual's ownership or control of a resource. Transfers of resources must be evaluated to determine if the individual received the current market value for the transferred resource. Transfers are either compensated or uncompensated.

#### **1.1. Compensated Transfer**

If the individual receives the CMV for the transferred resource, the transfer is a compensated transfer. No penalty is applied.

#### **1.2. Uncompensated Transfer**

If the individual receives less than CMV for the resource, the difference between the CMV and the amount received is the uncompensated value. If the uncompensated value exceeds the AG Rate, the individual is ineligible for a period of time.

#### **1.3. Transferors**

This section applies to transfers made:

- By an individual;

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- By the individual's spouse if
    - The transfer was made prior to the individual's move to an ALF/AFCH; or
    - The transfer was made during the month of entry when both spouses enter an ALF/AFCH and apply for AG in the same month (the only month they are considered an AU of 2); or
- Note:** If the individual's spouse transfers his/her own resources after the individual's month of ALF/AFCH entry, the transfer does not impact the individual's AG eligibility.
- The transfer was made at any time during the evaluation period by the spouse who is a co-owner of the resource being transferred
  - By persons who are co-owners of the resource being transferred;
  - On behalf of the individual by a person acting for and legally authorized to execute a contract (e.g., a legal representative, a legal guardian, etc);
  - By an individual transferring assets which he constructively received (e.g., he/she refused an inheritance.)

## **2. Period Evaluated**

Transfers made within the three year period prior to the month of AG application can impact an individual's eligibility for AG. Transfers made prior to that do not impact an individual's AG eligibility. All resource transfers that occurred during that three year period and any that occur while an individual is receiving AG must be evaluated. The periods to be evaluated are called the look-back periods.

Periods of ineligibility can be imposed for transfers that took place during a look-back period but cannot be imposed for transfers that took place before that period.

### **2.1. Initial Claims**

The look-back period for initial applications is the 36 months before the month of application. A transfer for less than fair market value at any time within the look-back period and after the application was filed may result in a period of ineligibility.

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## **2.2. Ongoing**

When redetermining AG eligibility, it is always necessary to ask whether any resources were transferred since the previous redetermination. Absent evidence to the contrary, assume that any transfers before the redetermination have already been evaluated. However, if it is determined that a transfer that occurred before the redetermination has not been evaluated, it must be evaluated to determine if it affects past or current eligibility.

## **3. Notifying Individuals About The Effect Of Resource Transfers**

The local department of social services must inform all AG applicants and recipients about the transfer of resources penalty and the Medicaid transfer of assets penalty. The individual must be given a copy of the AG Resource Transfer Fact Sheet.

## **4. Information To Be Obtained**

Information must be obtained from all AG applicants about transfers of resources that occurred during the three years before the AG application date. Whether the transfer will affect AG eligibility depends on:

- The date the transfer occurred,
- To whom the resource was transferred,
- The type of resource that was transferred,
- The reason for the transfer,
- The value of the transferred resource, and
- The amount of compensation received.

## **5. Procedures Summary**

This table provides a summary of the procedures that must be followed to process resource transfers. Detailed information follows.

Steps	<p align="center"><b>Resource Transfer Procedure Chart</b></p> <p align="center"><b>ACTIONS</b></p>
<p><b>Step 1</b></p>	<p><b>Interviewing – Initial App and Redetermination</b></p> <p>Always ask whether the individual, the spouse, the joint owner, or anyone acting for the individual transferred a resource since the beginning of the look-back period.</p> <p align="right"><b>CONTINUE</b></p>
<p><b>Step 2</b></p>	<p><b>Determine Whether the Transfer is Valid</b></p> <p>Determine whether the transfer is valid and document the file</p> <ul style="list-style-type: none"> <li>• If the transfer is invalid, no transfer occurred and the item in question remains a resource to the individual.</li> </ul> <p align="right"><b>STOP</b></p> <ul style="list-style-type: none"> <li>• If the transfer is valid, do not count the transferred item as a resource beginning with the month following the month of transfer.</li> </ul> <p align="right"><b>CONTINUE</b></p>
<p><b>Step 3</b></p>	<p><b>Determine Whether a Transfer Exception Applies</b></p> <p>Determine if the transfer meets one of the exceptions described in Chapter G - Sections 14 through 18 apply.</p> <ul style="list-style-type: none"> <li>• If one of the exceptions applies, the period of ineligibility does not apply. Document your determination that an exception applies and process the case normally.</li> </ul> <p align="right"><b>STOP</b></p> <ul style="list-style-type: none"> <li>• If none of the exceptions apply,</li> </ul> <p align="right"><b>CONTINUE</b></p>

Steps	<p style="text-align: center;"><b>Resource Transfer Procedure Chart</b></p> <p style="text-align: center;"><b>ACTIONS</b></p>
<p><b>Step 4</b></p>	<p><b>Determine Whether the Individual Received Compensation Equal to the Current Market Value</b></p> <ul style="list-style-type: none"> <li>• If the individual received current market value for the transferred resource, the period of ineligibility does not apply. Document the determination and process the case normally. <span style="float: right;"><b>STOP</b></span></li> <li>• If the individual did not receive current market value for the transferred resource, document this determination. A period of ineligibility may apply. <span style="float: right;"><b>CONTINUE</b></span></li> </ul>
<p><b>Step 5</b></p>	<p><b>Compute The Period Of Ineligibility</b></p> <ul style="list-style-type: none"> <li>• Determine the uncompensated value by subtracting the compensation received from the CMV.</li> <li>• Divide the uncompensated value by the appropriate AG Rate and round down.</li> <li>• The result is the number of months in the period of ineligibility. <span style="float: right;"><b>CONTINUE</b></span></li> </ul>
<p><b>Step 6</b></p>	<p><b>Notify The Individual</b></p> <p>Send the individual a Transfer of Resources Notice to notify him/her of his/her period of ineligibility and his/her right to claim undue hardship. Allow 10 days for the individual to respond.</p> <ul style="list-style-type: none"> <li>• If the individual claims undue hardship <span style="float: right;"><b>CONTINUE</b></span></li> <li>• The individual does not claim undue hardship, impose the period of ineligibility and send a Notice of Action to deny the application or an Advance Notice of Proposed Action to close the case. <span style="float: right;"><b>STOP</b></span></li> </ul>

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Steps	<p style="text-align: center;"><b>Resource Transfer Procedure Chart</b></p> <p style="text-align: center;"><b>ACTIONS</b></p>
<b>Step 7</b>	<p><b>Determine Whether the Undue Hardship Exception Applies</b></p> <ul style="list-style-type: none"> <li>• Develop undue hardship only after determining that the individual does not meet one of the other exceptions and after computing the period of ineligibility.</li> <li>• Determine if hardship exists in any month <ul style="list-style-type: none"> <li>○ The individual can be paid for any month in which hardship exists.</li> <li>○ The period of ineligibility is applied to each month in which undue hardship does not exist.</li> </ul> </li> <li>• Send the individual a Transfer of Resources Notice to notify him/her of the results of the undue hardship evaluation.</li> </ul>

## 6. Valid Transfer

It is always necessary to determine whether an alleged transfer of a resource was a valid transfer. A valid transfer is one that transfers ownership of an item from one person to another based on a legally binding agreement. When there is a valid transfer, the transferor no longer owns the property. If a transfer is not valid, the transferring person still owns the property and it is counted as a resource to that person.

When property is validly transferred, it no longer counts as a resource as of the first moment of the month following the transfer.

**Example:** The individual sells his sailboat on 5/15/06. For AG purposes, the boat is considered a resource for May. As of June the boat is not a resource.

