

11.7 TRANSFER OF ASSETS

A. FOOD STAMPS

There is a penalty when an AG member, an individual excluded by law or disqualified, knowingly transfers assets for the purpose of qualifying for the Food Stamp Program. Supervisory approval is required before notification of disqualification is sent to the client.

1. Applicants

If the applicant has transferred assets within the 3-month period immediately preceding the date of application, the AG is disqualified from participation in the Program for up to one year from the date the transfer is discovered.

2. Recipients

If a recipient transfers an asset, the AG is disqualified from participation for up to one year from the date the transfer is discovered.

3. Permissible Transfers

Eligibility is not affected by transfers of assets which:

- Would otherwise not affect eligibility, such as personal effects, excluded vehicles, etc.; or
- Are sold or traded at or near the CMV; or
- Are transferred between members of the Food Stamp AG.

EXCEPTION: The assets of an SSI recipient are excluded in a mixed Food Stamp AG. See Section 11.5,A,4. Therefore, a transfer from a non-SSI recipient to an SSI recipient could be a transfer of assets and any such transfer must be explored.

- Are transferred for other purposes.

EXAMPLE: Placing funds in an irrevocable burial trust fund.

4. Length of Disqualification

The length of the disqualification period is based on

the amount by which the client's total retained assets and those transferred exceed the appropriate asset limit.

EXAMPLE: If a one-person AG, with a bank account of \$1,500, transfers bonds with a cash value of \$1,000, the amount transferred is \$500. The \$1,500 bank account plus \$1,000 in bonds equals \$2,500. Subtract the \$2,000 asset limit from this amount to arrive at the \$500.

The chart below is used to determine the disqualification period:

<u>Amount in Excess of the Asset Limit</u>	<u>Disqualification Period</u>
0 - 249.99	1 month
250 - 999.99	3 months
1,000 - 2,999.99	6 months
3,000 - 4,999.99	9 months
5,000 - and up	12 months

The disqualification period begins as follows:

- Application: The month of application.
- Active Case: With the first issuance after discovery, when the adverse action notice period permits. Otherwise, the following month.
- Closed Case: If the transfer occurs prior to closure, disqualification begins when the AG reapplies and is found otherwise eligible. If the transfer occurs after closure, the client is treated the same as any other applicant upon reapplication.

EXAMPLE: A one-person AG has \$1,750 in a bank account. He transferred ownership of a vehicle with a CMV of \$5,000 to qualify for Food Stamps. To determine his disqualification period, the first \$4,650 of the vehicle's CMV is exempt and \$400 is an asset. Combine the \$1,750 bank account and \$400 vehicle asset value to determine the client's countable assets of \$2,150. The countable assets of \$2,150 less the \$2,000 asset limit equals the amount

in excess of the asset limit or \$150. The disqualification period is one month.

B. MEDICAID

There is no transfer of assets penalty for Medicaid, except when a Medicaid recipient, who receives Medicaid under a

coverage group that requires an asset test, applies for or receives long-term care services. See Chapter 17.

C. WV WORKS

NOTE: The following policy is used for transfers of assets made on or after 1/1/97, regardless of the date the individual county changed from TANF to WV WORKS. However, no penalty may be applied until the case has been converted from TANF to WV WORKS. There is no penalty for transferring assets prior to that date.

1. Definitions

For purposes of this item (item C), the following definitions apply.

- Fair Market Value (FMV): An estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred.

For an asset to be considered transferred for FMV, or to be considered transferred for valuable consideration, the compensation received for the asset must be in a tangible form, with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for FMV. Also, while relatives and family members legitimately can be paid for care they provide to the individual, it is presumed that services provided for free, at the time, were intended to be provided without compensation. Therefore, a transfer to a relative for care provided in the past normally is not a transfer of assets for FMV. However, an individual may rebut this presumption.

- For the Sole Benefit Of: A transfer is considered to be for the sole benefit of a spouse, disabled child, or a disabled individual under age 65, if the transfer is

arranged in such a way that no individual, except the spouse, child or individual, can benefit from the transferred asset(s) in any way, either at the time of the transfer, or at any time in the future, except as provided below. The agreement must be in writing.

Similarly, a trust is considered to be established for the sole benefit of one of these individuals if the trust benefits no one but the individual, either at the time of the establishment of the trust, or any time in the future, except as provided below. However, the trust may provide for reasonable compensation for a trustee to manage the trust, as well as for reasonable costs associated with investing or otherwise managing the funds or property in the trust. In defining reasonable compensation, consider the amount of time and effort involved in managing a trust of the size involved, as well as the prevailing rate of compensation, if any, for managing a trust of similar size and complexity.

If a beneficiary is named to receive the funds remaining in a trust upon the individual's death, the transfer is considered made for the sole benefit of the individual if the Department is named as the primary beneficiary for up to the amount paid in benefits to the individual. The designated beneficiary receives any remaining amount.

