

1. The institutionalized person's home is currently occupied by the institutionalized person's spouse, child who is under age 18, or child who is 18 years or older and who is developmentally disabled;

2. The institutionalized person intends to return to the home and the anticipated absence from the home, as verified by a physician, is less than 12 months; or

3. The anticipated absence of the institutionalized person from the home is for more than 12 months but there is a realistic expectation, as verified by a physician, that the person will return to the home. That expectation shall include a determination of the availability of home health care services which would enable the recipient to live at home.

(c) If none of the conditions under par. (b) is met, the property is no longer the principal residence and becomes non-homestead property.

(d) When income that has been protected for institutionalized recipients accumulates to the point that the asset limit is exceeded, MA eligibility shall terminate. Eligibility may not be reinstated until the assets are below the limit at which time a new application shall be required.

(e) To maintain continuous MA eligibility the recipient may apply assets as a refund of MA benefits to the department. In no instance may refunds exceed benefits received.

(2) MOTOR VEHICLES. (a) In this section:

1. "Motor vehicle" means a passenger car or other motor vehicle used to provide transportation of persons or goods and which is owned by a person in the MA or fiscal test group.

2. "Equity value" means the fair market value minus any encumbrances which are legal debts.

3. "Fair market value" means the wholesale value shown in a standard guide on motor vehicle values or the value as estimated by a reliable expert.

(b) For persons whose eligibility is being determined according to AFDC categorically needy financial standards, the following conditions shall apply:

1. If one vehicle is owned, up to \$1,500 of equity value is exempt; and

2. If more than one vehicle is owned, up to \$1,500 of equity value of the vehicle with the greatest equity value is exempt. The equity value of the vehicle with the greatest equity value in excess of \$1,500 and the equity value of any other vehicle is counted as an asset.

(bm) For persons whose eligibility is being determined according to AFDC medically needy financial standards, the following conditions shall apply:

1. If one vehicle is owned, it is exempt from consideration as an asset regardless of value;

2. If more than one vehicle is owned, a second vehicle is exempt from consideration as an asset if the agency determines that it is necessary for the purpose of employment or to obtain medical care; and

3. The equity value of any nonexempt vehicle owned by the applicant is counted as an asset.

(c) For persons whose eligibility is being determined according to SSI categorically needy or medically needy financial standards, the following conditions shall apply:

1. If one vehicle is owned it is exempt if it meets one of the following conditions:

- a. It is necessary for employment;
- b. It is necessary for medical treatment of a specific or regular medical problem;
- c. It is modified for operation by or transportation of a handicapped person; or
- d. It is necessary because of climate, terrain, distance or similar factors to provide transportation to perform essential daily activities.

2. If no automobile is exempt under subd. 1, one automobile is not counted as an asset to the extent that its current fair market value does not exceed \$4,500. Fair market value in excess of \$4,500 counts toward the asset limit.

3. If more than one vehicle is owned, the equity value of the nonexempt vehicle is counted as an asset.

(3) JOINT ACCOUNTS AND JOINTLY HELD PROPERTY. (a) *Joint accounts.* A joint account shall be deemed available to each person whose name is on the account or listed as an owner. The value of a joint savings or checking account shall be determined as follows in determining eligibility for MA:

1. For persons who receive MA who are not age 65 or over, or not blind or disabled, the division of a joint account shall be determined according to applicable federal law; and

2. For persons who receive MA who are age 65 or over or who are blind or disabled, joint accounts shall be divided as follows:

a. If both owners of the joint account receive MA, equal shares of the joint account shall be included for the purpose of determining MA eligibility; and

b. If only one owner of the joint account receives MA, the full amount of the joint account shall be included for the purpose of determining MA eligibility.

(b) *Jointly held property.* If the applicant or recipient is a joint owner of property with a person who refuses to sell the property and who is not a legally responsible relative of the applicant or recipient, the property shall not be considered available to the applicant or recipient and may not be counted as an asset. If the property is available to the applicant or recipient, it shall be divided equally between the joint owners.

(4) HOMESTEAD PROPERTY. (a) A home owned and lived in by an applicant or recipient is an exempt asset.

(b) Net proceeds from the sale of homestead property shall be treated as assets except when the proceeds are placed in escrow in contemplation of purchase of another home. Proceeds in escrow are exempt assets for a maximum of one year.

(5) **NON-HOMESTEAD REAL PROPERTY.** (a) If the equity value of the non-homestead property together with all other assets does not exceed the asset limit, the person may retain the property and be eligible for MA.

(b) If the value of non-homestead property together with the value of the other assets exceeds the asset limit, the non-homestead property need not be counted as an asset if it produces a reasonable amount of income. In this paragraph, "reasonable amount of income" means a fair return considering the value and marketability of the property.

(c) If the total value of non-homestead property and non-exempt assets exceeds the asset limit, the person who owns the non-homestead property shall list the property for sale with a licensed realtor at a price which the realtor certifies as appropriate. If the property is listed for sale, it may not be counted as an asset. When the property is sold, the net proceeds shall be counted as an asset.