Valid transfers of resource ownership may occur through any of the following types of transactions:

- Sale of property;

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- Trade or exchange of one property for another;
- Spending cash;
- Giving away cash;
- Transferring any financial instrument (e.g., stocks, bonds);
- Transfers of an inheritance
- Giving away property (including adding another person's name as an owner of the property);

**Example:** If the owner of a home adds the name of another person to the deed as a co-owner, the owner has transferred a portion of the value of the resource to that person. This transaction is considered a transfer of resources. The deed is the legally binding agreement.

#### **6.1. Documenting Date and Validity of Transfer**

Obtain the individual's signed statement that explains:

- The nature of the transfer (sold, given away, traded, etc);
- The method of transfer (sold on open market, transferred without compensation, etc.);
- The date of the transfer;
- A description of the transferred resource;
- The amount of cash transferred or the current market value (CMV) of the transferred resource;
- The amount and type of compensation received;
- Any remaining ownership interest.

#### **6.2. Verification of Validity**

Verify the date and validity of a transfer that is alleged to have occurred. To verify, obtain copies of available evidence of the transaction such as:

- Bills of sale;
- Receipts for prepayment of rent;

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- Signed statement by the person to whom the property was transferred;
- A signed statement by the transferor, if the evidence above cannot be obtained and the sale was on the open market (not to a relative).

## 7. Current Market Value

The **current market value** (CMV) of a resource is the going price for which it can be reasonably expected to sell on the open market in the geographic area involved. Use the CMV value of a resource **at the time the resource is transferred**.

### 7.1. **Property Sold On the Open Market**

If the property was sold on the open market, the selling price is accepted as the CMV. If the property was not sold on the open market (e.g., it was sold to a relative), obtain a CMV estimate from a knowledgeable third party. Use the resource procedures that apply to the type of resource transferred to determine who an appropriate third party would be.

## 8. Compensation

Compensation is the cash or other valuable consideration provided in exchange for the resource. Compensation can include real or personal property received by the individual in exchange for the resource. Compensation also may include in-kind support and maintenance or services to be provided to the individual because of the transfer. Compensation also may include assumption of the transferor's legal debt.

A transferor receives compensation when he/she receives something of value pursuant to a legally binding agreement (e.g., a contract, a bill of sale, a deed) that was **in effect at the time of transfer**. The transferor may actually receive the compensation before, at, or after the actual time of transfer.

If the individual received compensation equal to or greater than the transferred resource's current market value, the transfer is a compensated transfer that does not impact eligibility.

### 8.1. **Compensation For Cash Transferred**

**Assume**, absent evidence to the contrary, that an individual gets current market value when he/she **spends** cash resources. Purchases of goods and services are compensated transfers.

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When an individual **gives away cash**, he does not receive any compensation. The amount given away is the amount of the transfer. The period of ineligibility for transferring a resource for less than fair market value may apply unless one of the exceptions in Chapter G – Sections 13 through 18 apply.

### 8.1.1. Verification

Use the following procedures when an individual alleges having spent or given away cash in order to determine whether the spent/given away cash was a compensated transfer of resources and current market value was received in return:

- Obtain the individual's signed statement to document how the cash was spent.
- **If the allegation is questionable**, obtain available evidence to support the allegation (e.g., sales receipts for purchases, bank statements showing withdrawals, etc.).
  - An individual may not be able to provide an exact “to the penny” accounting for purchases. Therefore, any reasonable accounting should be accepted.
  - An individual may allege an expenditure that cannot be corroborated. If the explanation appears reasonable, accept the individual’s written statement.
- Document your determination. For example: “Mr. Jones' spending of \$1400 in 7/06 is a valid transfer and he received fair market value.”

**Example 1: Allegation Accepted** - During her redetermination, Ms. Barrett submitted bank records showing resources over the \$2,000 limit for 3/06 and 4/06 followed by a \$750 withdrawal in 5/06 which brought her total resources below the limit. Ms. Barrett provides a signed statement that she used \$150 for utility bills, \$170 for a dentist bill, \$300 for car repairs, and \$130 for plumbing repairs. Assuming there is no conflicting information, there is no need to request receipts to verify these allegations.

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**Example 2: Allegation Questionable** - Mr. Jones filed for AG on 6/5/06 and he alleged liquid resources of \$1,800 on 6/1/06. Mr. Jones alleged that he spent about \$4,000 from savings in 5/06 just prior to filing for AG. He said that \$2,000 was spent for a new furnace and the rest was spent on a series of small purchases. Prior to spending this money, Mr. Jones was over the AG resource limit. At the time of the interview, Mr. Jones could not explain how and when the additional \$2,000 was spent. Since he could not provide a reasonable accounting of how he spent the funds, his allegation is questionable. The worker requests additional verification to support Mr. Jones' allegation of how the money was spent.

## 9. Value Of Compensation Received

Compensation may be received as cash, non-cash items, or in-kind support and maintenance (ISM). The value of the compensation is determined using the following procedures.

### 9.1. Cash Compensation

Obtain evidence that verifies the amount of the cash received in exchange for the transferred resource (e.g., bill of sale, contract, receipts, etc.). If such evidence is not available, obtain signed statements from the individual and the person to whom the property was transferred to establish the amount of cash compensation received or to be received.

### 9.2. Non-cash Compensation

The value of compensation received is based on the legally binding agreement and the expectations of payment at the time of the transfer or contract for sale, if earlier.

**Example 1:** A purchaser agreed to pay an eligible individual \$10,000 in 10 installments of \$1,000 each, but has thus far paid only \$7,000. The compensation is \$10,000.

**Example 2:** A purchaser agreed to provide nursing services valued at \$3,000, but to date has not provided any of the services. The compensation is \$3,000.

#### 9.2.1. Value Of Non-cash Compensation

Value non-cash compensation at its CMV at the time of transfer or contract for sale, whichever is earlier. The value of compensation is the gross value paid or to be paid. Expenses attributed to the sale do not reduce the value of the compensation.

### 9.3. In-kind Support And Maintenance (ISM)

ISM is food and/or shelter that are provided to an individual. An agreement specifying the services to be provided and the rate of compensation must be in effect at the time that the ISM is provided to the individual. ISM given to an individual by friends or relatives with no obligation for repayment cannot be considered a debt retroactively. A transfer made to pay for previously provided ISM, for which there was no agreement, is an uncompensated transfer.

#### 9.3.1. Verification

Obtain a signed statement from the person providing the ISM to verify that the ISM is being provided in exchange for the transferred resource. The statement must include

- Total monthly household operating expenses which includes
  - Food costs if food is to be provided
- Number of household members
- The period of time for which ISM will be provided.

#### 9.3.2. Value

The CMV is the individual's pro rata share of the household's expenses times the number of months/years ISM is to be provided. Value compensation received in the form of ISM at its full CMV (monthly or annually depending upon the agreement) multiplied by the length of time for which it is to be provided under the agreement.

**Note:** If an individual consumes all meals outside the household or purchases food separately, use only shelter expenses instead of total household operating expenses when computing ISM.

If the agreement is that the receiver of the property will provide ISM for the life of the eligible individual, use the table below to determine the individual's life expectancy. The individual's life expectancy is the figure in the "Years of Life Remaining" column which corresponds to the age (or next lower age) of the eligible individual as of his/her last birthday at the time the resource was transferred.

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**Example 1:** Valerie Payne transferred non-home real property valued at \$185,000 to her sister. As compensation, her sister agreed to provide Ms. Payne with room and board in the sister's home for the rest of Ms. Payne's life. ISM development showed that her sister's total household expenses were \$1,500 per month. The household consisted of 3 persons, including Ms. Payne who was age 53 at the time of the transfer. The CMV of the ISM was \$6,000 per year ( $\$1,500/3 = \$500$  per month X 12 months = \$6,000). Then,  $\$6,000 \times 31.61$  (average years of life remaining at age 50) = \$189,660 compensation. In this case, Ms. Payne received CMV for the transferred resource.

