

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

October 1, 2019
1:00 p.m. Central Time
Gold's Building, Room 534
1033 O Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 469 Nebraska Administrative Code (NAC) 1 - 4 – *Assistance to the Aged, Blind, or Disabled Program*. The proposed changes to the regulations: remove any repeat of statutory language or internal direction to staff from the regulations; update terminology and formatting; add a special diet allowance; allow for a budget deduction of prescription co-payments and costs associated with special diets; and remove any regulations that were applicable only to individuals receiving Medicaid, as those services are covered in the Division of Medicaid and Long-Term Care regulations.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

Interested persons may attend the hearing and provide verbal or written comments or mail, fax or email written comments, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 469	Prepared by: William Varicak
Chapter: 1-4	Date prepared: 5/15/2019
Subject: Assistance to the Aged, Blind or Disabled, and State Disability Program	Telephone: 402-310-8765

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

~~1-004 Definition of Terms: For use within AABD and SDP, the following definitions of terms will apply unless the context in which the term is used denotes otherwise.~~

~~AABD Payment: The financial assistance/payment portion of the AABD Program. Also known as AABD/PMT.~~

~~Adequate Notice: Notice of case action which includes a statement of what action(s) the worker intends to take, the reason(s) for the intended action(s), and the specific manual reference(s) that supports or the change in federal or state law that requires the action(s); (see also 469 NAC 1-008.03C).~~

~~Aged: A client who is age 65 or older.~~

~~Applicant: An individual who applies for assistance.~~

~~Application: The action by which the individual indicates the desire to receive assistance by submitting an application.~~

~~Application Date: For new and reopened cases, the date a properly signed application is received or the received date by the agency on an electronic application (e-app). When adding a program to a properly signed application, this is the date that the new program is requested.~~

~~Application Signature: Applications may be signed in writing or by electronic signature.~~

~~Application Submission: Applications may be submitted in person, by mail, by fax, or by electronic transmission.~~

~~Approval/Rejection Date: The date that the new or reopened case is determined eligible or rejected by the Nebraska Department of Health and Human Services.~~

~~Assignment: The legal transfer of an individual's right to benefits to the Nebraska Department of Health and Human Services.~~

~~Blind: A category of eligibility for clients who are age 64 and younger and who are blind in accordance with program standards.~~

~~Categorical Assistance: Assistance administered by the Nebraska Department of Health and Human Services. For the purposes of this definition, it includes Aid to Dependent Children (ADC), Child Welfare Payment and Medical Services Program, Assistance to the Aged, Blind, or Disabled (AABD), State Disability Program (SDP), and Refugee Resettlement Program (RRP) Program.~~

Client: An individual either applying for or receiving assistance. This term is used when the same policies apply to an applicant and a recipient.

Deeming: The process of determining the amount of income and resources of a parent or sponsor which must be considered available to meet the client's needs.

Disabled: A category of eligibility for clients who are age 64 and younger and who are disabled in accordance with program standards.

Equity: The fair market value of property minus the total amount owed on it.

Essential Person (EP): A needy individual:

1. Who lives in the home of the client;
2. Who is not eligible for assistance in his/her own right;
3. Who is necessary to the well-being of the client; and
4. Whose needs are included in the client's budget.

This determination is made by SSI or by the client.

For EP's included in determining a payment budget, see 469 NAC 3-006.02. For EP's included in determining eligibility for SDP, see 469 NAC 4-007.

Fair Market Value: The price an item of a particular make, model, size, material, or condition will sell for on the open market in the geographic area involved.

Grant Case: A case receiving a state supplement payment. Either term, grant or payment, may be used to make reference to the state supplement.

Inquiry: Any question received by phone, letter, electronic transmission, or personal contact without any indication that the individual wishes to apply. This may or may not be followed by a request or application for assistance.

Need: A condition of eligibility referring to economic need.

Needy Individual: One whose income and resources for maintenance are found under assistance standards to be insufficient for meeting the basic requirements (see also 469 NAC 2-009 and 2-010).

Payment: A case receiving a state supplement grant. Either term, payment or grant, may be used to make reference to the state supplement.

Payment Effective Date: The month and year that the grant payment is to be effective.

Pending Case: A case in which the application has been taken and eligibility is yet undetermined. All pending cases must be entered on N-FOCUS within two working days.

Power of Attorney: A written statement allowing one person to act for another person. A power of attorney may be authorized generally for the management of a specified business or enterprise or more often specifically for the accomplishment of a particular transaction. There is no court involvement or supervision in the appointment. The statement does not have to be notarized.

A standard or non-durable power of attorney automatically becomes null and void when the appointing individual becomes incompetent. A durable power of attorney continues in effect even when the appointing individual becomes incompetent. The power of attorney document should clearly specify if it is a durable power of attorney.

Prudent Person Principle: The practice of assessing all circumstances regarding case eligibility and using good judgment in requiring further verification or information before determining initial or continuing eligibility (see also 469 NAC 1-010).

Recipient: An individual who is receiving assistance.

Rejected Case: A case in which an application was completed and signed but the applicant did not meet the categorical, procedural, or financial requirements of the program.

Request: An action by which an individual's desire to receive assistance is made known to the local office. A request may be made by telephone, letter, electronic transmission, or an interview.

Request Date: The date the client requests assistance. For reopened cases, this is the date of the new request. For program changes, this is the request date for the new program.

Retroactive Eligibility for SDP Medical Assistance: The date of eligibility beginning no earlier than the first day of the third month before the month of request if the following conditions were met:

1. Eligibility was determined and a budget computed separately for each of the three months;
2. A medical need existed; and
3. Eligibility requirements were met at some time during each month.

Retroactive Payment: Any payment made during the current month but for a prior month.

Share of Cost: A client's financial out-of-pocket obligation for medical services when countable income exceeds the medical maintenance income level. The Share of Cost amount is the difference between the unit's countable income and the appropriate medical maintenance income level. This amount must be obligated or paid to medical providers before Medicaid will pay on the remaining medical bills.

SDP: A categorical program consisting of financial assistance and medical assistance or medical assistance only. The term SDP is used when the manual reference(s) apply to both the grant and medical portions of the program.

SDP Medical: The medical assistance portion of the State Disability Program. Also known as SDP/MA. Two types of SDP cases are included in the medical assistance-only category:

1. Medical Assistance with No Share of Cost (SOC) (MA only): A case in which there is income sufficient to meet daily maintenance needs but insufficient to meet medical needs.
2. SDP/Medical Assistance SOC Case: A case in which there is sufficient income to meet daily maintenance needs and a portion but not all of the unit's medical needs. The case is opened for medical assistance with no payment for medical services made until the SOC is obligated toward medical services.

SDP Payment: The financial assistance/payment portion of the State Disability Program. Also known as SDP/PMT.

SSI Federal Benefit Rate: The maximum SSI benefit payable based on the individual's living arrangement, e.g., own home, nursing home, living in another's home.

Supplemental Payment: Any payment made for and during the current month after major payroll has run.

Third Party Medical Payment: A payment from any health insurance plan, individual, or group for medical expenses.

Timely Notice: A notice of case action dated and mailed at least ten calendar days before the date the action becomes effective (see 469 NAC 1-008.03A2).

Unit: Eligible/needy individuals considered in determining the grant/payment amount and/or medical assistance.

Withdrawal: A voluntary written retraction of an application.

1-005 Worker Responsibilities: The worker has the following responsibilities.

1-005.01 Duties at Initial Application or Redetermination: At the time of initial application and redetermination, the worker shall-

1. Allow anyone who requests assistance to complete an application;
2. Give an explanation of the program requirements;
3. Collect and review the information entered on the application form;
4. Explain the eligibility and payment factors and how changes will affect eligibility and payment;
5. Explain the eligibility and payment factors that require verification;
6. Obtain the client's written consent for the needed verifications;
7. Explore income that may be currently or potentially available such as RSDI, SSI, Veteran's Assistance benefits (VA), etc.;
8. Give information about the social and other financial services available through the agency;
9. Inform the client about his/her rights and responsibilities (see 469 NAC 1-006 and 1-007);
10. Inform an SDP medical client that s/he must show his/her medical card to all providers and must inform the worker of any health insurance plan, any individual, or any group that may be liable for the client's medical expenses;
11. Explain the assignment of third party medical payments and the requirement to cooperate in obtaining third party medical payments and refund any payments received directly;
12. Complete necessary reports and information forms;
13. Act with reasonable promptness on the client's application for assistance;
14. Provide adequate notice to the client of
 - a. Approval for a grant and the amount;
 - b. Approval for SDP medical assistance;
 - c. Rejection of the application and the reason; or
 - d. Confirmation of the client's voluntary withdrawal; and
15. Explain the appeal process (see 465 NAC 2-001.02).

~~1-005.02 Continuing Responsibilities: The worker has the continuing responsibility to:~~

- ~~1. Provide adequate notice of any action affecting the client's assistance case (see 469 NAC 1-008.03 to determine if timely notice is necessary);~~
- ~~2. Treat the client's information confidentially; and~~
- ~~3. Uphold the client's civil rights.~~

~~1-005.03 Nursing Facility Admissions: The worker must refer any AABD grant or SDP client requesting nursing facility services to the admitting nursing facility for the identification screen and Pre-Admission Screening Process (PASP) as required by 471 NAC 12-000.~~

~~1-006 Client Responsibilities: The client is required to:~~

- ~~1. Provide complete and accurate information. State and federal law provides penalties of a fine, imprisonment, or both for persons found guilty of obtaining assistance or services for which they are not eligible by making false statements or failing to report promptly any changes in their circumstances;~~
- ~~2. Report a change in circumstances no later than ten days following the change. This includes information regarding:
 - ~~a. Monthly expenses;~~
 - ~~b. Resources or other financial matters;~~
 - ~~c. Employment status;~~
 - ~~d. The composition of the household;~~
 - ~~e. Living arrangements;~~
 - ~~f. Address;~~
 - ~~g. Disability status;~~
 - ~~h. A temporary absence from the home of any unit member; and~~
 - ~~i. Changes in the amount of monthly income, including:
 - ~~(1) All changes in unearned income; and~~
 - ~~(2) Changes in the source of employment, in the wage rate and in employment status, i.e., part-time to full-time or full-time to part-time. For reporting purposes for AABD, 30 hours per week is considered full-time. The client must report new employment within ten days of receipt of the first paycheck, and a change in wage rate or hours within ten days of the change.~~~~~~
- ~~3. Present his/her medical card to providers;~~
- ~~4. Inform the medical provider and worker of any health insurance plan, any individual, or any group that may be liable for his/her medical expenses;~~
- ~~5. Cooperate in obtaining any third party medical payments;~~
- ~~6. Enroll in a health plan and maintain enrollment if:
 - ~~a. One is available to the client;~~
 - ~~b. The client is able to enroll on his/her own behalf; and~~
 - ~~c. The Department has determined that enrollment in the plan is cost effective.~~~~
- ~~7. Reimburse to the Nebraska Department of Health and Human Services or pay to the provider any third party medical payments received directly for services which are payable by SDP Medical or the Nebraska Medicaid Program;~~
- ~~8. Pay any unauthorized medical expenses;~~
- ~~9. Pay any required medical copayment (see 469 NAC 4-008);~~
- ~~10. Cooperate with state and federal quality control; and~~
- ~~11. Contact the agency for an interview as instructed by the agency in writing.~~

~~1-006.01 Sanction for Non-Cooperation With Quality Control: A client must cooperate with state and federal quality control as a condition of eligibility. If a client fails to cooperate, s/he is ineligible for one month only. The worker closes the case the first month possible, considering adequate and timely notice. The following month, the worker reopens the case if the client is otherwise eligible. If at anytime QC notifies the worker that the client has cooperated, assistance is restored for the month the case was closed.~~

~~1-007 Client Rights: The client has the right to:~~

- ~~1. Apply. Anyone who wishes to request and/or apply for assistance must be given the opportunity to do so. No one may be denied the right to apply for public assistance;~~
- ~~2. Reasonably prompt action on his/her application for assistance (see 469 NAC 1-008.02B);~~
- ~~3. Adequate notice of any action affecting his/her application or assistance case (see 469 NAC 1-008.03 to determine if timely notice is necessary);~~
- ~~4. Appeal to the Director for a hearing on any action or inaction with regard to an application, the amount of the assistance payment, or failure to act with reasonable promptness. The appeal must be filed in writing within 90 days of the action or inaction;~~
- ~~5. Have his/her information treated confidentially;~~
- ~~6. Have his/her civil rights upheld. No person may be subjected to discrimination on the grounds of his/her race, color, national origin, sex, age, disability, religion, or political belief;~~
- ~~7. Have the program requirements and benefits fully explained;~~
- ~~8. Be assisted in the application process by the person of his/her choice; and~~
- ~~9. Referral to other agencies.~~

1-008 Application Processing

~~1-008.01 Request: A request for AABD grant assistance or SDP may be made in person, by letter, or by telephone, fax, or electronic submission and may be made by the applicant, his/her guardian or conservator, an individual acting under a duly executed power of attorney (see 469 NAC 1-004), or another person authorized to act for the applicant. The worker must record the request date on the application. If an interview cannot be scheduled within 14 days from the date of request, an application must be mailed promptly or the client must be informed of the electronic application.~~

~~A request is terminated:~~

- ~~1. When a properly signed application is received;~~
- ~~2. When the applicant or his/her representative notifies the worker of withdrawal; or~~
- ~~3. After 30 days if the worker has heard nothing further from the applicant or his/her representative. However, the worker may continue to hold a request pending if there is reason to believe the applicant intends to complete his/her application.~~

~~1-008.02 Application: A request becomes an application when a properly signed application is received. A properly signed application contains:~~

- ~~1. Name;~~
- ~~2. Address; and~~
- ~~3. Proper signature, as defined by the appropriate program.~~

~~An application may be signed by an individual for himself/herself or by the applicant's guardian, conservator, an individual acting under a duly executed power of attorney, or another person authorized to act for the applicant. The worker must use prudent person principle in deciding who may sign the application.~~

~~An application for SDP Medical benefits only may be taken on behalf of a deceased person. If there is no one to represent the deceased person, the administrator of the estate may sign the application. The eligibility requirements must have been met at the time medical services were rendered.~~

~~1-008.02A Alterations: The application, when completed and signed by the client or his/her representative, constitutes his/her own statement in regard to his/her eligibility. If the worker adds information received from a client to a properly signed application, the worker must date the information and:~~

- ~~1. Note the information received from the client; or~~
- ~~2. If the information is not received from the client, identify the source of the information.~~

~~The worker may add information to an application up to the date of approval or completed redetermination.~~

~~1-008.02B Prompt Action on Applications: The worker must act with reasonable promptness on all applications for assistance. The worker must make a determination of eligibility of an application within 45 days from the date of the request for a client applying under the blind or aged category and within 60 days from the date of request for a client applying under the disabled category. If circumstances beyond the control of the worker prevent action within the required time, the worker must record the reason for the delay in the case record. The worker must send a Notice of Action informing the applicant of the reason for the delay. The 45 or 60-day time period must not be used as a routine waiting period before approving assistance. Until a determination of eligibility is made, the worker must send a Notice of Action every 45 days from the date of request for a pending application for the blind or aged category and every 60 days for the disabled category.~~

~~1-008.02C SDP Medical Application with Share of Cost: An application for SDP medical assistance for an individual with a Share of Cost who has a medical need may be approved with no medical payments authorized until the applicant has met his/her obligation.~~

~~1-008.02D AABD Payment and SDP Application with Excess Resources: An application for assistance for an individual who has excess resources may be held pending until the resources are reduced. For resource spenddown procedures, see 469 NAC 2-009.11.~~

~~For eligibility for a grant, see 469 NAC 2-009.08. For SDP medical eligibility, see 469 NAC 4-005.~~

~~1-008.02E Withdrawals: The applicant may voluntarily withdraw an application. If the applicant verbally withdraws the application, the worker must request a written statement of withdrawal. The worker must make note of the withdrawal in the case record and give written confirmation of withdrawal to the applicant on a Notice of Action (see 469 NAC 1-008.03C).~~

~~If the applicant does not provide written confirmation of the withdrawal within 30 days from the application date, the worker must reject the application. The worker must send a Notice of Action to the applicant notifying him/her of the rejection.~~

~~1-008.02F Authorization for Investigation: For some sources the worker asks the client to sign a Release of Information when it appears that information given is incorrect, when the client is unable to furnish the necessary information, or for sample quality control verification. A copy of the authorization for release of information from the Application for Assistance may be used if the source will accept it.~~

~~1-008.02G New Application: A new application is required after one calendar month of ineligibility.~~

~~1-008.03 Notice of Finding: The worker must send adequate notice using a Notice of Action to notify the client of any action affecting his/her assistance case. The Notice of Action must be sent to the last reported address. If the form is inadvertently sent to the wrong address, the worker must send a new form, allowing the client ten days from the date the corrected form is sent (if adequate and timely notice is required). If the client resides in a skilled nursing care, intermediate care, or long term care facility, a copy of the Notice of Action must be sent to the facility.~~

~~1-008.03A Types of Notices~~

~~1-008.03A1 Adequate Notice: An adequate notice must include a statement of what action(s) the worker intends to take, the reason(s) for the intended action(s), and the specific manual reference(s) that supports the action or the change in federal or state law that requires the action(s). The worker must send an adequate notice no later than the date of action.~~

~~1-008.03A2 Timely Notice: A timely notice must be dated and mailed at least ten calendar days before the date that action would become effective, which is always the first day of the month.~~

~~1-008.03B Adequate and Timely Notice: In cases of intended adverse action (action to discontinue, terminate, suspend, or reduce assistance or to change the manner or form of payment or service to a more restrictive method, i.e., protective payee), the worker must give the client adequate and timely notice.~~

~~1-008.03C Situations Requiring Adequate Notice: In the following situations, the worker may dispense with timely notice but shall send adequate notice no later than the effective date of action.~~

- ~~1. The agency has factual information confirming the death of a client;~~
- ~~2. The agency receives a written and signed statement from the client -
 - ~~a. Stating that assistance is no longer required; or~~
 - ~~b. Giving information which requires termination or reduction of assistance, and indicating, in writing, that the client understands the consequence of supplying the information;~~~~
- ~~3. The client has been admitted or committed to an institution, and no longer qualifies for assistance;~~
- ~~4. The client has been placed in skilled nursing care, intermediate care, long-term hospitalization, or Assisted Living Waiver;~~
- ~~5. The client's whereabouts are unknown and agency mail directed to the client has been returned by the post office indicating no known forwarding address. The agency shall make the client's grant available to the client if his/her whereabouts become known during the payment period covered by returned correspondence;~~
- ~~6. The client has been accepted for assistance in another state and that fact has been established;~~
- ~~7. A change in level of medical care; or~~
- ~~8. A special allowance granted for a specific period is terminated and the client has been informed in writing at the time of initiation that the allowance automatically terminates at the end of the specified period.~~

~~1-008.03D Waiver of Notice: If a client agrees to waive his/her right to a timely notice in situations requiring timely notice, the worker shall obtain a statement signed by the client to be filed in the case record.~~

~~1-008.03E In Fraud Cases: At least five days' advance written notice must be given if~~

- ~~1. The agency has facts indicating that action should be taken to discontinue, suspend, terminate, or reduce assistance because of probable fraud by the client; and~~
- ~~2. The facts have been verified where possible through collateral sources.~~

~~1-008.03F Continuation of Benefits: In cases of adverse action where the worker is required to send timely and adequate notice, if the client requests an appeal hearing within ten days following the date Form IM-8 is mailed, the worker shall not carry out the adverse action until a fair hearing decision is made. This regulation does not apply to those situations outlined in 469 NAC 1-008.03C where the worker is required to send adequate notice only.~~

~~This regulation does not restrict the worker from continuing normal case activities and implementing changes to the assistance case that are not directly related to the appeal issue.~~

~~The worker shall not carry out an adverse action pending an appeal hearing if-~~

- ~~1. The case action being appealed required adequate and timely notice (see 469 NAC 1-008.03B and 1-008.03C);~~
- ~~2. The client requests an appeal hearing within ten days following the date the notice of finding is mailed; and~~
- ~~3. The client does not refuse continued assistance on Form DA-6.~~

~~If the worker's action is sustained by the hearing decision, the worker may institute recovery procedures against the client to recoup the disputed amount of assistance furnished the client during the appeal period (see 469 NAC 3-007.03B). Any amount of overpayment must be shown on the system so that it may be recouped if the client becomes eligible at a later date (see 469 NAC 3-007.03B).~~

~~1-008.03F1 Refusal of Continued Benefits: A client may refuse continuation of benefits pending an appeal hearing by checking the statement to that effect on Form DA-6 or handwriting a refusal.~~

~~1-008.03F2 Continuation of AABD Payment Benefits Pending an RSDI/SSI Appeal: If the worker receives information that the client has been determined no longer disabled by RSDI/SSI, the worker shall determine the last month that RSDI/SSI benefits are payable. Then the worker shall close the case the first month possible taking into account the advance notice requirement, unless-~~

- ~~1. The client files an appeal of RSDI/SSI's determination and will continue to receive benefits pending the appeal; and~~
- ~~2. The client loses the appeal because the administrative law judge determines that the client is not disabled. In that case the worker shall close the case as soon as the appeal decision is reached, taking into consideration the ten-day notice requirement.~~

~~1-009 Redetermination of AABD Payment or SDP Eligibility: The worker shall redetermine eligibility according to the following material. Whenever there is reported or suspected ineligibility of a client, the worker shall take immediate action.~~

~~1-009.01 Complete AABD Payment and SDP Redetermination: The worker must do a complete redetermination of eligibility every 12 months. The worker may use either a new or a previously completed application. Eligibility may be redetermined in less than 12 months to coordinate review dates for more than one program.~~

~~If the client is eligible for SDP medical assistance only or SDP medical assistance with Share of Cost but no further medical needs are apparent or indicated, or the case is ineligible, the worker must close the case and send a ten-day notice. The worker must determine if the client has a medical need by discussing the situation with the client, using the client's medical profile, etc. The worker closes the case if there is no medical need.~~

~~SDP Note: The worker must explain on the notice of action that the client may reapply if there is a medical need at a later date.~~

~~In addition to the complete redetermination, the worker must complete income, resource, and disability reviews as described in following material.~~

~~1-009.01A Redetermination for SSI Recipients: The worker is not required to complete an application at the time of redetermination for clients who are receiving SSI.~~

~~If SSI is discontinued and the last application was completed more than 12 months from the last month of eligibility for SSI, the worker must conduct a complete redetermination of eligibility within the next 30 days, including completion of an application. If it has been less than 12 months since completion of the last application, the worker must review all eligibility requirements that are necessary for continued assistance.~~

~~Exception: A redetermination is not required for periodic non-pay for income due to an extra-pay period.~~

~~Note: Clients who are determined eligible by SSI under the provisions of 1619(b) are not required to complete an application at redetermination. The worker does not need to verify resources (see 469 NAC 2-009.01). The worker must verify income and budget it for grant (see 469 NAC 2-010.01C and 3-006.01).~~

~~1-009.02 Income Review: The worker must review income eligibility every 12 months for AABD Payment and SDP.~~

~~An income review is not required for SSI recipients. Income must be reviewed for clients who are placed in 1619(b) status by SSI.~~

~~1-009.03 Disability Review: Workers must complete procedures for review of disability for SDP or AABD Payment cases when DHHS has made the disability determination. DHHS shall determine the duration for the disability, not to exceed 12 months, and the redetermination shall comply with the disability duration set by DHHS.~~

~~1-010 Prudent Person Principle: When the statements of the client are incomplete, unclear, or inconsistent, or when other circumstances in the particular case indicate to a prudent person that further inquiry must be made, the worker must obtain additional verification before eligibility is determined. The client has primary responsibility for providing verification of information relating to eligibility.~~

~~Verification may be supplied in person, through electronic submission, the mail, or from another source (as an employer). If it would be extremely difficult or impossible for the client to furnish verification in a timely manner, the worker must offer assistance.~~

~~1-011 (Reserved)~~

~~1-012 Summary of Forms: Instructions for the forms used in this program are contained in the Public Assistance Forms Manual.~~

~~CHAPTER 2-000 ELIGIBILITY REQUIREMENTS: To be eligible for AABD Payment (AABD/PMT), SDP State Disability Program (SDP — applies to both Payment and Medical portions), SDP Payment (SDP/PMT), or SDP Medical (SDP/MA), the individual must meet the following eligibility requirements:~~

- ~~1. Application (see 469 NAC 2-001);~~
- ~~2. U.S. citizenship or alien status (see 469 NAC 2-002);~~
- ~~3. Nebraska residence (see 469 NAC 2-003);~~
- ~~4. Social Security number (see 469 NAC 2-004)~~
- ~~5. Age (see 469 NAC 2-005);~~
- ~~6. Relative responsibility (see 469 NAC 2-006);~~
- ~~7. Blindness or disability (see 469 NAC 2-007);~~
- ~~8. Institutionalization (see 469 NAC 2-008);~~
- ~~9. Resources (see 469 NAC 2-009);~~
- ~~10. Income (see 469 NAC 2-010);~~
- ~~11. Cooperation in obtaining third party medical payments (see 469 NAC 2-011); and~~
- ~~12. Non-receipt of other assistance (see 469 NAC 2-012).~~

~~All medical assistance criteria in this manual refers to the State Disability Program only. See Title 477 for AABD and other Medicaid programs.~~

~~2-001 Application: An individual wishing to apply for AABD Payment and SDP assistance must complete and submit an application(s) as required by the Department of Health and Human Services. A relative or other person acting for the client may complete the application.~~

~~The agency will conduct a face-to-face interview if requested by the client, or determined necessary by the agency using the prudent person principle (see 469 NAC 1-010). The agency will conduct a face-to-face interview if requested by the client. If a client, for good reason, is unable to conduct a face-to-face interview in the DHHS office, then the worker and the client must identify a mutually acceptable time and place, such as a hospital, senior or community center, or the client's home.~~

~~2-002 Citizenship and Alien Status:~~ In order to be eligible for AABD Payment or SDP, an individual's status must be documented as one of the following using acceptable documents, as defined by federal regulations. See Appendix 469-000-301.

~~1. A citizen of the United States;~~

~~Note: A child born in the United States is a U.S. citizen.~~

~~2. Qualified Aliens as defined in Section 431 of the Immigration and Nationality Act (INA):~~

~~a. An alien who was admitted as a lawful permanent resident (LPR) and has resided in the United States for at least five calendar years from the date of entry or who has worked or can be credited with 40 qualifying quarters of work;~~

~~b. A refugee admitted to the U.S. under Section 207 (INA);~~

~~c. An asylee under Section 208 of INA;~~

~~d. Victims of severe form of trafficking (Victims of Trafficking and Violence Protection Act of 2000;~~

~~e. An alien whose deportation is withheld under Section 243(h) of INA;~~

~~f. An alien from Cuba or Haiti who was admitted under Section 501(a) of the Refugee Education Assistance Act of 1980;~~

~~g. A refugee who entered the U.S. before April 1, 1980, and was granted conditional entry;~~

~~h. An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or parent or by a member of the spouse or parent's family who is residing in the same household as the alien, but only after having resided in the United States for at least five calendar years from the date of entry or who has worked or can be credited with 40 qualifying quarters of work. The child or children of a battered alien meeting these requirements are also eligible;~~

~~3. Iraqi and Afghan aliens granted special immigration status;~~

~~4. An Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations act, 1988, as amended;~~

~~5. An alien with past or current military involvement defined as an alien veteran who is on active duty (other than active duty for training) with any of the U.S. Armed Forces units or who has been honorably discharged (not on account of alienage) and who has fulfilled minimum active-duty service requirements. Minimum active-duty is defined as 24 months or the period for which the person was called to active duty. The spouse or unmarried dependent child of an alien veteran as described in this paragraph;~~

~~6. An alien who is paroled into the U.S. under Section 212(d)(5) of INA, but only having resided in the United States for at least five calendar years from the date of entry or who has worked or can be credited with 40 qualifying quarters of work; or~~

~~7. For SDP Medical only, certain American Indian tribe members born in Canada or outside the United States or who are a member of an Indian tribe;~~

~~Any individual born in the United States is considered a U.S. citizen. This includes children whose parents are not U.S. citizens, such as undocumented alien parents or parents with student visas.~~

~~Receipt of SSI, SSDI, or Medicare is sufficient proof of citizenship or lawfully admitted alien status.~~

~~Individuals who declare to be U.S. citizens and meet all other eligibility requirements must be given a reasonable opportunity to present satisfactory documentation of citizenship or nationality. AABD payments benefits or SDP benefits must not be denied, delayed, reduced, or terminated pending receipt of the requested citizenship verification. The Department may authorize one additional ten-day extension for verification if the necessary information has been requested by the client. If the Department has requested verification, such as an out-of-state birth certificate, benefits will not be denied or terminated while awaiting receipt. Once an individual has declared s/he is a U.S. citizen or national and has provided all other information to determine eligibility, benefits must be provided.~~

~~If the client is not cooperating in providing documentation, the client must be closed.~~

~~2-002.01 Verification of Alien Status: When a client states that one or more of the unit members for whom assistance is being requested is an alien, the worker must require the client to present verification for each alien member. If the client has documentation containing an alien registration number, the worker must verify the alien status using the Systematic Alien Verification for Entitlements (SAVE) system. For further verification procedures, see 469-000-300 and 469-000-309.~~

~~2-002.02 Repatriation Program: The Repatriation Program provides temporary assistance, care, and treatment for up to 90 days for U.S. citizens or dependents of U.S. citizens who have returned from foreign countries. To qualify for repatriation assistance the individual must be returned from a foreign country because s/he is destitute or ill (including mentally ill) or because of war, threat of war, or a similar crisis. A request must be made by the State Department to the U.S. Department of Health and Human Services to receive the individual in the United States and to provide the necessary care, treatment, and assistance.~~

~~Assistance may be provided for up to 90 days from the date the individual arrives in the United States. This assistance may include reception service, food, shelter, clothing, and transportation. It may also include payment for special services such as medical and psychiatric care. Any assistance that is provided through General Assistance or Emergency Assistance may be reimbursed through federal funds. The individual is required to sign an agreement to repay the U.S. government for the cost of the assistance provided.~~

~~Assistance provided through the Repatriation Program is not counted as income in determining initial eligibility for categorical assistance.~~

~~The Central Office will contact the appropriate local office with specific instructions if an individual is eligible for assistance through the Repatriation Program.~~

~~2-003 Residence: To be eligible for assistance, a client must be a Nebraska resident. A resident is defined as an individual living in the state voluntarily with the intent of making Nebraska his/her home. Migrants and itinerant workers are considered residents of Nebraska if they are living in Nebraska and entered the state to seek employment or to fulfill a job commitment.~~

~~The agency must not deny assistance because an individual has not resided in the state for a specified period.~~

~~2-003.01 Incapable of Indicating Intent: For purposes of this section, an individual is considered incapable of indicating intent if:~~

- ~~1. His/her I.Q. is 49 or less or s/he has a mental age of 7 or less, based on tests acceptable to the State developmental disabilities agency;~~
- ~~2. S/he is judged legally incompetent; or~~
- ~~3. Medical documentation obtained from a physician, psychologist, or other person licensed by the state in the field of developmental disability, or other documentation acceptable to the state, supports a finding that s/he is incapable of indicating intent.~~

~~2-003.02 Residence of Individuals Entering the State: The intent of an individual to establish Nebraska residence must be investigated in accordance with this regulation if the individual comes into the state and immediately enters a facility licensed by the Nebraska Department of Health and Human Services.~~

~~To determine the individual's intent to establish residence in Nebraska the worker must consider the individual's purpose for entering the state. The individual is considered a Nebraska resident if his/her purpose for entering the state was because s/he:~~

- ~~1. Desired to be near to close friends or relatives in the state;~~
- ~~2. Previously resided in the state; or~~
- ~~3. Has other contacts in the state.~~

~~If none of the previously mentioned conditions exist, the worker must evaluate the client's intent to establish residence. If the client states that s/he plans to establish residence but the situation seems to indicate otherwise, the worker must review factors such as when the client entered the state, whether the client maintains a residence or owns property (including real and/or personal property) in another state, place of residence of the client's spouse and other immediate family members; and length of time in the Nebraska facility on private pay. The worker must also consider if the client was eligible for medical assistance in the state in which s/he previously resided, how the client was referred to the facility in Nebraska (e.g., family member, hospital staff, social service worker in the other state, etc.), where the client would reside if s/he moved out of the facility in Nebraska, and any other related factors. Before denying assistance, the worker must describe the circumstances and submit the question to Central Office as required by Central Office, including any information relating to the listed factors. At the Central Office a review and a decision will be made based upon the information relating to the listed factors.~~

~~2-003.03 Placement in an Out-of-State Institution: If a state arranges for an individual to be placed in an institution located in another state, the state making the placement is the individual's state of residence, regardless of the individual's indicated intent or ability to indicate intent.~~

~~2-003.04 Individuals Receiving a State Supplementary Payment (SSP): For any individual who is receiving an SSP, the state paying the SSP is the state of residence.~~

~~2-003.05 Institutionalized Individuals: The state where the institution is located is the individual's state of residence unless the worker determines that the individual is a resident of another state, according to the following regulations.~~

~~For any institutionalized individual who is age 20 or younger or who is age 21 or older and became incapable of indicating intent before reaching age 21, the state of residence is:~~

- ~~1. That of his/her parent(s), or his/her legal guardian at the time of placement; or~~
- ~~2. That of the parent(s) or legal guardian if the individual is institutionalized in that state.~~

~~For any institutionalized individual who became incapable of indicating intent at or after reaching age 21, the state of residence is the state in which the individual is physically present except where another state makes a placement.~~

~~2-003.06 Non-Institutionalized Individuals~~

~~2-003.06A Age 20 and Younger: For any non-institutionalized individual age 20 or younger whose eligibility is based on blindness or disability, the state of residence is the state in which s/he is living. Any other non-institutionalized individual age 20 or younger is a resident of the state in which s/he is living other than on a temporary basis.~~

~~2-003.06B Age 21 and Older: For any non-institutionalized individual age 21 or older, the state of residence is the state where s/he is:~~

- ~~1. Living with the intention to remain permanently or for an indefinite period (or if incapable of stating intent, where s/he is living); or~~
- ~~2. Living and which s/he entered with a job commitment or seeking employment (whether or not currently employed).~~

~~2-003.07 Absence from the State: The agency may not deny assistance because an individual has not resided in the state for a specified period.~~

~~2003.07A Temporary Absence: The agency may not terminate a resident's eligibility because of that person's temporary absence from the state if the person intends to return when the purpose of the absence has been accomplished, unless another state has determined that the person is a resident there for assistance purposes.~~

~~2-003.07B Loss of State Residence: Eligibility for AABD payment or SDP ends if the family unit leaves Nebraska with the intent of establishing its home in another state. The family may receive an AABD payment or SDP assistance from Nebraska (if otherwise eligible) for a period not to exceed two months to enable the other state to process the application.~~

~~A family unit may not receive an AABD payment or SDP assistance from Nebraska beyond the month in which it has been found eligible for categorical assistance from another state.~~

~~Exception: Individuals who leave the state for longer than two months may continue to receive an AABD payment or SDP assistance in Nebraska if they are absent for a temporary purpose and intend to return.~~

~~2-003.07C Out-of-State Medical: If an out-of-state provider does not sign an agreement with SDP medical or Medicaid and accept the reimbursement rate, the SDP client is liable for any medical bills. Payment may be approved for services provided outside Nebraska in the following situations:~~

- ~~1. When an emergency arises from accident or sudden illness while a client is visiting in another state and the client's health would be endangered if care is postponed until s/he returns to Nebraska or if s/he travels to Nebraska;~~
- ~~2. When a client customarily obtains service in another state because the service is more accessible;~~
- ~~3. When the client requires a medically necessary service that is not available in Nebraska but is available in another state; and~~
- ~~4. When long term care services are provided in another state.~~

~~Payment for items 3 and 4 must be prior authorized by the Division of Medicaid and Long-Term Care (MLTC) before the services are provided. The provider shall request prior authorization of payment from the appropriate MLTC staff. Prior authorization of Item 3 may include economical transportation as a provider payment if needed.~~

~~2-003.08 Disqualification for Misrepresenting Residence: Any person convicted in federal or state court of having fraudulently misrepresented his/her residence in order to obtain AABD Payment or SDP assistance in two or more states is ineligible for AABD Payment or SDP assistance for ten years from the date of conviction. Only the individual convicted of the misrepresentation is ineligible; other members of the family or household may receive benefits.~~

~~2-004 Requirement of Social Security Number (SSN): All eligible members of the AABD Payment or SDP unit shall furnish Social Security numbers (SSN). The SSN, in conjunction with other information, provides evidence of identity of the individual.~~

~~2-004.01 Application for an SSN: If the client has not applied within 30 days of the date s/he is given the Referral for Social Security Application, the worker must not include the client in determining the size of the assistance unit. Before taking adverse action, the worker must take into consideration the client's ability to follow through on the referral (such as lack of transportation, no visit by SSA to the contact station, lack of required verification documents, etc.) and use prudent person principle.~~

~~2-004.01A SSN Application for a Newborn: If Enumeration at Birth was not done as verified by a Vital Statistics Alert, the worker must refer the parent or payee to the Social Security office via a Referral for Social Security Number Application by the first day of the second month following the mother's discharge from the hospital after the birth. If the child is not born in a hospital, a Referral for Social Security Number Application must be completed by the first day of the second month following the birth regardless of where the child is born. If the parent or payee fails or refuses to apply for a Social Security number, the provisions in 469 NAC 2-004.01 are followed for eligibility for a grant.~~

~~The parent is required to provide the SSN by the next redetermination or within six months after the parent receives the SSN, whichever is earlier.~~

~~2-004.02 Assistance Pending Verification of SSN: After the client has been referred to SSA, if s/he is otherwise eligible, assistance is not delayed, denied, or discontinued pending the verification or assignment of an SSN.~~

2-005 Age

~~2-005.01 Age Limits:~~ To be eligible for AABD Payment or SDP, an individual must meet the following age limits:

- ~~1. To qualify as aged, an individual must be age 65 or older. A payment is made for the month the individual becomes age 65 if otherwise eligible.~~
- ~~2. To qualify as blind, an individual must be age 64 or younger.~~
- ~~3. To qualify as disabled, an individual must be age 64 or younger.~~

~~The month that an already eligible blind or disabled AABD payment or SDP payment person becomes 65, s/he becomes eligible for assistance to the aged (see Application Date and Request Date, 469 NAC 1-004). A new application is not required; however, the worker must update the necessary information on N-FOCUS.~~

~~2-005.02 Birthdate Used if Birth Information Is Incomplete:~~ When birth information is incomplete, a birthdate is designated as follows:

- ~~1. If the year but not the month is known, July is used.~~
- ~~2. If the day of the month is not known, the 15th is used.~~

2-006 Relative Responsibility

~~2-006.01 Spouse for Spouse:~~ A divorce dissolves the marriage of a couple and there is no longer spouse-for-spouse responsibility. A legal separation does not dissolve the marriage. The worker shall use the following guidelines in determining financial responsibility for a married couple.

- ~~1. Living Together - No Medicaid Waiver Services.~~

~~Consider income and resources of both spouses living together in the same household as available to each other. Use the resource standard for two for grant or SDP medical. Budget together for AABD payment or SDP whether one or both are eligible.~~

~~Exception: If only one spouse receives SSI and the other spouse receives VA benefits based on need which SSI is disregarding, budget the SSI spouse separately for grant. If the spouse receiving VA is eligible for AABD payment, budget him/her separately for AABD payment or SDP medical. This only applies if they would be ineligible for SSI as a couple. If they would both be eligible for SSI, the non-SSI spouse must apply (see 469 NAC 2-010.01B6c(1)).~~

~~2. Living Together – Medicaid Waiver Services~~

~~If both spouses are eligible and one or both receive waiver services, consider income and resources together for grant eligibility. Use the grant resource standard for two and budget together for grant unless the exception under number 1 applies. For SDP medical eligibility, consider income and resources separately. Use the medical resource standard of one for each and budget separately for SDP medical.~~

~~If only one spouse is eligible, consider income and resources together for AABD grant eligibility. Use the grant resource standard for two and budget together for grant. The exception in number 1 applies. For SDP medical eligibility, use the spousal impoverishment treatment of resources and income. Refer to 469 NAC 2-009.02C for resources and 469 NAC 4-007.01 for income budgeting on Form DA-4M. An assessment and designation of resources must be completed.~~

~~3. Living Apart – Neither in a Specified Living Arrangement~~

~~Consider income and resources separately beginning in the first full month the couple ceases to live together. Allow the client(s) a resource standard for one for grant or SDP medical and budget the client(s) separately. Total countable resources for the couple must not exceed \$8,000 for SDP medical eligibility. Total countable resources for the couple must not exceed \$4,000.00 for grant eligibility. Follow this guideline whether one or both are eligible.~~

~~Exception: If either spouse is current pay SSI, follow SSI budgeting rules.~~

~~4. Living Apart – Both in a Specified Living Arrangement~~

~~If both spouses are in a specified living arrangement, consider income and resources separately. Allow the client(s) a resource standard for one for grant or SDP medical. Budget the client(s) separately for AABD grant, SDP grant, and/or SDP medical. Follow this guideline whether one or both are eligible.~~

~~5. Living Apart - One in a Specified Living Arrangement~~

~~If only one spouse is eligible, spousal impoverishment rules apply for treatment of income and resources. See 469 NAC 2-009.02C for resources. An assessment and designation of resources must be completed. Budget the client separately for grant and apply the grant resource standard for one. For SDP medical, allow the client the resource standard for one and budget. See 469 NAC 4-007.01.~~

~~If both spouses are eligible and one enters a specified living arrangement, consider income and resources separately beginning in the first full month the couple ceases to live together. Allow each a resource standard for one for AABD payment or SDP. Budget separately for AABD grant or SDP.~~

~~Note: If one spouse is temporarily absent from the home, continue to consider the couple's income and resources together. An absence of less than 90 days may be considered temporary. If the spouse will be absent longer than 90 days, determine if the client plans or is able to return home.~~

~~2-006.02 Parent for Child: The worker shall deem income and resources of a parent(s) to a child age 17 or younger if living in the same household. See 469 NAC 2-009.04 and 2-010.01F1 for deeming procedures and exceptions to this deeming requirement.~~

2-007 Blindness or Disability

~~2-007.01 Eligibility Requirements Applicable Only to Blind or Disabled:~~ All applicants for AABD payment or SDP after January 1, 1974, must meet the medical definitions of blindness or disability of the RSDI/SSI Programs as administered by the Social Security Administration (SSA). The determination by SSA that an individual is disabled or blind must be accepted for eligibility for AABD/MA. In some cases, DHHS may make the determination of blindness or disability (see 469 NAC 2-007.03A1).

If the client has a pending SSI/RSDI decision, the client must sign a DHHS designated form (e.g. IM-17) to allow DHHS to be reimbursed from SSA for interim assistance in order to be considered for AABD payment or SDP eligibility.

~~2-007.01A Grandfathered Cases:~~ All individuals who were determined to be AABD Payment-eligible before July 1, 1973, and received a payment for December, 1973, must be considered blind or disabled by the standards in effect in July, 1973. If SSI determines in a subsequent review that blindness or disability has ceased, the case must be referred to the DHHS-designated medical consultant reviewer (MCR) for review of blindness or disability using standards in effect in July, 1973. An MCR determines whether disability continues and if the AABD payment case remains open.

~~2-007.01A1 Standards in Effect in July, 1973:~~ The following standards for blindness and disability were in effect in July, 1973.

~~2-007.01A1a Blindness:~~ Economic blindness is defined as visual acuity of 20/200 or less in the better eye with best corrective glasses. An individual with central visual acuity of more than 20/200 in the better eye with proper correction must be considered blind if the widest diameter of the visual field does not extend beyond an angular distance of twenty degrees.

~~2-007.01A1b Disability:~~ An individual must have been permanently and totally disabled.

~~2-007.01A1b(1) Definitions~~

~~Permanent and total disability:~~ Physical, functional, and/or mental impairment, from which recovery cannot reasonably be expected. The individual must not be able to engage in a useful occupation, including holding a job or homemaking.

Permanence does not rule out the possibility of rehabilitation, restoration, or even recovery from the impairment.

Totally involves considerations in addition to those verified through the medical findings, such as age, training, skills, work experience, and the probable functioning of the individual in a particular situation in light of the individual's impairment.

Physical impairment refers to loss or defect of arms or legs, malfunctioning of the organs of the body, or physiological disturbances with structural damage.

Mental impairment refers to conditions characterized by a marked and consistent failure to adjust to the emotional, social, or intellectual demands of living. The individual requires the assistance of another person in the essential activities of daily living.

The following conditions are considered mental impairments:

1. ~~Psycho-neuroses;~~
2. ~~Psycho-physiological reactions;~~
3. ~~Personality disorders;~~
4. ~~Mental deficiency; and~~
5. ~~Psychoses applied to individuals who have been released from a state mental hospital.~~

The mental impairment must prevent the individual from functioning independently with respect to the essential activities of daily living.

