

Assets

When the equity value of an individual's home exceeds \$500,000, he is ineligible for Medicaid payment for nursing home care or **AD** Waiver Services, unless his spouse, child under 21 or disabled adult child resides in the home.

NOTE: Property being purchased with a land sale contract is considered Homestead property if the buyer lives on the property. See Item X above for the equity value of land sale contracts.

When the client has only a life estate interest in his principal place of residence, the value of the life estate interest is excluded. For more information, see item 4 below. Temporary absences from the home for trips, visits, hospitalizations or institutionalization do not affect the homestead exclusion. See item 4 below for the purchase of a life estate in another individual's home.

2. Sale Proceeds Or Compensation For Loss Or Damage

See Section 11.2 CONVERSION OR SALE OF AN ASSET; COMPENSATION FOR LOSS OR DAMAGE
--

3. Non-Homestead Property

Treatment of non-homestead property as an asset depends on its use.

- a. Income-Producing Property

SNAP	WVW, AFDC Related	SSI Groups
No	Yes	No*

- (1) SNAP Benefits

All real property, mobile homes and mineral/timber rights are excluded, regardless of use.

Assets

a. Trusts Established By Will

A trust is treated as an asset only to the extent that it is available to the client. Clauses included in a trust which limit the trustee's use of the funds (i.e., exculpatory clauses) are recognized and the amount of funds affected by such exculpatory clauses, is excluded. Irrevocable trusts are excluded, regardless of the amount. There is no penalty for the placement of funds in an irrevocable trust.

b. Trusts Not Established By Will

When the following two conditions are met, the trust policy contained below in this item is applied. If the two conditions are not met, the fund is treated as any other bank account.

1. An individual has established a trust if his resources were used to form all or part of the corpus of the trust.
2. Any of the following persons established the trust for the individual by any vehicle other than by will:
 - Individual
 - Individual's spouse
 - 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
 - A person, including any court or administrative body, acting at the direction of, or upon the request, of the individual or the individual's spouse.

In the following four trust situations, the trust is totally excluded. In addition, establishment of these trusts is not treated as an uncompensated transfer of resources, as defined in Chapter 17 and Section 11.7.

Assets

NOTE: For these purposes, the SSA definition of disability is used. Therefore, any person medically approved for or receiving SSI, based on disability, meets the definition, as well as persons who have been determined disabled by the Medical Review Team (MRT). If no disability determination has been made, the case must be submitted for a MRT decision. See Section 12.10.

1. A trust containing the assets of an individual, under age 65, who is disabled, and which is established for his benefit by a parent, grandparent, legal guardian, or a court. The exception continues even after the individual becomes age 65, as long as he continues to be disabled. **This is commonly known as a special needs trust.**

To qualify for the exception, a trust must contain a provision that the State will receive all amounts remaining in the trust upon the death of the individual, up to the total Medicaid and/or WV WORKS payments made on his behalf.

2. A trust which contains the assets of an individual who is disabled and which meets all of the following conditions.
 - The trust is established and managed by a non-profit association.
 - A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools the funds in these accounts.
 - Accounts in the trusts are established solely for the benefit of the disabled individual.
 - Accounts in the trusts are established by the individual, his parent, grandparent, legal guardian or by a court.
 - The trust must include a specific provision that amounts remaining in the individual's account that are not retained by the trust upon the client's death, must be used to reimburse the State for Medicaid and/or WV WORKS payments which were made on the individual's behalf.

FOR MEDICAID ONLY: When an individual is approved for Medicaid and has an excluded trust described above, for which Medicaid must be the beneficiary, the Worker must fax a copy of the trust document and the Medicaid recipient's name, case number and name of the recipient's power-of-attorney or representative, if applicable, to the current contract agency for Estate Recovery. Information about this agency is in Chapter 17, Appendix I.

3. Burial trusts which meet all of the following conditions:

- The individual signs a contract with the funeral director promising prepayment in return for specific funeral merchandise and services.
- The contract is irrevocable.
- The individual pays the agreed upon amount to the funeral director in the form of a direct cash payment, purchase or transfer of a life insurance policy or annuity which is assigned to the funeral director.
- The funeral director, in turn, places the preneed payment or device into a trust or escrow account which the funeral director establishes himself. If the client establishes the trust or other device himself, the amount may be considered a transfer of resources. See Chapter 17 and Section 11.7.

4. A trust established with a settlement or funds received from the following:

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

Assets

c. Revocable Trusts

Once the Worker determines that the trust was not established by a will and does not meet one of the exceptions, above, the following rules apply:

- The corpus of the trust is considered an available asset.
- Payments from the trust to the client or for his benefit are counted as income.

d. Irrevocable Trusts

Once the Worker determines the trust was not established by a will and does not meet one of the exceptions above, the following rules apply:

If there are any circumstances under which payments from the trust could be made to the client or for his benefit, that portion of the corpus, or the interest, is an asset.

- If payments are made from the available corpus, or interest, to the client or for his benefit, the amount is treated as income.

(1) Payment for the Client's Benefit

Throughout this item d "payments made on behalf of the client" or "for his benefit" means payments of any kind to another entity, such that the client derives some benefit from the payment. This may include, but is not limited to, clothing, television, payments for services or care rendered, whether medical or personal, payments to maintain a home, etc. Any payment for the benefit of the client is counted, even if it is not customarily counted in determining Medicaid and/or WV WORKS eligibility.

In determining whether payments can or cannot be made from a trust, take into account any restrictions on payments, such as use restrictions, exculpatory clauses, limits on trustee discretion, etc., that may be included in the trust.

Assets

EXAMPLE: A trust provides that the trustee can disburse only \$1,000 out of a \$20,000 trust, only the \$1,000 is treated as a payment that could be made to the client or for his benefit. The remaining \$19,000 is treated as an amount which cannot, under any circumstances, be paid to, or for the benefit of the individual.

EXAMPLE: A trust contains \$50,000 that the trustee can disburse only in the event that the grantor needs a heart transplant. The full amount is payment that could be made under some circumstances, even though the likelihood of payment is remote if the client does not have heart problems.

In determining whether payments can or cannot be made from a trust, the Worker must take into account restrictions included in the trust on how payments can be made, the Worker must not take into account when payments can be made. When a trust provides, in some manner, that a payment can be made, even though that payment may be sometime in the future, the trust must be treated as providing that payment can be made from the trust.

e. Undue Hardship

There is a hardship provision for Long-Term Care Medicaid which allows the Department to exclude a trust when counting it results in undue hardship for the client. All decisions about undue hardship are made by the Undue Hardship Waiver Committee. Any requests for such a determination are submitted in writing and must show complete details about the undue hardship which will result. See "Undue Hardship" in Section 11.1 and Section 17.6.

UU. UNIFORM GIFTS TO MINORS ACT FUNDS

SNAP	WVW, AFDC Related	SSI Groups
Yes	Yes	No

VV. VEHICLES

SNAP	WVW, AFDC Related	SSI Groups
No	Yes*	Yes*

The owner of a vehicle is generally the individual to whom it is titled. However, when the title of a vehicle is not in the client's name, but the client states he is the owner, the vehicle is counted as the client's asset. If the title is in the client's name, and he indicates the vehicle no longer belongs to him, and the name on the title has not been changed, the vehicle is presumed to be his, unless he can