

# Medicaid Asset Determination

Angeleigh Dorsey  
Legal Aid of North Carolina  
Senior Law Project

---

---

---

---

---

---

---

---

## What we will cover

- Medicaid Assets 101
- Medicaid for the Aged/Blind Disabled
- What counts as an asset
- Penalty for transfer of assets
- Hearings and appeals
- Hypotheticals
- NCDHHS DMA Aged, Blind and Disabled Manual (Cited as MA- \_\_\_\_\_)

---

---

---

---

---

---

---

---

## Financial Resources

- All financial assets that the applicant/beneficiary or financially responsible person:
  - Owns, or has the right, authority, or power to convert to cash, AND
  - Are legally available for the a/b's support and maintenance

MA-2230 I.A. 1

---

---

---

---

---

---

---

---

**Resource Limits**

- Individual \$2000
- Couple \$3000
- Higher resource limits for other types of Medicaid

MA-2230 I.A.3

---

---

---

---

---

---

---

---

**Value of Resources**

- First moment of the month – liquid assets
- Equity value based on current tax value

MA-2230 II.C.1

---

---

---

---

---

---

---

---

**Types of Resources**

- Real Property – land & dwellings
- Personal Property- personal effects, HH goods, motor vehicles, boats, trailers, farm & garden equipment, most mobile homes
- Liquid Assets – cash, bank accounts, CDs, any items that can be converted to cash

MA-2230 I.B.1-3

---

---

---

---

---

---

---

---

**Whose Resources are Counted**

- Applicant/Beneficiary - ALWAYS
- Spouse of A/B - MAYBE
- Parent of a A/B under age 18 - MAYBE

MA-2230 II

---

---

---

---

---

---

---

---

**Calculation of Resource**

- Private Living Arrangements
- Long Term Care (LTC)
- Married LTC a/b with community spouse

MA-2230 II.F. 1-2

---

---

---

---

---

---

---

---

**Rebuttal**

- A/B can rebut value when resources exceed allowable limits
- Real property
- Personal property
- Promissory notes
- Written statements from knowledgeable sources like real estate brokers, FHA staff, professional appraiser, car dealer or dealer of item at issue
- MA 2230-VII.E. & VIII.E.

---

---

---

---

---

---

---

---

**Exempt or Non Countable Assets**

- Burial Exclusion (\$1500)
- Personal effects/HH goods
- One motor vehicle used for transportation
- Mobile home used as home site
- Home of Residence/Home site
- Real Property contiguous to home site
- Tenancy in Common interest in real property
- Life estate interest in real property
- Remainder interest in real property if more than one remainder holder (except TbyE)

---

---

---

---

---

---

---

---

**Non-Countable Liquid Assets**

- Monthly income
- Life insurance
- Relocation Assistance
- Retirement accounts (including IRAs) if not available to withdraw in lump sum
- Irrevocable pre-need burial contracts
- Certain federal lump sum payments

MA-2230 X.C

---

---

---

---

---

---

---

---

**Availability of Resources**

- A/B can access or use resource
- In some instances, if financially responsible person can access or use resource

MA-2230 IV

---

---

---

---

---

---

---

---

### Available or Unavailable?

- Financial Exploitation (Defrauded) by legal guardian or POA
- Marriage agreements – prenuptial, post nuptial, separation agreements
- Divorce decree
- Will
- Deed
- Resulting Trusts/Legally binding agreement
- MA-2230 IV & V

---

---

---

---

---

---

---

---

### Resulting Trusts/Legal Agreements

- Holding a resource in someone else's name for the benefit of another and:
  - Retains NO legal interest and
  - Will not benefit from disposal of resource
- Written Contracts
- Verbal agreements
- Liquid Assets/Bank Accounts
- Motor Vehicles
- Not countable as resource if evidence shows it is held in trust for another
- MA-2230 V

---

---

---

---

---

---

---

---

### Unavailable

- Judgments
- Estates
- Boundary Disputes
- Legally Binding Agreements
- Incompetent (Maybe) – MA-2230 VI
- Burden on A/B to provide this evidence to DSS

---

---

---

---

---

---

---

---

**Real Property Assets**

- Sole ownership
- Tenancy by the Entirety
- Tenancy in Common
- Life Estate
- Remainder Interest

---

---

---

---

---

---

---

---

**Transferring Assets**

- Property that is transferred to another for less than FMV
- Transfer of Asset Sanction may be imposed
- Applies to certain types of Medicaid covered services:
  - Skilled nursing services in institution/nursing facility (NF)
  - Intermediate care facility for mentally retarded (ICF-MR)
  - Community Alternatives Program (CAP)
  - Program of All Inclusive Care for the Elderly (PACE)
- Sanction applies to transfers that occur on or after lookback date