Useful occupations: Productive activities which add to economic wealth, or produce goods or services which have a monetary value.

The following are not included in "useful occupations":

1. ~~An activity such as a hobby;~~
2. ~~An activity which does not provide a bona fide job opportunity, i.e., if the individual quit, no replacement would be hired; and~~
3. ~~That part of a rehabilitation program which is officially designated as "training," and which is carried on under supervision.~~

Homemaking: The ability to assume home management and decision-making responsibilities and provide essential services for at least one other person.

The following activities are included in homemaking:

1. Shopping for food and supplies;
2. Planning and preparing meals;
3. Washing dishes;
4. Cleaning house;
5. Making beds;
6. Washing and ironing clothes; and
7. Caring for young children, including:
 - a. Lifting and carrying infants and, in emergency, pre-school children;
 - b. Bathing and dressing the children;
 - c. Training and supervising them; and
 - d. Accompanying the children to community activities, for medical care, etc.

If a person is determined unable to perform homemaking activities, s/he must be unable to perform a significant combination of the previously listed activities, because of impairment, unable to perform for the required number of hours daily, or unable to perform predictably enough to meet the responsibilities involved.

2-007.02 Definitions of Disability and Blindness: The following definitions are used by SSA and the DHHS-designated Medical Consultant Review (MCR) process in making a determination for AABD Payment and SDP.

Disability for AABD Payment: An individual is considered disabled if s/he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A child through age 17 is considered disabled if s/he suffers from any medically determinable physical or mental impairment of comparable severity.

Blindness for AABD Payment: An individual is considered blind if s/he has central visual acuity of 20/200 or less in the better eye with correcting lens or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20 degrees.

~~Disability for SDP: An individual is considered disabled for SDP if s/he is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 6 months from onset and not more than 12 months. The DHHS-designated medical consultant reviewer always makes the determination for SDP. The individual must be ineligible for other Medicaid programs.~~

~~2-007.03 Determination of Eligibility for the Blind or Disabled~~

~~2-007.03A Social Security Administration (SSA) Disability Determination: In the determination of eligibility for AABD Payment, all eligibility requirements except that of the disability determination are the responsibility of DHHS.~~

~~2-007.03B Medical Consultant Review (MCR) Disability Determination: SDP is only an option for applicants whose Social Security disability (e.g. SSI, RSDI, SSDI) application has been denied due to 'lack of duration'.~~

~~2-007.03C For AABD or SDP payment, if the individual is not eligible for SSI or RSDI and was not denied by SSA for lack of duration, the individual will need to apply first for Medicaid through MLTC. An application for AABD payment, if no determination of blind or disabled by MLTC is received, it is to be denied as the disability requirement has not been met. If MLTC, through their DHHS-designated medical review process, makes a determination that the individual is disabled for Medicaid, the MLTC disability determination will be accepted for determining AABD payment eligibility. The individual will need to provide a DHHS-required application for AABD payment. The start date of eligibility for AABD payment, if all other eligibility criteria are met, will be the date of the individual's application for Medicaid.~~

~~2-007.03D Payment for Examination and Transportation: The cost of medical examinations to determine initial or continuing SDP eligibility may not exceed the established Medicaid allowable fee. The cost of a medical examination to determine eligibility is an allowable Title XIX expenditure if the individual is eligible for medical benefits on the date of the examination. If the initial application is rejected, the cost of the examination must be paid from administrative funds.~~

~~The cost of transportation necessary to secure the examination, and subsistence expense when it is necessary for the individual to secure the required services away from home are paid from administrative funds if the application is rejected. If the application is approved, the cost of transportation and subsistence expense is allowed in the budget as a special need (see 469 NAC 3-004.03A1 and 3-004.03A5).~~

~~2-007.03E Subsequent Social Security Administration Disability Determinations: DHHS will continue to monitor the client's potential eligibility for RSDI and SSI benefits even though the DHHS-designated MCR has made the determination of disability.~~

~~2-008 Institutionalization: An individual may qualify for AABD/MA or SDP/MA while living in an institution only if the institution is subject to the licensing requirements of the Nebraska Department of Health.~~

~~2-008.01 Definitions: The following definitions are used in the administration of assistance to individuals who are institutionalized.~~

~~Inmate of a Public Institution: A person who is living in a public institution and receiving treatment and/or services which are appropriate to the person's requirements. A person is not considered an inmate when s/he is in a public educational or vocational training institution for purposes of securing educational or vocational training, or s/he is in a public institution for a temporary period pending other arrangements appropriate to his/her needs.~~

~~Inpatient: A patient who has been admitted to a medical institution on the recommendation of a physician or dentist and is receiving room, board, and professional services in the institution on a continuous 24 hour-a-day basis.~~

~~Institution: An establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor and, in addition, provides some treatment or services which meet some need beyond the basic provision of food and shelter.~~

~~Institution for Mental Diseases: An institution primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.~~

~~Institution for Persons with Developmental Disability or Related Conditions: An institution (or distinct part of an institution) that is primarily for the diagnosis, treatment, or rehabilitation of persons with developmental disabilities, i.e., epilepsy, cerebral palsy, and other related conditions. The institution provides, in a protected residential setting, ongoing evaluation, planning, 24-hour supervision, coordination, and integration of health and rehabilitative services to help each individual function at his/her greatest ability.~~

~~Medical Institution: An institution which is organized to provide medical care, including nursing and convalescent care, and has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards. The institution must be authorized under state law to provide medical care.~~

~~Public Institution: An institution that is the responsibility of a governmental unit, or over which a governmental unit exercises administrative control.~~

~~Publicly Operated Community Residence: A publicly operated residence designed to serve no more than 16 residents and providing some services beyond food and shelter such as social services, help with personal living activities or training in socialization and life skills. Occasional or incidental medical or remedial care may also be provided. Excluded from the definition are the following facilities even if their accommodations are for 16 residents or fewer; residential facilities adjacent to any large institution or multi-purpose complex; educational or vocational training institutions; correctional or holding facilities for individuals whose personal freedom is restricted because of a court sentence, holding or pending disposition; medical treatment facilities such as hospitals and skilled nursing facilities.~~

~~2-008.02 Licensed Institutions: Nebraska currently has the following public institutions licensed for the treatment of mental diseases and/or developmental disabilities.~~

1. ~~Hastings Regional Center (HRC);~~
2. ~~Norfolk Regional Center (NRC);~~
3. ~~Lincoln Regional Center (LRC); and~~
4. ~~Beatrice State Developmental Center (BSDC).~~

~~2-008.02A Levels of Care:~~ The previously listed facilities may be licensed by the Nebraska Department of Health and Human Services, Division of Public Health and certified under Medicaid as one or more of the following types of facilities:

1. ~~Acute hospital;~~
2. ~~Psychiatric; and~~
3. ~~Intermediate care facility for persons with developmental disabilities (ICF/DD).~~

~~Coverage may be provided to persons of all ages in the previously listed facilities for acute hospital and ICF/DD levels of care if the individuals are otherwise determined eligible.~~

~~Psychiatric care is available to SDP medical-eligible individuals.~~

~~Exception: An individual is not eligible to receive an AABD Payment or SDP if in a prison, (unless the individual is hospitalized while in prison), jail or veteran's hospital (see 469 NAC 2-008.07).~~

~~2-008.03 Patients in a Medical Institution: Assistance may be provided for a client who is a patient in a medical institution, i.e., hospital, nursing home, etc., if all other eligibility factors are met. Psychiatric wards of medical hospitals are considered part of the medical institution and are not subject to the restriction on psychiatric care identified in 469 NAC 2-008.02A.~~

~~2-008.04 Convalescent Leave: Eligibility of individuals "on convalescent leave or visit" from public medical institutions is determined in accordance with the usual program standards. Eligibility is based on their living situation and needs while on leave.~~

~~2-008.05 Responsibility for Determining Nature of Institution: The Central Office is responsible for determining the public or private nature of an institution, and whether a public institution is one in which otherwise eligible individuals may receive assistance.~~

~~2-008.06 Criteria for Determining the Public Nature of Institutions: Prisons, jails, etc., are designated in the law as public institutions whose inmates are ineligible to receive assistance. Governmental participation in financial support of an institution, in policy formulation, or in the application of policy to specific situations, is evidence of the public control which makes it a public institution. Payment from public funds to, or in support of, individuals in a private institution is not considered governmental participation in support of the institution.~~

2-008.07 Factors Relating to Eligibility of Clients in Institutions

2-008.07A Beatrice State Developmental Center (BSDC) and Regional Centers: Superintendents of BSDC and of the regional centers are the guardians for the patients.

If the client does not have a court-appointed guardian or conservator, payment may be made to the superintendent on behalf of the patient. It is not necessary for the superintendent to file letters of guardianship or conservatorship, and the application for assistance may be signed by the patient.

2-008.07B Private Institution and Home: The private institution in which the client chooses to reside may be a fraternal, benevolent, or charitable institution, or the client may make plans for living in a home which is privately owned and operated and which furnishes shelter, board, and care according to the client's needs. In determining the eligibility of a person living in a private institution or home, it is necessary to determine if s/he has entered into any agreement with the institution that s/he is to receive shelter and care in return for a transfer of property, insurance, or other assets.

In determining eligibility of an individual in a private institution, it is necessary to determine what the institution is able to furnish its guests from its own resources. The individual may be eligible to receive assistance if residing in one of the facilities previously described if the terms of his/her stay do not in any way restrict the use of his/her personal assets or income and if the individual has a need.

2-009 Resources: The total equity value of available non-excluded resources of the client or client and responsible relative (see 469 NAC 2-006) or client and essential person (see 469 NAC 3-006.02) is determined and compared with the established maximum for available resources which the client may own and still be considered eligible. If the total equity value of available non-excluded resources exceeds the established maximum, the client is ineligible.

Note: According to 469 NAC 2-006, assets of each spouse are considered available to the other unless there is a divorce or spousal impoverishment provisions apply.

The following are examples of resources:

1. Cash on hand;
2. Cash in savings or checking accounts;
3. Certificates of deposit;
4. Stocks;
5. Bonds;
6. Investments;
7. Collectable unpaid notes or loans;
8. Promissory notes;
9. Mortgages;

- ~~10. Land contracts;~~
- ~~11. Land leases;~~
- ~~12. Revocable burial funds;~~
- ~~13. Trust or guardianship funds;~~
- ~~14. Cash value of insurance policies;~~
- ~~15. A home;~~
- ~~16. Additional pieces of property;~~
- ~~17. Trailer houses;~~
- ~~18. Burial spaces;~~
- ~~19. Motor vehicles;~~
- ~~20. Life estates;~~
- ~~21. Farm and business equipment;~~
- ~~22. Livestock;~~
- ~~23. Poultry and crops;~~
- ~~24. Household goods and other personal effects;~~
- ~~25. Contents of a safe deposit box;~~
- ~~26. Tax refunds;~~
- ~~27. Elective share of a spouse's augmented estate; and~~
- ~~28. Revocable, assignable, or saleable annuity.~~

~~2-009.01 Verification of Resources: Before determining eligibility of an AABD or SDP client who does not receive SSI, the worker must verify and document in the case record all resources. The worker is not required to verify resources of an SSI recipient including a client who is determined eligible for 1619(b) status by SSI. For any retroactive or prospective month that an AABD client is not in current pay status for SSI, the worker must verify resources. Verification of resources consists of but is not limited to the following information:~~

- ~~1. A description of the type of resource to include account or policy number(s), legal descriptions (for property), etc.;~~
- ~~2. The location of the resource (i.e., name and address of the bank, insurance company, etc.);~~
- ~~3. Current value of the resource, encumbrances against the resource, and the resulting equity value (see 469 NAC 2-009.06);~~
- ~~4. Description of current ownership (see 469 NAC 2-009.03); and~~
- ~~5. Source of verification and the date the verification is obtained.~~

~~If the client or spouse of the client has a guardian, the worker may use the guardian's report to the court for verification. The guardian's report applies only to the period covered by the report. The worker must follow regular verification procedures if there is no guardian's report or the report does not coincide with the date of redetermination.~~

~~The worker must also note any additional information that may affect resource eligibility.~~

~~If the Central Office notifies the worker that there may have been a deprivation of resources by an SSI recipient, see 469 NAC 2-009.10.~~

~~2-009.02 Definition of Available Resources:~~ For the determination of eligibility, available resources include cash or other liquid assets or any type of real or personal property or interest in property that the client owns and may convert into cash to be used for support and maintenance.

~~2-009.02A Unavailability of Resource:~~ Regardless of the terms of ownership, if it can be documented in the case record that the resource is unavailable to the client, the value of that resource is not used in determining eligibility. The worker must consider the feasibility of the client's taking legal action to make the resource available. If the worker determines that legal action can be taken, the worker must allow the client 60 days to initiate legal action. After 60 days, if the client has not filed legal action, the case is closed for failure to comply. The resource is not considered available until the legal action is completed.

In evaluating the availability of benefit funds, such as funds raised by a benefit dance or auction, the worker must determine the purpose of the funds and if the client has access to them. If the client cannot access the funds to pay normal maintenance needs, the funds are not considered available.

An applicant or recipient must file in county court for the maximum elective share of a deceased spouse's augmented estate as specified in Neb. Rev. Stat. sections 30-2313 and 30-2314.

The worker must monitor the status of the resource.

~~2-009.02B Excluded Resources:~~ Disregarded income is also disregarded as a resource unless there is regulation stating otherwise. See 469 NAC 2-010.01H for the listing of income treatment. In addition, the following resources are excluded in making a determination of eligibility:

- ~~1. Real property which the individual owns and occupies as a home;~~
- ~~2. Household goods and personal effects of a moderate value used in the home;~~
- ~~3. Cash surrender value of life insurance policies with combined face values of \$1,500 or less per individual (see 469 NAC 2-009.07A4);~~
- ~~4. A specified maximum in proceeds from an insurance policy irrevocably assigned for the purpose of burial of the client (see 469 NAC 2-009.07A3b);~~
- ~~5. Irrevocable burial trusts up to the specified amount per individual and the interest if irrevocable (see 469 NAC 2-009.07A3);~~
- ~~6. Burial space items or a contract for the purchase of burial space items owned by a client or designated family member (see 469 NAC 2-009.07A3(d)(1));~~

- ~~7. Burial spaces (see 469 NAC 2-009.07A3d);~~
- ~~8. Up to \$1,500 set aside for burial arrangements (see 469 NAC 2-009.07A3c);~~
- ~~9. One motor vehicle if it is used for employment, medical transportation, or as the client's home. If the client has more than one motor vehicle, s/he may designate the vehicle to be excluded (see 469 NAC 2-009.07B7);~~
- ~~10. Certain trusts (including guardianships). The person(s) in whose behalf the trust is established may be ineligible but this may not affect eligibility of the other person(s) in the unit (see 469 NAC 2-009.07A6);~~
- ~~11. Certain life estates in real property (see 469 NAC 2-009.07B8);~~
- ~~12. Income received annually, semi-annually, or quarterly which is prorated on a monthly basis and included in the budget. This income is excluded as a resource over the period of time it is being considered as income;~~
- ~~13. The unspent portion of any RSDI or SSI retroactive payments (excluded for six months following the month of receipt);~~
- ~~14. U.S. savings bonds (excluded for the initial six-month mandatory retention period);~~
- ~~15. A resource used in the client's trade or business (see 469 NAC 2-009.07B11);~~
- ~~16. A maximum of \$6,000 equity value of nonbusiness property (real or personal) that is used to produce goods or services essential to daily activities (see 469 NAC 2-009.07B11a);~~
- ~~17. The unspent portion of an AABD or SDP retroactive payment (excluded for six months following the month of receipt);~~
- ~~18. Victims compensation payments, i.e., payments received from a state or local government to aid victims of crime (excluded for nine months beginning with the first month after receipt);~~
- ~~19. Payments received from a state or local government to assist in relocation (excluded for nine months beginning with the first month after receipt);~~
- ~~20. An unavailable job-related retirement account that is held by the employer;~~
- ~~21. An Individual Development Account (an account set up for postsecondary education or purchase of a client's first home); and~~
- ~~22. Medicare Set-aside accounts that may be used only for payment of medical bills of Medicare beneficiaries.~~

~~The worth of resources, both available and excluded, is determined on the basis of their equity.~~

~~For any of these funds to be excluded as a resource, they must be segregated in a separate account so that they can be identified. If the funds are not in a separate account, the worker shall allow the client 30 days from notification of the requirement to set up a new account. After 30 days, the resource is included in the resource limit if the client fails to segregate the funds. If this makes the client ineligible for a grant and the client subsequently segregates the funds, the worker shall determine eligibility for a grant for the month of segregation.~~

~~Several excludable resources may be combined in a single account.~~

2-009.02C Spouse for Spouse Responsibility and Designation of Resources for SDP Medical:

2-009.02C1 Definitions

Alternate Care Spouse: A spouse who is living in a specified living arrangement.

Assessment of Resources: A listing of all countable resources owned jointly or separately by a couple when one is residing in a specified living arrangement and the other is residing in the home. Following an assessment, the spouse in the specified living arrangement may or may not apply for assistance.

Community Spouse: A spouse who is:

1. Not applying for or receiving assistance;
2. Not residing with the alternate care spouse unless the alternate care spouse is eligible for Home and Community-Based Waiver Services; and
3. Not in a hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for persons with developmental disabilities.

Continuous Residence: A period of at least 30 consecutive days.

Designation of Resources: A listing of the amount of resources retained by each spouse that is completed at the time of application for assistance when one spouse is residing in a specified living arrangement and the other spouse is residing in the home.

Specified Living Arrangement: A specified living arrangement includes residence in –

1. An adult family home;
2. A long-term care facility including Assisted Living Waiver;
3. An assisted living facility;
4. A center for the developmentally disabled;
5. The home with eligibility for Home and Community-Based Waiver Services; or
6. A medical institution.

2-009.02C2 Resources Reserved for the Community Spouse: Resources may be reserved for the community spouse when the alternate care spouse is residing continuously in a specified living arrangement and completes an application for AABD payment or SDP.

The amount of resources that a community spouse may reserve is based on the Consumer Price Index. This figure is adjusted annually. See 469-000-205 for the amount of resources a community spouse may reserve.

The reserved amount of resources is calculated from the total resources owned by the couple and verified.

~~2-009.02C3 Assessment of Resources:~~ Either spouse may request an assessment of their resources no earlier than the beginning of a period of continuous residence in a specified living arrangement. An assessment of resources may not be finalized and signed until a client has been in a specified living arrangement for 30 consecutive days or would have been except for death. A couple is allowed only one assessment. The worker must complete an Assessment of Resources listing all countable resources owned jointly or individually by the couple the month the spouse entered the specified living arrangement. If a transfer or sale of resources occurred during the month the spouse entered the specified living arrangement, then the assessment of resources must list all countable resources owned jointly or individually by the couple on the day the spouse entered the specified living arrangement. The couple is allowed resource exclusions listed in 469 NAC 2-009.02B.

~~Ownership of the home, one automobile, and all essential property (business property and \$6,000 equity in non-business property used to produce goods for home consumption) may be transferred to the community spouse. Other resources transferred to the community spouse are limited to that spouse's protected resource amount. The alternate care spouse is not eligible for SDP Medical if resources in excess of the protected amount have been transferred.~~

~~If the community spouse transfers away any resource for less than fair market value, it is a deprivation of resources. See 469 NAC 2-009.10.~~

~~The worker must verify and document all resources declared by the couple. The couple or their representative has the primary responsibility for providing verification and documentation. The assessment must be completed within 90 days from the request.~~

~~2-009.02C3a Appeal of Assessment:~~ The Assessment of Resources notifies the couple that they may appeal the assessment of resources. The couple may appeal:

- ~~1. The value assigned to the resource(s); and~~
- ~~2. The amount reserved for the community spouse. If the couple shows that the community spouse requires more than the limit, s/he may be allowed to reserve more.~~

~~In order to appeal, the alternate care spouse must SDP apply for medical assistance, even if s/he has excess resources.~~

~~Note:~~ Income from the institutionalized spouse must first be used before additional reserved resources for the community spouse may be considered.

~~2-009.02C3b Jointly Owned Resources: If the resources are held jointly with persons other than the spouse, the worker determines ownership according to 469 NAC 2-009.03.~~

~~2-009.02C3c Unavailable Resources: If the worker determines that the resource is not available after applying 469 NAC 2-009.02A, the value of the resource is excluded from the total.~~

~~2-009.02C3d Treatment of Resources Not Included on Assessment: Since the resource assessment is completed only once, the total value of countable resources which are owned by either or both spouse and which are acquired, discovered, or lose their exclusion after completion of the assessment and before the designation are considered available resources and cannot be used to increase the community spouse's resource allowance calculated at the time of the assessment.~~

~~Examples of resources which may lose their exclusion are the home when the community spouse no longer resides in it or business property in which the community spouse is no longer actively engaged in operating.~~

~~2-009.02C3e Continued Validity of Assessment: The Assessment of Resources remains valid as long as the alternate care spouse does not return to the home without waiver services (even if s/he moves from one specified living arrangement to another). If the alternate care spouse returns home without waiver services, the Assessment of Resources becomes invalid. If the alternate care spouse returns to a specified living arrangement, the original Assessment of Resources is again valid.~~

~~2-009.02C4 Designation of Resources: When the spouse in the specified living arrangement is eligible for medical assistance, the worker must complete a Designation of Resources. The Designation of Resources lists the amount of resources retained by each spouse.~~

~~The worker must re-verify and document all resources.~~

~~2-009.02C4a Transfer of Ownership: A resource must appear on record in the name of the spouse to which the resource is designated on the Designation of Resources.~~

~~The couple is allowed 90 days from the date of notice of approval to complete a required transfer of ownership to the appropriate spouse. Once the worker determines that the alternate care spouse is otherwise eligible, the worker approves the case without waiting for completion of the transfer. On a Notice of Action, the worker must advise the couple of the 90-day period. If the couple fails to complete the transfer within 90 days, the worker closes the case.~~

~~Transfers of countable resources from the alternate care spouse to the community spouse are not considered a deprivation of resources as long as the amount transferred to the community spouse, when added to his/her own resources, does not exceed the amount the community spouse is allowed to reserve as calculated at the time of assessment.~~

~~The alternate care spouse may be eligible in the retroactive months if the couple's resources did not exceed the allowable limit plus the amount reserved for the community spouse, even if the couple has not completed a Designation of Resources or necessary transfers of ownership. (See 469-000-316, #2).~~

~~Excluded resources (e.g., the home, one automobile, and essential property) transferred solely to the community spouse are not a deprivation of resources. If the community spouse disposes of a resource for less than fair market value, it is considered deprivation of a resource.~~

~~2-009.02C4b Treatment of Resources Not Included on Designation: Resources that are acquired or which lose their exclusion after a Designation of Resources is signed are counted as follows:~~

- ~~1. A resource in the name of the alternate care spouse is considered his/hers;~~
- ~~2. A resource in the name of the community spouse is considered his/hers; or~~
- ~~3. A resource that is jointly owned is divided between the spouses.~~

~~Examples of resources which may lose their exclusion are the home when the community spouse no longer resides in it or business property in which the community spouse is no longer actively engaged in operating.~~

~~The alternate care spouse may transfer a resource that is in his/her name or his/her share of a jointly owned resource to the community spouse if the amount of resources combined with the community spouse's other resources does not exceed the spousal allowance calculated at the time of assessment. This may occur if the community spouse has had to use some of the assets reserved at the time of the assessment. It allows the alternate care spouse to transfer resources back to the community spouse so that the community spouse may maintain the reserved amount on the Assessment of Resources. The alternate care spouse must provide a written statement of his/her intent to transfer the resource. The alternate care spouse is allowed 90 days from the date of report of the resource to complete the transfer. The worker must notify the couple in writing of the 90-day limit.~~

~~2-009.02C4c Assigning Support Rights: If the couple have resources that exceed the allowable amount and refuse to spend down which prevents SDP Medical eligibility for the alternate care spouse, the Department has the legal right to bring support proceedings against the community spouse.~~

~~2-009.02C4d Continued Validity of the Designation: The designation of resources remains valid even if either spouse enters a different specified living arrangement. If the couple does live together in the home without eligibility for waiver services, the designation becomes invalid. Spouse for spouse responsibility again applies.~~

~~If the alternate care spouse later moves out of the home or becomes eligible for waiver services, the original designation again becomes valid and the alternate care spouse is allowed a resource level for one.~~

~~If the community spouse applies, s/he must reduce his/her designated resources to the maximum allowable for:~~

- ~~1. One if the couple is not in the home together or in the home with eligibility for waiver services; or~~
- ~~2. Two if the couple is in the home and ineligible for waiver services.~~

~~2-009.03 Determination of Ownership of Resources: A resource which appears on record in the name of a client or responsible relative (see 469 NAC 2-006) must be considered belonging to the client. The worker must verify ownership of real estate through records in the offices of the register of deeds or county clerk.~~

~~If the worker substantiates that the client is not the true owner of a resource, it is permissible to allow the client to remove his/her name from the title of ownership in order to reflect true ownership. The client is allowed 60 days to make this change without affecting eligibility. After the client removes his/her name from the resource, eligibility may be determined retroactively and/or prospectively. If the client does not remove his/her name in 60 days, the resource is counted.~~

~~2-009.03A Jointly Owned Resources: When a client has a jointly owned resource that is considered available, the worker must use the guidelines in the following regulations.~~

~~2-009.03A1 Resources Owned With Other Clients: If a client owns a resource with another client who is on categorical assistance, the worker must divide the value of the resource by the number of owners, regardless of the terms of ownership. The appropriate value is counted for each unit.~~

~~This reference also applies to resources owned with a spouse or child.~~

~~2-009.03A2 Resources Owned With Non-Clients: If a client owns a resource with an individual who is not receiving categorical assistance, the worker must determine the appropriate value to be assigned to the client.~~

~~2-009.03A2a Real Estate: The worker must verify ownership of real estate through records in the offices of the register of deeds or county clerk. The worker must verify the terms on which property is held in cases of joint ownership. Records of the county court have information in regard to estates which have not been settled or which are in probate. The worker must consult the records of the county court if the property has come to the holder as a part of an estate; if by joint purchase, the facts will appear in the record of the deed.~~

~~2-009.03A2b Motor Vehicles: The worker must verify ownership of a motor vehicle. The title, not the registration, of a motor vehicle legally determines ownership.~~

~~2-009.03A2c Bank Accounts: The worker must verify the terms of the account with the financial institution. If any individual on the account is able to withdraw the total amount, the full amount of the account is considered the client's. If all signatures are required to withdraw the money, the proportionate share must be counted toward the client.~~

~~If the client verifies that none of the money belongs to him/her, the client must be allowed 60 days to remove his/her name from the account. The client must provide proof of the change. After the client removes his/her name from the account, eligibility may be determined retrospectively and/or prospectively. If the client does not remove his/her name in 60 days, the money is counted as a resource.~~

~~If a portion is the client's, the worker must notify the client of the requirement to put the money in a separate account.~~

~~2-009.04 Consideration of Relative Responsibility: When the client (i.e., a spouse or parent) has relative responsibility for a client in another assistance unit and the responsible relative owns the resource(s), the worker must divide the value by the number of units to determine the amount to be counted to each. An AABD/MA or SDP/MA couple is considered one unit.~~

~~Exception: If the responsible relative receives SSI, none of the value of the resource(s) is considered to the other unit.~~

~~2-009.05 Inheritance: When a client receives an inheritance, verified payment of debts or obligations of the deceased are subtracted from the settlement.~~

~~2-009.06 Value and Equity: Equity is the actual value of property (the price at which it could be sold) less the total of encumbrances against it (mortgages, mechanic's liens, other liens and taxes, and estimated selling expenses).~~

~~If the encumbrances against the property equal or exceed the price for which the property could be sold, the client has no equity and the property is not an available resource.~~

~~2-009.06A Secured Debts: The total value of unpaid personal taxes and other personal debts secured by mortgages, liens, promissory notes, and judgments (other than those on which the statute of limitations applies) is subtracted from the gross value of the encumbered property, to find the equity. The worker shall document in the case record the type of debt and plan under which payment was made. The client's statement of debts may usually be accepted unless information to the contrary is available.~~

~~2-009.06B Determination of Value: The worker may use public tax records to determine the sale value of a resource. If there is a question as to the accuracy of the sale value determined by tax records, verification may be obtained from a real estate agent, car dealer, or other appropriate individual.~~

~~2-009.07 Types of Resources: Resources can be divided into two categories: liquid and non-liquid.~~

~~2-009.07A Liquid Resources: Liquid resources are assets that are in cash or financial instruments which are convertible to cash. See 469-000-325 for examples of liquid resources.~~

~~2-009.07A1 Cash, Savings, Investments, Money Due: Cash on hand, cash in checking and savings accounts, salable stocks or bonds, certificates of deposit, promissory notes and other collectable unpaid notes or loans and other investments are available resources.~~

~~2-009.07A2 Land Contracts: A land contract, or real estate contract of sale, is considered a resource to the seller of the property if the contract can be sold. In determining the value of the contract, the worker and/or the client determines the salability of the contract and the resulting value (see 469 NAC 2-009.06). The contract is not considered salable unless there is a known buyer. If the contract is determined to be salable, the net value of the contract becomes the value at which it could be sold minus encumbrances, etc., against the property.~~

~~If it is determined and documented that the contract is not salable, the contract is not considered an available resource to the client. The worker must review the salability at all redeterminations or as the worker feels necessary.~~

~~Any income received from the land contract is considered unearned income to the client (see 469 NAC 2-010.01H, item 22).~~

~~2-009.07A3 Funds Set Aside for Burial: A specified maximum may be disregarded if it is set aside for the purpose of paying burial expenses. The individual may choose to put the money in:~~

- ~~1. A pre-need burial trust. If the client has an irrevocable burial trust for more than the specified maximum, the excess is considered an available resource;~~
- ~~2. A policy of burial insurance. If the client has irrevocably assigned more than the specified maximum in burial insurance, the excess is not an available resource but may be a deprivation of resources (see 469 NAC 2-009.10); or~~
- ~~3. A maximum of \$1,500 designated for burial (see 469 NAC 2-009.07A3c). These funds may be in an account or in an insurance policy.~~

If the client has a combination of an irrevocable burial trust, and/or burial insurance that exceed the specified maximum, see 469-000-310 to determine how to treat the excess. An individual may transfer funds from an irrevocable burial trust fund into an insurance policy if there is no lapse of time between the withdrawal and the transfer.

See 469 NAC 2-009.07A3d for the treatment of burial spaces and burial space items.

2-009.07A3a Irrevocable Burial Trusts: If the money was put in an irrevocable burial trust on July 16, 1982, or later, it is not considered an available resource. According to Nebraska law, an individual is allowed to deposit funds up to the specified maximum in an irrevocable trust fund created for the purpose of a prearranged funeral plan.

Therefore, the value up to the specified maximum of an irrevocable burial trust and any accrued interest or dividends on that amount, if irrevocable, are considered unavailable and are disregarded. The mortuary may retain an additional amount not to exceed 15 percent, but this amount must not be included in the burial trust.

An irrevocable burial trust fund must be deposited with a financial institution. For burial trusts contracted on December 31, 1986, or earlier, a written copy of the contract for a prearranged funeral plan must be on file with the financial institution. For burial trusts contracted on January 1, 1987, or later, a written copy of the contract may be retained by the client or the funeral home.

In determining whether the value of a burial fund contracted in Nebraska is considered available, the worker must verify the terms of the contract with the financial institution. The worker must determine also if the contract stipulates that the interest or dividends are irrevocable. If a burial fund is drawn up in another state, the worker must verify the contract terms and determine whether that state allows irrevocable burial funds or whether the value of the fund is available to the client regardless of the contract terms.

Questions regarding burial funds contracted out of state must be sent to Central Office Economic Assistance along with a copy of the contract.

~~2-009.07A3a(1) Interest on Burial Trusts: For irrevocable burial trusts contracted on December 31, 1986, or earlier, the individual was allowed to stipulate whether the interest or dividends accruing to the trust fund were irrevocable. If the interest or dividends are irrevocable, they are disregarded. The worker shall determine if the contract stipulates that the interest or dividends are irrevocable.~~

~~For irrevocable burial trusts contracted on January 1, 1987, or later, all accrued interest or dividends are also irrevocable.~~

~~2-009.07A3b Burial Insurance: Burial insurance is defined as insurance whose terms specifically provide that the proceeds can be used only to pay the burial expenses of the insured, or a life insurance policy that is irrevocably assigned for the specific purpose of burial. When the proceeds of a life insurance policy are irrevocably assigned for the purpose of burial, the cash value is not available and is disregarded as a resource.~~

~~2-009.07A3c Money Designated for Burial: Up to \$1,500 may be disregarded for each individual if it is set aside for the purpose of paying burial arrangements for the individual or the individual's spouse. This exclusion is in addition to the burial space exclusion. This exclusion is not in addition to a burial trust or burial insurance that has been irrevocably assigned.~~

~~The \$1,500 must be reduced by subtracting:~~

- ~~1. The face value of whole life insurance policies owned by an individual if the cash surrender value of the policies have been excluded from resources; and/or~~
- ~~2. The amount(s) set aside in an irrevocable trust or other irrevocable agreement available to meet funeral expenses.~~

~~Exception: Any amount designated solely for burial space items either in an insurance policy or a trust (revocable or irrevocable) is not subtracted from the \$1,500.~~

~~The funds set aside for burial arrangements must be kept separate from other funds. If the funds are not segregated from other resources, the exclusion does not apply to any of the resources. Burial funds that are combined with other resources are treated as non-excluded resources.~~

~~Interest earned on these excluded burial funds and appreciation on the value of the funds are excluded from resources if left to accumulate and become part of the separate, identified burial account.~~

~~These funds are no longer considered as funds designated for burial if any of the principal or interest is withdrawn. If the worker verifies that withdrawals have been made, the remainder is considered a resource.~~

~~Exception: If the client has an account that is funded by insurance that is specified for burial space items, any remainder continues to be disregarded if the client withdraws funds from the account.~~

~~2-009.07A3d Burial Spaces: The value of burial spaces held for the purpose of providing a place for the burial of the client, his/her spouse, and members of the client's immediate family are not counted as an available resource. The immediate family includes minor and adult children, including adopted children and stepchildren, brothers, sisters, parents, adoptive parents, and the spouses of these individuals. A burial space includes a crypt, mausoleum, urn, casket, marker, vault, or other repository for the remains of a deceased person. This exemption also applies to markers, vaults, etc., and the charges for opening and closing the grave, but does not include services, burial fees, etc. These items are exempt only if they are actually purchased. If the client has a life insurance policy for the purchase of burial items, the cash value is included in the specified maximum if the policy is irrevocably assigned (see 469 NAC 2-009.07A3b).~~

~~2-009.07A3d(1) Burial Space Items Held in a Contract: Burial space items may be disregarded when they are held for an individual by way of a contract. To meet the requirement that the item is actually purchased, the contract must state that the individual has purchased a particular item for a specified price. Revocability is not an issue for burial space contracts as long as the agreement itself represents the individual's ownership.~~

~~The contract may be funded by money set aside in a bank account or in a burial insurance policy. Any interest accrued and left to accumulate is not counted as income.~~

~~If it is burial insurance which has been irrevocably assigned, it is treated according to 469 NAC 2-009.07A3b and the specified maximum applies. If a total of more than the specified maximum in burial insurance is irrevocably assigned for services and/or burial space items, the amount above the specified maximum may be considered a deprivation of a resource under 469 NAC 2-009.10.~~

~~If the client transfers ownership of a life insurance policy to someone else, e.g., a mortuary or a relative, and there is a contract with a mortuary for purchase of burial space items which the insurance policy will be used to fund, the cash value of the policy is not considered a resource since the client does not own it and this is not considered deprivation of a resource.~~

2-009.07A4 Life Insurance

2-009.07A4a Definitions

Cash surrender value: Amount which the insurer will pay (usually to the owner) upon cancellation of the policy before death of the insured or before maturity of the policy.

Face value: Basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions. (In determining the face value of a policy, the original face value of the policy is used.)

Insured: The person whose life is insured.

Insurer: The company that insures others.

Owner: The person who has the right to change the policy.

~~2-009.07A4b Cash Surrender Value:~~ Using the following criteria, the cash surrender value of life insurance owned by the client is considered a resource. If the combined original face value of all the life insurance policies owned by the client exceeds \$1,500, the cash surrender value of all the policies is considered a countable resource. Each person in the unit is allowed the \$1,500 exemption for the face value of his/her life insurance.

The worker must disregard the following in determining the combined original face value of all life insurance policies:

- ~~1. Burial insurance; and~~
- ~~2. Life insurance policies where the proceeds are irrevocably assigned for the purpose of burial.~~

~~See 469 NAC 2-009.07A3b for the treatment of burial insurance.~~

~~If the cash surrender value is to be counted towards the total resource of a client, consideration is given to any outstanding loans against the policy in determining net cash surrender value (see 469 NAC 2-009.06).~~

~~2-009.07A4c Adjustment:~~ The client can usually adjust a large insurance policy to a smaller amount providing limited protection and allowing the client to benefit from accumulated savings.

~~2-009.07A4d Interest and Dividends:~~ Interest and dividends actually paid to the client from all life insurance policies are treated according to 469 NAC 2-010.01H, item 6.

~~2-009.07A5 Long Term Care (LTC) Partnership Program: Resources equal to the amount of benefits paid out by a qualified Long Term Care Partnership policy are disregarded for an individual applying for SDP if the policy was issued on July 1, 2006, or later, and the individual is otherwise SDP-eligible. The benefits may be paid as direct reimbursement of long term care expenses, or paid on a per diem or other periodic basis, for periods during which the individual received long term care services. The disregard is applied to the amount of benefits paid to or for the individual as of the month of application, even if additional benefits remain available under the terms of the policy.~~

~~The amount of the resource disregard is also excluded from estate recovery.~~

~~2-009.07A5a Definition of a Qualified Long Term Care Partnership Policy: A Qualified LTC Partnership policy is a long term care insurance policy that has been approved by the Nebraska Department of Insurance. The Department accepts the Department of Insurance's certification of the policy. If an individual has a long term care insurance policy that does not meet the requirements for a Qualified LTC Partnership policy because it was issued before July 1, 2006, the individual may exchange the policy for another.~~

~~2-009.07A5b Exchange of Non-Partnership Policy for Qualified LTC Partnership Policy: An individual may exchange a policy that does not meet the requirements of a qualified LTC Partnership Policy for one that does meet the requirements. The date of exchange is considered the issue date for the qualified LTC Partnership Policy.~~

~~2-009.07A5c Reciprocity with Other States: The Department will accept qualified LTC Partnership Policies issued in other states with Long Term Care Partnership Programs.~~

~~2-009.07A6 Trust, Guardianship/Conservatorship, and Annuity Funds: When a guardianship, conservatorship, annuity, or trust has been established on behalf of a client and the client(s) who has applied has resources exceeding the total resource limit for an AABD grant or SDP grant and/or medical (see 469 NAC 2-009.08), the worker must verify if the trust, guardianship/conservatorship, or annuity is available to the client.~~

~~2-009.07A6a Definitions: For the purposes of these regulations, the following definitions apply.~~

~~Annuity: A right to receive periodic payments, either for life or a term of years.~~

~~Beneficiary: Any individual, or individuals, designated in the trust to receive any disbursement from the corpus of the trust, or from income generated by the trust, which benefits the party receiving it. A payment from a trust may~~

~~include actual cash, as well as non-cash or property disbursements, such as the right to use and occupy real property.~~

~~_____ Grantor: Any individual who creates a trust. It includes the following:~~

- ~~_____ 1. The client;~~
- ~~_____ 2. The client's spouse;~~
- ~~_____ 3. A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse (guardian/conservator); or~~
- ~~_____ 4. A person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.~~

~~Irrevocable Trust: A trust which cannot, in any way, be revoked by the grantor.~~

~~SDP-Qualifying Trust: A trust or similar legal device that was established before August 11, 1993, by a client (or his or her spouse) under which:~~

- ~~_____ 1. The client is the beneficiary of all or part of the payments from the trust; and~~
- ~~_____ 2. The amount of the distribution is determined by one or more trustees who are permitted to exercise any discretion with respect to the amount to be distributed to the individual and the distributable amount from a SDP-qualifying trust has no use limitation.~~

~~Pooled Trust: A trust containing the assets of a disabled individual(s) that is established and managed by a nonprofit association in a separate account solely for the benefit of a disabled individual.~~

~~Revocable Trust: A trust which can be revoked by the grantor. A trust which provides that the trust can only be modified or terminated by a court is considered to be a revocable trust, since the grantor (or representative) can petition the court to terminate the trust. A trust called irrevocable but which will terminate if some action is taken by the grantor is a revocable trust for purposes of these regulations.~~

~~Special Needs Trust: A trust containing the assets of a client age 64 or younger who is disabled and which is established for the sole benefit of the client by a parent, grandparent, legal guardian, or a court.~~

~~Testamentary Trust: A trust established through a will.~~

~~Trust: For purposes of these regulations, a trust is any arrangement in which an individual (grantor) transfers property to another person(s) (trustee[s]) with the intention that it be held, managed, or administered by the trustee(s) for the benefit of the grantor or certain designated beneficiaries. The trust must be valid under state law and manifested by a valid trust instrument of agreement. A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.~~

~~The term trust also includes any legal instrument or device that is similar to a trust for purposes of these regulations. It involves a grantor who transfers property to an individual or entity with the intention that it be held, managed, or administered by the individual or entity for the benefit of the grantor or others. This can include (but is not limited to) escrow accounts, investment accounts, pension funds, irrevocable burial trusts, annuities, and other similar entities managed by an individual or entity with fiduciary obligations.~~

~~2-009.07A6b Testamentary Trusts: Testamentary trusts may be excluded as resources, depending on the availability of the funds to the individual or his/her spouse as specified in the terms of the trust.~~

~~2-009.07A6c Annuities~~

~~2-009.07A6c(1) Purchased or Annuitized Before February 8, 2006: Where the client cannot assign or change the ownership or payee, the annuity is unavailable. A determination must then be made if a deprivation has occurred. If the expected return on the annuity is commensurate with the life expectancy of the client, the annuity can be deemed actuarially sound and no deprivation has occurred.~~

If the average number of years of expected life remaining for the client does not coincide with the life of the annuity (i.e., the client is not reasonably expected to live longer than the guarantee period of the annuity), a deprivation has occurred. The look back period is the same for trusts, i.e., 60 months. See 469-000-212 Period Life Tables.

~~2-009.07A6c(2) Annuity Transaction On or After February 8, 2006: Revocable and assignable annuities are a countable resource. A saleable annuity which has not been sold is a countable resource for the amount annuitized, less the payment(s) amount already received. A saleable annuity which has been sold for a value consistent with the secondary market is a countable resource in the amount of the proceeds. If a saleable annuity is sold for less than a value consistent with the secondary market, it will be valued at the current secondary market amount and the difference will be subject to deprivation of resources regulation.~~

~~2-009.07A6c(2)(a) Annuities Excluded from Resources: An annuity which has been annuitized will be excluded from countable resources if it meets the following conditions:~~

- ~~1. The annuity is considered either an individual retirement annuity according to Internal Revenue Code (IRC) or a deemed Individual Retirement Account under a qualified employer plan by IRC; or~~
- ~~2. The annuity is purchased with the proceeds from a simplified employee pension; and~~
- ~~3. The annuity is irrevocable and non-assignable, the individual who owned the retirement account or plan is receiving equal monthly payments with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy.~~

The applicant or recipient must verify that the annuity meets these requirements.

2-009.07A6c(2)(b) Deprivation of Resources for Annuity Transactions: For long term care services (see 469 NAC 2-009.10B), an annuity transaction after February 8, 2006, is treated as a disposal of an asset for less than fair market value unless the State of Nebraska is named as the remainder beneficiary in the first position for at least the total amount of SDP Medical expenditures paid, or is named as the remainder beneficiary in the second position after the community spouse and/or minor or disabled child. An annuity is also treated as a disposal of assets for less than fair market value unless it is irrevocable and non-assignable, actuarially sound, and provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments. This provision also applies to a community spouse.

The issuer of an annuity must notify the Department when there is a change in the amount of income or principal withdrawn from the annuity.