- Look-Back Date: The look-back date is the earliest date for which a penalty for transferring assets for less than FMV can be applied. Penalties can be applied for transfers which take place on or after the look-back date. Penalties cannot be applied for transfers which take place prior to the look-back date.

When an individual applies more than once (e.g., he applies and is denied due to excess assets and applies again later), the look-back date is based on the first date on which the individual applied for WV WORKS.

2. Look-Back Period

The length of time for which the Worker looks back

for any assets transfers depends upon whether or not a trust fund was involved.

a. Trust Amounts Treated As Uncompensated Transfers

The look-back period is 60 months for amounts in revocable or irrevocable trusts that are considered transferred. The time period begins the month the client applies for WV WORKS.

b. Other Transfers

The look-back period is 36 months. The time period begins the month the client applies for or is converted to, WV WORKS.

3. Permissible Transfers

The following transfers do not result in a penalty for transferring assets.

a. Transfer to a Trust

When an AG member transfers assets to a trust that is excluded from consideration as an asset, no penalty is applied.

b. Transferred Assets Returned

When all assets transferred for less than FMV have been returned to the client, no penalty is applied. However, if a penalty has already been applied or has already started, a retroactive adjustment back to the beginning of the penalty period is required. The client is not necessarily asset-eligible once the resources are returned.

If part of such assets are returned, the penalty period is adjusted accordingly.

c. Client Intended Fair Market Return or Other Valuable Consideration

When the client can demonstrate that he intended to dispose of the asset for FMV or for other valuable consideration, no penalty is applied.

d. Transfer Was Not To Qualify For WV WORKS

When the asset(s) was transferred exclusively for a purpose other than to qualify for WV WORKS, no penalty is applied.

e. Denial Would Result in Undue Hardship

When it is determined that denial of eligibility would work an undue hardship on the client, no penalty is applied. Decisions about what constitutes undue hardship are made by the Director of the OFS Policy Unit. Requests for consideration must be submitted in writing to the OFS Policy Unit with details about the anticipated undue hardship.

f. Transfer of Certain Hemophilia/AIDS Settlements or Funds

Transfer of any amounts received from the following settlements or funds does not result in a transfer penalty:

- § Factor VIII or IX Concentrate Blood Products Litigation, MDL 986, No. 93-C-7452, ND of Illinois
- § Ricky Ray Fund
- § Walker v. Bayer Settlement

4. Transfers Which Are Not Permissible

All transfers not specifically excluded from the application of a penalty result in application of a penalty. This also applies to jointly owned assets. The jointly owned asset, or the affected portion of it, is considered transferred by the client when any action is taken that reduces or eliminates the client's ownership or control of the resource.

5. Transfer With Retention of A Life Estate

A transfer of property with the retention of a life estate interest is treated as an uncompensated transfer.

To determine if a penalty is assessed and the length of the penalty, the Worker must compute the value of the transferred asset and of the life estate, then calculate the difference between the two.

- Step 1: To determine the value of the transferred asset, subtract any loans, mortgages or other encumbrances from the FMV of the transferred asset.
- Step 2: Determine the age of the life estate holder as of his last birthday and the life estate factor for that age found in Appendix A of this Chapter. Multiply the FMV of the transferred asset by the life estate factor. This is the value of the life estate.

- Step 3: Subtract the Step 2 amount from the Step 1 amount. The result is the uncompensated value of the transfer.
- Step 4: Divide the Step 3 amount by 100% current FPL for the AG size. The result is the number of months the penalty covers.

6. Transfer To Purchase An Annuity

Establishment of an annuity is sometimes treated as a transfer of assets, depending on whether or not the annuity is actuarially sound. The average number of years of expected life remaining for the individual who benefits from the annuity must coincide with the life of the annuity for it to be actuarially sound and, thus, not treated as an uncompensated transfer of assets. If the individual is not reasonably expected to live longer than the guarantee period of the annuity, the individual will not receive FMV. The annuity is not, then, actuarially sound and a transfer of assets for less than FMV has taken place.

The transfer is considered to have occurred at the time the annuity was purchased. Only the amount that is not actuarially sound is treated as an uncompensated transfer. Life Expectancy Tables by sex are found in Appendix E of Chapter 17.

EXAMPLE: A 30-year-old father who won \$500,000 in the lottery, purchases a \$500,000 annuity which is to be paid over 40 years. His life expectancy, according to Appendix E of Chapter 17, is 44.06 years. The annuity is actuarially sound so no transfer of resources has taken place.

EXAMPLE: A 60-year-old grandmother, who is the caretaker for her grandchildren, requests to be included in the payment. She purchases a \$50,000 annuity to be paid over 25 years. According to Appendix E of Chapter 17, her life expectancy is only 22.86 years. Therefore, the amount which will be paid out by the annuity for 2.14 years is considered an uncompensated transfer of assets which took place at the time the annuity was purchased.