**Example 2:** Assume the same case facts as Example 1 except that Ms. Payne is 80 years old at the time of the transfer. As in Example 1 the ISM is worth \$6,000 per year. At 80 years of age the life expectancy table indicates 7.16 years; multiplying 7.16 years times \$6,000 results in compensation of \$42,960. In this case there is uncompensated value of \$142,040 (\$185,000 minus \$42,960). Therefore, Ms. Payne would be subject to a period of ineligibility for AG because she transferred the house for less than fair market value.

### 9.3.2.1. ISM Value Computation

Use the following computation method to compute the CMV of ISM

1. Total monthly household operating expenses

\_\_\_\_\_

2. Divide by number of household members

÷ \_\_\_\_\_

Result equals individual's pro rata share (Monthly CMV)

= \_\_\_\_\_

3. Multiply monthly CMV by 12 months for yearly total (Yearly CMV)

= \_\_\_\_\_

4. Multiply the yearly CMV by the number years it's to be provided or if for life, by the individual's remaining years of life

= \_\_\_\_\_ Total ISM Value

### 9.3.2.2. Uncompensated Value

Subtract the Total ISM Value from the transferred amount.  
The remainder, if any, is the uncompensated value.

## 9.4. Services

Determine the value of services provided to the transferor based on the CMV of the services (monthly or annually) and their frequency and duration under the agreement.

**Example:** In exchange for \$9,000 cash, the individual contracts for yard maintenance services for 5 years. The maintenance company charges \$150 per month (\$1,800 per year). The CMV of five years of maintenance at \$1,800 per year equals \$9,000. This was a compensated transfer.

### 9.4.1. Verification

- Verify the CMV of the services. If the services were purchased on the open market, accept the price paid as the CMV. If the services were not purchased on the open market, contact at least one local knowledgeable source in addition to the provider to verify the value.
- Verify the agreement to provide services by getting a copy of the services contract or a signed statement from the person getting the transferred resource that shows the type, frequency, and duration of the services to be provided. If the agreement does not specify the frequency, but rather that the services are to be provided on an “as needed” basis, the statement must include his/her expectations as to the frequency of the services and the basis for the expectation.

**Example—Compensation Received as Services:** Roy Linden transferred livestock valued at \$2,000 to his neighbor. As compensation, the neighbor agreed to put a new roof on Mr. Linden's home. The worker contacted a local roofing contractor and found that the cost of a new roof would be about \$2,100. The compensation received by Mr. Linden was valued at \$2,100. Therefore, the worker determines that Mr. Linden received CMV for his livestock.

**9.4.2. Services For Life**

If the services are to be provided for the life of the claimant, first determine the yearly value of the services, and multiply that amount by the individual’s life expectancy. The individual’s life expectancy is the figure in the “Years of Life Remaining” column which corresponds to the age (or next lower age) of the eligible individual as of his/her last birthday at the time the resource was transferred. See the life expectancy table below.

**9.4.3. Uncompensated Value**

Subtract the total value of the services from the transferred amount. The remainder, if any, is the uncompensated value.

**9.4.4. Remaining Years of Life Table**

The data in this table was developed by the Social Security Administration's Office of the Chief Actuary for the Year 2000 Trustees Report. Use this table in determining the value of compensation of services for life and ISM for life. After you determine the yearly value of services (or ISM), multiply it by the “years of life remaining” for the year corresponding to the individual's age and gender. If the exact age is not on the chart, **use the next lower age**. For example, if an individual is age 47 at the time of the resource transfer, use the life expectancy corresponding to age 40 on the chart.

AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining	AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining
10	64.03	69.93	75	9.58	12.09
20	54.41	60.13	76	9.06	11.46

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<b>AGE</b>	<b>MALE Years of Life Remaining</b>	<b>FEMALE Years of Life Remaining</b>	<b>AGE</b>	<b>MALE Years of Life Remaining</b>	<b>FEMALE Years of Life Remaining</b>
<b>30</b>	45.14	50.43	<b>77</b>	8.56	10.85
<b>40</b>	35.94	40.86	<b>78</b>	8.07	10.25
<b>50</b>	27.13	31.61	<b>79</b>	7.61	9.67
<b>60</b>	19.07	22.99	<b>80</b>	7.16	9.11
<b>61</b>	18.33	22.18	<b>81</b>	6.72	8.57
<b>62</b>	17.60	21.38	<b>82</b>	6.31	8.04
<b>63</b>	16.89	20.60	<b>83</b>	5.92	7.54
<b>64</b>	16.19	19.82	<b>84</b>	5.55	7.05
<b>65</b>	15.52	19.06	<b>85</b>	5.20	6.59
<b>66</b>	14.86	18.31	<b>86</b>	4.86	6.15
<b>67</b>	14.23	17.58	<b>87</b>	4.55	5.74

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AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining	AGE	MALE Years of Life Remaining	FEMALE Years of Life Remaining
68	13.61	16.85	88	4.26	5.34
69	13.00	16.14	89	3.98	4.97
70	12.41	15.44	90	3.73	4.63
71	11.82	14.85	95	2.71	3.26
72	11.24	14.06	100	2.05	2.39
73	10.67	13.40	110	1.14	1.22

### 9.5. Assumption Of A Legal Debt

Value compensation when an assumption of the transferor's legal debt is made at the outstanding principal amount at the time of the assumption. Interest payments are not compensation.

**Example:** The individual had ownership interest in a piece of real property with a current market value of \$12,000. The individual had equity of \$2,000 and owed \$10,000. The individual alleges that he could not keep up the payments and transferred title to the property to his brother in exchange for his brother assuming responsibility for the real estate contract. The value of the compensation received is \$10,000 which is the amount of the outstanding debt. The uncompensated value is \$2,000—the difference between the CMV and the outstanding debt.

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**9.5.1. Verification**

- Obtain documents from the individual to verify the assumption of the legal debt, the amount of the debt, and that the person purchasing the resource has assumed the debt.
- Contact the lender if the individual's documents do not verify this information.

**9.5.2. Uncompensated Value**

Determine the amount of compensation by comparing the CMV of the resource with the amount of debt assumed. The uncompensated value, if any, is the difference between the CMV and the amount of debt assumed.

**10. Transfer To Trust Established With Individual's Resources**

A transfer of the individual's or spouse's resources to a trust that is available to the individual, is not a transfer of resources. When all or a portion of the principal of a trust, established by an individual or spouse with the individual's or spouse's resources, cannot be paid to, or for the benefit of, the individual, the portion which cannot be paid is considered a transfer of resources for less than fair market value. Certain exceptions apply. See Chapter G – 14.

The date of the transfer is considered to be:

- The date the trust was established; or
- If later, the date on which payment to the individual was prohibited (i.e., an action was taken which precludes future payments from the trust).

**10.1. Value**

The value of the transfer is the value of the trust or portion of the trust that became unavailable to the individual at the point the trust was established or at the point a change was made to prohibit the distribution of the funds to the individual. Do not subtract the value of any disbursements made after the date determined above. Additions to the unavailable portion of the trust after the above date may be new transfers that must be developed separately.

## **11. Transfers To Or From Trusts Established With Individual's Non-Resource Assets**

A **non-resource asset** is an asset that does not meet the definition of a resource. Transfer of non-resource assets **into** a trust does not constitute a transfer of resources. However, when non-resources are placed in a trust, they become countable in determining the resource value of the trust. Therefore, when all or a portion of the corpus of a trust is considered to be a countable resource under Trust Type A or B, the transfer of funds **from** the trust is a transfer of resources and a penalty may apply in the following circumstances:

- When an action is taken to prohibit future payments from the countable resource portion of the trust to the individual or spouse, that action is a transfer of resources as of the date that payment was prohibited.
- If payment is made, from the portion of the trust that is a resource, to or for the benefit of another individual, then such payment is a transfer as of the date the payment was made.

**Note:** If a trust established with the individual's non-resource assets is not a resource to the individual, payments to or for the benefit of another person or prohibiting payment to the individual is not subject to the transfer of resources penalty because the trust was not a resource.