~~2-009.07A6d Revocable Trusts: In the case of a revocable trust:~~

- ~~1. The entire corpus of the trust is counted as an available resource to the client;~~
- ~~2. Any payments from the trust made to or for the benefit of the client are counted as income;~~
- ~~3. Any payments from the trust which are not made to, or on behalf of, the client are considered assets disposed of for less than fair market value (see 469 NAC 2-009.10); and~~
- ~~4. If the client must go to court to access the funds, the client or his/her guardian or conservator is allowed 60 days to initiate court action.
 - ~~a. An applicant is allowed 60 days from the approval date; and~~
 - ~~b. A recipient is allowed 60 days from the date of notification of the requirement to file for access.~~~~

~~2-009.07A6e Guardianships/Conservatorships: When a fund is established in the process of the appointment of a guardianship or conservatorship, the worker must determine if the funds are available without court approval. The client is ineligible for categorical assistance until the guardian gives the local office written notice of refusal to spend guardianship/conservatorship monies for the care and maintenance of the client. In order to be considered current notice, it must be given within one year of its use in determining eligibility for categorical assistance. After current notice has been given, the client, if otherwise eligible, may receive benefits if all judicial remedies are pursued to determine the availability of the funds. This may include an appeal to the proper district court and, if necessary, to the Court of Appeals and the Nebraska Supreme Court. However, certain guardianships/conservatorships are not reasonably available and judicial review may be waived; these include some guardianships/conservatorships where the guardian or conservator's discretion is limited and certain guardianships/conservatorships established from the proceeds of a personal injury case on behalf of a child.~~

~~The child or his/her guardian/conservator must file a request for access to the funds in a court of competent jurisdiction within:~~

- ~~1. For an applicant, 60 days from the approval date;~~
- ~~2. For a recipient, 60 days from the date of notification of the requirement to file for access.~~

If the petition or application has not been filed after 60 days, the client is no longer eligible for AABD or SDP.

2-009.07A6f Irrevocable Trusts:

~~2-009.07A6f(1) Trusts Established Before August 11, 1993: For a qualifying trust established before August 11, 1993, the maximum amount that could have been distributed from either the income or principal is considered an available resource.~~

~~A qualifying trust is a trust or similar legal device that was established by a client (or his or her spouse) under which:~~

- ~~1. The client is the beneficiary of all or part of the payments from the trust; and~~
- ~~2. The amount of the distribution is determined by one or more trustees who are permitted to exercise any discretion with respect to the amount to be distributed to the individual and the distributable amount from a qualifying trust has no use limitation.~~

~~A trust that was established by a client's guardian or legal representative, acting on the client's behalf, falls under the definition of a qualifying trust. If a client is not legally competent, for example, a trust established by his/her legal guardian (including a parent) using the client's assets can be treated as having been established by the client, since the client could not establish the trust for himself/herself.~~

2-009.07A6f(2) Trusts Established On or After August 11, 1993: The following regulations apply to all trusts created on or after August 11, 1993.

These regulations apply to any client who establishes a trust, who is a beneficiary of a trust, and who is an applicant or recipient of AABD or SDP. A client is considered to have established a trust if his or her assets or assets of his or her spouse were used to form a part or the entire corpus of the trust other than by will.

These include trusts established by:

1. ~~The individual;~~
2. ~~The individual's spouse;~~
3. ~~A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or~~
4. ~~Person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.~~

Where a trust includes the assets of another person or persons as well as the assets of the client and/or his/her spouse, the rules in this section apply only to the portion of the trust attributable to the assets of the client and/or the client's spouse.

~~2-009.07A6f(2)(a) Payment Can Be Made From Trust: The following applies when payment may be made to the individual and/or the individual's spouse under the terms of the trust:~~

1. ~~Payments from income, or from the corpus, made to or for the benefit of the client and/or the client's spouse are treated as income to the client.~~
2. ~~If there are any circumstances under which payment from the trust corpus could be made to or for the benefit of the client and/or the client's spouse, the portion of the corpus from which payment to or for the benefit of the client or the client's spouse could be made must be considered a resource available to the client.~~
3. ~~Any portion of the corpus that could be paid to or for the benefit of the client and/or the client's spouse is treated as an available resource.~~
4. ~~Payments from income or from the corpus that are not made to or for the benefit of the client and/or the client's spouse are treated as transfers of assets for less than fair market value.~~

~~2-009.07A6f(2)(a)[1] Exceptions: A trust is not considered available if it is established for a disabled client age 64 or younger (receiving or eligible to receive SSI, RSDI, or AABD) and is a:~~

- ~~1. Special needs trust: A trust containing the assets of the client and established solely for the benefit of the client by the client's parent, grandparent, legal guardian, or a court if the State will receive all amounts remaining in the trust upon the death of the client or upon termination of the trust up to the amount of total medical assistance paid on behalf of the client; or~~
- ~~2. Pooled trust: A trust containing the assets of the client and:
 - ~~a. Established and managed by a non-profit association;~~
 - ~~b. A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of assets, the trust pools these accounts;~~
 - ~~c. Accounts in the trust are established solely for the benefit of individuals who are blind or disabled (receiving or eligible to receive SSI, RSDI, or AABD); and~~
 - ~~d. The trust contains the provision that the State of Nebraska will receive all amounts remaining in the trust for the beneficiary upon the death of the client up to the amount of total medical assistance paid on behalf of the client.~~~~

~~2-009.07A6f(2)(b) Payment Cannot Be Made from Trust: When payments from some portion or all of the trust cannot under any circumstances be made to or for the benefit of the client, or where there is some portion of the trust from which no payments can be made to or for the benefit of the client, all of the corpus, or income on the corpus, which cannot be paid to the client is considered a transfer of assets for less than fair market value.~~

~~2-009.07A6g Hardship Procedures: A trust will not be considered available if denial of assistance would cause undue hardship.~~

~~2-009.07B Non-Liquid Resources:~~ Non-liquid resources are tangible properties which need to be sold if they are to be used for the maintenance of the client. They include all properties not classified as liquid resources, such as:

1. ~~A home;~~
2. ~~Additional pieces of property;~~
3. ~~Trailer houses;~~
4. ~~Burial lots;~~
5. ~~Motor vehicles;~~
6. ~~Life estates;~~
7. ~~Farm and business equipment;~~
8. ~~Livestock;~~
9. ~~Poultry and crops; and~~
10. ~~Household goods and other personal effects.~~

~~2-009.07B1 Exemption of Home:~~ The AABD Payment or SDP client's home is exempt from consideration as an available resource, with the following limitations.

~~2-009.07B1a Definition of Home:~~ A home is defined as any shelter which the individual owns and uses as his/her principal place of residence. The home includes any land on which the house is located and any related outbuildings necessary to the operation of the home.

~~2-009.07B1b Adjacent Lots:~~ Lots adjacent to the home are considered available if they can be sold separately from the home. If the worker determines and documents in the case record that the lots adjacent to the home cannot be sold or are not saleable due to the location or condition of the property, the adjacent lots are also exempt.

~~2-009.07B1c Home Equity Value:~~ For applications on or after January 1, 2006, or later, the individual is not eligible for any long term care services specified at 469 NAC 2-009.10B if the equity value interest in the home exceeds the specified amount.

~~2-009.07B2 Removal from Home:~~ If the individual moves away from the home and does not plan or is unable to return to it, the worker must determine when the home becomes an available resource in accordance with the following provisions.

The home continues to be exempt as a resource while it is actually occupied by the client's spouse or dependent relative. A dependent relative includes the client's:

- ~~1. Child, stepchild, or grandchild age 17 or younger;~~
- ~~2. Child, stepchild, or grandchild age 18 or older if aged, blind, or disabled and receiving or eligible to receive SSI; AABD; SDP; and other categorical assistance; or~~
- ~~3. Brother, sister, stepbrother, stepsister, half brother, half sister, parent, stepparent, grandparent, aunt, uncle, niece, nephew, or the spouse of any persons previously named even after the marriage has been terminated by death or divorce (who is receiving or who would be eligible for categorical assistance except for income and resources and who lived in the home at any time one year before the client moved away from the home).~~

~~When the client moves to a nursing home or to an assisted living facility and is receiving AD waiver services, and it is not possible to determine immediately if the client will be able to return home, a maximum of six months may be allowed to make that determination.~~

~~Unless the client or the client's representative signs a statement that the individual will not return to the home, or the home is already listed for sale, it is not possible to determine immediately if s/he will return home.~~

~~After a maximum of six months, the home may no longer be considered the individual's principal place of residence and must be considered an available resource. However, the client is allowed time as described in 469 NAC 2-009.07B4b to liquidate the property before it affects eligibility.~~

~~**Note:** The six months begin with the first full month following the month of admission.~~

~~After the client is admitted, if the home is exempt because it is occupied by one or more of the relatives identified previously, the six months begin with the first full month following the month that the home is no longer allowed the exemption for occupation.~~

~~2-009.07B2a Liquidation of Home: As soon as the determination is made that the client will not be able to return home, the worker must allow the client time to liquidate the property (see 469 NAC 2-009.07B4).~~

~~The client is also allowed time for liquidation if s/he leaves the home for a reason other than entering a medical institution.~~

~~2-009.07B3 Sale of Home: If the AABD or SDP client sells his/her home, the net proceeds become an available resource unless reinvested immediately in another home. In order to be allowed time to reinvest the proceeds, the client must be residing in the home at the time of the sale and move directly to his/her new home.~~

~~Net proceeds are the remainder after payment of the mortgage, realtor's fees, legal fees, etc. The worker must verify any deductions.~~

~~2-009.07B4 Liquidation of Real Property: When a client has excess resources because of real property, s/he may be eligible to receive an AABD grant or SDP pending liquidation of the resource, according to the following regulations. This reference does not apply if the community spouse under spousal impoverishment regulations will retain any of the proceeds from the sale. The community spouse is not a client.~~

~~Note: If the client has excess resources because of real property other than the home, s/he is ineligible until the month the Agreement to Sell Real Property and Repay Assistance is signed.~~

~~2-009.07B4a Definition of Real Property: Real property is defined as land, houses, or buildings.~~

~~2-009.07B4b Time Limits for Liquidation: The worker must exclude real property which the client is making a good faith effort to sell.~~

~~First the worker must determine if the individual has the legal authority to liquidate the property. If not, the client is allowed 60 days to initiate legal action to obtain authority to liquidate (see 469 NAC 2-009.02A). If the client owns the property with other persons, see 469 NAC 2-009.07B4b(2).~~

~~Once the client has the legal authority to liquidate the property, the worker must obtain the client's signature on the Agreement to Sell Real Property and Repay Assistance. The client is allowed six calendar months to liquidate the real property. If the client refuses to sign the Agreement to Sell Real Property and Repay Assistance, s/he is immediately ineligible because of excess resources.~~

~~The six-month period begins with the month following the month in which the Agreement to Sell Real Property and Repay Assistance is signed. Once the Agreement to Sell Real Property and Repay Assistance is signed, the six calendar months are counted, whether or not the client is receiving assistance. If after the Agreement to Sell Real Property and Repay Assistance is signed the client goes into current pay status for SSI, the Agreement to Sell Real Property and Repay Assistance is void. If the client later goes into non-pay status for SSI, a new Agreement to Sell Real Property and Repay Assistance is signed and a new six-month liquidation period is established.~~

~~If the client moves back to the home and subsequently moves out again during the six-month period, s/he is only allowed the months remaining in the original six-calendar month period.~~

~~One liquidation period is allowed for each piece of real property that is determined to cause excess resources, even if the case is closed and subsequently reopened.~~

~~2-009.07B4b(1) Extension of Time Limit: If the client is unable to liquidate the property in six calendar months, the supervisor may authorize an additional three calendar months. In determining whether to allow a three-calendar-month extension, the supervisor must consider:~~

- ~~1. If the property has been placed on the market with a real estate licensee or;~~
- ~~2. If the client is asking a fair price for the property;~~
- ~~3. If the asking price has been reduced;~~
- ~~4. If the client understands the requirement for liquidation of the property;~~
- ~~5. If the client has not refused a reasonable offer to purchase; and~~
~~Note: If there is not a better offer, a reasonable offer is defined as at least 2/3 of either the estimated current market value or the proven actual value.~~
- ~~6. The economic conditions in the area and if real estate is selling.~~

~~The three calendar months are counted whether or not the client is receiving assistance. If the client moves back to the home during the three-month period and subsequently moves out again, s/he is allowed the months remaining in the three months.~~

~~Before the three-month extension ends, if the client has exhausted all possibilities for selling the property but it is not sold, the worker must submit all information regarding the property and its salability to Central Office, Economic Assistance to determine if the resource is available, in accordance with the guidelines previously listed.~~

~~2-009.07B4b(2) Joint Ownership: Real property that is jointly owned is excluded if sale of the property would cause the other owner (whether the other owner is on assistance or not) undue hardship. However, if undue hardship ceases to exist, the property is included in countable resources and handled according to the following regulations.~~

~~If the client owns the property with other persons who are not on assistance and the real property is not the principal place of residence of the other owner(s), the worker contacts the other owners to determine if they are willing to liquidate their interest in the property. If all parties are willing to liquidate, the worker proceeds with the liquidation process. If one or more of the parties do not wish to liquidate, the worker applies 469 NAC 2-009.02A and requires the client to take legal action to force a sale of the property. The worker may obtain a written statement from the other parties and file it in the case record. After a legal determination is made regarding the availability of the client's interest in the property, the worker takes the appropriate action.~~

~~2-009.07B5 Additional Pieces of Real Property: The worker shall determine and use in computing the amount of the unit's total available resources the potential sales value of all real property, other than the allowed exemption for the home.~~

~~2-009.07B6 Burial Spaces: See 469 NAC 2-009.07A3d.~~

~~2-009.07B7 Motor Vehicles: The worker must disregard one motor vehicle regardless of its value as long as it is necessary for the client or a member of his/her household for employment, medical treatment, or use as the home. If the client has more than one motor vehicle, the worker excludes the vehicle with the greatest equity.~~

~~Exception: The client designates the disregarded vehicle for the Assessment of Resources.~~

~~Any other motor vehicles are treated as nonliquid resources and the equity is counted in the resource limit. The client's verbal statement that the motor vehicle is used for employment or medical treatment is sufficient.~~

~~Exception: A client in a nursing home or receiving services through an Assisted Living Waiver is not allowed the disregard of any motor vehicles because medical transportation is included in the payment to the facility.~~

~~2-009.07B7a Determination of Fair Market Value: For motor vehicles that are counted in the resource total, the worker uses the fair market value. Cars, trucks, SUVs, vans, motorcycles, recreational vehicles, motorboats and watercraft, and planes are included in the category of motor vehicles. To determine the fair market value of vehicles, the worker must use the trade-in value as shown in either the Kelly Blue Book or the National Auto Dealers Association (NADA) Used Car Guide. If the vehicle is not listed in the Kelly Blue Book or the NADA Used Car Guide, or if the client or the worker feels the value listed in the Guide is inappropriate or not a true valuation of the vehicle, the worker may:~~

- ~~1. Contact the county assessor's office for the assessed value;~~
- ~~2. Use the client's most recent vehicle tax statement; or~~
- ~~3. Have the client obtain the vehicle's value from used car dealers.~~

~~2-009.07B7b (Reserved)~~

~~2-009.07B8 Life Estates:~~ The owner of a life estate in real property is generally unable to sell the property. Therefore, the worker must include the net income from the life estate in the budget rather than considering the life estate as an available resource. If the owner of a life estate transfers it to another individual, the worker must determine if it is deprivation of a resource (see 469 NAC 2-009.10). If the life estate is sold, the proceeds are counted as a resource. See 469-000-208 for the Life Estate Interest Table.

It is a disposal of assets to purchase a life estate interest in another individual's home unless the purchaser resides in the home for at least 12 months after the date of purchase.

~~2-009.07B9 Household Goods and Personal Effects:~~ Household goods and personal effects of moderate value used in the home are exempt. Household goods are defined as including household furniture, furnishings and equipment used in the operation, maintenance, and occupancy of the home or in the functions and activities of the home and family life, as well as those items which are for comfort and accommodation. Personal effects include clothing, jewelry, items of personal care, etc.

~~2-009.07B10 Loans:~~ A bona fide loan to a client or financially responsible relative is disregarded as a resource. A bona fide loan is defined as one that must be repaid. The agreement for repayment may be verbal or written and the loan may be owed to an individual or to an organization or agency. Using prudent person principle the client's statement is adequate verification that the loan must be repaid.

For income treatment, see 469 NAC 2-010.01H.

~~2-009.07B11 Essential Property:~~ If the client owns a resource that is used in his/her trade or business, the resource is disregarded, regardless of the value. This includes real property such as land, houses, or buildings as well as personal property such as farm machinery, business equipment, livestock, poultry, crops, tools, safety equipment, or business bank accounts as long as the funds are separated from other liquid resources. The client or a responsible relative (spouse or parent) must be actively involved in the day to day operation of the trade or business as a primary means of earning a livelihood. See 469-000-318 for examples. If the client or responsible relative is not actively involved in the trade or business, it must be due to circumstances that are beyond the individual's control, e.g., illness, and there must be a reasonable expectation that the use will resume.

~~2-009.07B11a Nonbusiness Property:~~ A maximum of \$6,000 equity value of nonbusiness property (real or personal) that is used to produce goods or services essential to daily activities is excluded from resources. For instance, an individual may maintain livestock for consumption in his/her own household.

~~The property must be in current use or there is the reasonable expectation that use will resume.~~

~~A vehicle such as a garden tractor may qualify for this exemption; an automobile does not qualify.~~

~~Any equity in excess of \$6,000 is counted as a resource. If the excess resource is real property, see 469 NAC 2-009.07B4 for regulations on liquidating real property.~~

~~2-009.07B12 Trailer Houses and Other Portable Housing Units: If a client occupies a trailer house or other portable housing unit as his/her home, the property is allowed the resource exemption for a home (see 469 NAC 2-009.07B1). If the client enters a nursing home, s/he is allowed the exemption of a home for up to six months (see 469 NAC 2-009.07B2).~~

~~If the trailer house or other portable housing unit is used for the client's trade or business, see 469 NAC 2-009.07B11. If it is used to produce goods for the client's own consumption or use, see 469 NAC 2-009.07B11a.~~

~~2-009.07B13 Farm Equipment: If the farm equipment is used for the client's trade or business, see 469 NAC 2-009.07B11. If it is used to produce goods for the client's own consumption or use, see 469 NAC 2-009.07B11a.~~

~~If it is necessary to determine the equity in farm equipment, the worker may use tax assessor's records or consult a farm equipment dealer to arrive at a market value. The worker must verify any loans, liens, etc., to determine equity.~~

~~2-009.07B14 Business Equipment, Fixtures, Machinery: If business equipment, etc., is used for the client's trade or business, see 469 NAC 2-009.07B11. If it is used to produce goods for the client's own consumption or use, see 469 NAC 2-009.07B11a.~~

~~If it is necessary to determine the value of these resources, the worker may use the owner's estimate of the current market price for the equipment, fixtures, or machinery. If the client is unable to provide an estimate or if the worker feels the estimate is inaccurate, other sources may be used, such as an auctioneer, county assessor, etc.~~

~~2-009.07B15 Livestock, Poultry, Crops (Growing and on Hand): If the livestock, poultry, and crops are grown for the client's trade or business, see 469 NAC 2-009.07B11. If they are grown for the client's own consumption, see 469 NAC 2-009.07B11a.~~

~~If it is necessary to determine the value of these resources, the worker may use the owner's estimate of the current market price for livestock, poultry, and crops (growing and harvested). If the client is unable to provide an estimate or if the worker feels the estimate is inaccurate, the worker may consult other sources such as an auctioneer, county assessor, etc.~~

~~2-009.08 Maximum Available Resource Levels for Grant Eligibility: The established maximum for available resources which the client, or the client and responsible relative or essential person (see 469 NAC 3-006.02), may own and still be considered eligible for a grant, according to unit size, are as follows:~~

- ~~1. One member unit - client only \$2000
If a couple has a valid designation of resources and:
a. There is an eligible spouse and an ineligible spouse, the resource level for the eligible spouse is \$2,000; or
b. The ineligible spouse later becomes eligible; each spouse is allowed \$2,000.~~
- ~~2. Two member unit \$3000
a. Client and eligible spouse;
b. Client and ineligible spouse; or
c. Client and ineligible spouse who have designated resources but the client returns home or no longer is eligible for waiver services;
d. Client and other essential person; (This may be a disabled minor child and one parent if that parent is considered an EP); and~~
- ~~3. Three or more member unit \$3000 plus
a. Client and spouse; or \$25 for each
b. Client and other essential additional EP
person; and
c. Additional essential persons.~~

~~If the client has resources in excess of the allowable limit for a grant, the client is ineligible and the AABD Payment or SDP Payment case must be closed or denied. The worker must consider eligibility for SDP Medical using the resource levels in 469 NAC 4-005.01. For procedures on designating resources, see 469 NAC 2-009.02C.~~

~~If two or more related AABD Payment or SDP Payment clients (other than a married couple), i.e., an eligible AABD grant parent and his/her eligible AABD grant minor child or two or more unrelated eligible AABD grant clients, reside in the same household, each client is entitled to a resource maximum of \$2000.~~

~~The treatment of resources of a spouse, a parent, or an essential person is the same as for a client (see 469 NAC 2-006).~~

~~If the total equity value of available non-excluded resources exceeds the maximums specified above, the client(s) is ineligible. Resources must be below these maximum resource levels for one day in the month in order for the client to be eligible for a grant in that month.~~

~~2-009.08A Resources of a Spouse, Parent, or Other Essential Person (EP): All resources of a client and spouse or other EP who is included in the budget and who share the same home are considered available for the support of both unless one spouse is eligible for or receiving waiver services. Relative responsibility includes eligible spouse for spouse (eligible or ineligible) and parents for children who are age 17 or younger and still considered part of their household. (See 469 NAC 2-006 for relative responsibility and 469 NAC 2-009.02C for the designation of resources.)~~

~~If the client and spouse are legally separated or divorced, consideration must still be given to jointly owned resources and their availability in determining the individual's eligibility.~~

~~In the case of an eligible client whose payment standard has been increased because of the inclusion of EP's (see 469 NAC 3-006.02), the resources of the essential person(s) are considered available to the client. Resources of an essential person are treated the same as the resources of the eligible client. However, if the resources of the essential person make the client ineligible (unless the essential person is the ineligible spouse or parent of a minor child), the essential person may be removed from the budget. Once the EP is removed from the budget, his/her resources are no longer considered.~~

~~2-009.09 Deeming of Resources of A Parent: In considering the resources of a parent(s) who is not considered an EP towards an eligible child age 17 or younger and living in the parent's household, the following resources are considered to the child whether or not they are actually made available:~~

- ~~1. All resources exceeding \$2,000 in the case of one parent; or~~
- ~~2. All resources exceeding \$3,000 in the case of-~~
 - ~~a. Two parents;~~
 - ~~b. One parent and spouse of the parent; or~~
 - ~~c. One parent and one minor sibling.~~
- ~~3. \$25 each additional minor sibling in the parent(s)' household.~~

~~Resource exclusions listed in 469 NAC 2-009.02B apply to the parent's resources. The resources of the eligible child's brothers and sisters are not considered towards the child.~~

~~**Note:** If income of a parent is not deemed according to 469 NAC 2-010.01F1, resources are also not deemed.~~

~~2-009.10 Deprivation of Resources: Any action taken by the individual, or any other person or entity, that reduces or eliminates the individual's or spouse's recorded ownership or control of the asset for less than fair market value (full value) is a deprivation of resources. The worker must verify the fair market value of the resource at the time the resource was disposed of and determine the equity value of the resource by taking into consideration any encumbrances against the resource. This includes:~~

- ~~1. Recorded transfer of ownership of real property;~~
- ~~2. Not receiving the spousal share of an augmented estate;~~
- ~~3. Purchase of a life estate in another individual's home without meeting the 12-month requirement to reside there;~~
- ~~4. Promissory notes, loans, mortgages, and contract sales for less than fair market value and not enforced;~~
- ~~5. Purchase of an irrevocable, non-assignable annuity if SDP is not the preferred beneficiary and the annuity is issued on February 8, 2006, or later;~~
- ~~6. Any transfer above the protected spousal reserved amount to a community spouse; and~~
- ~~7. Purchase of any contract or financial instrument, including an endowment or insurance, where the criteria for fair market value are not met.~~

~~The criteria for fair market value are not met when:~~

- ~~1. The term of the instrument exceeds the life expectancy of the applicable client(s);~~
- ~~2. The instrument does not provide for equal monthly or annual payments commencing immediately during the term of the contract;~~
- ~~3. The instrument does not provide for the recovery of assets in the event of default; or~~
- ~~4. The instrument contains exculpatory or cancellation terms of balance due.~~

~~A service given for free at the time cannot later be claimed as an amount owed.~~

~~When an asset is placed in an annuity on February 8, 2006 or later, see annuity regulations at 469 NAC 2-009.07A6c(2).~~

~~Trust regulations at 469 NAC 2-009.07A6 take precedence over deprivation when an asset is placed in a trust.~~

~~When real property in which the individual has a life estate is sold, the individual or spouse must receive as a lump sum his/her life estate interest from the net proceeds, or the entire net proceeds invested and the individual(s) who has the life estate receives all the income.~~

~~2-009.10A Deprivation of Resources for a Grant: The worker needs to investigate for deprivation of a resource if an individual or an individual's spouse applies for or becomes eligible for a grant. For deprivation of resources for SDP medical assistance, see 469 NAC 2-009.10B.~~

~~2-009.10A1 Look-Back Period: To determine if a client or his/her spouse deprived himself/herself of a resource in order to qualify for an AABD payment, the worker must look back 36 months from when the individual applies for AABD grant assistance or, if later, the date on which the individual or spouse disposes of resources for less than fair market value.~~

~~The look-back period for grant is always 36 months.~~

~~2-009.10A2 Period of Ineligibility for a Grant: If the worker determines that an individual disposed of a resource, the applicant or recipient is ineligible for a grant for the number of months calculated by dividing the uncompensated value of the resources disposed of by the maximum AABD payment to the individual. The number of months the individual is ineligible for a grant must not exceed 36. If the applicant or recipient is eligible for SSI but for a period of ineligibility due to a disposal, the AABD grant period of ineligibility is the same as the SSI period of ineligibility. Ineligibility for a grant begins with the month of transfer. Receipt of any grant during the period of ineligibility results in an overpayment and recoupment procedures apply (see 469 NAC 3-007.03B2).~~

~~2-009.10B Deprivation of Resources for SDP Medical Assistance: The worker needs to investigate for deprivation of a resource only if an individual or an individual's spouse resides in a specified living arrangement which is defined as:~~

- ~~1. Residing in a nursing home;~~
- ~~2. Receiving the skilled level of care in a hospital, i.e., swing bed services;~~
- ~~3. Requesting or Receiving Home and Community Based Services including an Assisted Living waiver, home health care or personal care services; or~~
- ~~4. Residing in an Intermediate Care Facility for Persons with Developmental Disabilities.~~

~~If a couple chooses to do an assessment of resources, see 469 NAC 2-009.02C3.~~

~~2-009.10B1 Exceptions to Deprivation Rule: For all disposals of assets, regardless of date, an exception may be made if:~~

- ~~1. A satisfactory showing is made to the State that the individual intended to dispose of the assets either at fair market value or for other valuable consideration;~~
- ~~2. The assets were transferred exclusively for a purpose other than to qualify for SDP medical assistance; or~~
- ~~3. All assets transferred for less than fair market value have been returned to the individual.~~

~~Also see 469 NAC 2-009.10C.~~

~~2-009.10B2 Disposal/Transfer of Resources:~~

~~2-009.10B2a Look-Back Period: To determine if a client or his/her spouse deprived himself/herself of a resource to qualify for medical assistance, the worker must look back 60 months before the month of application.~~

~~For SDP Medical, the look-back is triggered when the individual first applies for Medicaid and is in a specified living arrangement or is on SDP Medical and enters a specified living arrangement. When an individual applies for SDP Medical more than once, the look back period is based on the first date the individual meets both requirements.~~

~~To determine the countable value disposed of, the worker:~~

- ~~1. Takes the equity the client has in the resource (equity equals fair market value minus encumbrances);~~
- ~~2. Subtracts any compensation received by the client; and~~
- ~~3. Subtracts the allowable resource level shown at 469 NAC 4-005.01 from the result of step 2 if this is the first disposal.~~

~~2-009.10B2b Period of Ineligibility for SDP Medical: If the worker determines that an individual disposed of a resource, the applicant or recipient is ineligible for SDP Medical for the number of months determined by dividing the countable value of the resource by the actual monthly cost of care in the specified living arrangement at the current private pay rate. If the period of ineligibility is longer than 12 months, the SDP case is to be closed or denied and the client will need to apply for Medicaid. If the period of ineligibility is less than 12 months, the period of ineligibility begins:~~

- ~~1. If the individual is on SDP Medical, with the month of entry into a specified living arrangement; or~~
- ~~2. If the individual is not on SDP Medical, the month of application if in a specified living arrangement.~~

~~The individual must be eligible for SDP Medical except for the deprivation of resources in the month of application. It does not apply to an application month in which the individual is ineligible because of excess resources or other eligibility criteria.~~

~~If the division results in a fraction, the worker converts the fraction to a dollar amount and includes that amount as unearned income for the applicable month.~~

~~In determining the period of ineligibility, the worker uses the fair market value of the transferred resource only. The value of other resources and income are not included in the calculation.~~

~~For periodic disposals within the look back period, the worker determines each separately; the periods of ineligibility run consecutively. Multiple fractional month transfers are cumulative and treated as one transfer.~~

~~The remaining time of ineligibility is divided by two and shared by the couple if the community spouse enters one of the specified living arrangements listed in 469 NAC 2-009.10B during the period of ineligibility of the institutionalized spouse.~~

~~2-009.10B2c Availability of Hardship Waiver Process: The individual may request in writing to the Local Office or Call Center a hardship waiver exception when imposing a period of ineligibility for transfer of assets would deprive the individual of medical care so that his/her health or his/her life would be endangered. A notice of discharge from the facility is not necessary to demonstrate that health or life would be endangered. Undue hardship also exists when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter, or other necessities of life.~~

~~The facility in which the institutionalized individual resides may file the undue hardship waiver request on behalf of the individual with the written consent of the individual or his/her legal representative.~~

~~The documentation will be scanned and the request will be submitted to Central Office, Economic Assistance for determination, along with information including, but not limited to, spouse's resources, any written demand for return of assets, any legal action taken to recover the asset, documentation of the individual that signed for or requested the transfer of assets, and living arrangement of the individual(s) at time of transfer. The Central Office will make a determination within 30 days of receiving the hardship waiver request by the Central Office. If circumstances beyond the control of the agency prevent action within the required time, Central Office will send a notice to the individual who filed the hardship waiver request.~~

~~The guardian, conservator, or anyone acting on behalf of the client must attempt to recover transferred assets. Up to 30 days of nursing home services may be provided if the individual is cooperating to the fullest extent in attempting to recover transferred assets.~~

~~If cooperation ceases, undue hardship no longer exists.~~

~~A hardship waiver will be denied if the individual or his/her spouse participated in the transfer.~~

~~A denial of hardship waiver request may be appealed.~~

~~2-009.10C Transfers Not Considered Deprivation for Grant or Medical: It is not considered a deprivation if:~~

- ~~1. An applicant or recipient transferred a resource to his/her spouse or to an individual with power of attorney or a guardian or conservator for the sole benefit of the applicant or recipient's spouse;~~
- ~~2. An applicant or a recipient's spouse transferred a resource to an individual with power of attorney or a guardian or conservator for the sole benefit of the applicant or recipient's spouse;~~
- ~~3. A resource was transferred to a trust established solely for the benefit of the individual's son or daughter who is blind or disabled (receiving or eligible to receive SSI, RSDI, AABD payment, or Medicaid);~~
- ~~4. A resource was transferred to the individual's son or daughter who is blind or disabled (receiving or eligible to receive SSI, RSDI, AABD, or MA); or~~
- ~~5. A resource was transferred to a trust established solely for the benefit of an individual age 64 or younger who is disabled (receiving or eligible to receive SSI, RSDI, AABD payment, or Medicaid).~~

~~For transfer of a home, see 469 NAC 2-009.10C1.~~

~~2-009.10C1 Transfer of a Home: It is not considered a deprivation of a resource if an applicant or recipient transfers title to his/her home to his/her:~~

- ~~1. Spouse;~~
- ~~2. Son or daughter who:
 - ~~a. Is age 20 or younger;~~
 - ~~b. Is blind or disabled (receiving or eligible to receive SSI, RSDI, AABD Payment or Medicaid based on blindness or disability); or~~
 - ~~c. Was residing in the home for at least two years before his/her parent requested assistance or entered the living arrangement listed at 469 NAC 2-009.10B and provided care to his/her parent which permitted the parent to reside at home rather than be institutionalized or receive Home and Community-Based Waiver Services; or~~~~
- ~~3. Sibling who has an equity interest in the home and who was residing in the home for at least one year immediately before his/her sibling requested assistance or entered the previously listed living arrangement (469 NAC 2-009.10B).~~

~~2-009.11 Reduction of Resources: The client may reduce available resources to the allowable limit if the case record contains documentation that the resources have been reduced and the unit is within the allowable resource limits. An application for an individual who has excess resources other than real property may be held pending until the resources are reduced. For treatment of real property which causes the client to have excess resources see 469 NAC 2-009.07B4.~~

~~The client may reduce his/her resources by paying any secured or unsecured debts, purchasing personal property, establishing burial funds, or expending the resources in any manner that the client deems appropriate. If the client is in a medical institution or receiving waiver services, s/he cannot give away resources in order to establish SDP Medical eligibility per 469 NAC 2-009.10. If the client is not in a medical institution or receiving waiver services, giving away the excess resources is not considered a deprivation of a resource. If the client reduces resources in any way except paying on outstanding medical bills, eligibility is effective the first day of the month in which the resources are actually expended if all other eligibility factors are met. The client's statement of expenditures is acceptable.~~

~~The client may do a resource spenddown to establish an earlier SDP Medical effective date if s/he has outstanding medical bills. However, medical eligibility may not begin earlier than the third month before the request for assistance (see 469 NAC 4-003). In order for a client with excess resources to establish an earlier medical effective date, s/he must pay all of the excess resources on medical bills incurred no earlier than the third month before the month of request. The medical expense does not have to be a Medicaid covered service. The client should pay on the oldest medical bills incurred within the retroactive period and continue paying bills until the amount of the excess resources has been expended. Medical eligibility may begin with the first day of the month in which the last medical bill was paid which reduced the resources to the allowable limit. The worker must verify expenditures for medical bills.~~

~~If the client has excess resources in the month of application it is not necessary to verify resources in any of the retroactive months. The resource spenddown of the excess resources from the month of application is all that is necessary. If the client does not have excess resources in the month of application, the worker must verify resources in the oldest retroactive month in which the client has outstanding medical bills. If there are excess resources during this retroactive month, the worker must use only this amount of excess resources to complete the resource spenddown.~~

~~See 469-000-319 for procedures related to documenting a resource spenddown.~~

~~2-010 Income: Need is determined by considering the amount of total net income of the AABD/MA or SDP/MA client (and spouse or other EP's whose needs are included in the budget) in relation to individual requirements.~~

~~In the case of an eligible client whose payment standard has been increased because of the inclusion of EP's (see 469 NAC 3-006.02), income of the essential person(s) is considered available to the client. Income of an essential person is treated the same as income of the eligible client. However, if the income of the essential person makes the client ineligible (unless the essential person is the ineligible spouse or parent of a minor child), the essential person may be removed from the budget. Once the EP is removed from the budget, his/her income is no longer considered.~~

~~When there is a client living in a specified living arrangement (see 469 NAC 2-009.02C1) and a spouse in the community, income is budgeted according to 469 NAC 4-007.01).~~

~~2-010.01 Definition of Income: Income is defined as gain or recurrent benefit received in money or in-kind (see 469 NAC 2-010.01B1b) from employment, business, property, investments, gifts, benefits, or annuities, at regular or irregular intervals of time.~~

~~2-010.01A Availability: All income, whether earned, or unearned must be considered if received and currently available for the use of the individual.~~

~~2-010.01B Types of Income~~

~~2-010.01B1 Earned Income: Earned income is money received from wages, tips, salary, commissions, profits from activities in which an individual is engaged as a self-employed person or as an employee, or items of need received at no cost in lieu of wages.~~

~~Note: Reimbursement for employment-related expenses such as mileage, lodging, or meals is not considered earned income.~~

~~2-010.01B1a Contractual Income:~~ The worker shall prorate income paid on a contractual basis. The worker shall prorate the income over the number of months covered under the contract, even if the client is paid in fewer months than the contract covers. For example, if a teacher's contract is for 12 months, but s/he is paid over 9 months, the income is prorated over the 12-month period.

~~Income received intermittently such as farm income is prorated over the period it is intended to cover.~~

~~2-010.01B1b In-Kind Income:~~ In-kind income is the value of food, clothing, shelter, or other items received in lieu of wages.

~~2-010.01B1c Disregards for Self-Employment:~~ Operating expenses related to producing the goods or services and without which the goods or services could not be produced are deducted from gross income. Operating expenses may include—

- ~~1. Cost of goods sold;~~
- ~~2. Advertising;~~
- ~~3. Bad debts from sales or services;~~
- ~~4. Bank service charges;~~
- ~~5. Car and truck expenses;~~
- ~~6. Commission;~~
- ~~7. Employee benefit programs;~~
- ~~8. Freight/shipping costs;~~
- ~~9. Insurance;~~
- ~~10. Interest on business indebtedness;~~
- ~~11. Laundry and cleaning;~~
- ~~12. Legal and professional services;~~
- ~~13. Office supplies and postage;~~
- ~~14. Rent on business property;~~
- ~~15. Repairs and maintenance;~~
- ~~16. Supplies;~~
- ~~17. Utilities and telephone;~~
- ~~18. Wages; and~~
- ~~19. Transportation other than to and from work and child care (see 469-000-339 for the allowance for transportation).~~

~~2-010.01B1c(1) Operating Expenses - Farm Income: The following expenses related to farm income are considered operating expenses:~~

- ~~1. Cost of goods sold;~~
- ~~2. Cost of labor;~~
- ~~3. Repairs and maintenance;~~
- ~~4. Interest;~~
- ~~5. Rent of farm, pasture;~~
- ~~6. Feed purchased;~~
- ~~7. Seeds, plants purchased;~~
- ~~8. Fertilizers, lime, and chemicals;~~
- ~~9. Cost of machines leased;~~
- ~~10. Supplies purchased;~~
- ~~11. Breeding fees;~~
- ~~12. Veterinary fees, medicine;~~
- ~~13. Gasoline, fuel, or oil;~~
- ~~14. Storage, warehousing;~~
- ~~15. Insurance;~~
- ~~16. Utilities;~~
- ~~17. Freight, trucking;~~
- ~~18. Conservation expenses;~~
- ~~19. Land clearing expenses; and~~
- ~~20. Employee benefit programs.~~

~~2-010.01B1c(2) Operating Expenses Not Allowed: The following expenses are not allowed as operating expenses:~~

- ~~1. Depreciation;~~
- ~~2. Personal business expenses such as subscriptions, dues to professional organizations and unions, training courses, etc.;~~
- ~~3. Personal transportation;~~
- ~~4. Purchase of capital equipment;~~
- ~~5. Payments on the principal of loans; and~~
- ~~6. Business-related entertainment expenses.~~

~~If the 1040 document is used to verify income, the worker does not allow depreciation as a cost of operation and does not count capital gains and other gains from lines 13, 14, and 15 of Form 1040 as income.~~

~~2-010.01B1c(3) Offset of Earnings: If a client has a combination of farm or self-employment income and regular earned income, the regular earnings may be offset with a loss from the self-employment or farm operation.~~

~~2-010.01B2 Unearned Income: Unearned income includes but is not limited to-~~

- ~~1. Retirement, Survivors, and Disability benefits;~~
- ~~2. Railroad Retirement;~~
- ~~3. Child support;~~
- ~~4. Military service benefits;~~
- ~~5. Civil service benefits;~~
- ~~6. Unemployment compensation;~~
- ~~7. Gifts;~~
- ~~8. Disability insurance benefits;~~
- ~~9. Disability benefits paid by an employer (this does not include sick leave);
and~~
- ~~10. Returns from securities or investments (i.e., stocks, bonds, annuities, or savings) in which the individual is not actively engaged.~~

~~If payments are received annually, semi-annually, or quarterly, the amount is prorated on a monthly basis.~~

~~2-010.01B2a RSDI Benefits: For budgeting, the gross amount of RSDI is used; the gross amount is the RSDI benefit with no Medicare premium deducted and rounded down to the nearest whole dollar.~~

~~2-010.01B2a(1) Delay in Counting RSDI Increase: After the annual RSDI cost of living increase, if a client would go from grant or MA only status to MA excess because his/her income exceeds the Federal Poverty Level, the worker shall continue using the current RSDI amount. The month after the month that the new FPL figures are published, the worker shall determine the client's eligibility by comparing the increased RSDI benefit to the new FPL guidelines.~~

~~The delayed COLA provision applies only if the RSDI increase would cause the client to have excess income. If there is an increase in other unearned income or the client starts receiving other unearned income in the same month as the COLA in RSDI benefits, the delayed COLA provisions do not apply.~~

~~2-010.01B2b SSI Benefits:~~ SSI benefits are not used in computing the budgets but the Federal Benefit Rate (FBR) is used by the system to calculate the amount of the state supplemental payment.

~~2-010.01B2c Contributions:~~ Contributions are verified payments which are paid to or for the unit. Contributions received regularly to aid in the support of the client, either in the form of money payments or items of need, are considered unearned income.

Payments by relatives directly to an alternate living arrangement that is not a medical facility are not counted as a contribution.

The standard of need is not reduced due to the presence in the household of a self-supporting household member. However, if the self-supporting member is contributing to the support of the household, only the amount in excess of the proportionate share is counted as unearned income. (The proportionate share is figured by dividing the standard of need plus actual shelter cost by the number of persons in the household.) For treatment of loans, see 469 NAC 2-009.07B10.

~~2-010.01B2c(1) Temporary Crisis Assistance:~~ In determining initial eligibility only, a contribution is not counted when the applicant states that:

- ~~1. S/he has no income and has been forced to share a living arrangement with a self-supporting individual; or~~
- ~~2. An individual not in the household is paying the applicant's shelter costs; and~~
- ~~3. The applicant plans to make other arrangements (move, pay all or a share of the expenses) as soon as s/he has income.~~

~~2-010.01B2c(2) Nursing Facility, Assisted Living Waiver, or Hospital Care:~~ Contributions to or for a client who is receiving nursing facility, Assisted Living Waiver, or hospital care are considered unearned income in the client's budget if Medicaid is or will be paying any part of the nursing facility, Assisted Living Waiver, or hospital care.

~~Exception:~~ If a client resides in a nursing facility, a payment to the facility for the client to enable him/her to have a single room is not considered income in the client's budget if Medicaid is or will be paying any part of the nursing home care.

Contributions to assist a client in paying for private care are not considered income in the client's budget. The client may be determined eligible for payment of other medical services, e.g., medication, coinsurance and deductibles, doctor bills, etc.

~~2-010.01B2c(3) Life Insurance Premiums: Payment of premiums on small protective life insurance policies is not considered a contribution.~~

~~2-010.01B2c(4) Health Insurance Premiums: Payment of a health insurance premium by another individual is not considered a contribution as long as the premium is paid to the insurance company, not to the client.~~

~~The amount of the premium is not allowed as a deduction on the SDP Medical budget if the client does not pay the premium.~~

~~2-010.01B2d Third Party Medical Payments: Income received from a third party that pays the client directly is-~~

- ~~1. Disregarded if it is refunded to the provider or the Department as reimbursement for a specific service; or~~
- ~~2. Counted as unearned income if the client fails or refuses to refund these payments.~~

~~If the client receives a third party medical payment directly and the medical expense for which the third party medical payment is intended is payable by Medicaid, the worker shall send a demand letter advising the client that s/he must reimburse the Department or the provider up to the amount of payment which has been or will be made for the specific service. The client is allowed ten days from the date of notification to reimburse the Department or pay the provider.~~

~~If an applicant receives a third party medical payment for services which are payable by Medicaid, the worker must not delay determination of eligibility for assistance and authorization for payment pending the applicant's reimbursement. At the time the application is approved, the worker must notify the client of the number of days left in which to reimburse the payment.~~

~~If the client refunds within ten days, the worker must take no further action. If the client fails or refuses to refund within ten days, the worker must consider the entire third party payment as unearned income in the first month possible. Taking into account adequate and timely notice. Any balance remaining is considered a resource in the following month.~~

~~2-010.01B2d(1) Income-Producing Policies: Income received from an insurance policy that supplements the client's income is treated as unearned income. These policies provide income regardless of the type of service being provided or the condition of the client. If it is verified that the income was applied to medical bills, the income is not counted in the client's budget.~~

~~2-010.01B2e Inheritance and Gifts:~~ If the client receives a gift or inheritance, it is considered unearned income in the month of receipt or report and should be counted in the budget the first month possible, considering timely notice; any unspent remainder is considered a resource in the following month.

~~2-010.01B2f Life Estate Or Land Contract Income:~~ If an applicant receives periodic life estate or land contract income, e.g., annual, semi-annual or quarterly, and the last periodic payment has been spent before the application, the life estate/land contract income may be considered unavailable and not counted in the budget. When the application is approved the worker must notify the client that s/he must report receipt of the next payment within ten days and that the life estate/land contract income must then be counted in the budget.

