

EFFECTIVE
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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

469 NAC 2

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;
- (H) Meet resource limits;
- (I) Meet income requirements;
- (J) Cooperate in obtaining third-party medical payments; and
- (K) 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 incapable of indicating intent if:

- (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; or
- (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 the 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) \$2,000 for a single individual; or
 - (ii) \$3,000 for a couple.

009.01 COUNTED RESOURCES.

- (i) Cash on hand;

- (ii) Cash in saving or checking accounts;
- (iii) Certificates of deposit;
- (iv) Stocks;
- (v) Bonds;
- (vi) Investments;
- (vii) Collectable unpaid notes or loans;
- (viii) Promissory notes;
- (ix) Mortgages;
- (x) Land Contracts;
- (xi) Land leases;
- (xii) Revocable burial funds;
- (xiii) Trust or guardianship funds;
- (xiv) Cash value of insurance policies;
- (xv) A home;
- (xvi) Additional pieces of property;
- (xvii) Trailer houses;
- (xviii) Burial spaces;
- (xix) Motor vehicles;
- (xx) Life estates;
- (xxi) Farm and business equipment;
- (xxii) Livestock;
- (xxiii) Poultry and crops;
- (xxiv) Household goods and other personal effects;
- (xxv) Contents of a safe deposit box;
- (xxvi) Tax Refunds;
- (xxvii) Elective share of a spouse's augmented estate; and
- (xxviii) Revocable, assignable, or saleable annuity.

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.

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.

009.03(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.

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.

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.

009.08(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, such as:

- (i) A home;
- (ii) Additional pieces of property;
- (iii) Trailer houses;
- (iv) Burial lots;
- (v) Motor vehicles;
- (vi) Life estates;
- (vii) Farm and business equipment;
- (ix) Livestock;
- (x) Poultry and crops; and
- (xi) Household goods and other personal effects.

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.

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.

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.

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. The eligibility of individuals who own excess real property other than the individual's home is determined in the month when the Agreement to Sell Real Property and Repay Assistance is signed. The 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 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: \$2,000
 - (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: \$3,000
 - (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: \$3,000 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; Assistance to the 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; Workers' 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 to the 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 TO THE 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 Workers' 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;
 - (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 spouses;
- (4) Essential persons; 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;
- (iv) Is the person petitioning for the admission of the alien under Section 204 of the Immigration and Nationality Act; and
- (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.