**Example** - An individual has non-resource assets of \$10,000 that she places into an irrevocable trust for the benefit of her daughter. The trust is not a resource to the individual because nothing can be paid to or for her benefit. It is also not a transfer of resources subject to the penalty provision since the trust is not a resource and the trust was established with non-resource assets. Likewise, payments from the trust to or for the benefit of the daughter are not transfers of resources.

### **11.1. Value**

The value of the transfer is the value of the trust or portion of the trust that became unavailable to the individual at the point the trust was established or at the point a change was made to prohibit the distribution of the funds to the individual. Do not subtract the value of any disbursements made after the date determined above. Additions to the unavailable portion of the trust after the above date may be new transfers that must be developed separately.

## **12. Transfer - Trust Payments Made To Or For The Benefit of Another**

When all or a portion of a trust established by an individual or spouse with the individual's or spouse's resources or non-resource assets is a resource to the individual, any payment made from the countable resource portion of the trust to or for the benefit of another is a transfer of resources.

### **12.1. Trust Established To/For The Benefit Of Another Person**

Consider a trust established for the benefit of another person if payments of any sort from the corpus or income of the trust are paid to someone so that the person derives some benefit from the payment. Such payments could include purchase of food, clothing or shelter, or household goods and personal items. The payments could also include services for medical or personal attendant care that the individual may need.

**Example 1:** Millie Russell is an adult AG recipient. Upon the death of her mother, Ms. Russell receives the proceeds of a life insurance policy in the amount of \$30,000. She uses the proceeds to establish an irrevocable trust solely to pay for the college expenses of her younger sister, in accordance with her mother's wishes. Receipt of the insurance proceeds is income to Ms. Russell. Establishment of the trust is a transfer of resources by Ms. Russell since payment to or for her own behalf is prohibited by terms of the trust. Even though establishing the trust was her mother's wish, she was not legally obligated to do so. Her mother could have established a trust in her will or named the younger sister as beneficiary of the insurance policy.

**Example 2:** Same scenario as in Example 1 except that Ms. Russell establishes an irrevocable trust for the benefit of her sister and herself. The trust is a resource to Ms. Russell and makes her ineligible. The trust makes a \$5,000 payment to State College on behalf of her sister for tuition. The \$5,000 payment is a transfer of resources for Ms. Russell. If the trust principal was spent down to the point where it would allow resource eligibility, the tuition payments or other payments to or on behalf of her sister would be evaluated as a transfer of resources.

## **13. Applying Exceptions To The Ineligibility Period**

The following sections provide instructions for determining whether an individual meets one of the exceptions to the period of ineligibility for transferring a resource at less than fair market value. If an individual meets one of the exceptions, the period of ineligibility does not apply.

**Note:** The Undue Hardship exclusion is developed only if the individual has a period of ineligibility due to a resource transfer and does not meet one of the other exceptions. See Chapter G – 21.

## **14. Transfer To A Trust Exceptions**

The **period of ineligibility** for transferring a resource at less than fair market value **does not** apply to an individual in the following situations.

### **14.1. The Trust Is A Countable Resource**

The **period of ineligibility does not** apply to an individual who transfers resources to a trust if either of the following is true:

- The trust has been evaluated under Trust Type A or Trust Type B, as appropriate, and the portion of the trust to which the resources were transferred is a countable resource to the individual or
- The trust would be considered a countable resource but was excluded under the trust undue hardship provision.

### **14.2. Transfers To A Trust For Disabled Or Blind Child**

The period of ineligibility does not apply to an individual who transfers a resource to a trust established for the sole benefit of the individual's child of any age who is blind or disabled. Child means biological child, adopted child, or stepchild **of any age and of any marital status.**

#### **14.2.1. Sole Benefit**

A transfer is considered to be for the sole benefit of a child if the transfer is arranged so that **no other person or entity can benefit** from the transferred resources **at the time of the transfer or for the remainder of the child's life.**

A transfer is considered “for the sole benefit” of a child only if established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the sole benefit of the child. Without such a document, a transfer cannot be determined to be for the sole benefit of the child.

Examples of legally binding written agreements are a trust, a deed that establishes that the person getting the resource is the sole owner, or a legally enforceable contract that shows that the transfer is for the sole benefit of the child.

#### ***14.2.2. Verification***

- Verify the relationship of the individual to the child.
- Verify that the child for whom the trust was established meets the SSI requirements for blindness or disability.
  - Assume that a child who was eligible for SSA or SSI benefits based on blindness or disability at the time of the transfer meets the definition of blindness or disability for purposes of this exception.
  - If the child who received the transferred resource was not eligible for SSI or SSA benefits based on blindness or disability at the time of the transfer, obtain a disability determination from disability determination services (DDS). See Chapter C – 2.3.4.
- Verify that the trust was established for the sole benefit of the child.

### **14.3. Transfers To A Trust For A Disabled Or Blind Individual Under Age 65**

The period of ineligibility does not apply to an individual who transfers a resource to a trust established for the **sole benefit** of a person, including himself or herself, who is under age 65 and is blind or disabled.

#### ***14.3.1. Sole Benefit***

A transfer is considered to be for the sole benefit of a blind/disabled person if the transfer is arranged so that **no other person or entity can benefit** from the transferred resources **at the time of the transfer or for the remainder of the blind/disabled person's life**.

A transfer is considered “for the sole benefit” of a blind/disabled person only if established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the sole benefit of the blind/disabled person. Without such a document, a transfer cannot be determined to be for the sole benefit of the blind/disabled person.

Examples of legally binding written agreements are a trust, a deed that establishes that the person getting the resource is the sole owner, or a

legally enforceable contract that shows that the transfer is for the sole benefit of the person.

#### ***14.3.2. Verification***

- Verify the age of the person for whom the trust was established,
- Verify that the person for whom the trust was established meets the SSI requirements for blindness or disability.
  - Assume that a person who was eligible for SSA or SSI benefits based on blindness or disability at the time of the transfer meets the definition of blindness or disability for purposes of this exception.
  - If the individual who received the transferred resource was not eligible for SSI or SSA benefits based on blindness or disability at the time of the transfer, obtain a disability determination from (DDS). See Chapter C – 2.3.4.
- Verify that the trust was established for the sole benefit of the disabled person.

### **15. Transfer Of The Individual's Home Exceptions**

The period of ineligibility for transferring a resource at less than fair market value will **not apply** if the individual or individual's spouse transfers title to his/her home to his/her:

#### **15.1. Spouse (Including A Separated Spouse)**

##### ***15.1.1. Verification***

Verify using any appropriate document the **relationship** of the transferor to the individual getting the resource (spouse).

#### **15.2. Child Under Age 21 Regardless Of Student Or Marital Status**

##### ***15.2.1. Verification***

- Verify using any appropriate document the **relationship** of the transferor to the individual receiving the home.
- Verify the child's **age**.

#### **15.3. Child Of Any Age Or Any Marital Status Who Is Blind Or Disabled**

### 15.3.1. Verification

- Verify that the child to whom the home was transferred meets the SSI requirements for blindness or disability.
  - Assume that an individual who was eligible for SSA or SSI benefits based on blindness or disability at the time of the transfer meets the definition of blindness or disability for purposes of this exception. For this purpose, “eligible” includes an individual in a payment suspension status.
  - If the individual who received the transferred resource was not eligible for SSI or SSA benefits based on blindness or disability at the time of the transfer, obtain a disability determination from (DDS). See Chapter C – 2.3.4.
- Verify using any appropriate document the relationship of the transferor to the individual receiving the home.