After report of the first payment following approval of the case the worker may:

- ~~1. Prorate each payment and count it in the budget over the period it is intended to cover; or~~
- ~~2. If the client files a tax return, the most recent Form 1040 may be used to estimate total life estate income to be received over a year. The countable amount may be prorated monthly and counted in the budget until the next Form 1040 is provided.~~

For examples of deprivation of resources, see 469-000-315.

~~2-010.01B3 Irregular Income:~~ Irregular income is income, earned or unearned, which varies in amount from month to month or which is received at irregular intervals. This may be due to irregular employment, but even when an individual works regularly, the income may be irregular because of factors such as seasonal increases or decreases in employment and earnings, e.g., day labor, sales work on a commission basis, child care, etc.

~~The worker uses an average of three consecutive months, if available, to project future income unless there has been a significant change (see 469 NAC 2-010.01C1 ff.).~~

~~Small, irregular earnings which are not computable or predictable are not considered.~~

~~2-010.01B4 — Accumulated Benefit Payments: — Accumulated payments of Retirement, Survivors, and Disability Insurance (RSDI); Railroad Retirement; veteran's pensions; worker's compensation; or other benefit payments which are received in a single sum are not considered income. Any unspent remainder is considered a resource in the month following the month of receipt or report, taking into account the timely notice provision.~~

~~Exception: The unspent portion of an RSDI, SSI, or state supplement retroactive payment is excluded for six months following the month of receipt (see 469 NAC 2-009.02B).~~

~~2-010.01B4a Accumulated SSI Payments: When an applicant has been approved for retroactive SSI benefits, if the following are in place, the worker does **not** consider the SSI benefits when computing a retroactive state supplement payment:~~

- ~~1. There must be an AABD application date that corresponds with the time frame approved by SSI;~~
- ~~2. Verified disability begin date;~~
- ~~3. Form IM-17 completed and SDX shows state reimbursement;~~
- ~~4. The SSI check has been or will be received by Central Office;~~
- ~~5. The Central Office has not returned any of the retroactive SSI money to the client; and~~
- ~~6. There are no RSDI amounts included in the retroactive SSI payments.~~

~~If there are **no** RSDI benefits and SSA sends the SSI retroactive check directly to the applicant or Central Office has received the SSI check and has returned all or a portion to the client, the worker must use the SSI Federal Benefit Rate (FBR) in any grant budget month there is an SSI payment due.~~

~~If RSDI benefits were used in determining the amount of the SSI check, the portion that is RSDI must be used when computing state supplement payments. (RSDI benefits by law must not be assigned to reimburse the state for state supplement expenditures.)~~

~~Note: If the client is otherwise eligible at the time of approval and the worker is unable to verify the amount of SSI retroactive benefits, the worker must wait until the SSI amount is known to determine any retroactive state supplement benefits.~~

~~See 469 NAC 2-010.01B4 for exclusion as a resource.~~

~~2-010.01B4b Accumulated RSDI Payments: When calculating the budget to determine retroactive AABD payments, the worker must include as income the monthly amount of RSDI that would have been received during that month. If there is no budgetary need, the RSDI monthly amount is not included.~~

~~Note: If the client is otherwise eligible at the time of approval and the worker is unable to verify the amount of RSDI retroactive benefits, the worker must determine prospective eligibility but wait until the RSDI amount is known to determine any retroactive state supplement benefits.~~

~~2-010.01B5 Combined Case with a Lump Sum: When an individual in an ADC-AABD case receives a lump sum, the way the money is treated depends upon which individual the lump sum is intended for. RSDI and SSI lump sums are excluded as a resource for up to six months (see 469 NAC 2-009.02B).~~

~~2-010.01B5a AABD Parent and ADC Child: If the lump sum is intended for an AABD parent, the money is considered for the parent in accordance with provisions in 469 NAC 2-010.01B4. The following month the money becomes a resource and must be divided proportionately between the cases.~~

~~2-010.01B5b AABD Child and ADC Parent: If the lump sum is intended for an AABD child, the money is considered for the child according to 469 NAC 2-010.01B4. As the child does not have relative responsibility for other members of the family, the money is considered only for the AABD case.~~

~~2-010.01B6 Potential Income: Potential income is defined as income based on entitlement or need which is usually determined by an administering agency as a result of an application for benefits by the individual. Potential income includes, but is not limited to, RSDI, categorical assistance, Railroad Retirement, veterans or military service benefits; unemployment compensation, disability insurance benefits, and worker's compensation (see also 469 NAC 2-010.01B6c). Medicare is not considered a potential benefit.~~

~~The worker must consider potential income for each client and for EP's in the household whenever the EP's requirements are considered in determining the need and amount of the client's payment. The client and any EP's are required to apply for any benefits for which s/he appears to be entitled within 60 days of the date the worker notifies the client of the requirement. The worker must not delay determination of eligibility for assistance and/or authorization of payment pending determination of entitlement for benefits.~~

~~After the worker has determined an applicant's eligibility for categorical assistance, s/he must notify the client in writing of the requirement to apply for a benefit for which the applicant appears eligible and inform the client of the number of days left in which to apply.~~

~~Benefit payments subsequently received are considered in the same manner as other income in determining need.~~

~~2-010.01B6a Need to Apply and Comply with Requirements: A client is expected to make grant application for and accept benefits promptly after the worker has discussed the client's apparent entitlement to the benefits. The client is notified on a Notice of Action of the number of days left in which to apply. The worker must document in the case record when the client was informed of the possibility of benefits. The worker must set up a special review to see if the client is grant eligible for or already receiving benefits. If the individual fails or refuses to make application within 60 days after notification by the worker or refuses to accept benefits for which s/he has been determined eligible, eligibility cannot be determined.~~

~~If a client's benefit is terminated for noncompliance, s/he should be given ten days to make contact to reestablish the benefit. If no contact is made within ten days, eligibility cannot be determined.~~

~~If an EP (including the ineligible spouse and the parent of a minor child) whose requirements are considered in determining the need of a client fails or refuses to apply for or comply with requirements for benefits for which s/he is apparently eligible, the EP's requirements are not considered in determining the client's need, and the income of the client is not applied toward meeting the EP's requirement. However, income and resources of responsible relatives are still considered in determining the eligibility of the client (see 469 NAC 2-006).~~

~~2-010.01B6b Veteran's Benefits: Clients who are veterans, their spouses, and the widows of veterans may be eligible for Aid and Attendant services. This service may be available and should be explored if the individual resides in a nursing home, in his/her own home, or in an Adult Foster Home or other alternate arrangement when the individual requires aid with daily living activities.~~

~~2-010.01B6c Supplemental Security Income Program (SSI):~~ If a client has not applied for SSI, an application must be filed immediately (see 469 NAC 2-007.03A1).

~~2-010.01B6c(1) SSI Referral:~~ A client must be referred to SSI if:

- ~~1. The client lives alone and has monthly unearned income less than the referral amount for an individual (see 469-000-211);~~
- ~~2. An eligible couple are living together and have monthly unearned income less than the referral amount for a couple (see 469-000-211); or~~
~~Note: Both must apply for SSI.~~
- ~~3. An individual is in a nursing home and has unearned income of less than \$50 per month.~~

~~Exception:~~ If income is less than these amounts but resources are more than 469 NAC 2-009.08 and less than 469 NAC 4-005.01, the worker does not make an SSI referral but must consider eligibility for medical assistance.

~~All individuals otherwise eligible must be approved for a state supplement without waiting for SSI's determination.~~

~~2-010.01B7 School District Payments:~~ School districts are required by law to provide proper education for school-age children who are handicapped. The district can provide this in the school setting or by contracting with other facilities.

~~If a school-aged child is receiving nursing home care, including ICF, ICF/DD, SNF, or chronic care, and the school district is contracting with the facility in providing the child's educational needs, the worker must disregard the school district payment as income if the payment is designated for educational services only. If any or all of the school district payment is for residential services, that portion must be shown as POS on N-FOCUS. In either situation, the worker must budget the correct SON based on the child's living arrangement.~~

~~If the school-aged child resides in a board and room or other alternative care facility, the worker must determine if the school provides payment for the child's board and room. If payment is being made to the facility, the payment is disregarded as income. The SON for personal needs only is used instead of using the full consolidated alternate care standard. The worker shall document the payment in the case record.~~

~~2-010.01C Verification of Income: The worker must verify income every 12 months (see 469 NAC 2-010.01B3). Regular income must be verified using one month's income as a minimum. Irregular income must be verified using the three most consecutive months, if available. This review may be eliminated for cases where the only source of income is RSDI, SSI, or another similar stable source of income, and there is no reason to believe the amount will change.~~

~~Initially, the worker verifies RSDI benefits by viewing the direct deposit records or N-FOCUS interface. Documentation of the verification must be contained in the case record (see 469 NAC 2-010.01B2a).~~

~~Generally RSDI (Social Security) is verified by the Bendex for current recipients of AABD/MA. Changes in benefits for current recipients are reported on N-FOCUS via the BDE interface and are used to determine the following month's budget, taking into consideration the ten-day notice requirement.~~

~~When there is a discrepancy in the verified amount of the check and the Bendex for the month of the check, the worker must initiate a SVES Request. This procedure does not apply to discrepancies with the buy-in.~~

~~The worker is not required to verify any income when a client receives SSI (for the exception, see 469 NAC 3-006.01A). If the client has been determined eligible for 1619(b) status by SSI, the worker must verify income. The worker must use the State Data Exchange (SDX) to verify receipt of SSI benefits and determine the correct federal benefit rate. Changes in SSI benefits for current recipients are reported on N-FOCUS via the SDX interface.~~

~~The worker may use the SDX to verify the amount of periodic extra earned income or periodic unearned income to be used in a client's AABD grant budget if s/he is in non-pay status for SSI for one month due to the receipt of this periodic income. This may be Net Countable Unearned Income, Deemed Income, or Net Countable Earned Income of the client. The amount of income from any of these fields may be used from the SDX and counted in the client's budget, if it has been updated by SSI. No income disregards are allowed as they have already been allowed by SSI. If the client has periodic extra earned income, the worker counts the income for grant, but not for medical if the client has gone into 1619(b) status. If the client receives periodic unearned income, e.g., life estate income received annually or semi-annually, or deemed income from a spouse/parent, the worker counts it for both grant and medical budgeting.~~

~~Approval of a grant application must not be delayed if all eligibility factors are met but the worker is unable to obtain verification of the amount of any RSDI and/or SSI benefits due to SSA's delay in determining the amount(s). The worker must compute grant budgets without the RSDI income. At the time of approval, the worker must notify the client on a Notice of Action that s/he must report receipt of any RSDI and/or SSI benefits. The worker must include the RSDI in the budget in the first month possible considering the ten-day notice requirement. If retroactive benefits are received, see 469 NAC 2-010.01B4.~~

~~2-010.01C1 Prospective Budgeting: The worker must average the most recent three months' actual income to arrive at the gross income amount for the income period. Income conversion charts are used for weekly and bi-weekly income. This figure is used to project medical eligibility for the next 12 months unless:~~

- ~~1. There was a significant change in the income of the previous three months; or~~
- ~~2. The worker anticipates a significant change during the projected 12-month period.~~

~~When income fluctuates, the worker must use an average of income for the three most recent consecutive months. When income is stable, the worker must use one month's income.~~

~~2-010.01C1a (Reserved)~~

~~2-010.01C1b Change: The client must report the following changes:~~

- ~~1. New employment;~~
- ~~2. Termination of employment;~~
- ~~3. Change in the amount of monthly income, including-~~
 - ~~a. All changes in unearned income (including beginning and termination of unearned income); and~~
 - ~~b. Changes in the source of employment, in the wage rate and in employment status, i.e., part-time to full-time or full-time to part-time. For reporting purposes for AABD, 30 hours per week is considered full-time. The client must report new employment within ten days of receipt of the first paycheck, and a change in wage rate or hours within ten days of the change.~~
- ~~4. Change in household composition, such as the addition or loss of a unit member; or~~
- ~~5. Change or receipt of a resource including cash on hand, stocks, bonds, money in a checking or savings account, or a motor vehicle.~~

2-010.01C1b(1) General Rules: The following procedures are used in handling changes in income:

1. Initiate action within three working days to verify the change;
2. Determine new income amount;
3. Estimate income on information available. When projecting income, use the conversion tables and convert weekly or bi-weekly income to a monthly amount (see 469-000-201). If the client receives semi-monthly or monthly income, do not convert the income.
4. For an adverse action, send a timely notice. Make the change the first month possible. If the change is not an adverse action, re-do the budget for the month that the change was reported;
5. If the income figure in step 3 is verified, use that figure in the next three months' payment budgets if no other changes are reported;
6. If the income used in step 3 is based on the client's statement, compute the budget for the month following receipt of verification. Use the conversion tables to compute income received weekly or bi-weekly (see 469-000-201); and
7. If no other changes have been reported, determine after three months' receipt of income if income fluctuates or is stable and apply the appropriate rules.

The worker shall record in the case record the date of reported change, method of estimating income, and the date verification was made. Only one budget may be based on the client's declaration of income. If the worker has not received verification for the second budget, the case must be suspended.

2-010.01C1b(2) Procedures for Changes: The worker shall first determine if the change(s) affects SDP Medical eligibility. If it does, the worker shall-

1. Compare resources to the resource limit; (see 469 NAC 2-009.08 or 4-005.01);
2. Determine eligibility based on the household composition;
3. Recompute the budget; and
4. Send an adequate and timely notice of change (see 469 NAC 4-008.03B).

2-010.01C2 Retroactive SDP Medical Eligibility: To determine retroactive SDP medical eligibility, the worker shall use the month's actual income (see 469 NAC 4-003.01B).

~~2-010.01D Income as It Applies to Resources:~~ Income received by a client during any one month for maintenance costs may not be considered a resource for that month. Any income not spent for maintenance is considered a resource in the subsequent month.

~~2-010.01E Computation of Income~~

~~2-010.01E1 Income Disregards~~

~~2-010.01E1a General \$20 Disregard:~~ Every unit receives a \$20 income disregard. A married couple who is living together and budgeted together is considered a unit and get one \$20 disregard. The income disregard is applied to unearned income first; any remainder is subtracted from earned income. For clients who are receiving SSI, see 469 NAC 3-006.01A.

~~Clients who are receiving Assisted Living AD Waiver services receive the \$20 disregard.~~

~~Exception:~~ Clients who are living in a nursing home, public institution, hospital or other medical institution, do not receive a \$20 disregard.

~~2-010.01E1b Earned Income Disregards:~~ The amount deducted from adjusted gross earned income (the amount after deduction of the cost of operation if self-employment income and the remainder of the general disregard from wages or self-employment) for each unit is in the following material.

~~2-010.01E1b(1) Aged or Disabled Clients:~~ See 469-000-202 for:

- ~~1. Aged or disabled clients; or~~
- ~~2. The aged, blind, or disabled client's:~~
 - ~~a. Ineligible spouse;~~
 - ~~b. EP; or~~
 - ~~c. Sponsors of aliens for deeming purposes.~~

~~2-010.01E1b(2) Blind or Blind Aged Clients:~~ The worker determines net income for blind or blind aged clients by disregarding the first \$85 plus 1/2 of the balance.

~~2-010.01F Deeming Income of Responsible Persons: Income of the following individuals is considered in determining a client's eligibility when s/he does not receive SSI:~~

- ~~1. Parent for child age 17 or younger and still considered part of the household;
and~~
- ~~2. Sponsor for an alien.~~

~~When there is a self-supporting parent(s) for children in two different units, the procedures for deeming found at 469 NAC 2-010.01F1 are followed and the resulting deemed income is divided between the units with the children on AABD payment or SDP.~~

~~A portion of the income of these individuals is deemed (determined available) to the client using the following procedures.~~

~~2-010.01F1 Parent: If the client does not receive SSI, the worker must use the following guidelines to determine if the parent(s)' income is deemed:~~

- ~~1. If the minor is living in the same household with parent(s), the parent(s)' income must be deemed.~~

~~Exceptions: Home and Community-Based Waivers: If a child, living in the parent(s)' home is receiving a Home and Community-Based Service waiver, the parent(s)' income and resources are not deemed when determining eligibility for SDP medical only. This does not require Central Office review. The parent(s)' income and resources must be deemed for grant eligibility.~~

~~Autism Waiver: If a child, living in the parent(s)' home is receiving a Home and Community-Based Waiver for Children with Autism Spectrum Disorder, both the parent(s)' income and Autism waiver child's income must be verified solely to determine a premium due amount when the gross income exceeds 185% FPL.~~

- ~~2. If the minor is temporarily absent from the home but is still considered part of the household, the parent(s)' income must be deemed. Temporary absence includes, but is not limited to, school attendance where the minor returns to the home on a regular basis (weekends, vacations, or summers).~~
- ~~3. If the minor is permanently out of the home and no longer considered part of the household, the parent(s)' income must not be deemed. This includes facilities for persons with developmental disabilities or mental illness.~~

~~When the parent(s) of an SSI child applies for categorical assistance, the worker should advise SSI of the potential eligibility of the parent(s). If the parent(s) is subsequently approved for assistance, the worker must advise SSI of the approval.~~

~~2-010.01F1a Exceptions to the Deeming Regulations: If a child age 17 or younger leaves a nursing facility or hospital where s/he was receiving an institutional personal needs amount SSI payment and goes home under a waiver, the worker must notify SSI of waiver eligibility. Even though income and resources of the parent(s) may make the child ineligible for SSI, if the child is waiver-eligible, SSI continues the institutional personal needs amount payment without deeming income and resources of the parent(s).~~

~~Note: If the parent(s) is receiving SSI, the worker must not deem any of the parent(s)' income.~~

~~See 469-000-326 for deeming calculation.~~

~~2-010.01F2 Deeming of Income of Sponsors of Aliens: The worker must consider 100 percent of the income and resources of a sponsor (and sponsor's spouse, if they are living together) when determining the eligibility of an eligible alien who applies for AABD payment or SDP if the sponsor has signed an affidavit of support under Section 213A of the Immigration and Nationality Act. The sponsor's income and resources will be considered available to the alien until the alien:~~

- ~~1. Becomes a U.S. citizen;~~
- ~~2. Has worked 40 qualifying quarters of coverage as defined under Title II of the Social Security Act or can be credited with the qualifying quarters as provided under Section 435 and the alien did not receive any federal means tested public benefit during that time period.~~

~~2-010.01F2a Definition of a Sponsor: A sponsor is an individual who:~~

- ~~1. Is a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;~~
- ~~2. Is 18 years of age or older;~~
- ~~3. Lives in any of the 50 states or the District of Columbia; and~~
- ~~4. Is the person petitioning for the admission of the alien under Section 204 of the Immigration and Nationality Act.~~

~~An organization is not considered a sponsor.~~

~~2-010.01F2b Alien Duties: As an eligibility requirement, the alien is responsible for:~~

- ~~1. Providing income and resource information from the sponsor; and~~
- ~~2. Obtaining the necessary cooperation from the sponsor.~~

~~If the alien does not provide the necessary information, s/he is not eligible for assistance.~~

~~2-010.01F2c Sponsor of More Than One Alien: When an individual is a sponsor for two or more aliens who are living in the same home, the amount of deemed income and resources of the sponsor (and the sponsor's spouse, if living with the sponsor) is divided equally among the aliens.~~

~~When an individual sponsors several aliens but not all apply for assistance, the sponsor's total deemable income and resources are applied to the needs of the aliens who apply for assistance.~~

~~2-010.01F2d Deeming Exception: If a sponsored immigrant demonstrates that s/he or his/her child(ren) have been battered or subjected to extreme cruelty by a spouse or a parent or by a member of the spouse's or parent's family who is residing in the same household as the alien, deeming may be waived if a judge, an administrative law judge, or INS recognize the battery or cruelty.~~

2-010.01G Computation of Net Income

2-010.01G1 Income Disregarded: Income disregarded for the AABD Payment or SDP client is not considered in determining the eligibility of or the amount of assistance for the client or any other individual. Savings from disregarded income are considered the same as assets accumulated from any other source.

2-010.01G2 Income Taxes Paid: Income taxes that must be paid on unearned income are not deducted from the income for budgeting purposes.

2-010.01G3 Garnishments and Overpayments: If income, earned or unearned, is being garnished, the garnishment is not deducted from income in the budgeting process. If unearned income is being reduced because of a previous overpayment, the amount of the benefit before the deduction of the overpayment is considered as income.

Exception: The amount after deduction of the overpayment is used if the client received AABD grant or SDP as well as another benefit at any time during which the overpayment occurred and the overpaid amount was included in the AABD grant or SDP budget.

2-010.01G4 Offset of Earnings: If a client has a combination of farm, self-employment, and regular earned income, a loss from one source of income may be used to offset a gain from another source.

2-010.01H Treatment of Other Income in Determining Eligibility and Payment:

- | | |
|--|-------------------------------|
| 1. Sale of home produce | 1. Consider as earned income. |
| ----- | |
| 2. Home produce from garden, livestock, and poultry, used by the client(s) for his/her own consumption | 2. Disregard. |
| ----- | |

3. Self-employment income
3. Consider as earned income:
- a. Deduct total monthly cost of operation from the monthly gross business income (If 1040 document is used to verify income, do not allow depreciation as a cost of operation and do not count as income capital gains and other gains from lines 13, 14, and 15 of Form 1040);
 - b. From adjusted gross income, deduct the appropriate standard disregard for earned income (see 469 NAC 2-010.01E1 ff.).

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4. Income from boarders, rented rooms, and apartments
4. Consider as unearned income:
- a. Deduct total monthly cost of operation from the monthly gross income (If 1040 document is used to verify income, the allowance for depreciation is added back in to arrive at the adjusted gross income figure);
 - b. From adjusted gross income, deduct the \$20 standard disregard. Exception: Income received from one client/unit for board and room and all foster care payments are disregarded.

-
5. Rental income from real property
5. a. Consider as earned income if operated as a small business (see 469 NAC 2-010.01H, item 3).
- b. Treat like 469 NAC 2-010.01H, number 4 if not operated as a business.
- Note: For both a and b, do not deduct payments on the principal of a loan.
-

6. Declared cash winnings; interest, dividends (may be prorated on a monthly basis), etc; small and insignificant children's cash allowances; interest on Series H savings bonds

6. Disregard if \$10 or less per month per individual for each income type. If more than \$10 per individual, count the amount that exceeds \$10 as unearned income in the budget.

7. Picket pay or strike pay

7. a. Consider as earned income if the client is required to perform specific duties or participate for a specific number of hours. Allow the earned income disregards.
b. If the client is not required to perform specific duties or participate for a specific number of hours, consider as unearned income.

8. Interest on Series E savings bonds or other bonds which accrue interest

8. Consider as unearned income when redeemed.

9. Income from life estate in real property

9. Consider as unearned income; deduct from gross income any expenses specified as a condition of the life estate.

10. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

10. Disregard.

11. Payments provided by a state or local government to assist in relocation

11. Disregard.

12. Any student financial assistance to an undergraduate student provided under programs in Title IV of the Higher Education Act or under Bureau of Indian Affairs student assistance programs. This would include:

12. Disregard.

- a. ~~Pell Grants (formerly called BEOG's);~~
- b. ~~Supplemental Educational Opportunity Grants (SEOG);~~
- c. ~~College work study;~~
- d. ~~Perkins Loans (formerly National Direct Student Loans);~~
- e. ~~Guaranteed student loans; (including PLUS loans and Supplemental Loans for Students);~~
- f. ~~State Student Incentive Grants (SSIG); and~~
- g. ~~Student assistance from the Bureau of Indian Affairs.~~

~~13. Any portion of grants, scholarships, or graduate assistantships not listed in item 12 and actually used for items such as tuition, books, fees, equipment, special clothing needs, transportation to and from school, child care services necessary for school attendance, etc. Transportation costs are allowed if the client uses private transportation or the actual cost of public transportation. The client must provide verification of the expenses.~~

~~Money received from the GI Bill, Veterans Administration under the Veterans Education and Employment Assistance Act for education expenses of a veteran, or BIA, is treated the same way. (This reference applies to undergraduate students, graduate students, and students working for a second undergraduate degree.)~~

~~14. Any portion of a grant, scholarship, or funds paid out from a Veterans Education and Employment Assistance account not used for the items listed in number 13.~~

~~14. Consider as unearned income and prorate over the period for which it is intended to cover.~~

~~15. Financial assistance for a graduate student or a student working for a second undergraduate degree if the student is required to work in order to receive the assistance. This includes work study, stipends, fellowships, and graduate assistantships.~~

~~15. Consider as earned income.~~

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16. ~~Payments to a client participating in training or school attendance subsidized by the Division of Vocational Rehabilitation~~ 16. ~~Disregard.~~
-
17. ~~Payments from Title I Workforce Investment Act (WIA) for classroom training~~ 17. ~~Disregard.~~
-
18. ~~Earnings received from the employer or compensation in lieu of wages under a Title I WIA program~~ 18. a. ~~For clients age 18 and younger who are full-time students, disregard for six months per calendar year; then consider as earned income.~~
b. ~~For clients age 19 and older, consider as earned income.~~
-
19. ~~Title I WIA program allowance paid to the client or vendor payments made to the provider for supportive services, such as transportation, meals, special tools, and clothing. This includes temporary Welfare to Work payments made through Workforce Development.~~ 19. ~~Disregard for all ages.~~
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20. ~~Indian judgment funds distributed as per capita payments to members of Indian tribes or held in trust by the Secretary of the Interior, interest and investment income accrued on Indian judgment funds while held in trust, and purchases made with the funds~~ 20. ~~Disregard.~~
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21. ~~Indian Land Lease~~ 21. ~~Disregard.~~
-
22. ~~Income from land contracts~~ 22. ~~Consider as unearned income.~~
-
23. ~~Payments from the Nutrition Program for the Elderly~~ 23. ~~Disregard.~~
-
24. ~~Payments for services or reimbursement of expenses to volunteers serving as foster grandparents, senior health aides, or senior companions; Service Corps of Retired Executives (SCORE); Active Corps of Executives (ACE); and any other programs under Title II and III (P.L. 93-113)~~ 24. ~~Disregard.~~

~~25. Fuel assistance payments and allowances 25. Disregard.~~

~~26. Payments to AmeriCorps volunteers 26. Disregard.~~

~~27. Federal and state income tax refunds 27. Disregard.~~

~~28. EIC and AEIC 28. Disregard.~~

~~29. The value of assistance under a National School Lunch or Child Nutrition Program 29. Disregard.~~

~~30. HUD rental and/or utility subsidies under Section 8 of the Housing Act (lump sum or monthly payments) 30. Disregard.~~

~~31. The value of assistance paid under the U.S. Housing Act of 1937, National Housing Act, Section 101 of Housing and Urban Development Act of 1965, Title V of Housing Act of 1949 31. Disregard.~~

~~32. Food stamps 32. Disregard.~~

~~33. The value of federally donated foods 33. Disregard.~~

~~34.a. Assistance received under the Disaster Relief Act of 1974 or under a federal statute because of catastrophe declared to be a major disaster by the President and any interest earned on the assistance 34.a. Disregard.~~

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- b. Insurance payments for damage to personal property b. Disregard
-
35. Any assigned child/spousal support 35. Disregard.
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36. Unassigned child support paid on behalf of an AABD child 36. Disregard 1/3 of the amount.
-
37. Subsidized adoption or subsidized guardianship payments from Title IV-E or child welfare funds 37. Disregard.
-
38. Income from the sale of blood or plasma 38. Consider as unearned income.
-
39. Agent Orange settlement payments 39. Disregard.
-
40. Loans 40. Disregard bona fide loans that must be repaid.
-
41. Veterans Assistance benefits received by the spouse of an SSI recipient if the spouse is applying for or receiving AABD/MA 41.a. Disregard the amount of VA benefits, if any, that are budgeted by SSI to the SSI spouse.
b. Consider as unearned income the remainder on the AABD/MA budget of the non-SSI spouse.
-
42. Veterans pension benefits reduced to \$90 for individuals receiving SDP Medical 42. Disregard.
-
43. Income from Experience Works, Inc. Senior Community Service Employment, and any other income received under Title V of the Older Americans Act 43. Consider as earned income.
-

~~44. Victims compensation payments, i.e., payments received from a state or local government to aid victims of crime~~ ~~44. Disregard.~~

~~45. Any payment received from the Radiation Exposure Compensation Trust Fund~~ ~~45. Disregard. Any interest earned on unspent RECTF payments is counted as unearned interest income.~~

~~46. Jury duty pay~~ ~~46. Disregard.~~

~~47. Benefits under Public Law 104-204 for a child born with spina bifida and whose parent(s) is a Vietnam veteran~~ ~~47. Disregard.~~

~~48. Payments made from any fund established as a result of the case of Susan Walker v. Bayer Corporation, et al. to hemophilia patients who are infected with human immunodeficiency virus~~ ~~48. Disregard.~~

~~49. Payments to individuals due to their status as victims of Nazi persecution~~ ~~49. Disregard.~~

~~2-011 Cooperation in Obtaining Third Party Medical Payments: The application for grant or SDP assistance constitutes an automatic assignment of the client's rights to third party payments made on behalf of the client for medical care or services which are payable under SDP medical or Medicaid. As a requirement for assistance, the client must also cooperate (unless s/he has good cause for noncooperation) in securing any third party medical payments.~~

~~This assignment gives the Department the right to pursue and receive payments from any third party liable to pay for the cost of medical care and services of the client and any other unit member and which otherwise would be covered by SDP medical or Medicaid.~~

~~The assignment becomes effective with the date of eligibility for AABD grant and/or SDP assistance. For SDP medical cases with a Share of Cost, the assignment becomes effective the first day of the cycle when the case status changes to 450, "obligation met."~~

~~2-011.01 (Reserved)~~

~~2-011.02 Third Party Payments Not Assigned:~~ The following third party payments are not subject to the automatic assignment provision:

- ~~_____ 1. Medicare benefits; and~~
- ~~_____ 2. Payments from income-producing policies which subsidize the client's income while s/he is hospitalized or receiving medical care, regardless of the type of medical service being provided (see 469 NAC 2-010.01B2d(1)).~~

~~2-011.03 Cooperation Requirements:~~ The client must cooperate in obtaining third party payments unless s/he has good cause for noncooperation (see 469 NAC 2-011.03B3).

~~_____ Cooperation includes any or all of the following:~~

- ~~_____ 1. Providing complete information to the Department about third party medical coverage which s/he has or may have or on children in their care. This includes third party medical coverage provided by any other person or agency;~~
- ~~_____ 2. Providing any additional information or signing claim forms which may be necessary for identification and collection of potential third party payments;~~
- ~~_____ 3. Appearing as a witness in a court or another proceeding, if necessary;~~
- ~~_____ 4. Notifying the Department of any action s/he is initiating to recover money from a liable third party for medical care or services. This includes the identity of the third party and the entire amount of any settlement, court award, or judgment; and~~
- ~~_____ 5. Reimbursing the Department or paying the provider from any payments received directly from a third party for any services payable by SDP medical or Medicaid; and~~
- ~~_____ 6. Taking any other reasonable steps to secure medical support payments.~~

~~2-011.03A Refusal to Cooperate:~~ The worker is responsible for determining non-cooperation by the client. This determination is based on the client's failure or refusal to fulfill the requirements listed in 469 NAC 2-011.03.

~~2-011.03B Opportunity to Claim Good Cause~~

~~2-011.03B1 Notification of Rights:~~ The worker must notify the client of the right to claim good cause for non-cooperation at the intake interview, redetermination, and whenever cooperation becomes an issue.

The worker must give the client a verbal explanation of good cause and the opportunity to ask questions.

~~2-011.03B2 Worker's Responsibilities if Good Cause Claimed:~~ If the client claims good cause, the worker must:

- ~~1. Explain that the client has the burden of establishing the existence of a good cause circumstance; and~~
- ~~2. Obtain a signed statement from the client listing the reason(s) for claiming good cause. The client is allowed 20 days to present evidence of the claim.~~

~~2-011.03B3 Acceptable Circumstances for Good Cause:~~ Good cause claims must be substantiated by signed statements. When documentary evidence is not available, the client must furnish sufficient information as to the location of the information.

To establish good cause, it must be documented that cooperation would not be in the best interest of the client because:

- ~~1. The client is physically or mentally incapable of cooperation; or~~
- ~~2. It is anticipated that cooperation could result in physical or emotional harm to the client.~~

~~2-011.03B3a Documentary Evidence: Documentary evidence which indicates these circumstances includes:~~

- ~~1. Medical records which document physical or emotional health history and present physical or mental health of the client;~~
- ~~2. Written statements from a physician or mental health professional indicating the diagnosis or prognosis concerning the client's physical or emotional condition;~~
- ~~3. Court, medical, criminal, protective services, social services, psychological, or law enforcement records which indicate that the third party might inflict serious physical or emotional harm on the client; or~~
- ~~4. Signed statements from individuals other than the client with knowledge of the circumstances which provide the basis for the claim.~~

~~2-011.03B4 Evidence Not Submitted by Client: When corroborative evidence is not submitted in support of a claim, the worker must:~~

- ~~1. Investigate the good cause claim when s/he believes that the claim is credible without corroborative evidence and the evidence is not available; and~~
- ~~2. Find good cause if the client's statement and the investigation indicate that the client has good cause for refusing to cooperate.~~

~~2-011.03B5 Worker Considerations: If the determination of good cause is not substantiated by documentary evidence, the worker must consider and document the following evidence:~~

- ~~1. The present physical or mental state of the client;~~
- ~~2. The physical or mental health history of the client;~~
- ~~3. Intensity and probable duration of the physical or mental upset; and~~
- ~~4. The degree of cooperation required by the client.~~

~~2-011.03B6 Decision on Good Cause: The worker must determine good cause and notify the client of the decision on a Notice of Action. If the worker determines that good cause does not exist, s/he allows the client ten days to respond from the date that the Notice of Action was mailed. If the client does not cooperate, withdraw the application, or request the case closed, a sanction is imposed.~~

~~2-011.03B7 Delay of Assistance Pending Determination: The agency must not deny, delay, or discontinue assistance pending a determination of good cause if the client has complied with the requirements of providing acceptable evidence or other necessary information. In most instances, a good cause determination must be made within 30 days following the receipt of a good cause claim.~~

~~2-011.03B8 Review of Good Cause:~~ At the time of each redetermination, the worker must review a good cause claim based on a circumstance that is subject to change.

~~If circumstances remain the same, no action is required. A new determination is necessary if circumstances have changed. If good cause no longer exists, the requirement to cooperate must be enforced.~~

~~2-011.03C Sanction for Refusal to Cooperate:~~ If the client fails or refuses to cooperate and there is no good cause claim or determination, the appropriate sanction is applied.

~~If the reason for non-cooperation is the client's failure or refusal to provide information about or obtain third party medical payments (see 469 NAC 2-011.03), the client is ineligible for grant and medical. Ineligibility continues until the client cooperates or cooperation is no longer an issue.~~

~~2-011.04 Third Party Medical Payments Received Directly:~~ If the client receives a third party medical payment directly and the medical expense for which the third party medical payment is intended is payable by SDP medical or Medicaid, the worker must take the following actions:

~~Recompment of Third Party Medical Payments:~~

- ~~1. Send a demand letter advising the client that s/he must reimburse the Department or the provider. The client is allowed ten days from the date of notification to reimburse the medical payment. For an applicant, the worker must not delay determination of eligibility for assistance and authorization for payment pending the applicant's reimbursement. At the time the application is approved, the worker must notify the client of the number of days left in which to reimburse the payment;~~
- ~~2. If the client refunds within the ten days, take no further action; or~~
- ~~3. If the client fails or refuses to refund within the ten days, consider the entire third party payment as unearned income in the first month possible, taking into account adequate and timely notice. Any balance remaining is considered a resource in the following month (see 469 NAC 2-010.01B2d).~~

~~If the insurance payment exceeds Medicaid rates, the excess is considered unearned income unless paid out on other medical services or supplies.~~

~~Regardless of the existence of a good cause claim, any third party medical payment that is received directly by the client must be reimbursed.~~

~~2-011.05 Willfully Withheld Information:~~ When the evidence clearly establishes that a client willfully withheld information regarding a third party medical payment which resulted in an overpayment of State Disability expenditures, the worker must refer the case to the Special Investigation Unit, Central Office, or in the Omaha Office to the Omaha Special Investigation Unit. Once a case has been referred to the Special Investigation Unit, the worker must take no action with regard to the prosecution of the suspected fraud except in accordance with instructions or approval by the Special Investigation Unit. However, the worker must complete normal case actions which include applying the appropriate sanction in this section.

~~2-011.06 Termination of Assignment:~~ When a client's case is rejected, or closed, the automatic assignment terminates. The client's rights to any future third party medical payments are restored. However, the assignment remains in effect for the time period during which the client was on assistance.

~~2-012 Child Support Enforcement Services:~~ Child Support Enforcement services are provided to an AABD/MA child age 18 or younger who has a noncustodial parent(s). If an adult does not have good cause (465 NAC 2-011.03B) and refuses to cooperate with Child Support for a child in his/her care, the AABD adult's grant and medical are closed. The child continues to be eligible.

~~2-013 Receipt of Other Assistance:~~ An individual who receives a payment or whose needs are included in a payment of AABD or SDP may not at the same time receive a payment of another type of categorical assistance administered by the Department. This does not preclude the client of another type of assistance from being the payee for an Aid to Dependent Children grant made on behalf of a child in the individual's care.

If a client whose needs have been included in another categorical payment becomes eligible for AABD or SDP, the worker computes any retroactive payments by considering the amount included in the other categorical grant for the individual.

Assistance from a source other than the Department may be used to supplement but not duplicate an assistance payment made for a particular need.

~~2-014 Ineligibility of Fleeing Felon:~~ An individual is ineligible for AABD grant and SDP assistance during any period in which the individual is:

- ~~1. Fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime that is a felony under the law of the place from which the individual is fleeing; or~~
- ~~2. Violating a condition of federal or state probation or parole.~~

CHAPTER 3-000 DETERMINATION OF BENEFITS

~~3-001 Description of Benefits: AABD Payment or SDP Payment assistance consists of money payments to the client. SDP Medical payments are made directly to the provider for medical care and services. Neither service needs nor medical needs are shown on the budget form.~~

~~SDP assistance payments to the client must not exceed the budgetary need of the unit. There is no minimum payment.~~

~~Provider payments for medical requirements are determined according to the standards in Title 471 NAC.~~

~~3-002 (Reserved)~~

~~3-003 Planning the Assistance Budget: The worker shall plan the assistance budget with the client by discussing and explaining the following:~~

- ~~1. Budgeting process;~~
- ~~2. Individual requirements;~~
- ~~3. Persons whose needs may be included in the budget;~~
- ~~4. Use of items supplied or obtained in-kind;~~
- ~~5. Use of any income;~~
- ~~6. Determination of the amount of the assistance payment;~~
- ~~7. Provision of medical services; and~~
- ~~8. Why it is necessary for a client to keep the local office informed of changes in his/her circumstances which may affect his/her needs.~~

~~3-004 Individual Requirements Included in Assistance Budgets: The individual requirements are--~~

- ~~1. Standard of need;~~
- ~~2. Shelter up to the maximum; and~~
- ~~3. Special requirements.~~

~~3-004.01 Standard of Need: The standard of need is a consolidation of items necessary for basic subsistence with amounts based on unit size. Included in this standard are food, clothing, sundries, home supplies, utilities, laundry, telephone, garbage collection, and recreation. Also included in this standard amount are meals prepared away from home, therapeutic diet, special clothing allowance, meals furnished to a household employee, transportation for shopping, and special taxes or use charge.~~

~~The standard of need is based on the tables in 469-000-211.~~

~~3-004.01A Alternate Living Arrangements: The standard of need for alternate living arrangements is a consolidated allowance for items necessary for basic subsistence. Included in this standard are-~~

- ~~1. Board;~~
- ~~2. Room;~~
- ~~3. Clothing;~~
- ~~4. Personal needs;~~
- ~~5. Laundry; and~~
- ~~6. Transportation.~~

~~Any items or needs required by licensing requirement, covered by Medicaid or other insurance or sources, or available from the alternate care facility as a courtesy to residents are not part of the standard of need. If a need arises which is not provided to the individual by the alternate care facility or by another means, consideration may be given to including an additional allowance according to 469 NAC 3-004.03, Special Requirements (this excludes need or item required by licensing requirements, covered by Medicaid or other insurance or sources, or available from the alternate care facility as a courtesy to residents).~~

~~If a client enters an alternate care facility and it appears that s/he may be able to return home, the cost of rent or home ownership and/or utilities may be allowed in accordance with the guidelines in 469 NAC 3-006.02A.~~

~~3-004.01A1 Licensing of Facilities: In determining the appropriate standard to be allowed, the worker shall verify the current licensure/certification of the facility. If the facility is covered under more than one licensure/ certification, the worker shall verify in which section the client is residing and which licensure/certification applies.~~

~~Nebraska law directs DHHS and other public and private agencies that arrange and supervise living arrangements to report any facility which is not currently licensed and serves more than three individuals. The worker shall contact the Division in Central Office responsible for licensing, if an unlicensed facility is identified.~~

~~3-004.01A2 Board and Room: Board and room does not include care or supervision and may be with a relative.~~

~~In addition to the actual amount of board and room paid, the client is allowed a personal needs allowance. The total allowance must not exceed the standard for Board and Room (see 469-000-211).~~

~~3-004.01A3 Licensed Boarding Home: Boarding homes provide the following to four or more individuals who are essentially capable of managing their own affairs:~~

- ~~1. Sleeping and other living accommodations;~~
- ~~2. A dining room, cafe, or common kitchen; and~~
- ~~3. Domestic services requested by the individuals which will assist them in daily living activities.~~

~~If board and room is provided by the boarding home, the allowance is treated as board and room (see 469 NAC 3-004.01A2). If food is not provided by the boarding home, the appropriate standard of need plus the shelter allowance shown in 469 NAC 3-004.02A are allowed.~~

~~A non-licensed boarding home serving three or fewer is budgeted in the same manner.~~

~~3-004.01A4 Licensed Assisted Living Facility: An Assisted Living facility provides accommodation and board and care (e.g., personal assistance in feeding, dressing, and other essential daily living activities) for four or more individuals not related to the owner, occupant, manager, or administrator. These individuals are unable to sufficiently or properly care for themselves or manage their own affairs because of illness, disease, injury, deformity, disability, or physical or mental infirmity.~~

~~Individuals residing in Assisted Living facilities do not require the daily services of licensed, registered, or practical nurses. However, staff in an assisted living facility may assist the individuals residing there in taking routine oral or external medication and also provide for storage and handling of the medication.~~

~~The monthly standard for an Assisted Living Facility includes an allowance for personal needs of the client. (See 469-000-211 for the payment standard.)~~

~~3-004.01A5 Certified Adult Family Home: An Adult Family Home is a residential living unit which provides full-time residence with minimal supervision and guidance to not more than three individuals age 19 or older. Service includes board and room with meals, standard furnishings, equipment, household supplies, and facilities to ensure client comfort. These individuals are essentially capable of managing their own affairs but are in need of supervision. This may include supervision of nutrition by the facility on a regular, continuing basis, but not necessarily on a consecutive 24-hour basis.~~

~~The monthly standard for an Adult Family Home includes an allowance for personal needs of the client. (See 469-000-211 for the payment standard.)~~

~~3-004.01A6 Licensed Group Home for Children and/or Child Caring Agency: This group care facility provides 24-hour accommodation for minors including care and supervision. The home provides services to two or more individuals who are developmentally disabled.~~

~~The monthly standard for a Licensed Group Home for Children or a Child-Caring Agency includes an allowance for personal needs of the client. (See 469-000-211 for the payment standard.)~~

~~3-004.01A7 Licensed Center for the Developmentally Disabled: A center for the developmentally disabled is any facility, place, or building not licensed as a hospital which provides accommodation, board, training, and other services when appropriate, primarily or exclusively, for four or more persons who are developmentally disabled.~~

~~Staff in a center for the developmentally disabled may assist individuals residing there in taking routine oral or external medication and also provide for storage and handling of the medication.~~

~~The term "center" includes:~~

- ~~1. Group Residence – Any group of rooms located within a dwelling and forming a single habitable unit with living, sleeping, cooking, and eating facilities for 4 through 15 developmentally disabled persons.~~
- ~~2. Institution for the Developmentally Disabled – Any facility other than a skilled nursing facility or an intermediate care facility I or II where 16 or more developmentally disabled persons reside.~~

~~The monthly standard for a Licensed Center for the Developmentally Disabled includes an allowance for personal needs of the client. (See 469-000-211 for the payment standard.)~~

~~3-004.01A8 Long Term Care Facility: The payment to a long term care facility includes an allowance for personal needs of the client which is determined by the licensure or certification of the facility where the client resides (see 469 NAC 3-004.01A).~~

~~This facility may be considered for all alternate care standards. The maximum amount allowed is the Assisted Living standard (see 469-000-211 for the Assisted Living standard).~~

~~For a client living in a care facility, see 469 NAC 3-006.02B5.~~

~~3-004.01A9 Assisted Living Waiver: See 469-000-203 for the standard for an individual receiving Assisted Living Waiver services. The monthly standard includes an allowance for personal needs of the client.~~

~~3-004.01A10 Licensed Mental Health Center: Mental health center means a facility where shelter, food, counseling, diagnosis, treatment, care, or related services are provided for a period of more than 24 consecutive hours to persons residing at the facility who have a mental disease, disorder, or disability.~~

~~3-004.01B AABD or SDP Standard of Need: The worker continues to use the standard of need for independent living and shelter costs or the consolidated standard for alternate living when SSI notifies the agency that the client will continue to receive full SSI payment for up to three months because the individual is likely to return to his/her previous living arrangement. The worker follows procedures in 469 NAC 3-006.02B5 for allowing shelter and/or utilities when:~~

- ~~1. SSI reduces or terminates the payment at the end of the three-month extension;~~
- ~~2. SSI determines that the client does not qualify for the full benefit for the three-month period; or~~
- ~~3. The client was not receiving SSI before admission to the medical facility.~~

~~If the client is in a hospital (or receiving acute hospital care) or licensed alcohol/drug treatment center, the worker must use the standard of need which most accurately reflects the client's living arrangement (see 469 NAC 2-008.02A).~~

~~3-004.02 Shelter: The item shelter includes rent and the expenses of home ownership.~~

~~If the client has gratuitously transferred the title for the home in which s/he is living, no allowance for shelter expense may be included. If the client retains a life estate in the home, see 469 NAC 3-004.02A2.~~

~~When an AABD or SDP client shares a household with other individuals who are not receiving categorical assistance, the AABD or SDP client is allowed the prorated share of the actual cost of shelter, up to the single shelter amount. If the client can provide verification that s/he is responsible for paying more than his/her prorated share, the actual cost up to the maximum may be allowed.~~

~~When AABD or SDP eligible clients live together in the same household in the combinations listed in 469 NAC 3-004.02A, item 2, their shelter allowance must not exceed the maximum multiple shelter amount (see 469-000-211).~~

~~3-004.02A Maximum Shelter Allowance: The worker uses:~~

- ~~1. The single shelter amount for one; or~~
- ~~2. The multiple shelter amount for:
 - ~~a. A married couple who are living together;~~
 - ~~b. An AABD or SDP parent living with a minor child; or~~
 - ~~c. An AABD or SDP client living with other EP's whose needs are included in the budget.~~~~

~~3-004.02A1 Rent: The allowance for rent should be sufficient to provide the family with decent quarters comparable to the standard for persons of modest circumstances in the same community (see 469-000-211).~~

~~3-004.02A1a Clients in Public Housing: When a client enters federally subsidized low-rent public housing from private housing, the budget must reflect the lowered rent amount. If the client is in public housing when s/he applies for assistance, the worker shall use the amount the client is responsible for paying at the time of application.~~

~~If the client remains in public housing and the shelter amount fluctuates, the budget must reflect increases in the shelter amount, but not decreases.~~

3-004.02A2 Home Ownership

~~3-004.02A2a Expenses of: Expenses of home ownership may be allowed if the client or spouse owns the home in which the client lives, provided the allowance does not exceed the maximum shelter limit allowed.~~

~~If the client or spouse has only a life interest in the home, the terms of the conveyance must be examined in determining whether the client or the title holder is responsible for the expenses of home ownership. The case record must contain an explanation if an allowance is included in the budget.~~

~~3-004.02A2b Standards for Determining Costs: The cost of interest or payments on mortgages or contract purchases, current taxes, and insurance may be allowed in the assistance budget as follows:~~

- ~~1. Mortgage or Purchase Contract: Interest and payments on the mortgage or purchase contract on the home may be included in the budget.~~

2. ~~Taxes: Current taxes on the home occupied by the client may be allowed on a monthly prorated basis unless the payment of taxes is included in the monthly payment on the mortgage or contract purchase.~~

~~Taxes may be allowed only for the lot(s) on which the house stands. No allowance may be made for taxes on other lots owned by the applicant unless the taxes cannot be determined separately from the taxes for the lot(s) on which the home is located.~~

~~If taxes have been allowed in an earlier budget but not paid, they may not be included in the budget again.~~

3. ~~Insurance: The amount of the homeowner's insurance is included in the budget on a prorated or lump sum basis, unless insurance is a part of the payment on the mortgage or purchase contract.~~
4. ~~Total Cost: The total cost of home ownership must not exceed the maximum shelter allowance.~~

~~3-004.03 Special Requirements: Special requirements are those that are essential because of the particular circumstances of an individual's situation. The inclusion of special requirements in the budget must be explained in the case record. In considering the need for a special requirement, the worker shall determine if the need is essential to the client's health and decency, and if the need could be met from another source. If the need is a one-time only expenditure, the worker shall consider whether the client has liquid assets available to totally or partially pay for the need. A trust that has been established for a disabled individual which has been excluded as a resource must be considered a resource for special needs. For procedures, see appendix 469-000-328.~~

~~3-004.03A Items That May Be Allowed as Special Requirements: The following may be allowed as special requirements:~~

1. ~~Transportation;~~
2. ~~Household furniture and appliances;~~
3. ~~Expenses of moving;~~
4. ~~Back taxes;~~
5. ~~Subsistence to obtain medical care;~~
6. ~~Maintenance for a service animal;~~
7. ~~Guardian/conservator fee of \$10 per month;~~
8. ~~Medical expenses of an EP;~~
9. ~~Cost of home repair;~~
10. ~~Automobile liability insurance; and~~
11. ~~Lifelines.~~

The local office may allow a special requirement differing in kind or in amount from those previously listed or allowed for in the standard of need or in the shelter allowance. The special requirement may be a one-time only need or an ongoing need. The client must provide documentation for the case record to verify the need for the expense in the budget. The worker must request prior Central Office approval on Form ASD-17 before allowing the expense in the budget.