(6) **LIFE ESTATE.** The applicant or recipient may hold a life estate without affecting eligibility for MA. If the property or the life estate is sold, any proceeds received by the applicant or recipient shall be considered assets. In this subsection, "life estate" means a claim or interest a person has in a homestead or other property, the duration of the interest being limited to the life of the party holding it with that party being entitled to the use of the property including the income from the property in his or her lifetime.

(7) **TRUSTS.** (a) Trust funds shall be considered available assets, except that:

1. Trust funds payable to a beneficiary only upon order of a court shall not be considered available assets if the trustee or other person interested in the trust first applied to the court for an order allowing use of part or all of the trust fund to meet the needs of the beneficiary and the court denied such application;

2. Trust funds held in a trust which meets the requirements of s. 701.06, Stats., shall not be considered available assets unless the settlor is legally obligated to support the beneficiary;

3. For SSI-related MA applicants and recipients, the pertinent SSI standards on the treatment of trusts as resources shall apply; and

4. For AFDC-related applicants and recipients, the pertinent AFDC standards on the treatment of trusts as resources shall apply.

(8) **PERSONAL PROPERTY.** Household and personal effects of reasonable value, considering the number of members in the fiscal test group, shall be exempt.

(9) **LOANS.** Money received on loan shall be exempt unless it is available for current living expenses, in which case the money shall be treated as an asset even if a repayment schedule exists.

(10) **LIFE INSURANCE POLICIES.** The cash value of a life insurance policy shall be considered an asset, except that for SSI-related persons it is an asset only when the total face value of all policies owned by the person exceeds \$1,500. In this subsection, "cash value" means the net amount of cash for which the policy could be surrendered after deducting any loans or liens against it, and "face value" means the dollar amount of the policy which is payable on death.

(11) **LUMP SUM PAYMENTS.** All lump sum payments, unless specifically exempted by federal statute or regulation, shall be treated as assets instead of income. In this subsection, "lump sum payment" means a non-recurring payment such as retroactive social security benefits, income tax refunds, and retroactive unemployment benefits.

(12) **WORK-RELATED ITEMS.** Work-related items essential to the employment or self-employment of a household member, except motor vehicles, are exempt from being counted as assets. For business or farm operations, internal revenue service (IRS) returns shall be used to determine whether or not the operation is profitable or moving toward becoming profitable. If the operation is not profitable or becoming profitable, all assets related to the operation shall be counted in the determination of eligibility.

(13) **SPECIAL EXEMPT ASSETS FOR BLIND OR DISABLED PERSONS.** The following assets shall be exempted in determining the eligibility of blind or disabled persons:

(a) Assets essential to the continuing operation of the person's trade or business;

(b) Income-producing property; and

(c) Funds conserved for a departmentally approved plan for self-support of a blind or disabled person. The conserved funds shall be segregated from other funds. Interest earned on conserved funds is exempt so long as the conserved funds do not exceed the provision of the approved plan.

(14) **LAND CONTRACTS.** (a) The applicant or recipient shall obtain a written estimate of the fair market value of a land contract from a source active in the market for land contracts in Wisconsin.

(b) If the applicant's or recipient's vendor interest in a land contract exceeds the medically needy asset limit under s. 49.47 (4) (b), Stats., the applicant or recipient shall offer the land contract for sale. The applicant's or recipient's vendor interest in a land contract shall be counted as an available asset unless he or she provides written documentation from a source active in the market for land contracts in Wisconsin proving that his or her interest in the land contract cannot be sold.

History: Cr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (d), r. and recr. (1) (e), Register, January, 1987, No. 373, eff. 2-1-87; am. (6), cr. (14), Register, July, 1989, No. 403, eff. 8-1-89; am. (2) (b), cr. (2) (bm), r. and recr. (2) (c), Register, December, 1990, No. 420, eff. 1-1-91.

HSS 103.063 Divestment prior to August 9, 1989. (1) APPLICABILITY. This section applies to all applicants for MA and recipients of MA who disposed of a resource at less than fair market value prior to August 9, 1989 and to all inter-spousal transfers occurring before October 1, 1989. Section HSS 103.065 applies to all institutionalized applicants and recipients. Register, December, 1990, No. 420

ients who divest on or after August 9, 1989, except for inter-spousal transfers occurring before October 1, 1989.

(1m) **PURPOSE.** This section implements s. 49.45 (17), 1987-88 Stats., which makes an applicant for or recipient of MA ineligible when the applicant or recipient disposed of a resource at less than fair market value within 2 years before or at any time after his or her most recent application for MA or any review of eligibility for MA. Section 49.45 (17) (d), 1987-88 Stats., is specifically concerned with an applicant for or recipient of MA who resides as an inpatient in a skilled nursing facility (SNF), intermediate care facility (ICF) or inpatient psychiatric facility and who disposed of homestead property at any time during or after the 2 year period prior to the date of the most recent application or any review of eligibility.

(2) **DIVESTMENT OF NON-HOMESTEAD PROPERTY.** (a) *Amount of divestment.* For any person who disposed of a resource, except a homestead or other exempt resource, at less than fair market value within 2 years before or at any time after his or her most recent application for MA, or any review of eligibility, the agency shall determine the amount of the divestment in the following manner:

1. If the compensation received is less than net market value, the difference between the compensation received and the net market value is the divested amount and shall be considered an asset.

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