### 15.4. Child Of Any Age Or Any Marital Status Who Provided Care:

- Who was residing in the parent's home for at least **2 years** immediately before the date the individual became institutionalized; and
- Who **provided care** to the individual which permitted the individual to reside at home instead of in an institution

#### 15.4.1. Verification

- Verify the **length of residency** in the home through available documents or by a statement from a knowledgeable third party. A person resides in the transferor's home if it is that person's primary place of residence.
- Verify using any appropriate document the relationship of the transferor to the individual receiving the home.
- Verify that the parent's dates of institutionalization. For purposes of the transfer of a home exception, the following individuals are considered to be institutionalized:
  - An individual who is an inpatient in a nursing facility;
  - An individual who is an inpatient in a medical treatment facility and for whom Medicaid payments are made based on a level of care provided in a nursing facility;

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- An individual who is eligible for home or community based services under a Medicaid waiver;
- An individual who is in an ALF or Adult Foster Care
- Verify that the son or daughter provided care for the individual using available documents or a signed statement by a knowledgeable third party.

- Providing Care for the Parent

The transfer of a home exception requires that the son or daughter (who received the transferred home) provided care that enabled the parent to reside at home instead of in an institution or facility. Such care is substantial but not necessarily full-time care. A son or daughter is providing care for purposes of this exception if he/she does most of the following for the transferor on regular basis:

- Prepares meals;
- Shops for food and clothing;
- Helps maintain the home;
- Assists with financial affairs (banking, paying bills, taxes);
- Runs errands;
- Provides transportation;
- Provides personal services;
- Arranges for medical appointments;
- Assists with medication

**Note:** The issue of providing care needs to be developed only when the resource is transferred to a son or daughter who is not blind or disabled, and who resides with the transferor for at least 2 years prior to the transferor becoming institutionalized.

### **15.5. Sibling (Full Sibling, Stepsibling, Or Half Sibling)**

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- Who has ownership interest (including life estate and equitable ownership) in the home; and
- Who was residing in the transferor's home for at least 1 year immediately before the date the transferor becomes institutionalized

#### **15.5.1. Verification**

- Verify that the sibling had an ownership interest in the home using appropriate documents.
- Verify the relationship of the transferor to the person receiving the home. Use any appropriate documents.
- Verify the length of residency in the home through available documents or by a statement from a knowledgeable third party. A person resides in the transferor's home if it is that person's primary place of residence.

### **16. Non-Home Transfers To Certain Family Members Exception**

The period of ineligibility for transferring a non-home resource at less than fair market value **does not** apply if the resource was transferred to:

- the transferor's spouse (including a separated spouse); or
- another person for the **sole benefit of** the transferor's **spouse**; or
- The transferor's **child** of any age who is **blind or disabled**.

**Note:** The period of ineligibility also does not apply if the resource is first transferred to the transferor's spouse and the spouse subsequently transfers it to another individual for the sole benefit of the spouse.

#### **16.1. Sole Benefit**

A transfer is considered "for the sole benefit" of a spouse only if established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the sole benefit of the spouse. Without such a document, a transfer cannot be determined to be for the sole benefit of the spouse.

#### **16.2. Verification**

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- Verify that the resource was transferred, to whom, the amount of compensation if any, and the date of transfer using the individual's signed statement and appropriate documents (e.g., sales agreement or any other document that verifies change of ownership).
- Verify using any appropriate document the relationship of the transferor to the individual getting the resource (spouse, child).
- As needed, verify that the transfer was for the sole benefit of the transferor's spouse by obtaining a copy of the appropriate legally binding written document. Allegations by both parties are not sufficient.
- As needed, verify that the child to whom the resource was transferred meets the AG requirements for blindness or disability.
  - Assume that an individual who was eligible for SSA or SSI benefits based on blindness or disability at the time of the transfer meets the definition of blindness or disability for purposes of this exception. For this purpose, “eligible” includes an individual in a payment suspension status.
  - If the individual who received the transferred resource was not eligible for SSI or SSA benefits based on blindness or disability at the time of the transfer, obtain a disability determination from (DDS). See Chapter C – 2.3.4.

## **17. Transfer For Purpose Other Than To Obtain AG Exception**

The period of ineligibility for transferring a non-home resource at less than fair market value **does not** apply if the individual transferred the resource **exclusively** for a purpose other than to obtain AG benefits.

### **17.1. Assumption**

If an individual gives away resources or sells resources for less than current market value (CMV), assume that the resources were transferred for the purpose of establishing or maintaining eligibility for AG. This assumption may be rebutted.

### **17.2. Rebuttal**

To rebut the assumption, the individual must provide convincing evidence that the resources were transferred exclusively for a purpose other than to become or remain eligible for AG.

**Note:** If the individual had some other purpose for transferring the resource, but an expectation of establishing or maintaining AG eligibility was also a factor, the period of ineligibility would apply.

### **17.3. Transfers Under The \$2,000/\$3,000 Limit**

If the individual's countable resources (including the transferred resource) in the month of transfer were below the \$2,000 limit (\$3,000 for a couple), accept the following verification as convincing evidence that the transfer was for a reason other than qualifying for AG.

#### **17.3.1. Verification**

- Obtain the individual's signed statement and appropriate documents (e.g., bank statements, a sales agreement, or any other document that verifies change of ownership).
- Verify that the individual's/couple's total countable resources were under the \$2,000/\$3,000 limit as of the date of the transfer.

### **17.4. Transfers For Less Than The ALF/AFCH Rate**

If the individual transfers a resource with a CMV that is less than the ALF/AFCH rate, because of the way the period of ineligibility is computed, the transfer would not result in a period of ineligibility. Accept this as convincing evidence that the transfer was for a reason other than qualifying for AG.

**EXCEPTION:** This does not apply to situations where the individual transferred small amounts of resources on several occasions. Remember that all resource transfers during the look-back period must be considered. Thus, several small transfers scattered over a period of months would not qualify for this abbreviated development if the total value of the transfers exceeds the ALF/AFCH rate. A full evaluation and convincing evidence would be required.

### **17.5. Convincing Evidence**

The individual must provide convincing evidence that the transfer of resources was exclusively for a purpose other than to qualify for AG benefits. A signed statement by the individual is not, by itself, convincing evidence. Assist the individual in obtaining evidence when necessary.

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Examples of convincing evidence are:

- Documents showing that, in the month of transfer, total countable resources would have been below the appropriate resource limit even if the individual had retained the transferred resource.
- Documents showing that the transfer was not within the individual's control (e.g., was ordered by a court); or
- Documents establishing that, at the time of the transfer, the individual could not have anticipated AG eligibility (e.g., the individual became disabled following a traumatic accident, but was not disabled at the time the transfer occurred); or
- Documents which verify the unexpected loss of other resources or income which would have precluded AG eligibility (e.g., a divorce which results in loss of income or resources provided by a spouse); or
- Documents establishing that, at the time of the transfer, the transferred resource would have been an excluded resource under AG rules (e.g., documents that establish the type of resource, the value, the date of transfer, etc.).
- The resources were given to a religious order by a member of that order in accordance with a vow of poverty.

#### **17.6. Verification**

- Individual's Statement - Obtain the individual's written and signed statement regarding the circumstances of the transfer. The statement should cover the individual's:
  - Purpose for transferring the resource;
  - Attempts, if any, to dispose of the resource at CMV;
  - Reason for accepting less than CMV for the resource;
  - Means or plans for self-support after the transfer;
  - Relationship, if any, to the person(s) to whom the resource was transferred;
  - Belief that he/she received CMV, if applicable.

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- Relevant documentary evidence (e.g., legal documents, real estate agreements, relevant correspondence, medical reports, etc.).
- Obtain signed statements from other individuals if material to the decision.