~~3-004.03A1 Transportation: The cost of transportation may be allowed as a special requirement for obtaining medical services.~~

~~Transportation needs other than by the client's own car are referred to the social services unit on a Client Referral. If the social services unit returns the request stating it is unable to pay, the transportation cost must be allowed as a special requirement.~~

~~If public transportation is used, the cost for one attendant may be allowed if one is needed to accompany the client.~~

~~3-004.03A2 Furniture and Appliances: The cost of furniture and/or appliances is allowed if:~~

- ~~1. The unit lacks essential items; or~~
- ~~2. The items the unit has are no longer usable.~~

~~3-004.03A2a Payment Limits: Items may be either purchased or repaired if the cost is:~~

- ~~1. \$749.99 or less and the local office has given prior authorization; or~~
- ~~2. \$750 or more and the Central Office has given prior authorization.~~

~~3-004.03A2b Installment Payments: If at the time of application, the client is making payments on an installment plan for new or used furniture or appliances, the worker must include an allowance to complete the payments, provided the cost is reasonable and the item(s) is needed.~~

~~3-004.03A3 Expense of Moving: The cost of moving personal belongings is included in the budget as a special requirement if the client is forced to move for reasons beyond the client's control, or if the move is made to obtain shelter at lower cost.~~

~~3-004.03A4 Back Taxes: Back taxes are allowed as a special requirement only if all of the following circumstances apply:~~

- ~~1. The individual would unquestionably lose the home if taxes are not paid;~~
- ~~2. The plan to remain in the home is preferred by the client and recommended by the worker; and~~
- ~~3. The taxes were not previously allowed as a shelter expense.~~

~~Back taxes, when allowed, may be paid in a lump sum or prorated.~~

~~3-004.03A5 Subsistence to Obtain Medical Care: The cost of meals and lodging is included in the budget when the expense is necessary to obtain approved health services and only if the client is away from home for 12 hours or more. The allowance for cost of meals is \$12 per day. Additionally, the cost of lodging will be allowed if reasonable and if receipts are provided by the client.~~

~~The \$12 allowance for cost of meals, plus the additional allowance for cost of lodging may also be provided for an attendant if one is needed to accompany the client.~~

~~Exception: Special requirements should not be used for meals and lodging if the facility is enrolled as an Ambulatory Room and Board provider.~~

~~3-004.03A6 Maintenance of a Service Animal: An allowance for medical or maintenance expenses for a service animal is included when there is a physician's statement that the client requires a service animal. A service animal is defined as a guide dog, signal dog, or another animal that is individually trained to provide assistance to an individual with a disability. For the amount of the allowance, see 469-000-211.~~

~~3-004.03A7 Guardian/Conservator Fee: An allowance is included when a client has a court-appointed conservator or guardian. The actual fee or an amount not to exceed \$10 a month is allowed. The allowance may be removed if it is documented in the case record that the guardian or conservator does not wish to receive the \$10 allowance.~~

~~If the guardian/conservator is required by the court to purchase a bond and file an annual report with the court, the actual amount approved by the court for these expenses may be allowed. The amount allowed by the court for the guardian/conservator's own expenses (in excess of \$120) may also be allowed as a special requirement. See 465 NAC 2-008.06 for attorney's fees.~~

~~3-004.03A8 Medical Expenses of an EP: If the client provides verification of payment of a medical bill or health insurance premium (except for income-producing policies) for an EP included in the budget, an amount up to the total monthly countable net earned and unearned income, including SSI, may be allowed. The EP must have incurred the medical bill since the client became eligible for assistance.~~

~~3-004.03A9 Home Repair:~~ An allowance may be made for the cost of home repair if the client owns and occupies his/her home and the repair is considered essential to the occupancy of the home. If the cost of the repair exceeds \$1000, the worker shall submit a request (e.g. Form ASD-17) to the Central Office with the necessary documentation describing the repair and cost.

~~3-004.03A10 Automobile Liability Insurance:~~ An allowance may be made for the cost of automobile liability uninsured and underinsured insurance required by state law. If the cost is \$274.99 or less for a six-month premium, the local office may approve the special requirement. If the cost is \$275 or more, the worker shall submit Form ASD-17 to the Central Office with the necessary documentation.

~~3-004.03A11 Lifelines:~~ An allowance may be made for the installation and ongoing monthly fees for lifeline telephone service.

~~3-004.03B Items That Are Not Allowed as Special Requirements:~~ The following items are not allowed as special requirements:

- ~~1. Personal computers because they are considered a vocational rehabilitation and educational item;~~
- ~~2. Smoking cessation programs because there are no national standards or official oversight of these programs. Guaranteed one time, long term smoking cessation success is not demonstrated by current programs;~~
- ~~3. Health club memberships and exercise or fitness equipment because these are related to weight loss and rehabilitation and essential components to assess the success of the individual program and to monitor the client's progress are unavailable;~~
- ~~4. Weight loss programs because there are no national recommendations and standards for these programs. Safety and efficacy issues are unresolved on the national level with no Federal Department of Agriculture or official oversight of this industry. Essential components for individualization for each person's special circumstances are not available;~~
- ~~5. Lawn care service, snow removal, and the equipment and supplies for them; and~~
- ~~6. Medical services and goods which are not covered by Medicaid or SDP Medical because of limits on amount, scope, or duration established by the Department.~~

3-005 (Reserved)

3-006 Budget Computation

~~3-006.01 Budgeting Process for Clients Not Receiving SSI (Including Clients Determined Eligible for 1619(b) Status by SSI):~~ The budget process for determining eligibility for and amount of assistance payment is completed through the DHHS-designated electronic system. The worker determines the budgetary need by comparing the monthly requirements of the unit to its net monthly income. To determine need, the worker shall-

- ~~1. Compute available net income;~~
- ~~2. Compute total requirements for the unit size; and~~
- ~~3. Measure all net income against total requirements. If the income is not sufficient to meet the total requirements, the difference is the budgetary need. If the income is sufficient to meet the client's total requirements, the client does not have a budgetary need. Determine if there is a need for SDP Medical using the criteria in 469 NAC 4.~~

~~Payment may begin no earlier than the month of application and no later than the month following the month of application if all eligibility requirements are met.~~

~~If at any time factors change that affect the budget, the worker shall recompute the budget.~~

~~3-006.01A AABD Payment Budgeting Process for Clients Receiving SSI:~~ The budget for clients who are receiving SSI is completed through the DHHS-designated electronic system. To determine need, the worker shall-

- ~~1. Compute only the following available net income. This income is not allowed the \$20 general income disregard:
 - ~~a. Income of non-spouse Essential Persons;~~
 - ~~b. Veteran's Aid and Attendant benefits; and~~
 - ~~c. Income allocated from another assistance unit (see 469-000-305);~~
 - ~~d. Income of an ineligible spouse not used by SSI in the calculation of the client's SSI payment. SSI disregards the deemed income if it is less than the difference between the federal benefit rate for an individual and a couple. SSI calculates the SSI payment based on the federal benefit rate for an individual.~~

~~Exception: Do not include VA benefits of the ineligible spouse which are disregarded by SSI, see 469 NAC 2-006.01.~~~~
- ~~2. Determine total requirements based on the unit size; and~~
- ~~3. Measure net income (identified in number 1) against total requirements. If there is no budgetary need and the income and resources of a non-spouse essential person were included, remove income and needs of the EP from the budget and recalculate.~~

~~3-006.01A1 Calculation of State Supplemental Payment: If it is determined that the client has a budgetary need and the client is receiving SSI, the computer automatically subtracts the SSI Federal Benefit Rate from the budgetary need to determine the amount of state supplemental payment. If the SSI Federal Benefit Rate is greater than the budgetary need, deny and close the case. (See 469 NAC 2-010.01B2b).~~

~~For a blind client receiving SSI who has earned income in the earned income field, N-FOCUS automatically adds \$20 to the warrant amount (see 469 NAC 2-010.01E1b(2)).~~

~~3-006.01A2 Budgeting Individuals in Long Term Care for Three Continuous Months: The worker shall use non-SSI budgeting procedures for individuals in long term care when SSI does not make a change in living arrangement at the end of three full continuous months and income exceeds the FBR for a single individual in an institution (see 469-000-207).~~

~~3-006.01B Deductions for Medical Insurance: Standards in 469 NAC 3-000 do not allow for deductions for medical insurance premiums, i.e., private policies, Medicare, etc., in the AABD budget. Therefore, if an insurance premium is being deducted from the client's unearned income, the worker shall add the premium amount back in to arrive at the correct amount to show in the AABD budget (see 469 NAC 2-010.01B2a). The SDP medical budget, which is computed based on standards in 469 NAC 4-000, can reflect medical insurance deductions (see 469 NAC 4-006.01).~~

~~3-006.02 Persons Included in the Budget:~~ The assistance budget is computed to determine the need of a client for assistance. Consideration must be given to the fact that presence in the home of other persons may be essential to the well-being of the client and affect his/her need (see 469 NAC 1-004). The individual requirements of these EP's may be included in the budget of the client. EP's in the home may include the spouse, minor or adult children, grandchildren, parents, sisters, or brothers. The decision of whether an individual is essential to the client rests with the client. An individual, who is considered a spouse by SSI, even though s/he is not married to the client, is considered an EP in the AABD budget. The EP is not eligible for assistance in his/her own right. If the couple has completed a designation of resources and protected resources above the resource limit for two persons, the income and needs of the community spouse are not included in the payment budget.

The needs of an ineligible spouse are not included as an EP in the client's budget if the ineligible spouse is receiving Veterans benefits based on need that SSI is disregarding in determining the client's SSI.

The needs of an EP may be included in the budget to determine eligibility for payment. When an EP has been included in the client's budget, their combined income and resources must not exceed standards (see 469 NAC 2-009.08 and 3-004.01B).

If an EP included in the budget has no other means of meeting medical needs and is not eligible for Medicaid in his/her own right, see 469 NAC 3-004.03A8.

If there is no budgetary need, close the case and the worker must determine SDP medical eligibility for with Share of Cost using the appropriate income level in 469 NAC 4-007. The appropriate maintenance level for SDP Medical is determined by considering the client(s) and the EP only if the EP is the spouse or minor child.

If the ineligible parent(s) of a minor AABD or SDP client does not have income which has been considered for deeming purposes, his/her needs may be included in the minor's budget if it has been determined that the parent's continued presence in the home is necessary for the child's well-being. If the parent has income which is being considered for deeming, his/her needs have already been recognized in this process (see 469 NAC 2-010.01F). If a parent's needs have been removed from an ADC unit for noncooperation (i.e., Employment First/employability or child support), his/her needs may not be included in the AABD or SDP child's budget.

~~3-006.02A Potential Assistance for Essential Persons (EP's):~~ The worker must explore the possible eligibility for assistance of other EP's and require them to apply for any assistance for which they appear to be eligible (see 469 NAC 2-010.01B6 and 2-010.01B6a).

~~3-006.02B Determining Total Requirements:~~ In determining the amount of the individual requirements in the following subparts, living independently includes rent, allowances for the cost of home ownership, and the cost of a room when the client is living in a boarding home and paying room only. Alternate living arrangements include board and room, licensed boarding homes, assisted living, certified adult family homes, licensed group homes for children and/or child caring agencies, and centers for the developmentally disabled.

Care facilities include nursing homes and public institutions for the treatment of mental diseases and/or developmental disabilities.

The following regulations discuss budgeting procedures for these living situations:

- ~~1. 469 NAC 3-006.02B1 Living Alone;~~
- ~~2. 469 NAC 3-006.02B2 Living With EP's;~~
- ~~3. 469 NAC 3-006.02B3 Living With Clients With Relative Responsibility;~~
- ~~4. 469 NAC 3-006.02B4 Living With Persons With No Relative Responsibility;~~
and
- ~~5. 469 NAC 3-006.02B5 Allowance While Living in a Care Facility.~~

~~3-006.02B1 Living Alone~~

~~3-006.02B1a Living Independently:~~ The budget of an AABD or SDP client who is living alone in an independent living situation shows:

- ~~1. The standard of need for one (see 469-000-211);~~
- ~~2. The actual shelter expense up to the single shelter amount (see 469-000-211); and~~
- ~~3. Special requirements, if applicable (see 469 NAC 3-004.03).~~

~~3-006.02B1b Living in an Alternate Living Arrangement:~~ The budget of an AABD or SDP client who is living alone in an alternate living arrangement shows:

- ~~1. The standard of need for the alternate living situation (see 469-000-211); and~~
- ~~2. Special requirements, if applicable (see 469 NAC 3-004.03).~~

3-006.02B2 Living With EP's

~~3-006.02B2a Living Independently:~~ The budget of an AABD or SDP client who is living with EP's in an independent living situation shows:

- ~~1. The standard of need for the client plus EP's (see 469-000-211);~~
- ~~2. Actual shelter expense paid up to the multiple shelter amount (see 469-000-211); and~~
- ~~3. Special requirements, if applicable for the client and EP's (see 469 NAC 3-004.03).~~

~~3-006.02B2b Living in a Board and Room Arrangement:~~ The budget of an AABD or SDP client who is living with EP's in a board and room arrangement shows:

- ~~1. Board and room as paid plus an allowance for personal needs up to the maximum for the client and EP (see 469-000-211); and~~
- ~~2. Special requirements, if applicable, for the client and EP's (see 469 NAC 3-004.03).~~

~~3-006.02B3 Living With Clients With Relative Responsibility:~~ When the AABD or SDP client is living with an eligible individual for whom there is relative responsibility (see 469 NAC 2-006), payment is computed according to the guidelines in the following subparts.

3-006.02B3a Client and an Eligible Spouse

~~3-006.02B3a(1) Spouse on AABD or SDP:~~ The needs of the eligible AABD couple who are living together (independently or in an unlicensed board and room) are shown on the same budget form and the payment is divided equally.

~~3-006.02B3a(1)(a) Living Independently:~~ When the couple is in an independent living situation, the budget must show:

- ~~1. The standard of need for two (see 469-000-211);~~
- ~~2. Actual shelter expense paid up to the multiple shelter amount (see 469-000-211); and~~
- ~~3. Special requirements for each, if applicable (see 469 NAC 3-004.03).~~

~~3-006.02B3a(1)(b) Living in Board and Room Arrangement:~~ When the couple is in an unlicensed board and room arrangement, the budget must show:

- ~~1. The actual amount of the board and room up to the maximum for the AABD or SDP client and the AABD or SDP spouse (see 469-000-211); and~~
- ~~2. Special requirements for an AABD or SDP client and/or an AABD or SDP spouse (see 469 NAC 3-004.03).~~

~~3-006.02B3a(2) Spouse on ADC or Refugee Resettlement Program (RRP):~~ If an AABD or SDP client lives with a spouse who is receiving ADC or RRP, the budgets must be computed separately. Neither the needs nor the income of the ADC or RRP client may be considered in the AABD or SDP budget.

~~3-006.02B3a(2)(a) Living Independently:~~ When the couple is in an independent living situation, the budget for the AABD or SDP client will show:

- ~~1. The prorated share of the standard of need based on the total number in the case (see 469-000-211);~~
- ~~2. The prorated share of the shelter allowance up to the multiple shelter amount based on the total number in the case (see 469-000-211); and~~
- ~~3. Special requirements, if applicable (see 469 NAC 3-004.03).~~

~~3-006.02B3a(2)(b) Living in an Alternate Living Arrangement: When the AABD or SDP client is in an alternate living arrangement, the budget for the AABD or SDP client will show:~~

- ~~1. The standard of need for the appropriate alternate living arrangement (see 469-000-211); and~~
- ~~2. Special requirements, if applicable (see 469 NAC 3-004.03).~~

~~3-006.02B3b Living With an Eligible Minor Child or Parent: If a client lives with an eligible minor child or parent (i.e., an AABD or SDP parent and an ADC, AABD, or SDP child), the budgets are computed separately.~~

~~If the AABD or SDP client lives with his/her minor child who is self-supporting, see 469 NAC 3-006.02B4a.~~

~~3-006.02B3b(1) Living Independently: When the client and the eligible child are in an independent living situation, the budget for each must show:~~

- ~~1. The prorated share of the standard of need based on the total number in the case (see 469-000-211);~~
- ~~2. The prorated share of the actual shelter paid up to the multiple shelter amount based on the total number in the case (see 469-000-211); and~~
- ~~3. Special requirements, if applicable (see 469 NAC 3-004.03).~~

~~Note: Parents are held financially responsible for their children through age 17 for AABD Payment and SDP.~~

~~3-006.02B3b(2) Living in an Alternate Living Arrangement: When the AABD or SDP client(s) is in an alternate living arrangement, the budget for each AABD or SDP client must show:~~

- ~~1. The standard of need for the appropriate alternate living arrangement (see 469-000-211); and~~
- ~~2. Special requirements, if applicable (see 469 NAC 3-004.03).~~

~~3-006.02B4 Living With Persons With No Relative Responsibility: Only the needs of the client are considered in the budget when the client is living with other individuals for whom there is no relative responsibility (see 469 NAC 2-006).~~

~~3-006.02B4a Living with Self-Supporting Individuals with No Relative Responsibility:~~ If a client is sharing a household with a self-supporting individual for whom the client has no relative responsibility (see 469 NAC 2-006), the budget is computed:

- ~~1. On a board and room basis, if the client is required to pay board and room (see 469-000-211);~~
- ~~2. On an expense-sharing plan when in an independent living arrangement using:
 - ~~a. The standard of need for one (see 469-000-211);~~
 - ~~b. Shelter costs (not to exceed the maximum) determined by:
 - ~~(1) The prorated share of total shelter costs based on the number of persons in the case (see 469-000-211) not to exceed the maximum single shelter amount; or~~
 - ~~(2) The actual amount of shelter paid up to the single shelter amount if the client can verify that s/he pays an amount other than the prorated share; and~~~~
 - ~~c. Special requirements, if applicable (see 469 NAC 3-004.03).~~~~

~~3-006.02B4b Living with Other Clients with No Relative Responsibility:~~ The budget of an AABD or SDP client living in the same household with other clients for whom the AABD or SDP client has no relative responsibility (see 469 NAC 2-006) is computed according to instructions in 469 NAC 3-006.02B4b(1) and 3-006.02B4b(2).

If an AABD or SPD client lives in the same household with an ADC client, the AABD or SDP client's budget must be computed separately. Neither the needs nor the income of any ADC client in the household may be considered in the AABD or SDP budget.

~~3-006.02B4b(1) Independent Living Arrangement:~~ When the AABD or SDP client is in an independent living arrangement, the budget will show:

- ~~1. The standard of need for one (see 469-000-211);~~
- ~~2. The prorated share of total shelter costs based on the number of persons in the case not to exceed the single shelter amount (see 469-000-211); and~~
- ~~3. Special requirements if applicable (see 469 NAC 3-004.03).~~

~~3-006.02B4b(2) Living in a Board and Room Arrangement: When the AABD or SDP client is in a board and room or boarding home arrangement, the budget will show:~~

- ~~1. Board and room as paid plus personal requirements up to the maximum (see 469-000-211); and~~
- ~~2. Special requirements, if applicable (see 469 NAC 3-004.03).~~

~~3-006.02B5 Client Living in a Care Facility: The budget of a client living in a care facility shows:~~

- ~~1. The standard of need for the correct living arrangement (see 469-000-211); and~~
- ~~2. An amount up to \$10 when the client has a guardian or conservator who requests a fee (see 469 NAC 3-004.03A7).~~

~~The expense of home ownership and/or utilities may be allowed only until it is apparent that the client cannot live there again (not to exceed six months). The budget may also allow for the expense of rent and/or utilities for up to six months. The total time for either allowance must not exceed six months. The allowances must not exceed the maximum shelter amount for one (see 469-000-211) if the client does not have a spouse.~~

~~Exception: See 469 NAC 3-004.01B for budgeting a client who continues to receive full SSI benefits for up to three months.~~

~~Note: If a client in an alternate care facility goes to a care facility, the worker must continue to budget the alternate care standard until it is apparent that the client will not return to the alternate care facility (not to exceed two months). If the client remains in the care facility beyond two months, Central Office approval is required via a Question Referral in order to continue using the alternate care standard.~~

~~3-006.02B6 AABD or SDP Child Living with Self-Supporting Parents: If an AABD minor child lives with a self-supporting parent(s), the child's budget will show-~~

- ~~1. The prorated share of the standard of need based on the total number in the case (see 469-000-211).~~
- ~~2. The prorated share of the actual shelter paid up to the multiple shelter amount (see 469-000-211); and~~
- ~~3. Special requirements, if applicable (see 469 NAC 3-004.03).~~

3-007 Payments for Assistance

~~3-007.01 Non-Restricted Payments: AABD or SDP assistance payments are grant payments to the client, conservator, guardian, or individual acting under a duly executed power of attorney without restrictions as to the use of the funds.~~

~~3-007.02 Protective Payments: Protective payments may be made on behalf of a client who has a physical or mental impairment which causes an inability to manage AABD or SDP payments.~~

~~3-007.02A To a Guardian, Conservator, or Duly Executed Power of Attorney: If an AABD or SDP client has a guardian, conservator, or individual acting under a duly executed power of attorney, AABD or SDP payments may be made to the appointed person on behalf of the client. Certified copies of the letter of guardianship, conservatorship, or power of attorney are filed with the local office.~~

~~3-007.02B To a Protective Payee: Protective payments may be made on behalf of a client who has a physical or mental impairment which causes an inability to manage AABD or SDP payments.~~

~~3-007.02B1 Supportive Evidence: The determination of the need for protective payments must be substantiated by a physician's statement or medical report of condition.~~

~~The case record must contain documentation of the reason protective payments were selected in lieu of guardianship or conservatorship.~~

~~3-007.02B2 Selection of Payee:~~ The client and worker shall jointly select the payee when possible. The payee must be an individual who can visit the client on a regular basis to discuss financial matters.

~~Protective payees may include relatives, friends, clergy who have a concern for the well-being of the client, or adult foster home sponsors (when recommended by the social services worker).~~

~~The payee must not be-~~

- ~~1. A local office administrator;~~
- ~~2. An HHS employee who determines financial eligibility for the client in question;~~
- ~~3. Landlords, grocers, or other vendors of goods and services dealing directly with the client; or~~
- ~~4. The operator of an alternate care facility.~~

~~3-007.02B2a Service Provider:~~ The worker must obtain Central Office approval before a service provider who contracts with the Department may act as protective payee for a client s/he serves.

~~3-007.02B3 Responsibilities:~~ The protective payee is responsible for:

- ~~1. Paying maintenance needs from the grant (i.e., rent, utilities, food, clothing, etc.);~~
- ~~2. Explaining to the client how the grant will be spent;~~
- ~~3. Keeping records of payments received and disbursements made of funds; and~~
- ~~4. Treating confidentially all personal information concerning the family.~~

~~3-007.02B4 Fair Hearing:~~ The client must be given the opportunity to appeal the initial decision or continuance of protective payments and the choice of the protective payee.

3-007.03 Erroneous State Supplement Payments

~~3-007.03A Underpayments:~~ If a state supplement payment is made for an amount less than the amount the client was entitled to receive, a correction must be made. Retroactive corrective payments may be made for the 12 months preceding the month in which the underpayment is discovered. State supplement payments made to correct an underpayment are not considered income or a resource in the month paid or the month following the month paid.

3-007.03B Overpayments

~~3-007.03B1 Identification of an Overpayment:~~ There are two types of overpayments:

- ~~1. Administrative errors:~~ Worker errors caused by inaccurate computation or the worker's failure to take action; and
- ~~2. Client errors:~~ Errors caused because the client supplies inaccurate or incomplete information or fails to provide information resulting in an overpayment.

All overpayments, regardless of cause, must be recouped.

~~3-007.03B2 Recoupment of Overpayments:~~ If a state supplement payment is made for an amount greater than the amount the client was entitled to receive the overpayment is recouped by reducing current state supplement payments by at least ten percent.

The worker must first send a demand letter, giving the client the choice of reimbursing all or part of the overpayment or having future assistance reduced. If the client reimburses part of the overpayment, the remainder must be recouped by grant reduction. The worker must allow the client ten days to respond to the demand letter. If the client requests recoupment within the ten days, the worker must take necessary action at that time. If the client does not respond within ten days, the worker must begin recoupment procedures in the first month possible, taking into account adequate and timely notice.

~~Recoupment is limited to the amount of overpayment which occurred in the 12 months preceding the month in which the overpayment was discovered. If the overpayment occurred before the 12-month time limit, no action may be taken.~~

~~In cases of suspected fraud, the social service worker must refer the case to the Special Investigation Unit, Central Office, or in the Omaha Office, to the Omaha Special Investigation Unit. Once a case has been referred to the Special Investigation Unit, the worker must take no action with regard to the prosecution of the suspected fraud except in accordance with instructions or approval by the Special Investigation Unit. However, the worker should complete normal case actions. Normal case actions include closing a case that is found to be ineligible and recovering overpayments.~~

~~3-007.04 Case Records: The case records of the AABD or SDP client must be complete and contain facts to substantiate each action with respect to assistance payments. Case records must be retained for four years from the closing of the case.~~

~~3-007.05 Fraud: See 465 NAC 2-007.~~

~~CHAPTER 4-000 STATE DISABILITY PROGRAM – MEDICAL (SDP Medical): SDP Medical provides medical care and services to those who do not have sufficient income to meet their medical needs and who qualify according to the program definitions as blind or disabled but only if they have also had their SSA disability application denied due to lack of duration; but, determined blind or disabled by the DHHS-designated medical consultant reviewer.~~

~~All references to medical in this Chapter refer to the State Disability Program cases only. Nebraska Medicaid eligibility guidelines are found in Title 477 NAC.~~

~~4-001 Eligibility Categories~~

~~4-001.01 Individuals Eligible for SDP Medical: Individuals who would have been denied disability by SSA due to lack of duration but found disabled by the medical consultant review and meet all other SDP eligibility criteria except eligibility for a grant.~~

~~4-001.02 Individuals Ineligible for SDP Payment But Eligible for SDP Medical Only: Individuals who have income or resources in excess of the budgetary standards for SDP grants (see 469 NAC 3) are ineligible for an assistance grant but must be reviewed for SDP Medical. The eligibility criteria for SDP Medical are the same as for AABD and SDP payments, with the exception of income and resource standards to be used if over the income or resource standards for a grant.~~

~~4-002 Cooperation in Obtaining Health Insurance: As a condition of eligibility for SDP, a client is required to enroll in an available health plan if the Department has determined that it is cost effective and the client is able to enroll on his/her own behalf. The Department then pays the premiums, deductibles, coinsurance, and other cost sharing obligations.~~

~~4-003 Effective Date of SDP Medical Eligibility: If an individual is eligible for medical assistance one day of the month, s/he is eligible the entire month. The effective date of eligibility for SDP Medical is determined as follows:~~

- ~~1. Prospective eligibility is effective the first day of the month of request if the client was eligible for SDP Medical in that same month and had a medical need.~~

~~Exception: The SDP Medical eligibility cannot begin prior to the start date of the disability as determined by the medical consultant review.~~

2. ~~Retroactive SDP Medical eligibility is no earlier than the first day of the third month before the month of request date or application date if there is no request date, if the following conditions are met:~~
- a. ~~Eligibility is determined and a budget computed separately for each of the three months;~~
 - b. ~~A medical need exists; and~~
 - c. ~~Elements of eligibility are met for each month.~~

~~An applicant may be eligible for the retroactive period (or any single month(s) of the retroactive period) even though ineligible for the prospective period.~~

~~If the client was not eligible for one or more months of the retroactive period, the case must contain documentation of the ineligibility.~~

~~4-004 Use of Medical Budget for SDP Medical: The worker determines eligibility for medical assistance only and medical assistance share of cost cases. If at any time factors change that affect the budget, the worker must recompute the budget. See 469-000-335 for medical budget periods and 469-000-305 for examples of medical budgeting procedures.~~

~~If the parent(s)' income has been deemed to the child, the medical expenses (including insurance premiums) of the parent(s) and any siblings for whom the parent(s) is responsible for paying medical expenses may be applied to the child's share of cost.~~

~~4-005 Treatment of Resources for SDP Medical: For the treatment of resources, the criteria outlined in 469 NAC 2-009 are used. The application for an individual who has excess resources other than real property may be held pending until the resources are reduced. For the liquidation of real property, see 469 NAC 2-009.07B4. Excess resources may be reduced by paying obligations for medical costs. SDP Medical eligibility begins with the first day of the month of the incurred obligation which was used to reduce the resources to the allowable maximum (see 469 NAC 2-009.11). Medical eligibility may not be established earlier than the three-month retroactive period.~~

~~4-005.01 Maximum Available Resource Levels: The established maximum for available resources which the client, or the client and responsible relative, may own and still be considered eligible for SDP Medical, according to unit size, are as follows:~~

- ~~1. One member unit – client only \$4000
If a couple has a valid designation of resources and
a. There is an eligible spouse and an ineligible spouse, the resource level for the eligible spouse is \$4,000; or
b. The ineligible spouse later becomes eligible, each spouse is allowed \$4,000.~~
- ~~2. Two member unit \$6000
a. Client and eligible spouse;
b. Client and ineligible spouse; or
c. Client and ineligible spouse who have designated resources but the client returns home or no longer is eligible for waiver services.~~

~~For procedures on designating resources, see 469 NAC 2-009.02C. For determination of ownership of resources, see 469 NAC 2-009.03. For resource levels for grant, see 469 NAC 2-009.08.~~

~~If two or more related AABD or SDP clients (other than a married couple), i.e., an eligible AABD parent and his/her eligible AABD minor child or two or more unrelated eligible AABD clients, reside in the same household, each client is entitled to a resource maximum of \$4000.~~

~~The treatment of resources of a spouse or a parent is the same as for a client (see 469 NAC 2-009).~~

~~If the total equity value of available non-excluded resources exceeds the maximums specified above, the client(s) is ineligible. Resources must be below the maximum resource level for one day in the month in order for the client to be eligible for that month.~~

4-005.01A Deeming Resources of a Parent: In considering the resources of a parent(s) who is not considered an EP towards an eligible child age 17 or younger and living in the parent's household, the following resources are considered to the child whether or not they are actually made available:

1. All resources exceeding \$4,000 in the case of one parent; or
2. All resources exceeding \$6,000 in the case of
 - a. Two parents;
 - b. One parent and spouse of the parent; or
 - c. One parent and one minor sibling.
3. \$25 each additional minor sibling in the parent(s)' household.

Resource exclusions listed in 469 NAC 2-009.02B apply to the parent's resources. The resources of the eligible child's brothers and sisters are not considered towards the child.

Note: If income of a parent is not deemed according to 469 NAC 2-010.01F1, resources are also not deemed.

4-005.02 Resource Review: The amount of total resources determines how often verification is required. Verification is completed on the following schedule:

<u>One Person</u>	
<u>Resource Total</u>	<u>Verification Frequency</u>
\$3,925 to \$4,000	Monthly
\$3,850 to \$3,924.99	Quarterly
\$3,500 to \$3,849.99	Semi-Annually
\$0.00 to \$3,499.99	Annually

<u>Two Persons</u>	
<u>Resource Total</u>	<u>Verification Frequency</u>
\$5,850 to \$6,000	Monthly
\$5,700 to \$5,849.99	Quarterly
\$5,550 to \$5,699.99	Semi-Annually
\$0.00 to \$5,549.99	Annually

If a worker has reason to believe that at any time there has been an increase in resources which may affect eligibility all resources must be verified immediately.

A resource review is not required for SSI recipients.

~~4-006 Treatment of Income: For treatment of income, use criteria outlined in 469 NAC 2-010.~~

~~4-006.01 Disregards for Medical Budgets~~

~~4-006.01A Medical Insurance Disregards: In addition to disregards outlined in 469 NAC 2-010.01E1, the cost of medical insurance premiums is deducted (including Medicare if the individual is responsible for paying it) (see 469 NAC 3-006.01C).~~

~~The cost of premiums for policies that are not considered health insurance are not allowed as a deduction for medical budgeting (see 469 NAC 2-010.01B2d).~~

~~4-006.01B Guardian or Conservator Fee: The expense of a guardian or conservator fee is allowed as paid, up to a maximum of \$10 per month. If the guardian/conservator is required by the court to purchase a bond and file an annual report with the court, the amount allowed by the court for expenses (in excess of \$120) may also be disregarded.~~

~~4-006.02 Repayment of SDP Medical Benefits Provided in Error: When an error has occurred in the amount of SDP Medicaid benefits received by the client because of erroneously reported income or changes in income and/or private health insurance premiums (not Medicare), the worker shall send Form IM-64 requesting voluntary repayment in the following situations:~~

- ~~1. The client failed to report a change timely and the amount of benefits in error is \$76 or more;~~
- ~~2. The client reported a change timely but the worker failed to take action in the first month possible and the amount of benefits in error is \$251 or more; or~~
- ~~3. The client failed to report a change timely, the worker failed to take action in the first month possible, and the amount of benefits in error is \$251 or more.~~

~~In determining if there was an error in SDP Medical benefits and the period for which repayment should be requested, the worker shall keep in mind that the client is allowed ten days to report a change and must be given a ten-day notice of an adverse action. When repayment is requested, the worker should attempt voluntary restitution from the client effective with the first month that the worker should have correctly adjusted the budget.~~

~~Note: In cases of suspected fraud, the social service worker shall refer the case via Form ASD-63 to the Special Investigation Unit, Central Office, or in the Omaha Office, to the Omaha Special Investigation Unit. Once a case has been referred to the Special Investigation Unit, the worker shall take no action with regard to the prosecution of the suspected fraud except in accordance with instructions or approval by the Special Investigation Unit. However, the worker should complete normal case actions, including closing a case that is found to be ineligible and recovering benefits received in error.~~

~~4-006.02A Amount of Benefits in Error: The amount of benefits in error for a client who was AABD grant or SDP grant/medical or SDP Medical only but should have been SDP Medical with a Share of Cost, or who was SDP Medical with a Share of Cost but who should have had a larger Share of Cost, is the smaller of-~~

- ~~1. The amount of SDP Medical services received for that month; or~~
- ~~2. The amount of Share of Cost in error.~~

~~4-007 Computing an SDP Medical Budget: When computing an SDP medical budget, the worker uses the following steps to determine if the client is eligible for SDP/Medical only or SDP/Medical with excess:~~

- ~~1. Compare the client's net income to the percent of the Federal Poverty Level (FPL) (see 469-000-207). If the client's income is equal to or less than the FPL, the client is eligible for MA only. If the client's income is more than the FPL, go to step 2 to determine the amount of Share of Cost. For clients in long term care, go directly to step 2.~~
- ~~2. Subtract the medically needy income level from the client's net income to determine the amount of Share of Cost (see 469-000-203).~~

~~When a client enters long term care, the standard is not reduced to the long term care level or Assisted Living Waiver level until the first full month that the client resides in long term care or at a later month if criteria in 3-004.01A are met.~~

4-007.01 Income When the Eligible Spouse is in a Specified Living Arrangement and the Ineligible Spouse and/or Family Member(s) is in the Community

4-007.01A Definitions

Community Spouse: A spouse who is—

1. Not applying for or receiving assistance;
2. Not residing with the alternate care spouse unless the alternate care spouse is in the home and eligible for Home and Community-Based Waiver Services; and
3. Not in a hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for persons with developmental disabilities.

Family Members: Minor children residing with a community spouse, or dependent parents or siblings of the community spouse or alternate care spouse who reside with the community spouse and could be claimed as dependents for tax purposes.

Maintenance Allowance: The amount deducted from an alternate care spouse's income to meet the maintenance needs of the community spouse and family members.

Maintenance Need Standard: The income standard to which the community spouse's and other family members' income is compared for the purpose of determining the amount of allowance which may be made from the alternate care spouse's income.

4-007.01B Allocation of Income: When computing the SDP medical assistance budget for an alternate care spouse in a specified living arrangement, only his/her income (calculated on side 1 of Form DA-4M) is considered. Income of a community spouse is not considered available to the alternate care spouse. Some of the income of the alternate care spouse may be allocated to the community spouse and/or family members to bring their income up to a minimum monthly amount. The amount which may be allocated is computed on side 2 of Form DA-4M. If the community spouse does not provide verification of his/her income, Form DA-4M budget is not used. Form DA-3M budget would be used for the client and no allocation of the client's income would be made to the community spouse.

When allocated allowances are not made available to the community spouse, the worker shall not deduct these allowances from the client's income on side one of Form DA-4M. The worker shall deduct allowances for other family members even if the institutionalized spouse does not make these allowances available to the family members.

~~The alternate care spouse must be residing in one of the following living arrangements for these special budgeting procedures to apply:~~

- ~~1. A long term care facility;~~
- ~~2. An Adult Family Home;~~
- ~~3. A Licensed Assisted Living Facility;~~
- ~~4. A Center for the Developmentally Disabled; or~~
- ~~5. Receiving services in a Home and Community Based Service Waiver.~~

~~If the spouse no longer meets the definition of a community spouse, i.e., s/he enters a specified living arrangement, spousal impoverishment budgeting stops the first month possible considering adequate and timely notice.~~

~~These budgeting procedures apply beginning with the month an eligible spouse enters a specified living arrangement (even if it is a partial month) and cease with the first full month the alternate care spouse is no longer in a specified living arrangement. An assessment and designation of resources must be completed.~~

~~The community spouse or other family member(s) must not be on assistance if s/he is included in this budgeting procedure. They may be eligible for assistance in their own right, but may choose not to apply if this is to their benefit.~~

~~4-007.01C Determining Ownership of Income: The worker shall verify all income to determine the amount of the income and the individual in whose name the income is received. If payment is made in the name of both spouses, half is considered available to each spouse. The worker shall divide income by the number of payees if payment is made in the name of one or both spouses and a third party. Only the spouse's proportionate share is considered available to him/her. If income is paid to one spouse and a third party but the verification reveals that the income is intended for both spouses, the worker shall include both spouses in the division to determine the proportionate share.~~

~~If income does not specify either spouse, one-half of the amount is considered available to each spouse.~~

~~The client may appeal the assumption of ownership of income.~~

~~4-007.01D Determining the Family Member's Maintenance Need Standard: To determine each family member's need standard, the worker -~~

- ~~1. Takes the percent of the Federal Poverty Level (see 469-000-203);~~
- ~~2. Subtracts the family member's gross income; and~~
~~Note: SSI is included as income.~~
- ~~3. Divides the result by 3.~~

~~The worker does a separate calculation for each family member. This is calculated on side 2 of Form DA-4M.~~

~~4-007.01E Determining the Spousal Maintenance Need Standard: To determine the community spouse's need standard, the worker -~~

- ~~1. Takes the percent of the Federal Poverty Level (see 469-000-203); and~~
- ~~2. Adds excess shelter costs, if any.~~

~~Excess shelter cost is the amount by which the rent or cost of home ownership (e.g. mortgage, taxes, insurance, cooperative/condominium maintenance fees) plus a utility standard exceed the prescribed shelter limit. The worker shall allow a utility standard even if utilities are included in the rent. The worker shall not prorate shelter costs even if someone lives with the community spouse. If the community spouse is paying board and room, the worker subtracts the food stamp allotment for one from the actual board and room paid to determine shelter. See 469-000-203 for the utility standard and the shelter limit. This is calculated on side 2 of Form DA-4M.~~

~~4-007.01F Determining the SDP Maintenance Allowance: To determine the amount of income from the alternate care spouse that may be allocated to the community spouse and other family members, the worker -~~

- ~~1. Takes the family maintenance need standard;~~
- ~~2. Adds the spousal maintenance need standard; and~~
- ~~3. Subtracts the gross income of the community spouse. SSI is included. If the community spouse has self-employment income, the worker uses adjusted gross income (after deducting the cost of operation).~~

~~This is calculated on side 2 of Form DA-4M.~~

~~The spousal maintenance allowance must not exceed the maximum in 469-000-203. However, if a court has ordered the client to make support payments to the spouse in excess of the maximum, the court order takes precedence over the maximum.~~

~~The worker shall notify the couple on Form IM-8 of the actual amount of the maintenance allowance, if any, which is being deducted from the alternate care spouse's income.~~

~~The couple may appeal the maintenance allowance. To support an increase in the maintenance allowance, either spouse must establish that the community spouse needs income above the maintenance allowance because of exceptional circumstances resulting in significant financial duress. If the couple wins their appeal, the community spouse may reserve more than the maximum maintenance allowance.~~

~~4-007.01F1 Income Provisions: The worker includes all income in the calculation, including SSI and income of minors. If the primary income – RSDI, SSI, earnings, etc., – is equal to or exceeds the maintenance need standard, the worker does not need to verify other income. The worker does not need to verify income for anyone if it is \$10 or less.~~

~~4-007.01G Budgeting the Alternate Care Spouse: The worker deducts the following amounts from the alternate care spouse's net earned and unearned income in computing the alternate care spouse's budget:~~

- ~~1. MNIL or FPL level (see 469 NAC 4-007, step 1 or step 2);~~
- ~~2. Guardian/Conservator fee;~~
- ~~3. Amount allocated to the community spouse and/or family member(s);~~
- ~~4. Medicare premium and/or health insurance premium. If the couple has a combined health insurance premium, the worker allows one-half of the amount on the client's budget.~~

~~This is calculated on side 1 of Form DA-4M.~~

~~For budget instructions see Appendix 469-000-340.~~

~~4-008 Required Copayments: Individuals who receive SDP assistance are exempt from paying copayments.~~

TITLE 469 ASSISTANCE TO THE AGED, BLIND, OR DISABLED PROGRAM

CHAPTER 1 GENERAL BACKGROUND

001. SCOPE AND AUTHORITY. The Assistance to the Aged, Blind, or Disabled Program was established to provide financial aid and medical assistance to individuals in need who are age 65 and older, or, who are age 64 and younger and have been determined to be blind or disabled according to the Retirement, Survivors, and Disabled Insurance or Supplemental Security Income Program via the Social Security Administration. The State Disability Program was established to provide financial aid and medical assistance to individuals who are blind or disabled and who meet the program definition of blindness or disability but do not meet the duration requirements.