7. Transfer Penalty

The transfer of assets penalty is ineligibility for a WV WORKS payment.

a. Start of the Penalty

The penalty period starts the month in which the asset is transferred, as long as that month does not occur in any other period of ineligibility due to a transfer of assets penalty. If the month the asset is transferred falls into another such penalty period, the penalty period begins the month after the previous penalty period ends.

When a single asset is transferred, or a number of assets are transferred at the same time, the penalty period is determined by adding together the total uncompensated value of the asset(s) and dividing as shown below. When resources are transferred at different times, the following general guidelines are used.

(1) When Penalty Periods Would Overlap

When assets have been transferred in amounts and/or frequency that would make the calculated penalty periods overlap, add together the value of all assets transferred, and divide by 100% FPL for the AG size. This produces a single penalty period which begins on the first day of the month in which the first transfer was made.

EXAMPLE: An individual transfers \$10,000 in January, \$10,000 in February and \$10,000 in March. Calculated individually, based on a 100% FPL of \$1,111 a month, the penalty for the 1st transfer is from January through September, the 2nd is from February through October and the 3rd is from March through November. Because these periods overlap, the Worker must calculate the penalty periods by adding the transfers together (a total of \$30,000) and dividing by the FPL (\$1,111). The penalty period is 27 months, beginning in January.

(2) When Penalty Periods Would Not Overlap

When multiple transfers are made in such a way that the penalty periods for each would not overlap, the Worker must treat

each transfer as a separate event, with its own penalty period.

All penalties for transferred assets run consecutively.

b. Length of Penalty

The penalty period lasts for the number of whole months determined by the following calculation:

Total amount transferred during the look-back period divided by 100% of the current FPL for the AG size.

When the amount of the transfer is less than the FPL amount, no penalty is applied until a series of transfers totals more than the FPL amount.

The penalty runs continuously from the first day of the penalty period, whether or not the client continues to receive benefits.

There is no maximum or minimum number of months a penalty may be applied.

c. Who Is Affected By the Penalty

The WV WORKS AG is affected by any transfer described above when any AG member, disqualified individual or any entity acting on behalf of, or at the discretion of, a member or a disqualified individual transfers an asset.

When the AG splits into 2 or more groups, the remaining penalty period is divided equally between the adults included in the WV WORKS benefit. A recording in each affected case must specifically explain the division of the penalty period.

EXAMPLE: Mr. and Mrs. Green received WV WORKS for themselves, Mrs. Green's 3 children from a previous marriage and Mr. Green's nephew. Mr. Green transferred an asset for less than FMV, and a 10-month penalty was imposed from February through November. Mr. Green leaves the home in April and Mrs. Green reapplies for WV WORKS. Mrs. Green continues to be

ineligible. However, because Mr. and Mrs. Green no longer live together, they each carry one-half of the remaining penalty period with them. Mrs. Green remains ineligible through July. There are 8 months remaining in the

penalty period. Both have already been ineligible as a unit for February and March. Mrs. Green becomes ineligible beginning in April for 4 additional months. If Mr. Green reapplies, he will also be determined ineligible through July. If the children begin living with other adults, no part of the transfer penalty follows them, unless they live in the home with Mr. and/or Mrs. Green.

NOTE: When the number of months remaining in the penalty period does not divide evenly by the number of adults who were included in the AG, a portion of the appropriate 100% FPL is counted as income after the penalty months have been served.

EXAMPLE: Same situation as in the above example except that 7 months are remaining in the penalty period when Mr. Green leaves. The AG's containing Mr. Green and Mrs. Green are both ineligible for 3 months. In addition, \$934 (100% FPL for 6 people = $\$1,862 \div 2$) is counted as income for each of the adults in the 4th month.

8. Treatment Of Jointly Owned Assets

Jointly owned assets include assets held by an individual in common with at least one other person by joint tenancy, tenancy in common, joint ownership or any similar arrangement. Such an asset is considered to be transferred by the individual when any action is taken, either by the individual or any other person, that reduces or eliminates the individual's ownership or control of the asset.

Under this policy, merely placing another person's name on an account or asset as a joint owner might not constitute a transfer of assets, depending upon the specific circumstances involved. In such a situation, the client may still possess ownership rights to the account or asset and, thus, have the right to withdraw all of the funds at any time. The account, then, still belongs to the client.

However, actual withdrawal of funds from the account, or removal of all or part of the asset by another person, removes the funds or property from the control of the client, and, thus, is a transfer of assets. In addition, if placing another person's name on the account or asset actually limits the client's right to sell or otherwise dispose of it, the addition of the name constitutes a transfer of assets.

If either the client or the other person proves that the funds withdrawn were the sole property of the other person, the withdrawal does not result in a penalty.