### **17.7. Examples—Rebuttal Determination**

**Example 1:** Ms. Berry has resided in an ALF since 8/14/06. She owns a home which has continued to be excluded because she expressed intent to return to the home. On 7/27/11 she deeds the home to her son. After discussing the transfer with Ms. Berry and her son, the worker learns that Ms. Berry had decided on 7/5/11 that she would never return to her home. The worker determines that this transfer does not meet any of the “transfer of a home” exceptions. In considering whether the transfer was for a purpose other than to preserve AG eligibility, the worker develops the issue of “intent to return”. The worker determines that Ms. Berry no longer intended to return home as of 7/5/11. Therefore, the home was not an excluded resource at the time Ms. Berry transferred ownership. This factor must be considered when the worker determines whether Ms. Berry transferred her home exclusively for a purpose other than to preserve AG eligibility.

## **18. Transferred Resources Returned To The Individual Exception**

The **period of ineligibility** for transferring a resource at less than fair market value **does not** apply to an individual if the entire resource is returned to the individual within the month of transfer. Return of the entire resource in a subsequent month or return of a portion of the resource requires that the period of ineligibility be reevaluated.

### **18.1. Entire Resource Returned In Same Month**

If the individual transfers a resource and the **entire** resource is returned in the **same** month, the period of ineligibility does not apply. To meet this exception, the individual must reacquire the same percentage of ownership interest in the resource that existed prior to the original transfer. Reacquiring a lower ownership interest is not sufficient to meet this exception nor is reacquiring physical possession of the resource. It is necessary to reacquire legal ownership. If the entire resource was returned in the same month as the transfer, process the case as if no transfer has occurred.

**Note:** The return of the resource to the individual is not counted as income to the individual.

**Example:** Ms. Smith transfers a non-excluded automobile for less than fair market value on 8/3/11. On 8/6/11 she files for AG and learns that the transferred resource will make her ineligible. On 8/10/11 she returns to the LDSS and provides evidence that the transferred automobile was returned to her on 8/9/11. Since the entire resource was transferred and returned in the same month, Ms. Smith is not subject to a period of ineligibility due to a resource transfer. However, Ms. Smith's eligibility for AG is based on the value of her resources as of 8/1/11, including the value of the non-excluded automobile.

## **18.2. Entire Resource Returned In A Subsequent Month**

If the individual transfers a resource and the **entire** resource is returned in a **subsequent month**, the **period of ineligibility continues through the month the resource is returned** (even if the resource is returned on the first day of the month). The period of ineligibility due to the transfer ends as of the month following the month the resource is returned. In that month, the returned resource is counted towards the individual's AG resource limit.

**Example 1:** Mr. Johnson transferred a sailboat for less than fair market value on 8/5/12. The uncompensated value is determined to be \$3,000. On 8/10/12 he files for AG benefits and learns that transferring a resource for less than fair market value makes him subject to a period of ineligibility. On 9/20/12 he reports to the LDSS that the transferred resource was returned to him on 9/15/12. For 8/12, Mr. Johnson's eligibility would be based on his resources as of 8/1/12 including the sailboat. For 9/12 he would be subject to a period of ineligibility due to the uncompensated value of the resource transfer. As of 10/12 the period of ineligibility due to the transfer ends. For 10/12 his eligibility would be based on all of his countable resources as of 10/1/12, including the sailboat. If Mr. Johnson is ineligible due to excess resources but otherwise eligible, the worker would advise him that he could be eligible for AG based on conditional benefits. See Chapter F.

**Example 2:** Mr. Jones files for AG on 10/3/12. He informs the worker that he transferred a boat worth \$5,000 to his nephew in 4/12. He further states that the nephew returned the boat to him in 6/12. Since the boat was returned to Mr. Jones before he filed for AG, the transfer has no effect on AG eligibility. However, if Mr. Jones still owned the boat in the month he filed for AG, it would be counted as a resource.

### 18.3. Less Than The Entire Resource Returned

If less than the entire resource is returned, recompute the period of ineligibility. The adjusted uncompensated value will be computed by subtracting the amount of the resource that was returned from the CMV of the resource. The recomputed period of ineligibility will be based on the adjusted uncompensated value. The **recomputed period of ineligibility will have the same beginning date**, the first of the month following the month of the initial transfer. If additional funds are subsequently returned, it will be necessary to recompute the uncompensated value again.

**Note:** Assume, absent evidence to the contrary, that the returned resource has the same current market value (CMV) it had when it was originally transferred. But, if there is evidence that the returned resource has a different CMV verify the new value, recompute the uncompensated value by comparing the CMV in the month the resource is returned with the CMV at the time of the original transfer.

**Example 1:** Ms. Jones files for AG on 8/6/11 and alleges ownership of 50 shares of stock worth \$5,000. She learns that the stocks would make her ineligible for AG due to excess resources, so she gives all 50 shares to her brother on 8/9/11. She returns to the LDSS and alleges that she no longer owns the stocks. The worker determines that she transferred the stocks for less than current market value and determines that she is ineligible due to excess resources in 8/11, and subject to a period of ineligibility beginning in 9/11 based on \$5,000 uncompensated value.

On 10/5/12 Ms. Jones returns to the LDSS and reports that the stocks were returned to her on 10/3/12. After reviewing the evidence, the worker determines that 15 shares of stock worth \$1,850 had been returned to Ms. Jones. Since the entire resource was not returned, Ms. Jones does not meet the exception to the period of ineligibility. The worker recomputes the uncompensated value (\$5,000 minus \$1,850 = \$3,150) and uses the new, lower uncompensated value to recompute the period of ineligibility. The recomputed period of ineligibility would have the same beginning date, but it would have fewer months due to the lower uncompensated value.

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**Example 2:** Ms. Green files for AG on 12/5/12 and gives her son \$10,000 in stock certificates on 12/21/12. The worker determines that she has a period of ineligibility of 8 months (\$10,000 divided by \$1,150 ALF rate = 8.70). Ms. Green is determined to be ineligible for AG from 1/13-08/13. However, in 7/13 her son returns \$4,800 of the certificates to Ms. Green. It is necessary to recompute the period of ineligibility based on uncompensated value of \$5,200 (\$10,000 minus \$4,800). The worker determines that the period of ineligibility is only 5 months (\$2,500 divided by \$500). However, her period of ineligibility continues through 7/13—the month that the resource was returned. She is potentially eligible for AG as of 8/13 if she meets all other requirements for eligibility.

#### **18.4. Verification**

Assume, absent evidence to the contrary, that the returned resource has the same current market value (CMV) it had when it was originally transferred. If there is evidence that the returned resource has a different CMV, verify the new value.

Verify that the ownership of the resource has been returned to the individual by obtaining

- The individual's signed statement **and**
- Appropriate documents that show the date the resource was returned, and that ownership of the entire resource was reacquired

A signed statement by the individual is not sufficient. It must be accompanied by the required additional verification. Failure to provide the appropriate verification will result in an inability to recalculate the period of ineligibility. The existing period of ineligibility will continue until the appropriate verifications are provided or the period of ineligibility expires.

#### **19. Uncompensated Value**

Uncompensated value (UV) is the difference between the CMV of a resource and the amount of compensation received by the individual in exchange for the resource. The uncompensated value is used to determine the period of ineligibility.

If the individual received compensation equal to or greater than the transferred resource's fair market value, there is no uncompensated value and no period of ineligibility.

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**19.1. Multiple Transfers Within The Look Back Period**

When multiple transfers occur within a look back period each must be evaluated individually to determine the uncompensated value of each. The uncompensated values are totaled to determine the total uncompensated value for all transfers that occurred during the look back period. The total is used to determine the period of ineligibility.

**20. Period Of Ineligibility**

The period of ineligibility is the period of time for which the individual is totally ineligible for AG due to a transfer of assets for less than the CMV. The period of ineligibility is determined by dividing the **uncompensated value** by the **ALF/AFCH rate** for the area in which the individual lived **at the time of the transfer**. The result is the number of months in the ineligibility period.

**Note:** If an AG period of ineligibility is assigned, Medicaid eligibility must be determined based on Medicaid guidelines.