002. DEFINITIONS. The following definitions apply:

002.01 ASSISTANCE TO THE AGED, BLIND, OR DISABLED PAYMENT. The financial assistance payment portion of the Assistance to the Aged, Blind, or Disabled Program.

002.02 ADEQUATE NOTICE. A notice of the case action, which includes a statement of what action is intended, the reason for the intended action, and the specific regulation that supports the action, or a change in federal or state law that requires the action.

002.03 AGED. An individual who is age 65 or older.

002.04 APPLICANT. An individual who is seeking an eligibility for himself or herself through the submission of an application.

002.05 APPLICATION. The request for Economic Assistance benefits submitted by, or on behalf of, an individual via a Department approved format.

002.06 APPLICATION DATE. For new and reopened cases, the date a valid application is received, or the received date by the Department on a paper application, a phone application, or an electronic application. When adding a program to a properly signed application, this is the date that the new program is requested.

002.07 APPLICATION SIGNATURE. Applications may be signed in writing, telephonic signature, or electronic signature.

002.08 APPLICATION SUBMISSION. Applications may be submitted in person, by mail, fax, phone, or electronic device.

002.09 APPROVAL OR DENIAL DATE. The date that the new or reopened case is determined eligible, or eligibility is denied, by the Department.

002.10 AVAILABLE RESOURCES. For the determination of eligibility, available resources include cash, or other liquid assets of any type, of real or personal property, or interest in property that the applicant or recipient owns and may convert into cash to be used for the care and support of the individuals applying.

002.11 AUTHORIZED REPRESENTATIVE. A person or organization authorized by an applicant, recipient, court, of competent jurisdiction to represent the applicant or recipient in any matters.

002.12 BLIND. A category of eligibility for individuals who are age 64 and younger and are blind.

002.13 BURIAL INSURANCE. Insurance whose terms specifically indicate that the proceeds can only be used to pay the burial expenses of the insured.

002.14 CASH SURRENDER VALUE. The amount in which the insurer will pay the owner if the policy is cancelled before maturity of the policy or death of the insured.

002.15 CATEGORICAL ASSISTANCE. Assistance administered by the Department. For the purposes of this definition, it includes the following programs: Aid to Dependent Children; Child Welfare Payment and Medical Services Program; Assistance to the Aged, Blind, or Disabled Program; State Disability Program; and Refugee Resettlement Program.

002.16 CONTRIBUTIONS OR CASH SUPPORT. Verified payments that are paid to or for State Disability Program recipient.

002.17 DEEMING. The process of determining the amount of income and resources of a parent or sponsor which must be considered available to meet the recipient's needs.

002.18 DEPARTMENT. The Nebraska Department of Health and Human Services.

002.19 DISABLED. A category of eligibility for individuals who are age 64 and younger and are disabled as determined by the Social Security Administration or State Review Team.

002.20 ELIGIBILITY DETERMINATION. An approval, denial, renewal, or termination of eligibility.

002.21 ELIGIBILITY OF RELEASE OF INFORMATION. Before information can be released about an applicant or recipient, the Department must obtain the applicant or recipient's written permission.

002.22 EQUITY. The fair market value of property minus the total amount owed on it.

002.23 ESSENTIAL PERSON. A spouse or other specified adult relative who is needed in the home full-time to help take care of the aged, blind, or disabled recipient. The related individual will meet the following criteria:

- (A) The individual lives in the home of the recipient;
- (B) The individual is not eligible for medical assistance under another program;
- (C) It has been established, via the Assistance to the Aged, Blind, or Disabled Essential Person Medically Necessary Form, that the individual's presence is medically necessary in the home, full-time, in order to assist the recipient with the recipient's needs and well-being.

002.24 FAIR MARKET VALUE. The price an item of a particular make, model, size, material, or condition will sell for on the open market.

002.25 GRANT CASE. A case receiving a state supplement payment. Either term, grant or payment, may be used to make reference to the state supplement.

002.26 HEARING. An administrative proceeding before the Director of Children and Family Services, or the Director's representative.

002.27 HOME. Any shelter which the individual owns and uses as his or her principle place of residence. The home includes any land on which the house is located and any related outbuildings necessary for the operation of the residence.

002.28 IN-KIND INCOME. The value of food, clothing, shelter, or other items received in lieu of wages.

002.29 IRREGULAR INCOME. Earned or unearned income which varies in the amount from month-to-month, or, which is received at irregular intervals.

002.30 LEGAL GUARDIAN. An individual appointed by a court of competent jurisdiction to be in charge of the affairs for a person who cannot effectively manage his or her own affairs due to his or her incapacity.

002.31 NOTICE OF ACTION. A statement sent by the Department to an applicant, recipient, or their authorized representative that includes a short, plain statement of actions taken by the Department, the factual reasons for the actions, and the references of the applicable regulatory laws that authorize the actions.

002.32 PARENT OR RELATIVE CAREGIVER. A relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and is one of the following:

- (A) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;
- (B) The spouse of such parent or relative, even after the marriage has terminated by death or divorce;
- (C) Another relative of the child based on blood, adoption, or marriage recognized by the State of Nebraska, or an adult with whom the child is living, and who has verified guardianship or conservatorship of the child.

002.33 PAYMENT. A recipient receiving a state supplement grant. Either term, payment or grant, may be used to make reference to the state supplement.

002.34 POWER OF ATTORNEY. A written statement allowing one person to act for another person. A Power of Attorney may be authorized generally for the management of a specified business or enterprise, or for the accomplishment of a particular transaction.

002.35 RECIPIENT. An individual receiving assistance.

002.36 RETROACTIVE PAYMENT. Any payment made during the current month for a previous month.

002.37 SHARE OF COST. A recipient's financial out-of-pocket obligation for State Disability Program medical services when countable income exceeds the medical maintenance income level. The share of cost amount is the difference between the recipient's countable income and the appropriate medical maintenance income level. This amount must be obligated or paid to medical providers before Medicaid will pay towards the remaining medical bills.

002.38 SPECIFIED LIVING ARRANGEMENT. The specified living arrangements are:

- (A) An adult family home
- (B) A long term care facility including assisted living with waiver,
- (C) An assisted living facility, or
- (D) A center for the developmentally disabled.

002.39 STATE DISABILITY PROGRAM. A program consisting of financial assistance and medical assistance, or medical assistance only. The term State Disability Program is used when reference is made to both the grant and medical portions of the program.

002.40 STATE DISABILITY PROGRAM MEDICAL. The medical assistance portion of the State Disability Program. Two types of state disability cases are included in the medical assistance only category:

- (A) State Disability Program medical assistance with no share of cost medical only is a case in which there is income sufficient to meet daily maintenance needs but insufficient to meet medical needs.
- (B) State Disability Program medical assistance with a share of cost medical only is a case in which there is sufficient income to meet daily maintenance needs and a portion, but not all the unit's medical needs. The case is opened for medical assistance with no payment for medical services made until the share of cost is obligated toward medical services that have been paid for.

002.41 STATE DISABILITY PROGRAM PAYMENT. The financial assistance payment portion of the State Disability Program.

002.42 STANDARD OF NEED. The maximum standard allowed according to eligible unit size and living arrangement.

002.43 THIRD PARTY MEDICAL PAYMENT. A payment from any health insurance plan, individual or group, for medical expenses.

002.44 TIMELY NOTICE. A notice of case action dated and mailed at least ten calendar days before the date the action becomes effective.

002.44 WITHDRAWAL. A voluntary written retraction of an application.

003. APPLICANT OR RECIPIENT RESPONSIBILITIES. The applicant or recipient is required to:

- (A) Provide complete and accurate information. State and federal law provides penalties of a fine, imprisonment, or both for individuals found guilty of obtaining assistance or services, for which they are not eligible, by making false statements or failing to report any changes in their circumstances within the timeframe allowed, depending upon the request and its requirements;
- (B) Report a change in circumstances no later than ten days following the change. This includes reporting:
 - (i) Change of address;
 - (ii) Change in living arrangement;
 - (iii) Change of payee;
 - (iv) Change of payment method for grant such as a debit card, bank account, or facility resident account;
 - (v) Disability or blind status;
 - (vi) Monthly expenses;
 - (vii) Resources or other financial circumstances;
 - (viii) Employment status;
 - (ix) The composition of the household;
 - (x) A temporary absence from the home of any unit member; and
 - (xi) Changes in the amount of monthly income, including:
 - (1) All changes in unearned income; and
 - (2) Changes in the source of employment, in the wage rate, and in employment status, such as part-time to full-time or fulltime to part-time. For reporting purposes for Assistance to the Aged, Blind, or Disabled Program, 30 hours per week is considered full-time;
- (C) Present his or her medical card to providers;
- (D) Inform the medical provider and Department of any health insurance plan, any individual, or any group that may be liable for his or her medical expenses;
- (E) Cooperate in obtaining any third party medical payments;
- (F) Enroll in a health plan and maintain enrollment if:
 - (i) One is available to the applicant or recipient;
 - (ii) The applicant or recipient is able to enroll on his or her own behalf; and
 - (iii) The Department has determined that enrollment in the plan is cost effective;
- (G) Reimburse to the Department or pay the provider any third party medical payments received directly for services which are payable by State Disability Program or the Nebraska Medicaid Program;
- (H) Pay any unauthorized medical expenses;
- (I) Pay any required medical copayment;
- (J) Cooperate with state and federal quality control; and
- (K) Contact the agency for an interview as advised by the agency.

003.01 SANCTION FOR REFUSAL TO COOPERATE. Failure to cooperate with the Department may result in a loss of benefits.

003.01(A) SANCTION FOR NON-COOPERATION WITH THE CHILD SUPPORT PROGRAM. If the applicant or recipient fails, or refuses, to cooperate and there is no good cause shown, a sanction will be applied. If the reason for the noncooperation is the applicant or recipient's failure, or refusal, to provide information about, or obtain third-party resources, the applicant or recipient is ineligible. Eligibility of a child, or the children, is not affected. Ineligibility continues for the applicant or recipient until the individual cooperates.

003.01(B) SANCTION FOR NON-COOPERATION WITH QUALITY CONTROL. The applicant or recipient is expected to cooperate with state and federal quality control as a condition of eligibility. If an applicant or recipient fails to cooperate, the individual is ineligible for one month.

004. APPLICANT'S AND RECIPIENT'S RIGHTS. The applicant or recipient has the right to:

- (A) Apply. Anyone who wishes to apply for assistance must be given the opportunity to do so. No one is denied the right to apply for public assistance;
- (B) Action on the individual's application for assistance within the allowed timeframe per regulation;
- (C) Adequate notice of any action affecting his or her application or assistance case;
- (D) Appeal to the Director for a hearing on any action, or inaction, with regard to an application, the amount of the assistance payment, or failure to act within the allowed timeframe per regulation. The appeal must be filed in writing within 90 days of the action or inaction.
- (E) Have his or her information treated confidentially;
- (F) Have his or her civil rights upheld. No person may be subjected to discrimination on the grounds of his or her race, color, national origin, sex, age, disability, religion, or political belief; and
- (G) Have the program requirements and benefits fully explained.

005. APPLICATION SUBMITTAL. An application for assistance may be made in person, by mail, telephone, fax, or electronic submission and may be made by the applicant, the applicant's guardian or conservator, an individual acting under a duly executed power of attorney, or another person authorized to act for the applicant.

005.01 VALID APPLICATION. An application is considered valid the date it is received by the Department and contains:

- (A) Name;
- (B) Address; and
- (C) Proper signature of the applicant or authorized representative.

005.02 ALTERATIONS TO THE APPLICATION. Information may be added to an application up to the decision date.

005.03 ACTION TAKEN ON APPLICATIONS WITHIN ALLOWED TIMEFRAMES PER REGULATION. Eligibility determinations are made 45 days from the date of the application for the blind or aged category, and within 60 days from the date of application for the disabled category.

005.04 STATE DISABILITY PROGRAM MEDICAL APPLICATION WITH SHARE OF COST. An application for State Disability Program medical assistance for an individual with a share of cost who has a medical need may be approved with no medical payments authorized until the applicant has met the share of cost obligation.

005.06 ASSISTANCE TO AGED, BLIND, OR DISABLED AND STATE DISABILITY PROGRAM APPLICATION WITH EXCESS RESOURCES. An application for assistance for an individual who has excess resources is denied. The applicant can reapply when the resources have been spent down.

005.07 APPLICATION WITHDRAWAL. The applicant may voluntarily withdraw an application verbally or in writing. A notice of action is sent to the applicant.

005.08 AUTHORIZATION FOR RELEASE OF INFORMATION. The applicant or recipient must sign a release of information form if the Department requests.

005.09 NEW APPLICATION NEEDED. A new application is required after one calendar month of ineligibility.

005.10 NOTICE OF FINDING. A notice of action is sent to inform the applicant or recipient of any action affecting the assistance case. The types of notices are:

005.10(A) ADEQUATE NOTICE. An adequate notice includes a statement of what actions are being taken, the reasons for the intended actions, and the regulation that support the actions or the change in federal, or state, law that requires the actions.

005.10(B) TIMELY NOTICE. A timely notice is dated and mailed at least ten calendar days before the date that action would become effective, which is always the first day of the month.

005.10(C) ADEQUATE AND TIMELY NOTICE. In cases of intended adverse action, including action to discontinue, terminate, suspend, or reduce assistance, or to change the manner, or form, of payment, or service, to a more restrictive method, such as a protective payee, the applicant or recipient is given adequate and timely notice.

005.11 SITUATIONS REQUIRING ADEQUATE NOTICE. In some instances, timely notice is not needed, but adequate notice is still required. Consult the Guidance Document for a complete listing of these situations.

005.12 WAIVER OF NOTICE. An applicant or recipient may agree to waive his or her right to a timely notice in situations requiring timely notice by providing a signed statement indicating his or her choice to waive the notice.

005.13 NOTICES IN FRAUD CASES. At least five days advance written notice is given if:

(A) The agency has facts indicating that action should be taken to discontinue, suspend, terminate, or reduce assistance because of probable fraud by the applicant or recipient; and

(B) The facts have been verified where possible through collateral sources.

005.14 CONTINUATION OF BENEFITS DURING AN APPEAL. In cases of adverse action, a timely and adequate notice is sent. When the applicant or recipient requests an appeal hearing within ten days following the date a notice of action is mailed, the adverse action is not taken until a fair hearing decision is made. This regulation does not apply to those situations where only an adequate, but not timely, notice is needed.

005.14(A) ON-GOING CASE MANAGEMENT. Normal case activities, and implementing changes to the assistance case, that are not directly related to the appeal issue is still completed.

005.14(B) ADVERSE ACTION Adverse action pending an appeal is not carried out if:

- (i) The case action being appealed required adequate and timely notice;
- (ii) The applicant or recipient requests an appeal hearing within ten days following the date the notice of finding is mailed; and
- (iii) The applicant or recipient does not refuse continued assistance.

005.14(C) RECOUPMENT CIRCUMSTANCES. If the appealed action is sustained by the hearing decision, the benefits received by the applicant or recipient while the hearing was pending will be subject to recoupment.

005.15 REFUSAL OF CONTINUED BENEFITS DURING AN APPEAL. An applicant or recipient has the right to refuse the continuation of benefits pending an appeal hearing by checking the statement to that effect on the Request for Fair Hearing form, or by handwriting a refusal request.

005.16 REDETERMINATION OF ELIGIBILITY FOR THE AGED, BLIND, OR DISABLED PAYMENT OR STATE DISABILITY PROGRAM. Whenever there is a reported, or suspected, ineligibility of benefits for an applicant or recipient, immediate action to determine current eligibility is taken. A review and eligibility determination is completed according to the following:

005.16(A) REDETERMINATION FOR THE ASSISTANCE TO THE AGED, BLIND OR DISABLED PROGRAM. Every twelve months for the Assistance to the Aged, Blind, or Disabled Payment program, although the eligibility may be redetermined in less than twelve months to coordinate review dates for more than one program.

005.16(B) REDETERMINATION FOR THE STATE DISABILITY PROGRAM. At the end of twelve months or the disability ruling by a medical consultant for the State Disability Program medical assistance only, or State Disability Program medical assistance with a share of cost and no further medical needs are apparent or indicated. The disability time frame from the medical consultant may dictate less than twelve months of eligibility and the individual is ineligible when the disability ruling ends. The case is then closed and a notice sent.

005.16(C) REDETERMINATION FOR SUPPLEMENTAL SECURITY INCOME RECIPIENTS. Every twelve months, or less, for a recipient who are current pay Supplemental Security Income status. An application is not required at the time of the review.

005.16(D) REDETERMINATION FOR SUPPLEMENTAL SECURITY INCOME 1619(b) PROVISION RECIPIENTS. Every twelve months, or less, for individuals who are determined eligible by Supplemental Security Income for the 1619(b) provision are not required to complete an application at the time of review.

005.16(E) TEMPORARY NONPAY STATUS FOR SUPPLEMENTAL SECURITY INCOME RECIPIENTS. A determination of eligibility review is not required for periodic Supplemental Security Income non-pay status for income due to an extra pay period.

005.17 INCOME REVIEW. An income review is completed every twelve months for the Assistance to the Aged, Blind, or Disabled Payment program.

005.17(A) INCOME REVIEW NOT REQUIRED. An income review is not required for recipients of Supplemental Security Income.

005.18 DISABILITY REVIEW. When the initial disability determination was made by the Department, all procedures necessary for a redetermination of disability are required for recipients of the Assistance to the Aged, Blind or Disabled payment program or the State Disability Program. A redetermination of disability must be made no later than twelve months after the initial determination of disability.

005.19 PRUDENT PERSON PRINCIPLE. When the statements of the client are incomplete, unclear, or inconsistent, or when other circumstances in the particular case indicate to a prudent person that further inquiry must be made, additional verification is obtained before eligibility is determined.

005.19(A) PRIMARY RESPONSIBILITY. The client has the primary responsibility for providing verification of information relating to eligibility.

005.19(B) VERIFICATION METHODS. Verification may be supplied in person, through electronic submission, the mail, or another source.

005.19(C) AVAILABLE ASSISTANCE. When it would be extremely difficult, or impossible, for the individual to provide verification in a timely manner, the individual may ask the Department for assistance.

TITLE 469 ASSISTANCE TO THE AGED, BLIND, OR DISABLED PROGRAM

CHAPTER 2 ELIGIBILITY REQUIREMENTS

001. ELIGIBILITY. In order to be eligible to receive assistance under the Aged, Blind, or Disabled Program the individual must:

- (A) Submit an application;
- (B) Be a United States citizen or have a qualified alien status as required by Nebraska Revised Statute (Neb. Rev. Stat.) § 4-111;
- (C) Be a Nebraska resident;
- (D) Have a Social Security number;
- (E) Meet the age requirements of section 005;
- (F) Be responsible for relative financial support as required by section 006;
- (G) Be determined blind or disabled by the Social Security Administration; Meet resource limits;
- (H) Meet income requirements;
- (I) Cooperate in obtaining third-party medical payments; and
- (J) Not be receiving any other state funded cash assistance.

001.01 MEDICAL ASSISTANCE. All medical assistance criteria in this title refers to the State Disability Program only.

002. APPLICATION. An application for Assistance to the Aged, Blind, or Disabled or State Disability Program must be completed and submitted.

003. VERIFYING CITIZENSHIP OR ALIEN STATUS. The applicant or recipient must sign an attestation form required by Neb. Rev. Stat. § 4-111. The applicant or recipient's status must be able to be verified in accordance with Neb. Rev. Stat. § 4-112.

004. RESIDENCE. To be eligible, the applicant or recipient must be living in the state voluntarily with the intent of making Nebraska their home. Residence starts the month the applicant moves into the state, even if the individual received categorical assistance in another state.

004.01 INCAPABLE OF INDICATING INTENT. An individual is considered in capable of indicating intent is:

- (A) The individual has an Intelligence Quotient of 49 or less, or a mental age of seven or less, based on tests acceptable to the State developmental disabilities agency;
- (B) The individual is judged legally incompetent;
- (C) Medical documentation obtained from a physician, psychologist, or other person licensed by the State in the field of developmental disability, or other documentation

acceptable to the State supports a finding that the individual is incapable of indicating intent.

004.02 RESIDENCE OF APPLICANTS ENTERING THE STATE INTO A LICENSED HOME. The intent of an individual to establish Nebraska as his or her residence is investigated if the individual comes into the state and immediately enters a facility licensed by the Nebraska Department of Health and Human Services Division of Public Health.

- (A) The applicant is considered a Nebraska resident if the individual entered because they:
 - (i) Desired to be near close friends or relatives in the State;
 - (ii) Previously resided in the State; or
 - (iii) Has other contacts in the State.
- (B) If the applicant indicates a plan to establish residence, but the situation seems to indicate otherwise, additional factors will be reviewed, such as:
 - (i) When the individual entered the state;
 - (ii) Whether, or not, the individual owns property of any kind in another state;
 - (iii) The place of residence of the spouse or other immediate family members;
 - (iv) The medical eligibility in the previous state of residence for the individual;
 - (v) How the individual was referred to the facility in Nebraska, such as by a family member, hospital staff, or social worker in the previous state;
 - (vi) Where the individual would reside if the facility placement was no longer needed;
and
 - (vii) Any other related factors.

004.03 PLACEMENT IN AN OUT-OF-STATE INSTITUTION. If a state arranges for an individual to be placed in an institution located in another state, the state making the placement is the individual's state of residence, regardless of the individual's indicated intent or ability to indicate intent.

004.04 INDIVIDUALS RECEIVING A STATE SUPPLEMENTAL PAYMENT. For any individual who is receiving a State Supplemental Payment, the state paying the State Supplemental Payment is the state of residence.

004.05 INSTITUTIONALIZED INDIVIDUALS. The state where the institution is located is the individual's state of residence unless it is determined that the individual is a resident of another state, according to the following:

- (A) Institutionalized individuals age 20 or younger, or age 21 or younger and who became incapable of indicating intent before reaching age 21, the state of residence is:
 - (i) That of the individual's parents or legal guardian at the time of placement;
 - (ii) That of the parents or legal guardian if the individual is institutionalized in that state.
- (B) Institutionalized individuals who became incapable of indicating intent at or after reaching age 21, the state of residence is the state in which the individual is physically present except where another state makes a placement.

004.06 NON-INSTITUTIONALIZED INDIVIDUALS. The following applies to individuals not residing in an institution:

004.06(A) AGE 20 AND YOUNGER. For an individual who is not institutionalized, who is age 20 or younger, and whose eligibility is based on blindness or disability, the individual's state of residence is the state where the individual is living. Any other individual who is not institutionalized, age 20 or younger is a resident of the state in which the individual is living other than on a temporary basis.

004.06(B) INDIVIDUALS AGE 21 AND OLDER. For individuals who are not institutionalized, but are incapable of indicating their intent regarding their residency, state residence is the state where the individual is living.

004.07 ABSENCE FROM THE STATE. Assistance is not denied because an individual has not resided in the state for a specific period of time.

004.07(A) TEMPORARY ABSENCE. An individual's eligibility may not be terminated because of that person's temporary absence from the state if the person intends to return. A temporary absence is typically 90 days or less.

004.07(B) LOSS OF STATE RESIDENCE. Eligibility ends if the family unit leaves Nebraska with the intent of establishing its home in another state;

- (i) A family unit may not receive an Assistance to the Aged, Blind, or Disabled payment or State Disability Program assistance from Nebraska beyond the month they have been found eligible for categorical assistance from another state;
- (ii) Individuals who leave the state for longer than two months may continue to receive an Assistance to the Aged, Blind, or Disabled payment or State Disability assistance in Nebraska if they are absent for a temporary purpose and intend to return.

004.07(C) OUT-OF-STATE MEDICAL. If an out-of-state provider does not sign an agreement with the State Disability Medical program or Medicaid, and accept the reimbursement rate, the individual receiving State Disability Program medical is liable for his or her own medical bills. Payments may be approved for services provided outside Nebraska in the following situations:

- (i) When an emergency arises from accident or sudden illness while a recipient is visiting in another state and the recipient's health would be endangered if care is postponed until the recipient returned to Nebraska or by traveling to Nebraska;
- (ii) When the recipient customarily obtains service in another state because the service is more accessible;
- (iii) When the recipient requires a medically necessary service that is not available in Nebraska but is available in another state; and
- (iv) When long term care services are provided in another state.

004.08 DISQUALIFICATION FOR MISREPRESENTING RESIDENCE. Any person convicted in federal or state court of having fraudulently misrepresented residence in order to obtain Assistance to the Aged, Blind, or Disabled payment or State Disability Program assistance in two or more states is ineligible for Assistance to the Aged, Blind, or Disabled payment or State Disability Program assistance for ten years from the date of conviction.

004.09 SOCIAL SECURITY NUMBER REQUIREMENT. All eligible members of the Assistance to the Aged, Blind, or Disabled Payment or State Disability unit must furnish Social Security numbers. The Social Security Number, in conjunction with other information, provides evidence of identity of the individual.

005. AGE. An applicant's age is considered in determining eligibility for Assistance to the Aged, Blind and Disabled benefits.

005.01 AGE LIMITS. To be eligible for Assistance to the Aged, Blind, or Disabled payment or State Disability Program, an individual must meet the following age limits:

- (A) To qualify as Aged, an individual must be age 65 or older;
- (B) To qualify as Blind, an individual must be age 64 or younger;
- (C) To qualify as Disabled, an individual must be age 64 or younger.

006. RELATIVE FINANCIAL RESPONSIBILITY. There are two categories of relative responsibility, spouse-for-spouse and parent-for-child.

006.01 SPOUSE FOR SPOUSE. A divorce dissolves the marriage of a couple and there is no longer spouse-for-spouse responsibility. A legal separation does not dissolve the marriage.

006.02 PARENT FOR CHILD. The income and resources of a parent is deemed to a child age 17 or younger if living in the same household.

007. BLINDNESS OR DISABILITY. The eligibility requirements and definitions for blindness and disability follow:

007.01 ELIGIBILITY REQUIREMENTS APPLICABLE ONLY TO BLIND OR DISABLED. All applicants for Assistance to the Aged, Blind, or Disabled payment or State Disability Program after January 1, 1974, must meet the medical definitions of blindness or disability of the Retirement, Survivors, Disability Insurance or Supplemental Security Income Programs as administered by the Social Security Administration. The determination by Social Security Administration that an individual is disabled or blind must be accepted for eligibility for Assistance to the Aged, Blind, or Disabled. In some cases, the State Review Team may make the determination of blindness or disability.

007.02 DEFINITIONS OF DISABILITY AND BLINDNESS. The following definitions are used by the Social Security Administration and the Department's designated Medical Consultant Review process in making a determination for the Assistance to the Aged, Blind, or Disabled payment program and the State Disability Program:

- (A) An individual is considered disabled for the Assistance to the Aged, Blind, or Disabled payment program when it is not possible for the individual to engage in any substantial gainful activity due to any medically determined physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months. A child through age 17 is considered disabled if the individual suffers from any medically determined physical or mental impairment of comparable severity.
- (B) An individual is considered blind for the Assistance to the Aged, Blind, or Disabled payment program if that individual has central visual acuity of 20 over 200, or less, in

the better eye with correcting lens, or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20 degrees.

- (C) An individual is considered disabled for the State Disability Program if it is not possible for the individual to engage in any substantial gainful activity by reason of a medically determined physical or mental impairment which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 6 months from onset and not more than 12 months. The Department's designated medical reviewer always makes the determination for State Disability Program. The individual cannot be ineligible for other Medicaid programs.

007.03 DETERMINATION OF ELIGIBILITY FOR THE BLIND OR DISABLED

- (A) When the Social Security Administration has made the disability determination, all eligibility requirements for the Assistance to the Aged, Blind, or Disabled payment program, except for the disability determination, are the responsibility of the Department.
- (B) To have the State's Medical Consultant make the disability determination for the State Disability Program the individual must be denied by Social Security for a 'lack of duration'.
- (C) To be eligible for Assistance to the Aged, Blind, or Disabled payment program, the individual must have been determined disabled by the Social Security Administration, and be currently eligible to receive Supplemental Security Income or Retirement, Survivors, Disability Insurance, or be determined disabled by the State Review Team.
- (D) To be eligible for a State Disability Program payment, the individual must have been denied Supplemental Security Income due to a 'lack of duration' of their disability, and was determined disabled by the Department's Medical Consultant.
- (E) The cost of medical examinations to determine initial or continuing State Disability eligibility may not exceed the established Medicaid allowable fee. The cost of a medical examination to determine eligibility is an allowable Title XIX expenditure if the individual is eligible for medical benefits on the date of the examination. If the initial application is rejected, the cost of the examination must be paid from administrative funds.

008. INSTITUTIONALIZATION. An individual may qualify for Assistance to the Aged, Blind, or Disabled while living in an institution only if the institution is subject to the licensing requirements of the Department.

008.01 PATIENTS IN A MEDICAL INSTITUTION AND CONVALESCENT LEAVE. Assistance may be provided for an individual who is a patient in a medical institution, such as a hospital or nursing home, if all other eligibility factors are met. Psychiatric units of medical hospitals are considered part of the medical institution and are not subject to the restriction on psychiatric care identified previously.

008.02 LICENSED INSTITUTIONS. Nebraska currently has the following public institutions licensed for the treatment of mental diseases and developmental disabilities:

- (A) Hastings Regional Center;
(B) Norfolk Regional Center;
(C) Lincoln Regional Center; and

(D) Beatrice State Developmental Center.

008.03 LEVELS OF CARE. The previously listed facilities may be licensed by the Department's Division of Public Health and certified under Medicaid as one or more of the following types of facilities:

- (A) Acute hospital;
- (B) Psychiatric; and
- (C) Intermediate care facility for persons with developmental disabilities.
 - (i) Coverage may be provided to persons of all ages in the previously listed facilities for acute hospital and intermediate care facility for persons with developmental disabilities levels of care if the individuals are otherwise determined eligible.
 - (ii) Psychiatric care is available to State Disability Plan medically eligible individuals.
 - (iii) An individual is not eligible to receive an Assistance to the Aged, Blind, or Disabled Payment or State Disability Program if in a prison, unless the individual is hospitalized while in prison, jail or in a veteran's hospital.

008.04 PATIENTS IN A MEDICAL INSTITUTION. Assistance may be provided for a recipient who is a patient in a medical institution, such as a hospital or nursing home, if all other eligibility factors are met. Psychiatric wards of medical hospitals are considered part of the medical institution and are not subject to the restriction on psychiatric care.

008.05 CONVALESCENT LEAVE. Eligibility of individuals on convalescent leave or visit from public medical institutions is determined in accordance with the usual program standards. Eligibility is based on their living situation and needs while on leave.

008.06 RESPONSIBILITY FOR DETERMINING NATURE OF INSTITUTION. The Department determines the public, or private, nature of an institution, and whether a public institution is one in which otherwise eligible individuals may receive assistance.

008.07 CRITERIA FOR DETERMINING THE PUBLIC NATURE OF INSTITUTIONS. Prisons and jails are designated in the law as public institutions whose inmates are ineligible to receive assistance. Governmental participation in financial support of an institution, in policy formulation, or in the application of policy to specific situations, is evidence of the public control which makes it a public institution. Payment from public funds to, or in support of, individuals in a private institution is not considered governmental participation in support of the institution.

009. RESOURCES. The total equity value of available non-excluded resources of the individual or individual and responsible relative, or individual and essential person is determined and compared with the established maximum for available resources which the individual may own and still be considered eligible. If the total equity value of available non-excluded resources exceeds the established maximum, the individual is ineligible. The assets of each spouse are considered available to the other unless there is a divorce.

- (A) Resource limits are:
 - (i) \$2000 for a single individual; or
 - (ii) \$3,000 for a couple.

009.01 COUNTED RESOURCES. For a listing of counted resources, please refer to the Guidance Document.

009.02 VERIFICATION OF RESOURCES. Before determining eligibility of an Assistance to the Aged, Blind, or Disabled or State Disability applicant who does not receive Supplemental Security Income, all individuals' resources must be verified and documented in the case record. Please refer to the Guidance Document for a listing of resources.

009.03 DEFINITION OF AVAILABLE RESOURCES. For the determination of eligibility, available resources include cash or other liquid assets or any type of real or personal property or interest in property that the applicant or recipient owns and may convert into cash to be used for support and maintenance.

009.03(A) UNAVAILABILITY OF RESOURCE. Regardless of the terms of ownership, if it can be documented in the case record that the resource is unavailable to the individual, the value of that resource is not used in determining eligibility.

004.03(B) EXCLUDED RESOURCES. Disregarded income is also disregarded as a resource unless there is regulation stating otherwise. Additionally, the following resources are excluded:

- (i) Real property which the individual owns and occupies as a home;
- (ii) Household goods and personal effects of a moderate value used in the home;
- (iii) Cash surrender value of life insurance policies with combined face values of \$1,500 or less per individual;
- (iv) A specified maximum in proceeds from an insurance policy irrevocably assigned for the purpose of burial of the applicant or recipient;
- (v) Irrevocable burial trusts up to the specified amount per individual and the interest if irrevocable;
- (vi) Burial space items or a contract for the purchase of burial space items owned by an applicant or recipient or designated family member;
- (vii) Burial space;
- (viii) Up to \$1,500 set aside for burial arrangements;
- (ix) One motor vehicle if it is used for employment, medical transportation, or as the applicant or recipient's home. If the individual has more than one motor vehicle, the individual may designate the vehicle to be excluded;
- (x) Certain trusts, including guardianships, where the person in whose behalf the trust is established may be ineligible but this may not affect eligibility of the other person in the household unit;
- (xi) Certain life estates in real property;
- (xii) Income received annually, semi-annually, or quarterly which is prorated on a monthly basis and included in the budget, during the period of time it is being considered as income;
- (xiii) The unspent portion of any Retirement, Survivors, Disability Insurance or Supplemental Security Income retroactive payments for six months following the month of receipt;
- (xiv) U.S. savings bonds, for the initial six-month mandatory retention period;
- (xv) A resource used in the recipient's trade or business;
- (xvi) A maximum of \$6,000 equity value of nonbusiness property, real or personal, that is used to produce goods or services essential to daily activities;
- (xvii) The unspent portion of an Aged, Blind, or Disabled or State Disability Program retroactive payment for six months following the month of receipt;

- (xviii) Victims compensation payments, such as payments received from a state or local government to aid victims of crime. These are excluded for nine months beginning with the first month after receipt;
- (xix) Payments received from a state or local government to assist in relocation, excluded for nine months beginning with the first month after receipt;
- (xx) An unavailable job-related retirement account that is held by the employer;
- (xxi) An Individual Development Account, set up for postsecondary education or purchase of an individual's first home;
- (xxii) Medicare set-aside accounts that may be used only for payment of medical bills of Medicare beneficiaries; and
- (xxiii) Funds held in an Achieving a Better Life Experience account, also known as an ABLE account.

009.04 DETERMINATION OF OWNERSHIP OF RESOURCES. A resource which appears on record in the name of an applicant or responsible relative is considered as belonging to the applicant.

009.04(A) JOINTLY OWNED RESOURCES. When an applicant has a jointly owned resource that is considered available, the following applies:

009.04(A)(i) RESOURCES OWNED WITH OTHER RECIPIENTS. If an applicant owns a resource with another individual who is on categorical assistance, the value of the resource will be divided by the number of owners, regardless of the terms of ownership.

009.05 CONSIDERATION OF RELATIVE RESPONSIBILITY. When the applicant has a relative responsibility for an individual in another assistance unit, and the responsible relative owns the resource, the value must be divided by the number of units to determine the amount to be counted to each. An Assistance to the Aged, Blind, or Disabled or State Disability Program Medical Assistance or State Disability Program Medical Assistance couple is considered one unit.

009.06 INHERITANCE. When an applicant receives an inheritance, verified payment of debts or obligations of the deceased are subtracted from the settlement.

009.07 VALUE AND EQUITY. Equity is the actual value of property or the price at which it could be sold, less the total of encumbrances against it such as the mortgages, mechanic's liens, other liens and taxes, and estimated selling expenses.

009.07(A) SECURED DEBTS. The total value of unpaid personal taxes and other personal debts secured by mortgages, liens, promissory notes, and judgments, other than those on which the statute of limitations applies, is subtracted from the gross value of the encumbered property to find the equity.

009.07(B) DETERMINATION OF VALUE. The use of public tax records may be used to determine the sale value of a resource.

009.08 TYPES OF RESOURCES. Resources can be divided into two categories: liquid and non-liquid.

009.08(A) LIQUID RESOURCES. Liquid resources are assets that are in cash or financial instruments which are convertible to cash. For a list of liquid resources, please refer to the Guidance Document.

009.08(A)(i) CASH, SAVINGS, INVESTMENTS, MONEY DUE. Cash on hand, cash in checking and savings accounts, salable stocks or bonds, certificates of deposit, promissory notes and other collectable unpaid notes or loans and other investments are available resources.

009.08(A)(i)(1) ABLE ACCOUNTS. In December 2014, the Achieving a Better Life Experience (ABLE) Act was signed into law authorizing individuals with disabilities to save more than the Social Security limit in assets (\$2,000).

009.08(A)(ii) LAND CONTRACTS. A land contract, or real estate contract of sale, is considered a resource to the seller of the property if the contract can be sold.

009.08(A)(iii) FUNDS SET ASIDE FOR BURIAL. A specified maximum may be disregarded if it is set aside for the purpose of paying burial expenses. The individual may choose to put the money in one of the following:

- (a) A pre-need burial trust. If the individual has an irrevocable burial trust for more than the specified maximum, the excess is considered an available resource;
- (b) A policy of burial insurance. If the individual has irrevocably assigned more than the specified maximum in burial insurance, the excess is not an available resource; or
- (c) A maximum of \$1,500 designated for burial. These funds may be in an account or in an insurance policy.

009.08(A)(iii)(1) IRREVOCABLE BURIAL TRUSTS. If the money was put in an irrevocable burial trust on July 16, 1982, or later, it is not considered an available resource. According to Nebraska law, an individual is allowed to deposit funds up to the specified maximum in an irrevocable trust fund created for the purpose of a prearranged funeral plan.

009.08(A)(iii)(1)(a) INTEREST ON BURIAL TRUSTS. For irrevocable burial trusts contracted on December 31, 1986, or earlier, the individual was allowed to stipulate whether the interest, or dividends, accruing to the trust fund were irrevocable. If the interest, or dividends, are irrevocable, they are disregarded.

009.08(A)(iii)(2) BURIAL INSURANCE. Burial insurance is defined as insurance whose terms specifically require that the proceeds can be only be used to pay the burial expenses of the insured, or a life insurance policy that is irrevocably assigned for the specific purpose of burial. When the proceeds of a life insurance policy are irrevocably assigned for the purpose of burial, the cash value is not available and is disregarded as a resource.

009.08(A)(iii)(3) MONEY DESIGNATED FOR BURIAL. Up to \$1,500 may be disregarded for each individual if it is set aside for the purpose of paying burial arrangements for the individual, or the individual's spouse. This exclusion is in addition to the burial space exclusion. This exclusion is not in addition to a burial trust or burial insurance that has been irrevocably assigned.

009.08(A)(iii)(4) BURIAL SPACES. The value of burial spaces held for the purpose of providing a place for the burial of the individual, their spouse, and members of the individual's immediate family are not counted as an available resource. The immediate family includes minor and adult children, including adopted children and stepchildren, brothers, sisters, parents, adoptive parents, and the spouses of these individuals. A burial space includes a crypt, mausoleum, urn, casket, marker, vault, or other repository for the remains of a deceased person. This exemption also applies to markers, vaults, and the charges for opening and closing the grave, but does not include services or burial fees. These items are exempt only if they are actually purchased. If the recipient has a life insurance policy for the purchase of burial items, the cash value is included in the specified maximum if the policy is irrevocably assigned.

009.08(A)(iii)(5) BURIAL SPACE ITEMS HELD IN A CONTRACT. Burial space items may be disregarded when they are held for an individual by way of a contract. To meet the requirement that the item is actually purchased, the contract must state that the individual has purchased a particular item for a specified price. Revocability is not an issue for burial space contracts as long as the agreement itself represents the individual's ownership.

009.08(A)(iv) LIFE INSURANCE TERMS. Definitions regarding life insurance that may be used in determining eligibility are:

- (a) Cash surrender value is the amount the insurer will pay, usually to the owner, upon cancellation of the policy before death of the insured or before maturity of the policy.
- (b) Face value is the basic death benefit of the policy exclusive of dividend additions or additional amounts payable because of accidental death or under other special provisions. In determining the face value of a policy, the original face value of the policy is used.
- (c) Insured refers to the person whose life is insured.
- (d) Insurer refers to the company that insures others.
- (e) Owner refers to the person who has the right to change the policy.

009.08(A)(iv)(1) CASH SURRENDER VALUE. Using the following criteria, the cash surrender value of life insurance owned by the recipient is considered a resource. If the combined original face value of all the life insurance policies owned by the recipient exceeds \$1,500, the cash surrender value of all the policies is considered a countable resource. Each person in the unit is allowed the \$1,500 exemption for the face value of their life insurance.

009.08(A)(iv)(2) ADJUSTMENT. The recipient can usually adjust a large insurance policy to a smaller amount providing limited protection and allowing the individual to benefit from accumulated savings.

009.08(A)(iv)(3) INTEREST AND DIVIDENDS. Interest and dividends actually paid to the recipient from all life insurance policies are treated as income unless the total is less than \$10 per individual.

009.08(A)(v) TRUST, GUARDIANSHIP, CONSERVATORSHIP, AND ANNUITY FUNDS. When a guardianship, conservatorship, annuity, or trust has been established on behalf of an individual and the individual who has applied has resources exceeding the total resource limit for an Aged, Blind, or Disabled Program grant program or State Disability Program grant or medical program, the trust, guardianship, conservatorship, or annuity will be verified if it is available to the applicant.

009.08(A)(v)(1) DEFINITIONS. For the purposes of these regulations, the following definitions apply.

- (a) ANNUITY. A right to receive periodic payments, either for life or a term of years.
- (b) BENEFICIARY. Any individual, or individuals, designated in the trust to receive any disbursement from the corpus of the trust, or from income generated by the trust, which benefits the party receiving it. A payment from a trust may include actual cash, as well as non-cash or property disbursements, such as the right to use and occupy real property.
- (c) GRANTOR. Any individual who creates a trust. It includes the following:
 - (i) The recipient;
 - (ii) The recipient's spouse;
 - (iii) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the individual or the individual's spouse or guardian or conservator; or
 - (iv) A person, including a court or administrative body, acting at the direction or upon the request of the recipient or the recipient's spouse.
- (d) IRREVOCABLE TRUST. A trust which cannot, in any way, be revoked by the grantor.
- (e) POOLED TRUST. A trust containing the assets of a disabled individual that is established and managed by a nonprofit association in a separate account solely for the benefit of a disabled individual.
- (f) REVOCABLE TRUST. A trust which can be revoked by the grantor. A trust which provides that the trust can only be modified or terminated by a court is considered to be a revocable trust, since the grantor, or representative can petition the court to terminate the trust. A trust called irrevocable, but which will terminate if some action is taken by the grantor, is a revocable trust for purposes of these regulations.
- (g) SPECIAL NEEDS TRUST. A trust containing the assets of an individual age 64, or younger, who is disabled and that is established for the sole benefit of that individual by a parent, grandparent, legal guardian, or a court.
- (h) TESTAMENTARY TRUST. A trust established through a will.

- (i) TRUST. For purposes of these regulations, a trust is any arrangement in which an individual, known as the grantor, transfers property to another person, known as the trustee, with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or certain designated beneficiaries. The trust must be valid under state law and manifested by a valid trust instrument of agreement. A trustee holds a fiduciary responsibility to manage the trust's corpus and income for the benefit of the beneficiaries.

009.08(A)(v)(2) TESTAMENTARY TRUSTS. Testamentary trusts may be excluded as resources, depending on the availability of the funds to the individual or their spouse as specified in the terms of the trust.

009.08(A)(v)(3) ANNUITIES.

009.08(A)(v)(3)(a). PURCHASED OR ANNUITIZED BEFORE FEBRUARY 8, 2006. Where the individual cannot assign or change the ownership or payee, the annuity is unavailable. A determination must then be made if a deprivation has occurred. If the expected return on the annuity is commensurate with the life expectancy of the individual, the annuity can be deemed actuarially sound and no deprivation has occurred.

009.08(A)(v)(3)(b). ANNUITY TRANSACTION ON OR AFTER FEBRUARY 8, 2006. Revocable and assignable annuities are a countable resource. A saleable annuity which has not been sold is a countable resource for the amount annuitized, less the payment amount already received. A saleable annuity which has been sold for a value consistent with the secondary market is a countable resource in the amount of the proceeds. If a saleable annuity is sold for less than a value consistent with the secondary market, it will be valued at the current secondary market amount.

2-009.08(A)(v)(3)(b)(i) ANNUITIES EXCLUDED FROM RESOURCES. An annuity which has been annuitized will be excluded from countable resources if it meets the following conditions:

- (1) The annuity is considered either an individual retirement annuity according to Internal Revenue Code, or a deemed Individual Retirement Account under a qualified employer plan by Internal Revenue Code;
- (2) The annuity is purchased with the proceeds from a simplified employee pension; and
- (3) The annuity is irrevocable and non-assignable, the individual who owned the retirement account or plan is receiving equal monthly payments with no deferral or balloon payments, and the scheduled payout period is actuarially sound based on the individual's life expectancy. The applicant or recipient must verify that the annuity meets these requirements.

009.08(A)(v)(4) REVOCABLE TRUSTS. In the case of a revocable trust:

- (a) The entire corpus of the trust is counted as an available resource to the applicant or recipient;
- (b) Any payments from the trust made to or for the benefit of the applicant or recipient are counted as income;
- (c) Any payments from the trust which are not made to, or on behalf of, the applicant or recipient are considered assets disposed of for less than fair market value; and
- (d) If the applicant or recipient must go to court to access the funds, the individual or guardian or conservator of the individual is allowed 60 days to initiate court action. For the applicant, 60 days from the approval date is allowed; for the recipient, 60 days from the notification of the requirement to file for access is allowed.

009.08(A)(v)(5) GUARDIANSHIPS OR CONSERVATORSHIPS. When a fund is established in the process of the appointment of a guardianship or conservatorship, determine if the funds are available without court approval.

- (a) The individual is ineligible for categorical assistance until the guardian gives the Department written notice of refusal to spend guardianship or conservatorship monies for the care and maintenance of the individual. In order to be considered current notice, it must be given within one year of its use in determining eligibility for categorical assistance.
- (b) After current notice has been given, the individual, if otherwise eligible, may receive benefits if all judicial remedies are pursued to determine the availability of the funds. This may include an appeal to the proper district court and, if necessary, to the Court of Appeals and the Nebraska Supreme Court.
- (c) Certain guardianships and conservatorships are not reasonably available and judicial review may be waived; these include some guardianships or conservatorships where the guardian or conservator's discretion is limited and certain guardianships or conservatorships established from the proceeds of a personal injury case on behalf of a child.
- (d) The child, guardian, or conservator must file a request for access to the funds in a court of competent jurisdiction within, for the applicant, 60 days from the approval date; for the recipient, 60 days from the notification of the requirement to file for access.
- (e) If the petition or application has not been filed after 60 days, the individual is no longer eligible for Aged, Blind, or Disabled payment or State Disability Program.

009.08(A)(v)(6) IRREVOCABLE TRUSTS.

009.08(A)(v)(6)(a) TRUSTS ESTABLISHED BEFORE AUGUST 11, 1993. For a qualifying trust established before August 11, 1993, the maximum amount that could have been distributed from either the income or principal is considered an available resource. A qualifying trust is a trust, or similar legal device, that was established by an applicant or recipient, or their spouse, under which:

- (1) The individual is the beneficiary of all or part of the payments from the trust; and
- (2) The amount of the distribution is determined by one or more trustees who are permitted to exercise any discretion with respect to the amount to be distributed to the individual and the distributable amount from a qualifying trust has no use limitation.

009.09(A)(v)(6)(a)(i) A trust that was established by an individual's guardian or legal representative, acting on the individual's behalf, falls under the definition of a qualifying trust. If an individual is not legally competent, for example, a trust established by a legal guardian, including a parent, using the individual's assets, can be treated as having been established by the individual, since that individual could not establish the trust for himself or herself.

009.08(A)(v)(6)(b) TRUSTS ESTABLISHED ON OR AFTER AUGUST 11, 1993. In accordance with Sections 1917 (c) and (d) of the Social Security Act, the following regulations apply to all trusts created on or after August 11, 1993:

- (i) These regulations apply to any recipient who establishes a trust, who is a beneficiary of a trust, and who is an applicant or recipient of the Aged, Blind, or Disabled, or State Disability Program. An individual is considered to have established a trust if their assets or assets of a spouse were used to form a part or the entire corpus of the trust other than by will. These include trusts established by:
 - (1) The individual;
 - (2) The individual's spouse;
 - (3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
 - (4) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- (ii) Where a trust includes the assets of another person, as well as the assets of the applicant or recipient, or this individual's spouse, the rules in this section apply only to the portion of the trust attributable to the assets of the applicant or recipient and this individual's spouse.

009.08(A)(v)(6)(c) PAYMENT CAN BE MADE FROM TRUST. The following applies when payment may be made to the individual or the individual's spouse under the terms of the trust:

- (1) Payments from income, or from the corpus, made to or for the benefit of the applicant or recipient or this individual's spouse are treated as income to the individual.
- (2) If there are any circumstances under which payment from the trust corpus could be made to or for the benefit of the applicant or recipient, or this individual's spouse, the portion of the corpus from which payment to or for the benefit of the applicant or recipient, or this

individual's spouse could be made must be considered a resource that is available to the individual.

- (3) Any portion of the corpus that could be paid to or for the benefit of the applicant or recipient, or this individual's spouse is treated as an available resource.
- (4) Payments from income or from the corpus that are not made to or for the benefit of the applicant or recipient, or this individual's spouse, are treated as transfers of assets for less than fair market value.

009.08(A)(v)(6)(c)(i) EXCEPTIONS. A trust is not considered available if it is established for a disabled recipient age 64 or younger, receiving or eligible to receive State Supplemental Income; Retirement, Survivors, Disability Insurance; or Aid to the Aged, Blind, or Disabled and is:

- (1) A Special Needs Trust containing the assets of the applicant or recipient and established solely for the benefit of this individual by the individual's parent, grandparent, legal guardian, or a court if the State will receive all amounts remaining in the trust upon the death of the individual or upon termination of the trust up to the amount of total medical assistance paid on behalf of the individual;
or
- (2) A Pooled trust containing the assets of the applicant or recipient and is:
 - (a) Established and managed by a non-profit association; or
 - (b) A separate account maintained for each beneficiary of the trust, but, for purposes of investment and management of assets, the trust pools these accounts;
 - (c) Accounts in the trust that are established solely for the benefit of individuals who are blind or disabled receiving, or eligible to receive, Supplemental Security Income, Retirement, Survivors, Disability Insurance, or Aged, Blind, or Disabled; and
 - (d) A trust containing the provision that the State of Nebraska will receive all amounts remaining in the trust for the beneficiary upon the death of the applicant or recipient up to the amount of total medical assistance paid on behalf of the individual.

009.08(A)(v)(6)(d) PAYMENT CANNOT BE MADE FROM TRUST. When payments from some portion or all of the trust cannot under any circumstances be made to or for the benefit of the individual, or where there is some portion of the trust from which no payments can be made to or for the benefit of the individual, all of the corpus, or income on the corpus, which cannot be paid to the individual is considered a transfer of assets for less than fair market value.

009.08(A)(v)(6)(e) HARDSHIP PROCEDURES. A trust will not be considered available if denial of assistance would cause undue hardship.

009.08(B) NON-LIQUID RESOURCES. Non-liquid resources are tangible properties which need to be sold if they are to be used for the maintenance of the recipient. They include all properties not classified as liquid resources. For a listing of the non-liquid resource refer to the Guidance Document.

009.08(B)(i) EXEMPTION OF HOME. The Aged, Blind, or Disabled Payment or State Disability Program applicant or recipient's home is exempt from consideration as an available resource, with the following limitations.

009.08(B)(i)(1) DEFINITION OF HOME. A home is defined as any shelter which the individual owns and uses as the principal place of residence. The home includes any land on which the house is located and any related outbuildings necessary to the operation of the home.

2-009.08(B)(i)(2) ADJACENT LOTS. Lots adjacent to the home are considered available if they can be sold separately from the home. If it is determined and documented in the case record that the lots adjacent to the home cannot be sold or are not saleable due to the location or condition of the property, the adjacent lots are also exempt.

2-009.08(B)(i)(3) HOME EQUITY VALUE. For applications on January 1, 2006, or later, the individual is not eligible for any long-term care services if the equity value interest in the home exceeds the specified amount.

009.08(B)(ii) REMOVAL FROM HOME. If the individual moves away from the home and does not plan, or is unable, to return to it, the Department determines when the home becomes an available resource in accordance with the following provisions:

- (a) The home continues to be exempt as a resource while it is actually occupied by the individual's spouse or dependent relative. A dependent relative includes the individual's:
 - (i) Child, stepchild, or grandchild age 17 or younger;
 - (ii) Child, stepchild, or grandchild age 18 or older if aged, blind, or disabled and receiving, or eligible to receive, Supplemental Security Income; Aged, Blind, or Disabled payment; State Disability Program; and, other categorical assistance; or
 - (iii) Brother, sister, stepbrother, stepsister, half-brother, half-sister, parent, stepparent, grandparent, aunt, uncle, niece, nephew, or the spouse of any persons previously named, even after the marriage has been terminated by death or divorce who is receiving, or who would be eligible for, categorical assistance except for income and resources, and who lived in the home at any time one year before the recipient moved away from the home.
- (b) When the individual moves to a nursing home, or to an assisted living facility, and is receiving Aged or Disabled waiver services, and it is not possible to determine immediately if the individual will be able to return home, a maximum of six months may be allowed to make that determination. Unless the individual or the individual's representative signs a statement that the

individual will not return to the home, or the home is already listed for sale, it is not possible to determine immediately if the individual will return home.

- (c) After a maximum of six months, the home may no longer be considered the individual's principal place of residence and must be considered an available resource. However, the individual is allowed time to liquidate the property before it affects eligibility. The six months begin with the first full month following the month of admission.
- (d) After the individual is admitted, if the home is exempt because it is occupied by one or more of the relatives identified previously, the six months begin with the first full month following the month that the home is no longer allowed the exemption for occupation.

2-009.08(B)(ii)(1) LIQUIDATION OF HOME. As soon as the determination is made that the recipient will not be able to return home, time must be allowed for the individual to liquidate the property. The recipient is also allowed time for liquidation if the home is left for a reason other than entering a medical institution.

009.08(B)(iii) SALE OF HOME. If the Aged, Blind, or Disabled payment or State Disability Program individual sells his or her home, the net proceeds become an available resource unless reinvested immediately in another home. In order to be allowed time to reinvest the proceeds, the individual must be residing in the home at the time of the sale and move directly to the new home. Net proceeds are the remainder after payment of the mortgage, realtor's fees, legal fees, and any other sales-related costs. Any deductions must be verified.

009.08(B)(iv) LIQUIDATION OF REAL PROPERTY. When an individual has excess resources because of real property, the individual may be eligible to receive an Aged, Blind, or Disabled grant or the State Disability Program pending liquidation of the resource in some instances. Eligibility does not apply when the excess resources are because of real property other than the home, until the month the Agreement to Sell Real Property and Repay Assistance has been signed. This instances that allow eligibility during the liquidation period are according to the following regulations:

009.08(B)(iv)(1) DEFINITION OF REAL PROPERTY. Real property is defined as land, houses, or buildings.

009.08(B)(iv)(2) TIME LIMITS FOR LIQUIDATION. Exclude real property which the recipient is making a good faith effort to sell.

009.08(B)(iv)(3) EXTENSION OF TIME LIMIT. If the individual is unable to liquidate the property in six calendar months, the Department may authorize an additional three calendar months. In determining whether to allow a three-calendar-month extension, the Department considers:

- (a) If the property has been placed on the market with a real estate licensee
or;
- (b) If the individual is asking a fair price for the property;
- (c) If the asking price has been reduced;
- (d) If the individual understands the requirement for liquidation of the property;

- (e) If the recipient has not refused a reasonable offer to purchase, which if there is not a better offer, a reasonable offer is defined as at least two-thirds of either the estimated current market value or the proven actual value;
- (f) The economic conditions in the area and if real estate is selling; and,
- (g) The three calendar months are counted whether or not the individual is receiving assistance. If the individual moves back to the home during the three-month period and subsequently moves out again, only the months remaining in the three months are allowed.

009.08(B)(iv)(4) JOINT OWNERSHIP. Real property that is jointly owned is excluded if sale of the property would cause the other owner, whether the other owner receives assistance or not, undue hardship. However, if undue hardship ceases to exist, the property is included in countable resources and handled according to the following regulations:

- (a) If the individual owns the property with other persons who are not receiving assistance, and the real property is not the principal place of residence of the other owner, the other owner shall be contacted to determine if they are willing to liquidate their interest in the property. If all parties are willing to liquidate, proceed with the liquidation process.
- (b) If one or more of the parties do not wish to liquidate, the individual must take legal action to force a sale of the property.

009.08(B)(iv)(5) ADDITIONAL PIECES OF REAL PROPERTY. In computing the amount of the unit's total available resources, the potential sales value of all real property, other than the allowed exemption for the home, is determined and used.

009.08(B)(iv)(6) MOTOR VEHICLES. One Motor vehicle is disregarded regardless of its value as long as it is necessary for the recipient or a member of their household for employment, medical treatment, or is used as the home. If the individual has more than one motor vehicle, the vehicle with the greatest equity is excluded.

- (a) Any other motor vehicles are treated as non-liquid resources and the equity is counted in the resource limit. The individual's verbal statement that the motor vehicle is used for employment or medical treatment is sufficient.
- (b) A recipient in a nursing home or receiving services through an Assisted Living Waiver is not allowed the disregard of any motor vehicles because medical transportation is included in the payment to the facility.

009.08(B)(iv)(7) DETERMINATION OF FAIR MARKET VALUE. For motor vehicles that are counted in the resource total, the Department uses the fair market value. Cars, trucks, SUVs, vans, motorcycles, recreational vehicles, motorboats and watercraft, and planes are included in the category of motor vehicles.

009.08(B)(iv)(8) LIFE ESTATES. The owner of a life estate in real property is generally unable to sell the property. The Department, includes the net income from the life estate in the budget rather than considering the life estate as an

available resource. If the owner of a life estate transfers it to another individual, it must be determined if it is deprivation of a resource. If the life estate is sold, the proceeds are counted as a resource. It is a disposal of assets to purchase a life estate interest in another individual's home unless the purchaser resides in the home for at least 12 months after the date of purchase.

009.08(B)(iv)(9) HOUSEHOLD GOODS AND PERSONAL EFFECTS. Household goods and personal effects of moderate value used in the home are exempt. Household goods are defined as including household furniture, furnishings and equipment used in the operation, maintenance, and occupancy of the home or in the functions and activities of the home and family life, as well as those items which are for comfort and accommodation. Personal effects include clothing, jewelry, items of personal care, and other similar items.

009.08(B)(iv)(10) LOANS. A bona fide loan to a recipient or financially responsible relative is disregarded as a resource. A bona fide loan is defined as one that must be repaid. The agreement for repayment may be verbal or written and the loan may be owed to an individual or to an organization or agency. Using prudent person principle, the individual's statement is adequate verification that the loan must be repaid.

009.08(B)(iv)(11) ESSENTIAL PROPERTY. If the individual owns a resource that is used in a trade or business, the resource is disregarded, regardless of the value. This includes real property such as land, houses, or buildings as well as personal property such as farm machinery, business equipment, livestock, poultry, crops, tools, safety equipment, or business bank accounts as long as the funds are separated from other liquid resources. The individual or a responsible relative, such as a spouse or parent, must be actively involved in the day-to-day operation of the trade or business as a primary means of earning a livelihood. If the individual or responsible relative is not actively involved in the trade or business, it must be due to circumstances that are beyond the individual's control, such as illness, and there must be a reasonable expectation that the use will resume.

009.08(B)(iv)(11)(a) NONBUSINESS PROPERTY. A maximum of \$6,000 equity value of nonbusiness property, real or personal, that is used to produce goods or services essential to daily activities is excluded from resources. For instance, an individual may maintain livestock for consumption in his or her own household.

- (i) The property must be in current use or there is the reasonable expectation that use will resume.
- (ii) A vehicle such as a garden tractor may qualify for this exemption; an automobile does not qualify.
- (iii) Any equity in excess of \$6,000 is counted as a resource. If the excess resource is real property, see the regulations on liquidating real property.

009.08(B)(iv)(12) TRAILER HOUSES AND OTHER PORTABLE HOUSING UNITS. If an individual occupies a trailer house, or other portable housing unit as

his or her home, the property is allowed the resource exemption for a home. If the recipient enters a nursing home, the allowed the exemption of a home for up to six months applies.

- (a) If the trailer house, or other portable housing unit, is used for the recipient's trade or business, it may qualify as essential property regarding an exemption.
- (b) If it is used to produce goods for the individual's own consumption or use, it may qualify as nonbusiness property regarding an exemption.

009.08(B)(iv)(13) FARM EQUIPMENT. If the farm equipment is used for the individual's trade or business, see Essential Property in this section. If it is used to produce goods for the individual's own consumption or use, see nonbusiness property in this section.

009.08(B)(iv)(14) BUSINESS EQUIPMENT, FIXTURES, AND MACHINERY. If business equipment is used for the individual's trade or business, see essential property in this section. If it is used to produce goods for the individual's own consumption or use, see nonbusiness property in this section.

009.08(B)(iv)(15) LIVESTOCK, POULTRY, CROPS THAT ARE GROWING AND ON HAND. If the livestock, poultry, and crops are grown for the individual's trade or business, see essential property in this section. If they are grown for the individual's own consumption or use, see nonbusiness property in this section.

009.09(C) MAXIMUM AVAILABLE RESOURCE LEVELS FOR GRANT ELIGIBILITY. The established maximum for available resources which an individual, or an individual and responsible relative or essential person may own and still be considered eligible for a grant, according to unit size, are as follows:

- (i) One member unit – applicant or recipient only: \$2000
 - (1) If there is an eligible spouse and an ineligible spouse, the resource level for the eligible spouse is \$2,000; or
 - (2) If the ineligible spouse later becomes eligible, each spouse is allowed \$2,000.
- (ii) Two member unit: \$3000
 - (1) Individual and eligible spouse;
 - (2) Individual and ineligible spouse;
 - (3) Individual and ineligible spouse who have designated resources but the individual returns home or no longer is eligible for waiver services; or
 - (4) Recipient and other essential person. This may be a disabled minor child and one parent if that parent is considered an essential person; and
- (iii) Three or more member unit: \$3000 plus \$25 for each additional essential person
 - (1) Recipient and spouse; or
 - (2) Recipient and other essential person; and
 - (3) Additional essential persons.

009.09(D) RESOURCES OF A SPOUSE, PARENT, OR OTHER ESSENTIAL PERSON. All resources of an individual and spouse or other essential person who is included in the budget and who share the same home are considered available for the support of both unless one spouse is eligible for or receiving waiver services. Relative responsibility

includes eligible spouse for spouse, whether the spouse is eligible or ineligible, and parents for children who are age 17, or younger, and still considered part of their household.

009.09(E) DEEMING OF RESOURCES OF A PARENT. In considering the resources of a parent who is not considered an Essential Person towards an eligible child age 17, or younger, and living in the parent's household, the following resources are considered to the child whether or not they are actually made available:

- (i) All resources exceeding \$2,000 in the case of one parent; or
- (ii) All resources exceeding \$3,000 in the case of:
 - (1) Two parents;
 - (2) One parent and spouse of the parent; or
 - (3) One parent and one minor sibling; and
- (iii) \$25 for each additional minor sibling in the parents' household.

009.09(F) DEPRIVATION OF RESOURCES. Any action taken by the individual, or any other person or entity, that reduces or eliminates the individual's, or spouse's, recorded ownership or control of the asset for less than fair market value is a deprivation of resources. This includes:

- (1) Recorded transfer of ownership of real property;
- (2) Not receiving the spousal share of an augmented estate;
- (3) Purchase of a life estate in another individual's home without meeting the 12-month requirement to reside there;
- (4) Promissory notes, loans, mortgages, and contract sales for less than fair market value and not enforced;
- (5) Purchase of an irrevocable, non-assignable annuity if State Disability Program is not the preferred beneficiary and the annuity is issued on February 8, 2006, or later;
- (6) Any transfer above the protected spousal reserved amount to a community spouse; and
- (7) Purchase of any contract or financial instrument, including an endowment or insurance, where the criteria for fair market value are not met.

009.09(F)(i) The criteria for fair market value are not met when:

- (1) The term of the instrument exceeds the life expectancy of the applicable individual;
- (2) The instrument does not provide for equal monthly or annual payments commencing immediately during the term of the contract;
- (3) The instrument does not provide for the recovery of assets in the event of default; or
- (4) The instrument contains exculpatory or cancellation terms of balance due.

009.09(F)(ii) A service given for free at the time cannot later be claimed as an amount owed.

009.09(F)(iii) When an asset is placed in an annuity on February 8, 2006 or later, the annuity regulations apply.

009.09(F)(iv) Trust regulations may take precedence over deprivation when an asset is placed in a trust.

009.09(F)(v) When real property in which the individual has a life estate is sold, the individual or spouse must receive, as a lump sum, their life estate interest from the net proceeds, or the entire net proceeds invested and the individual who has the life estate receives all the income.

009.09(F)(vi) DEPRIVATION OF RESOURCES FOR A GRANT. The Department investigates for deprivation of a resource if an individual, or an individual's spouse, applies for, or becomes eligible for, a grant.

009.09(F)(vi)(1) LOOK-BACK PERIOD. If it is determined that an individual disposed of a resource in order to qualify for an Aged, Blind, or Disabled payment, look back 36 months from when the individual applies for Aged, Blind, or Disabled grant assistance or, if later, the date on which the individual or spouse disposes of resources for less than fair market value. The look-back period for grant is always 36 months.

009.09(F)(vi)(2) PERIOD OF INELIGIBILITY FOR A GRANT. If it is determined that an individual disposed of a resource, the applicant or recipient is ineligible for a grant for the number of months calculated by dividing the uncompensated value of the resources disposed of, by the maximum Aged, Blind, or Disabled payment to the individual. The number of months the individual is ineligible for a grant must not exceed 36. If the applicant or recipient is eligible for Supplemental Security Income but for a period of ineligibility due to a disposal, the Aged, Blind, or Disabled grant period of ineligibility is the same as the Supplemental Security Income period of ineligibility. Ineligibility for a grant begins with the month of transfer. Receipt of any grant during the period of ineligibility results in an overpayment and recoupment procedures apply.

009.09(F)(vii) DEPRIVATION OF RESOURCES FOR STATE DISABILITY PROGRAM MEDICAL ASSISTANCE. Investigate for deprivation of a resource only if an individual, or an individual's spouse, resides in a specified living arrangement which is defined as:

- (a) Residing in a nursing home;
- (b) Receiving the skilled level of care in a hospital, such as swing bed services;
- (c) Requesting or Receiving Home and Community Based Services including an Assisted Living waiver, home health care, or personal care services; or
- (d) Residing in an Intermediate Care Facility for Persons with Developmental Disabilities.

009.09(F)(vii)(1) EXCEPTIONS TO DEPRIVATION RULE. An exception may be made when a transfer was made for less than fair market value, but the individual can verify that the intent was to dispose of the resource for fair market value, or for other valuable consideration, that the transfer was not made to qualify for assistance, or that denial of assistance would cause undue hardship. For all disposals of assets, regardless of date, an exception may be made if:

- (a) A satisfactory showing is made to the State that the individual intended to dispose of the assets either at fair market value or for other valuable consideration;
- (b) The assets were transferred exclusively for a purpose other than to qualify for State Disability Program medical assistance; or
- (c) All assets transferred for less than fair market value have been returned to the individual.

009.09(F)(vii)(2) Disposal or Transfer of Resources:

009.09(F)(vii)(2)(a) LOOK-BACK PERIOD. If it is determined that an individual disposed of a resource to qualify for medical assistance, look back 60 months before the month of application.

- (i) For State Disability Program Medical, the look-back is triggered when the individual first applies for Medicaid and is in a specified living arrangement, or is on State Disability Program Medical and enters a specified living arrangement. When an individual applies for State Disability Program Medical more than once, the look back period is based on the first date the individual meets both requirements.
- (ii) To determine the countable value disposed of:
 - (1) Take the equity in the resource, which is the fair market value minus encumbrances;
 - (2) Subtract any compensation received by the individual; and
 - (3) Subtract the allowable resource level from the result of step 2 if this is the first disposal.

009.09(F)(vii)(3) PERIOD OF INELIGIBILITY FOR STATE DISABILITY PROGRAM MEDICAL. If it is determined that an individual disposed of a resource, the applicant or recipient is ineligible for State Disability Program Medical for the number of months determined by dividing the countable value of the resource, by the actual monthly cost of care in the specified living arrangement at the current private pay rate. If the period of ineligibility is longer than 12 months, the State Disability Program case is closed or denied and the recipient will need to apply for Medicaid. If the period of ineligibility is less than 12 months, the period of ineligibility begins:

- (a) If the individual is on State Disability Program Medical, with the month of entry into a specified living arrangement; or
- (b) If the individual is not on State Disability Program Medical, the month of application if in a specified living arrangement.
- (c) If the individual is eligible for State Disability Program Medical, except for the deprivation of resources, in the month of application. It does not apply to an application month in which the individual is ineligible because of excess resources or other eligibility criteria.
- (d) If the division results in a fraction, the fraction is converted to a dollar amount and includes that amount as unearned income for the applicable month.

009.09(F)(vii)(4) AVAILABILITY OF HARDSHIP WAIVER PROCESS. The individual may request in writing, to the Department, a hardship waiver exception when an imposed period of ineligibility for a transfer of assets would deprive the individual of medical care so that their health or life would be endangered. A notice of discharge from the facility is not necessary to demonstrate that health or life would be endangered. Undue hardship also exists when the imposed period of ineligibility for a transfer of assets would deprive the individual of food, clothing, shelter, or other necessities of life.

009.09(F)(vii)(5) TRANSFERS NOT CONSIDERED DEPRIVATION FOR GRANT. It is not considered a deprivation if:

- (a) An applicant or recipient transferred a resource to his or her spouse or to an individual with power of attorney or a guardian or conservator for the sole benefit of the applicant or recipient's spouse;
- (b) An applicant or a recipient's spouse transferred a resource to an individual with power of attorney or a guardian or conservator for the sole benefit of the applicant or recipient's spouse;
- (c) A resource was transferred to a trust established solely for the benefit of the individual's son or daughter who is blind or disabled and who is receiving, or eligible to receive, Supplemental Security Income; Retirement, Survivors, Disability Insurance; Aged, Blind, or Disabled payment, or Medicaid;
- (d) A resource was transferred to the individual's son or daughter who is blind or disabled, who is receiving, or eligible to receive, Supplemental Security Income; Retirement, Survivors, Disability Insurance; Aged, Blind, or Disabled; or, Medicaid;
- (e) A resource was transferred to a trust established solely for the benefit of an individual age 64 or younger who is disabled, receiving or eligible to receive Supplemental Security Income; Retirement, Survivors, Disability Insurance; Aged, Blind, or Disabled payment, or Medicaid.

009.09(F)(vii)(6) TRANSFER OF A HOME. It is not considered a deprivation of a resource if a home is transferred by an applicant or recipient to:

- (a) Spouse;
- (b) Son or daughter who:
 - (i) Is age 20 or younger;
 - (ii) Is blind or disabled receiving, or eligible to receive, Supplemental Security Income; Retirement, Survivors, Disability Insurance, Aged, Blind, or Disabled payment or Medicaid based on blindness or disability; or,
 - (iii) Was residing in the home for at least two years before assistance was requested for the parent, or entered an alternate living arrangement and that individual provided care, which permitted the parent to reside at home rather than be institutionalized or receive Home and Community-Based Waiver Services; or
- (c) Sibling who has an equity interest in the home, and who was residing in the home for at least one year immediately before assistance was requested for a sibling or an alternate living arrangement was needed.

009.09(G) REDUCTION OF RESOURCES. The applicant or recipient may reduce available resources to the allowable limit if the case record contains documentation that the resources have been reduced and the unit is within the allowable resource limits.

010. INCOME. Need is determined by considering the amount of total net income of the Aged, Blind or Disabled or State Disability Program individual, and spouse or other essential person whose needs are included in the budget, in relation to individual requirements.

010.01 DEFINITION OF INCOME. Income is defined as gain or recurrent benefit received in money, or in-kind, from employment, business, property, investments, gifts, benefits, or annuities, at regular, or irregular, intervals of time.

010.01(A) AVAILABILITY. All income, whether earned, or unearned, is considered if received and currently available for the use of the individual.

010.01(B) TYPES OF INCOME.

010.01(B)(i) EARNED INCOME. Earned income is money received from wages, tips, salary, commissions, profits from activities in which an individual is engaged as a self-employed person or as an employee, or items of need received at no cost in lieu of wages.

010.01(B)(i)(1) EMPLOYMENT-RELATED REIMBURSEMENT. Reimbursement for employment-related expenses such as mileage, lodging, or meals is not considered earned income.

010.01(B)(i)(2) CONTRACTUAL INCOME. Income paid on a contractual basis is prorated over the number of months covered under the contract, even if the recipient is paid in fewer months than the contract covers.

010.01(B)(i)(3) IN-KIND INCOME. In-kind income is the value of food, clothing, shelter, or other items received in lieu of wages.

010.01(B)(i)(4) DISREGARDS FOR SELF-EMPLOYMENT. Operating expenses related to producing the goods or services, and without which the goods or services could not be produced, are deducted from gross income. Operating expenses may include:

- (a) Cost of goods sold;
- (b) Advertising;
- (c) Bad debts from sales or services;
- (d) Bank service charges;
- (e) Car and truck expenses;
- (f) Commission;
- (g) Employee benefit programs;
- (h) Freight or shipping costs;
- (i) Insurance;
- (j) Interest on business indebtedness;
- (k) Laundry and cleaning;

- (l) Legal and professional services;
- (m) Office supplies and postage;
- (n) Rent on business property;
- (o) Repairs and maintenance;
- (p) Supplies;
- (q) Utilities and telephone;
- (r) Wages; and
- (s) Transportation other than to and from work and child care.

010.01(B)(i)(5) OPERATING EXPENSES - FARM INCOME. The following expenses related to farm income are considered operating expenses:

- (i) Cost of goods sold;
- (ii) Cost of labor;
- (iii) Repairs and maintenance;
- (iv) Interest;
- (v) Rent of farm, pasture;
- (vi) Feed purchased;
- (vii) Seeds, plants purchased;
- (viii) Fertilizers, lime, and chemicals;
- (ix) Cost of machines leased;
- (x) Supplies purchased;
- (xi) Breeding fees;
- (xii) Veterinary fees, medicine;
- (xiii) Gasoline, fuel, or oil;
- (xiv) Storage, warehousing;
- (xv) Insurance;
- (xvi) Utilities;
- (xvii) Freight, trucking;
- (xviii) Conservation expenses;
- (xix) Land clearing expenses; and
- (xx) Employee benefit programs.

010.01(B)(i)(5)(a) OPERATING EXPENSES NOT ALLOWED. The following expenses are not allowed as operating expenses:

- (i) Depreciation;
- (ii) Personal business expenses such as subscriptions, dues to professional organizations and unions, training courses;
- (iii) Personal transportation;
- (iv) Purchase of capital equipment;
- (v) Payments on the principal of loans; and
- (vi) Business-related entertainment expenses.

010.01(B)(i)(5)(b) 1040 TAX DOCUMENT VERIFICATION. If the 1040 tax document is used to verify income, do not allow depreciation as a cost of operation and do not count capital gains and other gains from lines 13, 14, and 15 of Form 1040 as income.

010.01(B)(i)(5)(c) OFFSET OF EARNINGS. If an individual has a combination of farm or self-employment income and regular earned income, the regular earnings may be offset with a loss from the self-employment or farm operation.

010.01(B)(ii) UNEARNED INCOME. Unearned income includes but is not limited to:

- (a) Retirement, Survivors, and Disability benefits;
- (b) Railroad Retirement;
- (c) Child support;
- (d) Military service benefits;
- (e) Civil service benefits;
- (f) Unemployment compensation;
- (g) Gifts;
- (h) Disability insurance benefits;
- (i) Disability benefits paid by an employer, not including sick leave; and
- (j) Returns from securities or investments, such as stocks, bonds, annuities, or savings, in which the individual is not actively engaged.

010.01(B)(ii)(1) SUPPLEMENTAL SECURITY INCOME BENEFITS. Supplemental Security Income benefits are not used in computing the budgets, but the Federal Benefit Rate is used by the system to calculate the amount of the state supplemental payment.

010.01(B)(ii)(2) CONTRIBUTIONS. Contributions are verified payments which are paid to or for the unit. Contributions received regularly to aid in the support of the recipient, either in the form of money payments or items of need, are considered unearned income.

010.01(B)(ii)(2)(a) TEMPORARY CRISIS ASSISTANCE. In determining initial eligibility only, a contribution is not counted when the applicant states that:

- (i) The individual has no income and has been forced to share a living arrangement with a self-supporting individual; or
- (ii) An individual who is not in the household is paying the applicant's shelter costs; and
- (iii) The applicant plans to make other arrangements such as move, pay all or a share of the expenses, as soon as the applicant has income.

010.01(B)(ii)(2)(b) NURSING FACILITY, ASSISTED LIVING WAIVER, OR HOSPITAL CARE. Contributions to, or for, an individual who is receiving nursing facility, Assisted Living Waiver, or hospital care are considered unearned income in the applicant or recipient's budget if Medicaid is or will be paying any part of the nursing facility, Assisted Living Waiver, or hospital care.

010.01(B)(ii)(3) LIFE INSURANCE PREMIUMS. Payment of premiums on small protective life insurance policies is not considered a contribution.

010.01(B)(ii)(4) HEALTH INSURANCE PREMIUMS. Payment of a health insurance premium by another individual is not considered a contribution as long as the premium is paid to the insurance company, not to the individual.

010.01(B)(ii)(5) THIRD PARTY MEDICAL PAYMENTS. Income received from a third party that pays the applicant or recipient directly is:

- (i) Disregarded if it is refunded to the provider or the Department as reimbursement for a specific service; or
- (ii) Counted as unearned income if the recipient fails or refuses to refund these payments.

010.01(B)(ii)(5)(a) INCOME-PRODUCING POLICIES. Income received from an insurance policy that supplements the applicant or recipient's income is treated as unearned income. These policies provide income regardless of the type of service being provided or the condition of the applicant or recipient. If it is verified that the income was applied to medical bills, the income is not counted in the applicant or recipient's budget.

010.01(B)(ii)(6) INHERITANCE AND GIFTS. If the applicant or recipient receives a gift or inheritance, it is considered unearned income in the month of receipt or report, and is used in the budget the first month possible, considering timely notice. Any unspent remainder is considered a resource in the following month.

010.01(B)(ii)(7) LIFE ESTATE OR LAND CONTRACT INCOME. If an applicant receives periodic life estate or land contract income annually, semi-annually or quarterly, and the last periodic payment has been spent before the application, the life estate or land contract income may be considered unavailable and not counted in the budget. When the application is approved notify the recipient that receipt of the next payment must be reported within ten days and that the life estate or land contract income must then be counted in the budget.

010.01(B)(iii) IRREGULAR INCOME. Irregular income is income, earned or unearned, which varies in amount from month-to-month or which is received at irregular intervals. This may be due to irregular employment, but even when an individual works regularly, the income may be irregular because of factors such as seasonal increases or decreases in employment and earnings, such as day labor, sales work on a commission basis, or child care.

010.01(B)(iv) ACCUMULATED BENEFIT PAYMENTS. Accumulated payments of Retirement, Survivors, and Disability Insurance; Railroad Retirement; Veteran's Benefits or Pensions; Worker's Compensation; or other benefit payments which are received in a single sum are not considered income. Any unspent remainder is considered a resource in the month following the month of receipt, or report, taking into account the timely notice provision.

- (1) Exception: The unspent portion of a Retirement, Survivors, and Disability Insurance; Supplemental Security Income; or state supplemental retroactive payment is excluded for six months following the month of receipt.

010.01(B)(v) COMBINED CASE WITH A LUMP SUM. When an individual in an Aid to Dependent Children case or an individual in an Assistance Aged, Blind, or Disabled case receives a lump sum, the way the money is treated depends upon which individual the lump sum is intended for. Retirement, Survivor, Disability Insurance and Supplemental Security Income lump sums are excluded as a resource for up to six months.

010.01(B)(v)(1) ASSISTANCE AGED, BLIND, OR DISABLED PARENT AND AID TO DEPENDENT CHILDREN CHILD. If the lump sum is intended for an Aged, Blind, or Disabled parent, the money is considered for the parent. The following month the money becomes a resource and must be divided proportionately between the cases.

010.01(B)(v)(2) ASSISTANCE TO THE AGED, BLIND, OR DISABLED CHILD AND AID TO DEPENDENT CHILD PARENT. If the lump sum is intended for a Blind or Disabled child, the money is considered for the child. As the child does not have relative responsibility for other members of the family, the money is considered only for the child's Blind or Disabled case.

010.01(B)(vi) POTENTIAL INCOME. Potential income is defined as income based on entitlement, or need, which is usually determined by an administering agency as a result of an application for benefits by the individual. Potential income includes, but is not limited to, Retirement, Survivors, Disability Insurance, categorical assistance, Railroad Retirement, Veterans or Military Service benefits, Unemployment Compensation, Disability Insurance benefits, and Worker's Compensation. Medicare is not considered a potential benefit.

010.01(B)(vi)(1) NEED TO APPLY AND COMPLY WITH REQUIREMENTS. A recipient is expected to make grant application for, and accept benefits, immediately after the recipient is notified of the apparent entitlement to the benefits. The recipient is notified on a Notice of Action of the number of days left in which to apply.

010.01(B)(vi)(2) VETERAN'S BENEFITS. Applicants or recipients who are veterans, their spouses, and the widows of veterans may be eligible for Aid and Attendant services. This service may be available and should be explored if the individual resides in a nursing home, in his or her own home, in an Adult Foster Home or other alternate arrangement when the individual requires aid with daily living activities.

010.01(B)(vi)(3) SUPPLEMENTAL SECURITY INCOME PROGRAM. If an applicant or recipient has not applied for Supplemental Security Income Program, an application must be filed immediately.

010.01(B)(vi)(3)(a) SUPPLEMENTAL SECURITY INCOME REFERRAL. An applicant or recipient must be referred to Supplemental Security Income if:

- (i) The individual lives alone and has monthly unearned income less than the referral amount for an individual;

- (ii) An eligible couple are living together and have monthly unearned income less than the referral amount for a couple; both must apply for Supplemental Security Income; or
- (iii) An individual is in a nursing home and has unearned income of less than \$50 per month.

010.01(B)(vii) SCHOOL DISTRICT PAYMENTS. If a school-aged child is receiving nursing home care, including an Intermediate Care Facility, Intermediate Care Facility for Developmental Disability, Skilled Nursing Facility, or chronic care, and the school district is contracting with the facility in providing the child's educational needs, the school district payment is disregarded as income if the payment is designated for educational services only.

- (1) If any or all of the school district payment is for residential services, that portion must be shown as Payment on Services.
- (2) If the school-aged child resides in a board and room or other alternative care facility, determine if the school provides payment for the child's board and room.
- (3) If payment is being made to the facility, the payment is disregarded as income.

010.01(B)(viii) VERIFICATION OF INCOME. Income must be verified every 12 months.

010.01(B)(viii)(1) PROSPECTIVE BUDGETING. An average of the most recent three months' actual income is used to arrive at the gross income amount for the income period. This figure is used to project medical eligibility for the next 12 months unless:

- (i) There was a significant change in the income of the previous three months; or
- (ii) A significant change is anticipated during the projected 12-month period.
- (iii) Income is stable and only one month's income must be used.
- (iv) Income fluctuates and an average of the three most recent consecutive months must be used.

010.01(B)(viii)(1)(a) CHANGE. The recipient must report the following changes:

- (i) New employment must be reported to the Department and if receiving Supplemental Security Income to Social Security Administration within 10 days;
- (ii) Termination of employment;
- (iii) Change in the amount of monthly income, including:
 - (1) All changes in unearned income, including the beginning and termination of unearned income; and
 - (2) Changes in the source of employment, in the wage rate, and in employment status, such as part-time to full-time, or full-time to part-time. The recipient must report new employment within ten days of receipt of the first paycheck, and a change in wage rate or hours within ten days of the change.

- (3) Change in household composition, such as the addition or loss of a unit member; or
- (4) Change, or receipt of, a resource including cash on hand, stocks, bonds, money in a checking or savings account, or a motor vehicle.

010.01(B)(ix) RETROACTIVE STATE DISABILITY PROGRAM MEDICAL ELIGIBILITY. To determine retroactive State Disability Medical Program eligibility, the month's actual income is used.

010.01(B)(x) INCOME AS IT APPLIES TO RESOURCES. Income received by a recipient during any one month for maintenance costs may not be considered a resource for that month. Any income not spent for maintenance is considered a resource in the subsequent month.

010.01(B)(xi) COMPUTATION OF INCOME AND INCOME DISREGARDS. The following list allowable income disregards:

010.01(B)(xi)(1) GENERAL \$20 DISREGARD. Every unit receives a \$20 income disregard. A married couple who is living together and budgeted together is considered a household unit and gets one \$20 disregard. The income disregard is applied to unearned income first; any remainder is subtracted from earned income for:

- (a) Recipients who are receiving Assisted Living Aged and Disabled Waiver services receive the \$20 disregard.
- (b) Recipients who are living in a nursing home, public institution, hospital or other medical institution, do not receive a \$20 disregard.

010.01(B)(xi)(2) EARNED INCOME DISREGARDS. The amount deducted from adjusted gross earned income or the amount after deduction of the cost of operation if self-employment income, and the remainder of the general disregard from wages or self-employment, for each unit is as follows:

010.01(B)(xi)(2)(a) AGED OR DISABLED RECIPIENTS. The earned income disregards apply to:

- (1) Aged or disabled individuals;
- (2) The aged, blind, or disabled recipients;
- (3) Ineligible spouse;
- (4) Essential person; or
- (5) Sponsors of aliens for deeming purposes.

010.01(B)(xi)(2)(a)(i) Disregard the first \$65 plus one-half of the remainder in determining countable income.

010.01(B)(xi)(2)(b) BLIND OR BLIND AGED RECIPIENTS. Determine net income for blind or blind aged recipients by disregarding the first \$85 plus one-half of the remainder.

010.01(B)(xii) DEEMING INCOME OF RESPONSIBLE PERSONS. Income of the following individuals is considered in determining a recipient's eligibility when they do not receive Supplemental Security Income:

- (a) Parent for child age 17 or younger and still considered part of the household; and
- (b) Sponsor for an alien.