MONTHLY MAXIMUM AUXILIARY GRANT RATE HISTORY								
2010 – 2015								
ALF & AFC Rates	01/10	1/11	01/12	07/12	01/13	07/13	01/14	1/15
District 8	\$1,279	\$1,279	\$1,303	\$1,317	\$1,328	\$1,375	\$1,388	\$1,402
All Other Districts	\$1,112	\$1,112	\$1,136	\$1,150	\$1,161	\$1,196	\$1,207	\$1,219

### 20.1. Length Of Period Of Ineligibility

A period of ineligibility can be from **1 month up to a maximum of 36 months** depending on the amount of the uncompensated value. A period of ineligibility **cannot exceed 36 months** regardless of the uncompensated value of the transfer. Months in the period of ineligibility run consecutively and are not impacted by

- Periods in which the individual may have been ineligible for other reasons, or
- Months in which the Undue Hardship Exception applies.

**Example:** Mr. Franklin has been receiving AG for several years. While conducting a redetermination in 8/11, the worker finds that Mr. Franklin transferred a resource for less than fair market value on 12/20/10 and is subject to a 6-month period of ineligibility that begins as of 1/11. The worker also finds that Mr. Franklin was ineligible due to excess income in 3/11 and 4/11. Mr. Franklin's period of ineligibility runs from 1/11-6/11. The ineligibility in 3/11 and 4/11 due to excess income, does not affect the length of the period of ineligibility due to the resource transfer. An overpayment must be determined for the months of ineligibility. See, Chapter G, 3.

### 20.2. Period Of Ineligibility Begin Date

The period of ineligibility begins on the first day of the month after the month the resource was transferred for less than current market value. The rule applies for initial claims and for ongoing situations.

**Exception:** If an individual transfers resources several times during the look back period, the total uncompensated value of all the transfers in the applicable period is used to determine the length of the period of ineligibility and the period would begin on the first day of the month after the first transfer.

**Example 1: Transfer in Filing Month** Mr. Johnson gives away \$2,500 cash to his brother on 5/15/11 and files for AG on 5/20/11. The first month of the period of ineligibility is 6/11 (the month after the transfer).

**Example 2: Multiple Transfers** Ms. Thomas files for AG on 10/22/12. The worker learns that she gave away \$2,500 cash on 3/15/12 and that she gave away \$1,500 cash on 5/3/12. The period of ineligibility would be based on uncompensated value of \$4,000 (\$2,500 + \$1,500) and would begin in 4/12 (the month after the first transfer).

### 20.3. Computing The Period Of Ineligibility - Individual

Follow this procedure to compute the period of ineligibility for an individual applicant/recipient.

- Determine the total, cumulative uncompensated value of all resources transferred during the look-back period.
- Divide the uncompensated value by the full amount of the ALF/AFCH rate for the area in which the individual lived at the time of the transfer.
- The resulting amount, computed to 2 decimal places **and rounded down** to the nearest whole number, is the number of months of the period of ineligibility.

**Example:** The worker determines that Mr. Smith, a Virginia Beach resident, transferred a resource for less than fair market value on 8/10/11. The transfer resulted in uncompensated value of \$7,500. The worker divides \$7,500 by \$1,112 which equals 6.74. The worker rounds down to the nearest whole number and determines that the period of ineligibility is 6 months and would begin in 9/11.

### 20.4. Computing The Period Of Ineligibility - Couple (Initial Application Only)

Follow this procedure to compute the period of ineligibility **only** when:

- The individual and the spouse lived in the same household as of the date of application,
- Both of the members of the married couple entered an ALF/AFCH in the same month,
- Both applied for AG in the month of entry, and
- The period of ineligibility begins prior to or in the month of application.

### 20.5. Procedure

- Determine the total, cumulative uncompensated value of any resources transferred by either member of the couple since the beginning of the look-back period.
- Divide the uncompensated value by the couple's ALF/AFCH rate (ALF/AFCH rate X 2).

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- The resulting amount, computed to 2 decimal places and rounded down to the nearest whole number, is the number of months of the period of ineligibility for each member of the couple.

## 21. Undue Hardship Exception

The **period of ineligibility** for transferring a resource at less than fair market value **does not** apply to any month in which not receiving AG benefits would create undue hardship for the individual. Undue hardship is determined on a month by month basis.

Undue hardship exists within a month if:

- The individual alleges that failure to receive AG payments would deprive the individual of **food or shelter**; **and**
- The individual's **total available funds** (income and **liquid** resources) **do not equal or exceed the ALF/AFCH rate** for the month that undue hardship is alleged

### 21.1. **When To Consider Undue Hardship**

Undue hardship must be considered if the individual has transferred a resource for less than current market value and **none of the other exceptions to the period of ineligibility apply**.

Send the individual a Transfer of Resource Notice to explain to him/her that benefits may be payable based on undue hardship. Allow the individual 10 days to respond. If the individual alleges undue hardship, make a determination and document the file. If the individual does not allege undue hardship, a determination is not required. Document the file and impose the period of ineligibility.

### 21.2. **Undue Hardship Alleged**

Obtain the individual's signed statement. The statement should cover the month of application through the processing month and the following 6 months. The statement should include the individual's allegation that:

- Lack of AG payments would cause loss of food or shelter;
- The individual expects to be under the total available funds limit for the next 6 months (if the period of ineligibility extends for 6 months or longer and the individual claims undue hardship for the future months);

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- The individual agrees to report promptly any changes in income and resources; and
- The individual understands that he/she may be overpaid if the total available resources exceed the limit for undue hardship for any month. (Repayment would be pursued for this type of overpayment. See Volume II, Part I, Chapter G, 3.)

**Note:** If the individual alleges that other income is expected sooner than 6 months, set a special review for recontacting the individual in the month the other income is expected.

### **21.3. Verification Of Loss**

#### **21.3.1. Loss Of Food**

Absent evidence to the contrary, accept the individual's statement that he/she will lose food.

#### **21.3.2. Loss Of Shelter**

For purposes of this provision, an individual would be deprived of shelter if:

- He/she would be subject to eviction from the current residence if AG benefits were not received; and
- There is no other affordable housing available, or there is no other housing available with necessary modifications for a disabled individual.

### **21.4. Period To Develop**

- Fully develop undue hardship for the month of filing through the month the claim is being processed.
- Develop undue hardship for the following 6 months if the individual is currently eligible based on undue hardship, and the individual alleges that undue hardship will continue. This determination for future months is done in lieu of contacting the individual every month to evaluate undue hardship.

**Note:** Do not develop undue hardship for the month of transfer because the period of ineligibility always begins the month after the transfer.

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## 21.5. Determine Total Available Funds

Determine the individual's **total available funds** for **each** month for which undue hardship is claimed by adding the total income for the month and total **liquid** resources for the same month.

### 21.5.1. Income

All countable and excludable income (except AG and items that are not income per Chapter I) are counted.

### 21.5.2. Resources

All **liquid resources** (both countable and excludable, except for designated burial funds) as of the first moment of the month being considered are counted.

**Liquid resources** are any resources in the form of cash or in any other form which **can** be converted to cash within 20 workdays. **Workdays** are any days other than Saturdays, Sundays, and Federal holidays.

AG benefits retained from a prior month are counted as a resource for purposes of determining an individual's total available funds.

**Note:** The transferred resource is not counted when computing the total available funds.

### 21.5.3. Verification Of Income And Liquid Resources

Verify the individual's income and liquid resources using appropriate documents as defined in the Manual (e.g., bank statements, award letters).

For the future months assume, based on the individual's signed allegation, that income and resources will stay below the limit through the month that the worker will recontact the individual.

## 21.6. Compare Total Available Funds With Applicable ALF/AFCH Rate

Compare the individual's total available funds with the ALF/AFCH rate for each month under consideration. Use the ALF/AFCH for the area in which the individual lives.