010.01(B)(xii)(1) PARENT. If the individual does not receive Supplemental Security Income the following guidelines must be used to determine if the parent income is deemed:

- (a) If the minor is living in the same household with parent, the parent's income must be deemed.
- (b) If the minor is temporarily absent from the home but is still considered part of the household, the parent's income must be deemed. Temporary absence includes, but is not limited to, school attendance where the minor returns to the home on a regular basis such as weekends, vacations, or summers.
- (c) If the minor is permanently out of the home and no longer considered part of the household, the parent's income must not be deemed. This includes facilities for persons with developmental disabilities or mental illness.

010.01(B)(xii)(2) EXCEPTIONS TO THE DEEMING REGULATIONS. If a child age 17 or younger leaves a nursing facility or hospital where that child was receiving an institutional personal needs amount payment from Supplemental Security Income, then goes home under a waiver, the Social Security Administration must be notified of the waiver eligibility. Even though income and resources of the parent may make the child ineligible for State Supplemental Income, if the child is waiver-eligible, Supplemental Security Income continues the institutional personal needs payment amount without deeming income and resources of the parent.

010.01(B)(xii)(3) DEEMING OF INCOME OF SPONSORS OF ALIENS. One-hundred percent of the income and resources of a sponsor, and sponsor's spouse if they are living together, must be considered when determining the eligibility of an eligible alien who applies for Assistance to the Aged, Blind, or Disabled payment or State Disability Program if the sponsor has signed an affidavit of support under Section 213A of the Immigration and Nationality Act. The sponsor's income and resources will be considered available to the alien until the alien:

- (1) Becomes a U.S. citizen;
- (2) Has worked 40 qualifying quarters of coverage as defined under Title II of the Social Security Act or can be credited with the qualifying quarters as provided under Section 435 and the alien did not receive any federal means tested public benefit during that time period.

010.01(B)(xii)(3)(a) DEFINITION OF A SPONSOR. A sponsor is an individual who:

- (i) Is a citizen or national of the United States or an alien who is lawfully admitted to the United States for permanent residence;

- (ii) Is 18 years of age or older;
- (iii) Lives in any of the 50 states or the District of Columbia; and
- (iv) Is the person petitioning for the admission of the alien under Section 204 of the Immigration and Nationality Act.
- (v) An organization is not considered a sponsor.

010.01(B)(xii)(3)(b) ALIEN DUTIES. As an eligibility requirement, the alien is responsible for:

- (i) Providing income and resource information from the sponsor; and
- (ii) Obtaining the necessary cooperation from the sponsor.
- (iii) If the alien does not provide the necessary information, they are not eligible for assistance.

010.01(B)(xii)(3)(c) SPONSOR OF MORE THAN ONE ALIEN. When an individual is a sponsor for two or more aliens who are living in the same home, the amount of deemed income and resources of the sponsor, and the sponsor's spouse if living with the sponsor, is divided equally among the aliens.

- (i) When an individual sponsors several aliens but not all apply for assistance, the sponsor's total deemable income and resources are applied to the needs of the aliens who apply for assistance.

010.01(B)(xii)(3)(d) DEEMING EXCEPTION. If a sponsored immigrant demonstrates that they or their children have been battered or subjected to extreme cruelty by a spouse or a parent or by a member of the spouse's or parent's family who is residing in the same household as the alien, deeming may be waived if a judge, administrative law judge, or Immigration and Naturalization recognize the battery or cruelty.

010.01(B)(xiii) COMPUTATION OF NET INCOME.

010.01(B)(xiii)(1) INCOME DISREGARDED. Income disregarded for the Assistance to the Aged, Blind, or Disabled Payment or State Disability Program recipient is not considered in determining the eligibility of or the amount of assistance for the recipient or any other individual. Savings from disregarded income are considered the same as assets accumulated from any other source.

010.01(B)(xiii)(2) INCOME TAXES PAID. Income taxes that are paid on unearned income are not deducted from the income for budgeting purposes.

010.01(B)(xiii)(3) GARNISHMENTS AND OVERPAYMENTS. If income, earned or unearned, is being garnished, the garnishment is not deducted from income in the budgeting process. If unearned income is being reduced because of a previous overpayment, the amount of the benefit before the deduction of the overpayment is considered as income.

010.01(B)(xiii)(4) OFFSET OF EARNINGS. If a recipient has a combination of farm, self-employment, and regular earned income, a loss from one source of income may be used to offset a gain from another source.

011. COOPERATION IN OBTAINING THIRD PARTY MEDICAL PAYMENTS. The application for State Disability Program medical assistance constitutes an automatic assignment of the recipient's rights to third party payments made on behalf of the recipient for medical care or services which are payable under the State Disability Program. As a requirement for assistance, the recipient must also cooperate, unless good cause for noncooperation can be verified, in securing any third party medical payments.

011.01 THIRD PARTY PAYMENTS NOT ASSIGNED. The following third party payments are not subject to the automatic assignment provision:

- (A) Medicare benefits; and
- (B) Payments from income-producing policies which subsidize the individual's income while the individual is hospitalized or receiving medical care, regardless of the type of medical service being provided.

011.02 COOPERATION REQUIREMENTS. The recipient must cooperate in obtaining third party payments unless good cause for noncooperation can be established. Cooperation includes any or all of the following:

- (1) Providing complete information about third party medical coverage for the recipient or the children in their care. This includes third party medical coverage provided by any other person or agency;
- (2) Providing any additional information or signing claim forms which may be necessary for identification and collection of potential third party payments;
- (3) Appearing as a witness in a court or another proceeding, if necessary;
- (4) Notifying the Department of any actions being initiated to recover money from a liable third party for medical care or services. This includes the identity of the third party and the entire amount of any settlement, court award, or judgment; and
- (5) Reimbursing the Department, or paying the provider, from any payments received directly from a third party for any services payable by State Disability Program Medical Assistance; and
- (6) Taking any other reasonable steps to secure medical support payments.

011.02(A) REFUSAL TO COOPERATE. Non-cooperation by the recipient is based on the individual's failure or refusal to fulfill the requirements listed in this Section.

011.02(B) OPPORTUNITY TO CLAIM GOOD CAUSE.

011.02(C) NOTIFICATION OF RIGHTS. The individual must be notified of the right to claim good cause for non-cooperation at the intake interview, redetermination, or whenever cooperation becomes an issue.

011.01(C)(i) DEPARTMENT'S ACTIONS IF GOOD CAUSE CLAIMED. If the recipient claims good cause, the Department will:

- (1) Explain that the individual has the burden of establishing the existence of a good cause circumstance; and
- (2) Obtain a signed statement from the recipient listing the reason for claiming good cause. The individual is allowed 20 days to present evidence of the claim.

011.01(C)(ii) ACCEPTABLE CIRCUMSTANCES FOR GOOD CAUSE. Good cause claims must be substantiated by signed statements. When documentary evidence is not available, the individual must furnish sufficient information as to the location of the information.

011.01(C)(ii)(1) DOCUMENTARY EVIDENCE. Documentary evidence which indicates these circumstances includes:

- (a) Medical records which document physical or emotional health history and present physical or mental health of the recipient;
- (b) Written statements from a physician or mental health professional indicating the diagnosis or prognosis concerning the individual's physical or emotional condition;
- (c) Court, medical, criminal, protective services, social services, psychological, or law enforcement records which indicate that the third party might inflict serious physical or emotional harm on the individual; or
- (d) Signed statements from individuals other than the recipient with knowledge of the circumstances which provide the basis for the claim.

011.01(C)(ii)(2) EVIDENCE NOT SUBMITTED BY RECIPIENT. When corroborative evidence is not submitted in support of a claim:

- (a) The Department investigates the good cause claim when it is believed that the claim is credible without corroborative evidence and the evidence is not available; and
- (b) The Department will find good cause if the recipient's statement and the investigation indicate that the individual has good cause for refusing to cooperate.

011.01(C)(ii)(3) DEPARTMENT CONSIDERATIONS. If the determination of good cause is not substantiated by documentary evidence, the following evidence must be considered:

- (a) The present physical or mental state of the recipient;
- (b) The physical or mental health history of the recipient;
- (c) Intensity and probable duration of the physical or mental upset; and
- (d) The degree of cooperation required by the recipient.

011.01(C)(ii)(4) DECISION ON GOOD CAUSE. The recipient will receive written notice of the Department's decision on good cause. If it is determined that good cause does not exist, the individual is allowed ten days from the date that the notice of action was mailed to respond. If the recipient does not cooperate, withdraw the application or request the case closed, and a sanction is imposed.

011.01(C)(ii)(5) DELAY OF ASSISTANCE PENDING DETERMINATION. The good cause determination does not deny, delay, or discontinue assistance, while it is pending, if the recipient has complied with the requirements of providing acceptable evidence or other necessary information. In most instances, a good cause determination must be made within 30 days following the receipt of a good cause claim.

011.01(C)(ii)(6) REVIEW OF GOOD CAUSE. At the time of each redetermination, review a good cause claim based on a circumstance that is subject to change. If circumstances remain the same, no action is required. A new determination is necessary if circumstances have changed. If good cause no longer exists, the requirement to cooperate is enforced.

011.02(D) SANCTION FOR REFUSAL TO COOPERATE. If the recipient fails or refuses to cooperate and there is no good cause claim or determination, the appropriate sanction is applied. If the reason for non-cooperation is the recipient's failure or refusal to provide information about or obtain third party medical payments, the individual is ineligible for grant and medical. Ineligibility continues until the individual cooperates or cooperation is no longer an issue.

011.02(E) THIRD PARTY MEDICAL PAYMENTS RECEIVED DIRECTLY. If the recipient receives a third party medical payment directly, and the medical expense for which the third party medical payment is intended is payable by the State Disability Program Medical Assistance, the payment is considered unearned income unless reimbursed by the recipient. If the insurance payment exceeds Medicaid rates, the excess is considered unearned income unless paid out on other medical services or supplies. Regardless of the existence of a good cause claim, any third party medical payment that is received directly by the recipient must be reimbursed.

012. CHILD SUPPORT ENFORCEMENT SERVICES. Child Support Enforcement services are provided to an Assistance to the Aged, Blind, or Disabled child age 18 or younger who has a noncustodial parent. If an adult does not have good cause, and refuses to cooperate with Child Support for a child in the individual's care, the Assistance to the Aged, Blind, or Disabled adult's grant is closed. The child continues to be eligible.

013. RECEIPT OF OTHER ASSISTANCE. An individual who receives a payment or whose needs are included in a payment of Assistance to the Aged, Blind, or Disabled or State Disability Program may not receive a payment at the same time of another type of categorical assistance administered by the Department. This does not preclude the recipient of another type of assistance from being the payee for an Aid to Dependent Children grant made on behalf of a child in the individual's care.

014. INELIGIBILITY OF FLEEING FELON. An individual is ineligible for Aged Blind or Disabled grant and State Disability Program assistance during any period in which the individual is:

- (A) Fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime that is a felony under the law of the place from which the individual is fleeing; or
- (B) Violating a condition of federal or state probation or parole.

TITLE 469 ASSISTANCE TO THE AGED, BLIND, OR DISABLED PROGRAM

CHAPTER 3 DETERMINATION OF BENEFITS

001. DESCRIPTION OF BENEFITS. Assistance to the Aged, Blind, or Disabled Payment Program or State Disability Program payment assistance consists of money payments to the recipient. State Disability Program Medical Payments are made directly to the provider for medical care and services.

002. PLANNING THE ASSISTANCE BUDGET. The assistance budget is planned with the recipient by discussing and explaining the following:

- (A) Budgeting process;
- (B) Individual requirements;
- (C) Persons whose needs may be included in the budget;
- (D) Use of items supplied or obtained in-kind;
- (E) Use of any income;
- (F) Determination of the amount of the assistance payment;
- (G) Provision of medical services; and
- (H) Why it is necessary for a recipient to keep the Department informed of changes in the individual's circumstances which affect his or her needs.

003. INDIVIDUAL REQUIREMENTS INCLUDED IN ASSISTANCE BUDGETS. The individual requirements are:

- (A) Standard of need;
- (B) Shelter up to the maximum; and
- (C) Special requirements.

003.01 STANDARD OF NEED. The standard of need is a consolidation of items necessary for basic subsistence with amounts based on unit size. Included in this standard are food, clothing, sundries, home supplies, utilities, laundry, telephone, garbage collection, and recreation. Also included in this standard amount are meals prepared away from home, therapeutic diet, special clothing allowance, meals furnished to a household employee, transportation for shopping, and special taxes or use charge.

003.01(A) ALTERNATE LIVING ARRANGEMENTS. The standard of need for alternate living arrangements is a consolidated allowance for items necessary for basic subsistence. Included in this standard are:

- (1) Board;
- (2) Room;
- (3) Clothing;
- (4) Personal needs;

- (5) Laundry; and
- (6) Transportation.

003.01(A)(i) LICENSING OF FACILITIES. In determining the appropriate standard to be allowed, verify the current licensure or certification of the facility.

003.01(A)(ii) BOARD AND ROOM. Board and room does not include care or supervision and may be with a relative.

003.01(A)(iii) LICENSED BOARDING HOME. Boarding homes provide the following to four or more individuals who are essentially capable of managing their own affairs:

- (1) Sleeping and other living accommodations;
- (2) A dining room, cafe, or common kitchen; and
- (3) Domestic services requested by the individuals which will assist them in daily living activities.

003.01(A)(iv) LICENSED ASSISTED LIVING FACILITY. An Assisted Living facility provides accommodation and board and care, such as personal assistance in feeding, dressing, and other essential daily living activities, for four or more individuals not related to the owner, occupant, manager, or administrator. These individuals are unable to sufficiently or properly care for themselves or manage their own affairs because of illness, disease, injury, deformity, disability, or physical or mental infirmity.

003.01(A)(v) CERTIFIED ADULT FAMILY HOME. An Adult Family Home is a residential living unit which provides full-time residence with minimal supervision and guidance to not more than three individuals age 19 or older. Service includes board and room with meals, standard furnishings, equipment, household supplies, and facilities to ensure recipient comfort. These individuals are essentially capable of managing their own affairs but are in need of supervision. This may include supervision of nutrition by the facility on a regular, continuing basis, but not necessarily on a consecutive 24-hour basis.

003.01(A)(vi) LICENSED GROUP HOME FOR CHILDREN AND CHILD CARING AGENCY. This group care facility provides 24-hour accommodation for minors including care and supervision. The home provides services to two or more individuals who are developmentally disabled.

003.01(A)(vii) LICENSED CENTER FOR THE DEVELOPMENTALLY DISABLED. A center for the developmentally disabled is any facility, place, or building not licensed as a hospital which provides accommodation, board, training, and other services when appropriate, primarily or exclusively, for four or more persons who are developmentally disabled. Staff in a center for the developmentally disabled may assist individuals residing there in taking routine oral or external medication and also provide for storage and handling of the medication.

003.01(A)(vii)(1) CENTER DEFINED. The term "center" includes:

- (a) GROUP RESIDENCE. Any group of rooms located within a dwelling and forming a single habitable unit with living, sleeping, cooking, and eating facilities for 4 through 15 developmentally disabled persons.
- (b) INSTITUTION FOR THE DEVELOPMENTALLY DISABLED. Any facility other than a skilled nursing facility or an intermediate care facility I or II where 16 or more developmentally disabled persons reside.

003.01(A)(viii) LONG TERM CARE FACILITY. The payment to a long term care facility includes an allowance for personal needs of the recipient which is determined by the licensure or certification of the facility where the recipient resides.

003.01(A)(ix) ASSISTED LIVING WAIVER. The Standard of Need chart explains the standard for an individual receiving Assisted Living Waiver services. The monthly standard includes an allowance for personal needs of the recipient.

003.01(A)(x) LICENSED MENTAL HEALTH CENTER. Mental health center means a facility where shelter, food, counseling, diagnosis, treatment, care, or related services are provided for a period of more than 24 consecutive hours to persons residing at the facility who have a mental disease, disorder, or disability.

003.01(B) ASSISTANCE TO THE AGED, BLIND, OR DISABLED OR STATE DISABILITY PROGRAM STANDARD OF NEED. The standard of need for independent living and shelter costs, or the consolidated standard for alternate living, when Social Security determines that the recipient will continue to receive full Supplemental Security Income payment for up to three months because the individual is likely to return to the previous living arrangement. Follow procedures for allowing shelter and utilities when:

- (i) Supplemental Security Income reduces or terminates the payment at the end of the three-month extension;
- (ii) Supplemental Security Income determines that the individual does not qualify for the full benefit for the three-month period; or
- (iii) The recipient was not receiving Supplemental Security Income before admission to the medical facility.

003.02 SHELTER. The item shelter includes rent and the expenses of home ownership.

003.02(A) MAXIMUM SHELTER ALLOWANCE.

- (1) The single shelter amount for one; or
- (2) The multiple shelter amount for:
 - (a) A married couple who are living together;
 - (b) An Assistance to the Aged, Blind, or Disabled or State Disability Program parent living with a minor child; or
 - (c) An Assistance to the Aged, Blind or Disabled, or State Disability Program recipient living with other essential persons whose needs are included in the budget.

003.02(A)(i) RENT. The allowance for rent should be sufficient to provide the family with decent quarters comparable to the standard for persons of modest circumstances in the same community.

003.02(A)(ii) HOME OWNERSHIP.

003.02(A)(ii)(1) EXPENSES. Expenses of home ownership may be allowed if the recipient or spouse owns the home in which the individual lives, provided the allowance does not exceed the maximum shelter limit allowed.

- (a) If the recipient or spouse has only a life interest in the home, the terms of the conveyance must be examined in determining whether the recipient or the title-holder is responsible for the expenses of home ownership. The case record must contain an explanation if an allowance is included in the budget.

003.02(A)(ii)(2) STANDARDS FOR DETERMINING COSTS. The cost of interest or payments on mortgages or contract purchases, current taxes, and insurance may be allowed in the assistance budget as follows:

- (a) Interest and payments on the mortgage or purchase contract on the home may be included in the budget.
- (b) Current taxes on the home occupied by the recipient may be allowed on a monthly prorated basis unless the payment of taxes is included in the monthly payment on the mortgage or contract purchase.
- (c) If taxes have been allowed in an earlier budget but not paid, they may not be included in the budget again.
- (d) The amount of the homeowner's insurance is included in the budget on a prorated or lump sum basis, unless insurance is a part of the payment on the mortgage or purchase contract.
- (e) The total cost of home ownership must not exceed the maximum shelter allowance.

003.03 SPECIAL REQUIREMENTS. Special requirements are those items that are essential because of the particular circumstances of an individual's situation.

003.03(A) ITEMS THAT MAY BE ALLOWED AS SPECIAL REQUIREMENTS. The following items may be used as a special requirement:

- (i) Transportation;
- (ii) Household furniture and appliances;
- (iii) Expenses of moving;
- (iv) Back taxes;
- (v) Subsistence to obtain medical care;
- (vi) Maintenance for a service animal;
- (vii) Guardian or conservator fee of \$10 per month;
- (viii) Medical expenses of an essential person;
- (ix) Cost of home repair;
- (x) Automobile liability insurance;
- (xi) Lifelines;
- (xii) Vehicle repair;
- (xiii) Home modification and assistive technology equipment; and
- (xiv) Specialized diet allowance.

003.03(B) ITEMS THAT ARE NOT ALLOWED AS SPECIAL REQUIREMENTS. The following items are not allowed as special requirements:

- (i) Personal computers because they are considered a vocational rehabilitation and educational item;
- (ii) Smoking cessation programs because there are no national standards or official oversight of these programs. Guaranteed one time, long term smoking cessation success is not demonstrated by current programs;
- (iii) Health club memberships and exercise or fitness equipment because these are related to weight loss and rehabilitation and essential components to assess the success of the individual program and to monitor the recipient's progress are unavailable;
- (iv) Weight loss programs because there are no national recommendations and standards for these programs. Safety and efficacy issues are unresolved on the national level with no federal Department of Agriculture or official oversight of this industry. Essential components for individualization for each person's special circumstances are not available;
- (v) Lawn care service, snow removal, and the equipment and supplies for them; and
- (vi) Medical services and goods which are not covered by Medicaid or State Disability Medical Program because of limits on amount, scope, or duration established by the Department.

004. BUDGET COMPUTATION. When an application for assistance is approved during the initial 30 day period, the first month's payment begins with date of application, if all eligibility factors are met. If eligibility is determined during the additional 30 day period, the payment is prorated from the date the department receives sufficient information to verify eligibility.

004.01 BUDGETING PROCESS FOR INDIVIDUALS NOT RECEIVING STATE SUPPLEMENTAL INCOME, INCLUDING INDIVIDUALS DETERMINED ELIGIBLE FOR 1619(B) STATUS BY SOCIAL SECURITY ADMINISTRATION. The budget process for determining eligibility for and amount of assistance payment is completed through the Department of Health and Human Services-designated electronic system.

004.01(A) ASSISTANCE TO THE AGED, BLIND, OR DISABLED PAYMENT BUDGETING PROCESS FOR RECIPIENTS RECEIVING SUPPLEMENTAL SECURITY INCOME. The budget for recipients who are receiving State Supplemental Income is completed through the Department of Health and Human Services-designated electronic system. To determine need:

- (i) Only the following available net income is computed. This income is not allowed the \$20 general income disregard:
 - (1) Income of non-spouse essential persons;
 - (2) Veteran's Aid and Attendant benefits; and
 - (3) Income allocated from another assistance unit;
 - (4) Income of an ineligible spouse not used by the Social Security Administration in the calculation of the recipient's Supplemental Security Income payment. Social Security disregards the deemed income if it is less than the difference between the federal benefit rate for an individual and a couple. Social Security calculates the Supplemental Security Income payment based on the federal benefit rate for an individual.

004.01(B) DEDUCTIONS FOR MEDICAL INSURANCE. Assistance to the Aged, Blind, or Disabled Payment Program does not allow for deductions for medical insurance premiums, such as private policies, Medicare, or Medicare supplements in the budget. The State Disability Medical Program budget can reflect medical insurance deductions.

004.02 PERSONS INCLUDED IN THE BUDGET. The assistance budget is computed to determine the need of a recipient for assistance. Consideration is given to the fact that the presence of other related persons living in the home may be essential to the individual's needs and well-being and affect the individual's need. The individual requirements of these essential persons may be included in the budget of the recipient. essential persons in the home may include the spouse, minor or adult children, grandchildren, parents, sisters, or brothers. The decision of whether another related individual is essential to the recipient rests with the recipient. If it has been determined that the related individual is not eligible for medical assistance under another program, and it has been determined that the individual must be in the presence of our recipient full time, then the individual can be an essential person. An individual, who meets the above criteria and who is considered a spouse by Social Security, even though the individual is not married to the recipient, is considered an essential person in the Aged, Blind or Disabled budget. The essential person's income and resources are included in the recipient's Aged, Blind or Disabled budget, and their combined income and resources are not exceed standards.

- (1) A spouse or specified relative can be an essential person; unless:
 - (i) They are not living together;
 - (ii) The spouse or specified relative is an ineligible alien;
 - (iii) The spouse or specified relative is a fleeing felon;
 - (iv) The spouse or specified relative is eligible for assistance in his or her own right, such as receives medical assistance from another program;
 - (v) The spouse or specified relative is sanctioned;
 - (vi) The spouse is receiving Veteran's benefits and the recipient is current pay Supplemental Security Income; or
 - (vii) The spouse or specified relative failed to comply or apply for potential benefits. Medical health insurance premium and paid medical expenses may be paid for essential persons under Aged, Blind, or Disabled Special Requirements.
- (2) The needs of an ineligible spouse are not included as an essential person in the recipient's budget. If the ineligible spouse is receiving Veterans benefits based on need that Social Security is disregarding in determining the recipient's Supplemental Security Income, the individual cannot be an essential person.
- (3) The needs of an essential person may be included in the budget to determine eligibility for payment. When an essential person has been included in the recipient's budget, their combined income and resources cannot exceed standards.
- (4) If there is no budgetary need, close the case and determine SDP medical eligibility with a Share of Cost using the appropriate income level. The appropriate maintenance level for the State Disability Medical Program is determined by considering the recipient and the essential person only if the essential person is the spouse or minor child.
- (5) If the ineligible parent of a minor Assistance to the Aged, Blind, or Disabled or State Disability Program recipient does not have income which has been considered for deeming purposes, the individual's needs may be included in the minor's budget if it has been determined that the parent's continued full-time presence in the home is

necessary for the child's well-being. If the parent has income which is being considered for deeming, the individual's needs have already been recognized in this process. If a parent's needs have been removed from an Aid to Dependent Child unit for noncooperation, such as Employment First employability or child support, that individual's needs may not be included in the Blind, Disabled, or State Disability Program child's budget.

004.02(A) POTENTIAL ASSISTANCE FOR ESSENTIAL PERSONS. Essential persons are required to apply for any financial assistance for which they appear to be eligible.

004.02(B) DETERMINING TOTAL REQUIREMENTS. In determining the amount of the individual requirements in the following subparts, living independently includes rent, allowances for the cost of home ownership, and the cost of a room when the recipient is living in a boarding home and paying room only. Alternate living arrangements include board and room, licensed boarding homes, assisted living, certified adult family homes, licensed group homes for children or child caring agencies, and centers for the developmentally disabled. Care facilities include nursing homes and public institutions for the treatment of mental diseases or developmental disabilities.

004.02(B)(i) LIVING ALONE. The following items show in the budget of an Aged, Blind, or Disabled or State Disability Program recipient:

004.02(B)(i)(1) LIVING INDEPENDENTLY. The budget of an Aged, Blind, or Disabled or State Disability Program recipient who is living alone in an independent living situation shows:

- (a) The standard of need for one;
- (b) The actual shelter expense up to the single shelter amount; and
- (c) Special requirements, if applicable.

004.02(B)(i)(2) LIVING IN AN ALTERNATE LIVING ARRANGEMENT. The budget of an Aged, Blind, or Disabled or State Disabled Program recipient who is living alone in an alternate living arrangement shows:

- (a) The standard of need for the alternate living situation; and
- (b) Special requirements, if applicable.

004.02(B)(ii) LIVING WITH ESSENTIAL PERSON. The following living arrangements are considered when the recipient is living with the essential person:

004.02(B)(ii)(1) LIVING INDEPENDENTLY. The budget of an Aged, Blind, or Disabled or State Disability Program recipient who is living with an essential person in an independent living situation shows:

- (a) The standard of need for the recipient plus essential person's;
- (b) Actual shelter expense paid up to the multiple shelter amount; and
- (c) Special requirements, if applicable for the recipient and the essential person.

004.02(B)(ii)(2) LIVING IN A BOARD AND ROOM ARRANGEMENT. The budget of an Assistance to the Aged, Blind, or Disabled or State Disability Program

recipient who is living with an essential person in a board and room arrangement shows:

- (a) Board and room as paid plus an allowance for personal needs up to the maximum for the recipient and essential person; and
- (b) Special requirements, if applicable, for the recipient and essential person.

004.02(B)(iii) LIVING WITH RECIPIENTS WITH RELATIVE RESPONSIBILITY. When the Assistance to the Aged, Blind, or Disabled or State Disability Program recipient is living with an eligible individual for whom there is relative responsibility, payment is computed according to the guidelines in the following subparts.

004.02(B)(iv) SPOUSE ON AGED, BLIND, OR DISABILITY OR STATE DISABILITY PROGRAM. The needs of the eligible to Assistance to the Aged, Blind, or Disabled or State Disability Program couple who are living together, either independently or in an unlicensed board and room, are shown on the same budget form and the payment is divided equally.

004.02(B)(iv)(1) LIVING INDEPENDENTLY. When the couple is in an independent living situation, the budget must show:

- (a) The standard of need for two;
- (b) Actual shelter expense paid up to the multiple shelter amount; and
- (c) Special requirements for each, if applicable.

004.02(B)(iv)(2) LIVING IN A BOARD AND ROOM ARRANGEMENT. When the couple is in an unlicensed board and room arrangement, the budget must show:

- (a) The actual amount of the board and room up to the maximum for the Assistance to the Aged, Blind, Disabled or State Disability Program recipient and the Assistance to the Aged, Blind, or Disabled or State Disability Program spouse; and
- (b) Special requirements for an Aged, Blind, or Disabled or State Disability recipient or an Aged, Blind, or Disabled or State Disability spouse.

004.02(B)(iv)(3) SPOUSE ON AID TO DEPENDENT CHILDREN OR REFUGEE RESETTLEMENT PROGRAM. If an Assistance to the Aged, Blind, or Disabled or State Disability Program recipient lives with a spouse who is receiving Aid to Dependent Children or Refugee Resettlement Program assistance, the budgets must be computed separately. Neither the needs nor the income of the Aid to Dependent Children or Refugee Resettlement Program recipient may be considered in the Assistance to the Aged, Blind, or Disabled, or State Disability Program budget.

004.02(B)(iv)(3)(a) LIVING INDEPENDENTLY. When the couple is in an independent living situation, the budget for the Assistance to the Aged, Blind, or Disabled or State Disability Program recipient will show:

- (1) The prorated share of the standard of need based on the total number in the case;
- (2) The prorated share of the shelter allowance up to the multiple shelter amount based on the total number in the case; and

(3) Special requirements, if applicable.

004.02(B)(iv)(2)(a)(i) LIVING IN AN ALTERNATE LIVING ARRANGEMENT. When the Assistance to the Aged, Blind, or Disabled or State Disability Program recipient is in an alternate living arrangement, the budget for the Assistance to the Aged, Blind, or Disabled or State Disability Program individual will show:

- (1) The standard of need for the appropriate alternate living arrangement; and
- (2) Special requirements, if applicable.

004.02(B)(iv)(4) LIVING WITH AN ELIGIBLE MINOR CHILD OR PARENT. If a recipient lives with an eligible minor child or parent, such as an Aged, Blind, or Disabled, State Disability parent or an Aid to Dependent Children, Assistance to the Aged, Blind, or Disabled, or State Disability Program child, the budgets are computed separately.

004.02(B)(iv)(4)(a) LIVING INDEPENDENTLY. When the individual and the eligible child are in an independent living situation, the budget for each must show:

- (1) The prorated share of the standard of need based on the total number in the case;
- (2) The prorated share of the actual shelter paid up to the multiple shelter amount based on the total number in the case; and
- (3) Special requirements, if applicable.

004.02(B)(iv)(4)(b) LIVING IN AN ALTERNATE LIVING ARRANGEMENT. When the Assistance to the Aged, Blind, or Disabled or State Disability Program recipient is in an alternate living arrangement, the budget for each Aged, Blind, or Disabled or State Disability recipient must show:

- (1) The standard of need for the appropriate alternate living arrangement; and
- (2) Special requirements, if applicable.

004.02(B)(v) LIVING WITH PERSONS WITH NO RELATIVE RESPONSIBILITY. Only the needs of the recipient are considered in the budget when the recipient is living with other individuals for whom there is no relative responsibility.

004.02(B)(v)(1) LIVING WITH SELF-SUPPORTING INDIVIDUALS WITH NO RELATIVE RESPONSIBILITY. If a recipient is sharing a household with a self-supporting individual for whom the recipient has no relative responsibility, the budget is computed:

- (a) On a board and room basis, if the recipient is required to pay board and room;
- (b) On an expense-sharing plan when in an independent living arrangement using:
 - (i) The standard of need for one;
 - (ii) Shelter costs, not to exceed the maximum, determined by:

- (1) The prorated share of total shelter costs based on the number of persons in the case not to exceed the maximum single shelter amount; or
- (2) The actual amount of shelter paid up to the single shelter amount if the recipient can verify that they pay an amount other than the prorated share; and
- (iii) Special requirements, if applicable.

004.02(B)(v)(2) LIVING WITH OTHER RECIPIENTS WITH NO RELATIVE RESPONSIBILITY. The budget of an Assistance to the Aged, Blind, or Disabled or State Disability Program recipient living in the same household with other recipients for whom the Assistance to the Aged, Blind or Disabled or State Disability Program recipient has no relative responsibility is computed according to an independent living arrangement.

004.02(B)(v)(2)(a) INDEPENDENT LIVING ARRANGEMENT. When the Assistance to the Aged, Blind, or Disabled or State Disability Program recipient is in an independent living arrangement, the budget will show:

- (i) The standard of need for one;
- (ii) The prorated share of total shelter costs based on the number of persons in the case not to exceed the single shelter amount; and
- (iii) Special requirements if applicable.

004.02(B)(v)(2)(b) LIVING IN A BOARD AND ROOM ARRANGEMENT. When the Assistance to the Aged, Blind or Disabled or State Disability Program recipient is in a board and room or boarding home arrangement, the budget will show:

- (i) Board and room as paid plus personal requirements up to the maximum; and
- (ii) Special requirements, if applicable.

004.02(B)(vi) RECIPIENT LIVING IN A CARE FACILITY. The budget of a recipient living in a care facility shows:

- (1) The standard of need for the correct living arrangement; and
- (2) An amount up to \$10 when the recipient has a guardian or conservator who requests a fee.

004.02(B)(vii) ASSISTANCE TO THE AGED, BLIND, DISABLED, OR STATE DISABILITY PROGRAM CHILD LIVING WITH SELF-SUPPORTING PARENTS. If a Blind or Disabled, or State Disability minor child lives with a self-supporting parent, the child's budget will show:

- (1) The prorated share of the standard of need based on the total number in the case;
- (2) The prorated share of the actual shelter paid up to the multiple shelter amount; and
- (3) Special requirements, if applicable.

005. PAYMENTS FOR ASSISTANCE. Aged, Blind, or Disabled or State Disability Program payments may be made as follows:

005.01 TO A GUARDIAN, CONSERVATOR, OR DULY EXECUTED POWER OF ATTORNEY. If an Assistance to the Aged, Blind, Disabled, or State Disability Program recipient has a guardian, conservator, or individual acting under a duly executed power of attorney, Assistance to the Aged, Blind, Disabled, or State Disability Program payments may be made to the appointed person on behalf of the recipient. Certified copies of the letter of guardianship, conservatorship, or power of attorney are filed with the local office.

005.02 TO A PROTECTIVE PAYEE. Protective payments may be made on behalf of a recipient who has a physical or mental impairment which causes an inability to manage Assistance to the Aged, Blind, Disabled, or State Disability Program payments.

005.03 ERRONEOUS STATE SUPPLEMENT PAYMENTS. Underpayments and overpayments are processed as follows:

005.03(A) UNDERPAYMENTS. If a state supplement payment is made for an amount less than the amount the recipient was entitled to receive, a correction must be made. The retroactive corrective payments may be made for the 12 months preceding the month in which the underpayment is discovered. State supplement payments made to correct an underpayment are not considered income or a resource in the month paid or the month following the month paid.

005.03(B) OVERPAYMENTS. There are two types of overpayments:

- (i) Departmental errors caused by inaccurate budget computation or because the worker failed to take action; and
- (ii) Household errors caused because the recipient who failed to provide information, or the information provided was inaccurate or incomplete, resulting in an overpayment.

005.03(C) All overpayments, regardless of cause, must be recouped.

005.03(C)(i) RECOUPMENT OF OVERPAYMENTS. If a state supplement payment was made for an amount greater than the amount the recipient was entitled to receive, the overpayment is recouped by:

- (1) Reducing the current state supplement payments by at least ten percent; or,
- (2) If the recipient is no longer eligible for a grant, the individual may make arrangements to repay it on their own.

005.03(C)(ii) Recoupment is limited to the amount of overpayment which occurred in the 12 months preceding the month in which the overpayment was discovered.

TITLE 469 ASSISTANCE TO THE AGED, BLIND, OR DISABLED PROGRAM

CHAPTER 4 STATE DISABILITY PROGRAM – MEDICAL.

001. DESCRIPTION OF BENEFITS. The State Disability Medical Program provides medical care and services to those who do not have sufficient income to meet their medical needs and who qualify according to the program definitions as blind or disabled, but only if they have also had their Social Security Administration Disability application denied due to lack of duration, then determined blind or disabled by the Department of Health and Human Services designated medical consultant reviewer.

001.01 REFERENCES TO MEDICAL. All references to medical in this Chapter refer to the State Disability Program cases only. Nebraska Medicaid eligibility guidelines are found in Title 477 NAC.

002. ELIGIBILITY CATEGORIES. To qualify for the disability determination for the State Disability Program:

002.01 INDIVIDUALS ELIGIBLE FOR STATE DISABILITY MEDICAL PROGRAM. Individuals who would have been denied disability by the Social Security Administration due to lack of duration but found disabled by the medical consultant review and meet all other State Disability Program eligibility criteria except eligibility for a grant.

002.02 INDIVIDUALS INELIGIBLE FOR STATE DISABILITY PROGRAM GRANT BUT ELIGIBLE FOR STATE DISABILITY MEDICAL ONLY. Individuals who have income or resources in excess of the budgetary standards for the State Disability Program are ineligible for an assistance grant but must be reviewed for State Disability Medical. The eligibility criteria for State Disability Medical Program are the same as for Assistance to the Aged, Blind, or Disabled and State Disability Program payments, with the exception of income and resource standards to be used if over the income or resource standards for a grant.

003. COOPERATION IN OBTAINING HEALTH INSURANCE. As a condition of eligibility for the State Disability Program, an individual is required to enroll in an available health plan if the Department has determined that it is cost effective and the individual is able to enroll. The Department then pays the premiums, deductibles, coinsurance, and other cost sharing obligations.

004 EFFECTIVE DATE OF STATE DISABILITY MEDICAL ELIGIBILITY. If an individual is eligible for medical assistance one day of the month, the individual is eligible the entire month. The effective date of eligibility for State Disability Program Medical is determined as follows:

- (A) Prospective eligibility is effective the first day of the month of request if the individual was eligible for State Disability Program Medical in that same month and had a medical need.
 - (i) The State Disability Program Medical eligibility cannot begin prior to the start date of the disability as determined by the medical consultant review.
- (B) Retroactive State Disability Program Medical eligibility can be no earlier than the first day of the third month before the month of request date or application date if there is no request date, if the following conditions are met:
 - (i) Eligibility is determined and a budget calculated separately for each of the three months; and,
 - (ii) A medical need exists; and,
 - (iii) Elements of eligibility are met for each month.

005. USE OF MEDICAL BUDGET FOR STATE DISABILITY PROGRAM MEDICAL. Determine eligibility for medical assistance only and medical assistance share of cost cases. If at any time factors change that affect the budget, the budget must be recomputed.

006. TREATMENT OF RESOURCES FOR STATE DISABILITY PROGRAM MEDICAL. The application for an individual who has excess resources, other than real property, may be held pending until the resources are reduced. Excess resources may be reduced by paying obligations for medical costs. State Disability Program Medical eligibility begins with the first day of the month of the incurred obligation which was used to reduce the resources to the allowable maximum. Medical eligibility may not be established earlier than the three-month retroactive period.

006.01 MAXIMUM AVAILABLE RESOURCE LEVELS. The established maximum for available resources which the recipient, or the recipient and responsible relative, may own and still be considered eligible for Medical under the State Disability Program according to unit size, are as follows:

- (1) One member unit - recipient only \$4000
 - (a) If a couple has a valid designation of resources and:
 - (1) There is an eligible spouse and an ineligible spouse, the resource level for the eligible spouse is \$4,000; or
 - (2) The ineligible spouse later becomes eligible, each spouse is allowed \$4,000.
- (2) Two member unit \$6000
 - (a) Applicant or recipient and eligible spouse; or,
 - (b) Applicant or recipient and ineligible spouse;
- (3) If two or more related Assistance to the Aged, Blind, Disabled, or State Disability Program applicants or recipients, other than a married couple, such as an eligible Assistance to the Aged, Blind, or Disabled parent or eligible Blind or Disabled minor child, or two or more unrelated eligible Assistance to the Aged, Blind, or Disabled recipients, reside in the same household, each applicant or recipient is entitled to a resource maximum of \$4000.
- (4) If the total equity value of available non-excluded resources exceeds the maximums specified above, the applicant or recipient is ineligible. Resources must be below the maximum resource level for one day in the month in order for the applicant or recipient to be eligible for that month.

006.01(A) DEEMING RESOURCES OF A PARENT. In considering the resources of a parent, who is not considered an Essential Person in another case, towards an eligible

child age 17 or younger and who is living in the parent's household, the following resources are considered to the child whether or not they are actually made available:

- (i) All resources exceeding \$4,000 in the case of one parent;
- (ii) All resources exceeding \$6,000 in the case of:
 - (1) Two parents;
 - (2) One parent and spouse of the parent; or
 - (3) One parent and one minor sibling;
- (iii) \$25 for each additional minor sibling in the parents' household; and
- (iv) If income of a parent is not deemed, resources are also not deemed.

007. TREATMENT OF INCOME. The following disregards are allowed:

007.01 MEDICAL INSURANCE DISREGARDS. A deduction for the cost of medical insurance premiums is allowable in the State Disability Program budget. The cost of premiums for policies that are not considered health insurance are not allowed as a deduction for medical budgeting.

007.02 GUARDIAN OR CONSERVATOR FEE. The expense of a guardian or conservator fee is allowed as paid, up to a maximum of \$10 per month. If the guardian or conservator is required by the court to purchase a bond and file an annual report with the court, the amount allowed by the court for expenses, in excess of \$120, may also be disregarded.

007.03 REPAYMENT OF STATE DISABILITY MEDICAL BENEFITS PROVIDED IN ERROR. When an error has occurred in the paid amount of State Disability Program Medical benefits received by the recipient because of erroneously reported income, changes in income, or private health insurance premiums, not including Medicare, under Neb. Rev. Stat. § 68-138, repayment cannot be required unless such benefits were obtained through misrepresentation or fraud. Voluntary repayment in the following situations:

- (1) The recipient failed to report a change timely and the amount of benefits in error is \$76 or more;
- (2) The recipient reported a change timely but the Department failed to take action in the first month possible and the amount of benefits in error is \$251 or more; or
- (3) The recipient failed to report a change timely and the Department failed to take action in the first month possible with the amount of benefits in error is \$251 or more.

007.03(A) AMOUNT OF BENEFITS IN ERROR. The amount of benefits in error for a recipient of the Assistance to the Aged, Blind, Disabled or State Disability grant or medical, or State Disability Program Medical only, but should have been, State Disability Program Medical with a share of C=cost, or who was State Disability Program Medical with share of cost but who should have had a larger share of cost, is the smaller of:

- (i) The amount of State Disability Program Medical services received for that month;
or,
- (ii) The amount of share of cost in error.

008. COMPUTING A STATE DISABILITY MEDICAL BUDGET. When computing a State Disability Medical budget, the amount of income when compared to the Federal Poverty Level will determine the applicant or recipient's State Disability Medical eligibility for medical, medical with a share of cost, or ineligibility.

008.01 ENTERING LONG TERM CARE. When a recipient enters long term care, the standard is not reduced to the long term care level or Assisted Living Waiver level until the first full month that the recipient resides in long term care, or at a later month if certain other criteria are met, such as home liquidation.

008.02 INCOME WHEN ONE RECIPIENT OF THE HOUSEHOLD IS IN A SPECIFIED LIVING ARRANGEMENT. The following definitions apply when the eligible spouse is in a specified living arrangement and the ineligible spouse or family member is in the community:

- (A) COMMUNITY SPOUSE. A spouse who is:
 - (i) Not applying for or receiving assistance;
 - (ii) Not residing with the alternate care spouse unless the alternate care spouse is in the home and eligible for Home and Community-Based Waiver Services; and,
 - (iii) Not in a hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for persons with developmental disabilities.
- (B) FAMILY MEMBERS. Minor children residing with a community spouse, or dependent parents or siblings of the community spouse or alternate care spouse who reside with the community spouse and could be claimed as dependents for tax purposes.
- (C) MAINTENANCE ALLOWANCE. The amount deducted from an alternate care spouse's income to meet the home maintenance needs of the community spouse and family members.
- (D) MAINTENANCE NEED STANDARD. The income standard to which the community spouse's and other family members' income is compared for the purpose of determining the amount of allowance which may be made from the alternate care spouse's income.

008.03 ALLOCATION OF INCOME. When computing the State Disability Program medical assistance budget for an alternate care spouse in a specified living arrangement, only that individual's income is considered. Income of a community spouse is not considered available to the alternate care spouse. Some of the income of the alternate care spouse may be allocated to the community spouse or family members to bring their income up to a minimum monthly allowable amount.

- (A) The alternate care spouse must be residing in one of the following living arrangements for these special budgeting procedures to apply:
 - (i) A long term care facility;
 - (ii) An adult family home;
 - (iii) A licensed assisted living facility;
 - (iv) A center for the developmentally disabled; or
 - (v) Receiving services in a Home and Community Based Service Waiver.

008.04 DETERMINING OWNERSHIP OF INCOME. All income must be verified and the amount of income received by each individual determined. If payment is made in the name of both spouses, half is considered available to each spouse. If the income received does not specify either spouse, one-half of the amount is considered available to each spouse. Ownership of income may be appealed by the recipient.

009. REQUIRED COPAYMENTS. Individuals who receive State Disability Program assistance are exempt from paying copayments.