- Undue hardship does not exist for any month in which the total available funds **equal or exceed** the applicable ALF/AFCH rate. The period of ineligibility applies to any month in which undue hardship does not exist.

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- If undue hardship does not exist for the month of action or the following month, deny the case and hardship claim for future months. The individual can reapply if the situation changes.
- Undue hardship exists for any month in which the total available funds are **less than** the applicable ALF/AFCH rate and the individual has alleged that lack of AG payments would cause loss of food or shelter, and no evidence is uncovered that contradicts that allegation.

**Note:** Undue hardship is a month-by-month determination. Be alert for cases in which undue hardship may exist in some but not all months during the life of the application.

### **21.7. Document The Undue Hardship Determination**

Document the file with your determination of whether or not the individual qualifies for payments based on undue hardship. Use the **Transfer of Resources Notice** to notify the individual of the result of the evaluation.

### **21.8. Examples Of Undue Hardship Determinations**

**Example 1:** Mr. Johnson files for AG benefits on 7/5/11. He transferred a resource on 5/15/11 and the uncompensated value will result in a period of ineligibility of 14 months (6/11-7/12). Mr. Johnson alleges that not getting AG benefits would cause him undue hardship. Mr. Johnson's AG application indicates that his only monthly income is SSI valued at \$603. His only liquid resource is a savings account with a 7/1/11 balance of \$1,200. The worker adds Mr. Johnson's income and resources ( $\$603 + \$1,200 = \$1803.00$ ).

Because his total available funds (\$1,803.00) exceed the AG rate, Mr. Johnson does **not** meet the undue hardship test for 7/11. The worker inquires about Mr. Johnson's expected expenditures and Mr. Johnson alleges that he is not likely to spend enough of his savings in 7/11-8/11 to be within the limit for undue hardship. Therefore, since Mr. Johnson will not meet the requirements for undue hardship in the action month or the following month, the worker denies the application and issues a denial notice on 7/12/11.

**Example 2:** This example uses the same case facts as Example 1. Mr. Johnson returns to the field office on 9/4/11 and files a reapplication alleging that he has spent \$1,000 of his savings in 8/11 to pay bills. The worker documents the cash was spent and determines that on 9/1/11 Mr. Johnson's bank account balance was \$200. For 9/11 his total available funds are \$803 (\$603 income + \$200 savings). His total available funds are less than the AG rate.

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The worker documents the file with Mr. Johnson's allegation that he will not be able to pay for his food and shelter in 9/11 and in future months without AG. The worker determines that Mr. Johnson qualifies for benefits based on undue hardship for 9/11, and will continue to be eligible based on undue hardship for at least the next 6 months. The worker sets a special review for 6 months to recontact Mr. Johnson to determine if he still qualifies for AG based on undue hardship.

## **21.9. Recontacting Individual**

Use this procedure when you need to develop whether the individual continues to meet the requirements to receive benefits based on undue hardship.

### **21.9.1. Period Of Ineligibility Is 6 Months Or Less**

If the individual is subject to a period of ineligibility of 6 months or less, and is getting AG based on undue hardship, recontact the individual in the final month of the period of ineligibility to determine whether he/she was due benefits for each month of the past period.

### **21.9.2. Period Of Ineligibility Is Longer Than 6 Months**

Recontact the individual every 6 months and again in the final month of the ineligibility period if the individual is subject to a period of ineligibility longer than 6 months and is getting AG based on undue hardship. For periods of ineligibility of 6 to 12 months, recontact may be scheduled for the halfway point and the final month.

### **21.9.3. Documenting Whether Undue Hardship Has Continued**

When the individual is recontacted:

- Obtain the individual's signed allegation that AG was needed to prevent the loss of food or shelter for any months not covered by the previous signed allegation.
- Verify the individual's income and resources for any months not previously verified using appropriate documents (e.g., bank statements, award letters).
- Determine whether the total available income and resources in any of the months was over the limit for undue hardship payments. For any month that the individual's total available funds were over the limit, undue hardship does not apply and an overpayment exists. See Chapter G, 3.

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- If undue hardship continues for the remaining months of the ineligibility period, continue payments.

### **21.10. Determining Undue Hardship For Past Months In Ongoing Cases**

Use this procedure for ongoing cases when the period of ineligibility includes past months for which AG benefits have already been paid.

#### **21.10.1. Step One**

- Assume that the individual needed the AG payments in order to obtain food and shelter. (No statement required.)
- For each month of the past period, determine if the individual's total available funds were below the ALF/AFCH rate.
- Determine that undue hardship existed for each month that the individual was below the limit for total available funds.
- If the individual was not below the total available funds limit for any month, go to step 2.

#### **21.10.2. Step Two**

If the individual does not meet undue hardship for months in the past period under Step 1, it is necessary to take into account the effect that not receiving AG would have had on the individual. Therefore, for each past month in the ineligibility period, subtract the amount of AG paid in that month from the **liquid resource total** before determining whether the total available funds were below the undue hardship limit for that month.

**Example:** During a redetermination on 7/5/10, it is determined that Mr. Smith transferred a resource that resulted in a period of ineligibility that began in 3/10 and continues through 11/10. It is necessary to establish whether Mr. Smith meets the requirements for undue hardship to determine if he was due the AG payments for 3/10-6/10.

Mr. Smith provides evidence that he received \$700 of Title II benefits each month from 3/10-6/10. He had no other income in these months except his AG grant of \$346. The worker determines that Mr. Smith's liquid resources were \$800 on 3/1/10, \$250 on 4/1/10 \$300 on 5/1/10 and 6/1/10, and \$750 for 7/1/10.

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- For 3/05, Mr. Smith's other income (Title II of \$700) plus his liquid resources (\$800) = \$1500 which exceeds the undue hardship limit (\$1,112- the ALF rate in this case). The worker considers the effect that not getting AG would have by subtracting \$326 from \$1500 which results in total available funds of \$1,174 for 3/10. Since \$1,174 still exceeds the undue hardship limit of \$1,112, Mr. Smith is ineligible for 3/10 (an overpayment).
- For 4/10, Mr. Smith's other income (\$700) plus his liquid resource balance (\$250) = \$950. From \$950 the worker subtracts the \$326 AG payment which results in total available funds of \$624. This balance is below the undue hardship limit of \$1,112. Therefore, Mr. Smith is eligible for 4/10 based on undue hardship.
- For 5/10 and 6/10, Mr. Smith continues to meet the undue hardship requirement. The worker adds the other income (\$700) plus the liquid resource balance (\$300) and subtracts the \$326 AG payment which results in a balance of \$348 for both 5/10 and 6/10. Thus, Mr. Smith is eligible for both months.
- For 7/10 (the current month), Mr. Smith does not meet the undue hardship test. His other income (\$700) plus his bank balance (\$750) minus the \$326 AG payment leaves a balance of \$1124 which exceeds the limit for undue hardship.

### 21.11. Couples Cases – Month Of Application Only

Follow this procedure **only** when undue hardship is claimed for the **application month** when both of the members of a married couple enter an ALF or AFCH and apply for AG in the same month.

(The only month the couple is evaluated as an AU of 2.) For subsequent months determine undue hardship for each as an individual.

When determining total available funds for an eligible couple use the methods outlined in Chapter G – 21.10. However, use the couple's ALF/AFCH rate (ALF/AFCH rate X 2) and the total available funds of both spouses in the computations.

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## **22. Transfer of Resources Notice**

The Transfer of Resources Notice is used to notify an individual that he/she is ineligible for a period of time due to the uncompensated transfer of resources, to inform him/her of his/her right to claim undue hardship and to notify him/her of any adjustments made to his/her period of ineligibility. See Chapter G.

### **22.1. Initial Application/Reapplication**

The Transfer of Resources Notice is to be sent with the Notice of Action.

### **22.2. Redetermination or Change**

The Transfer of Resources Notice is to be sent with the Advance Notice of Proposed Action.