MA-2240 I

---

---

---

---

---

---

---

---

**Allowable Transfers of Homesite**

- Legal Spouse
- Child under age 21 at time of transfer
- Blind/disabled child of any age (SSA rules)
- Sibling who is co-owner & who has resided in home for year before a/b enters nursing facility or applies for CAP or PACE
- Certain types of trusts like "Sole Benefit" and special needs/pooled trusts
- MA 2240 VII & VIII

---

---

---

---

---

---

---

---

**MAYBE Allowable Transfer?**

- Annuities
- Promissory Notes, Loans, Mortgages or other property agreements
- Life Estate
- Remainder Interest in Real Property
- Tenancy in Common interest in real property

MA-2240 IX

---

---

---

---

---

---

---

---

**“Ladybird” Deeds/Enhanced Life Estate Deeds**

- Common estate planning tool to qualify for Medicaid or avoid Medicaid Estate Recovery
- T in C real estate not countable asset
- Sell for FMV a percentage of the real property to someone else
- Give self life estate interest in same property, remainder to someone else, but life estate owner retains right during lifetime to sell, convey, etc. without the remainderman permission

---

---

---

---

---

---

---

---

**Medicaid Hearing Process MA-2420**

- DSS must provide written notice of its action – approvals, denials, terminations, reductions, changes
- A/B has right to hearing if disagrees with DSS action (See Goldberg v Kelly, 397 U.S. 254 (1970))
- Right to an expedited hearing if standard schedule could jeopardize the individual's life, health or ability to attain, maintain, or regain maximum function. MA-2420 II. C
- Right to Continued benefits pending hearing in certain circumstances

---

---

---

---

---

---

---

---

### Non-Disability Appeals

- 60 days to request hearing/90 for good cause
- Local DSS hearing first: 5 days/3 days to hold hearing; no later than 15 days
- 15 days to request State Hearing following local hearing
- State hearing: standard schedule/no expedited hearing; generally within 90 days unless A/B has good cause for delay
- State decision – within 90 days from hearing request

---

---

---

---

---

---

---

---

### Non-Disability Appeals

- Notice of Decision (state hearing) – final agency decision after 10 days if no further appeal
- Both DSS and A/B can appeal within in 10 from Notice of Decision from state hearing to chief hearing officer
- Written or oral arguments, NO NEW EVIDENCE
- Superior Court – only A/B can appeal, not DSS or state MA-2420 V. L. 2. b

---

---

---

---

---

---

---

---

### Hypothetical 1

Dad, a widower, is sole owner of his home worth about \$100,000. His home is paid for and he considers it the only “inheritance” he will be able to provide for his son. He is worried about paying for nursing home care should he need it in the future. He consults an estate planning attorney and comes up with the following estate plan.

---

---

---

---

---

---

---

---



**Hypo 1 - Part 1 (1%)**

- A/B owns home with FMV/tax value of \$100,000
- A/B sells 1% interest to son for \$1000
- Home is now tenancy in common
- Even if A/B doesn't live in the home, the property is excluded as a resource
- Compensated transfer – not subject to transfer penalty

---

---

---

---

---

---

---

---

**Hypo 1 - Part 2 (enhanced life estate)**

- At same time, A/B executes a second deed, conveying his 99% interest in the property to himself as a life estate
- Son holds remainder interest
- A/B retains the right to sell or transfer the property without the consent of the remainderman (Son)
- When A/B dies, the remainder interest vests in son, who now owns 100% of the property

---

---

---

---

---

---

---

---

**Hypo 1 -Part 2 (continued)**

- Does it make a difference Son purchases life estate interest from A/B?
- What is the effect on Medicaid eligibility? Medicaid Estate Recovery?

---

---

---

---

---

---

---

---

**Hypothetical 2**

Bob is a 60 year old man who barely survived a motorcycle accident. He incurred over \$150,000 in hospital and rehabilitation bills. He owns his home, one truck, \$1400 in savings and checking and has no medical insurance. He applies for Medicaid, and a check by the casework shows a camper/trailer registered in his name at DMV and valued at \$9,617. He tells the casework it is his neighbor's trailer as he sold it to her 4 years ago.

---

---

---

---

---

---

---

---

**Hypo 2 (continued)**

Upon request, Bob provides the written contract for sale to the casework. The contract is handwritten, full of misspellings and grammatical errors, but is signed by both parties and has been properly notarized 4 years earlier. The terms were as follows: Bob agrees to sell the trailer for \$10000 to Darlene. Darlene will pay \$5000 to Bob and take possession immediately, and then pay the rest as she is able ("when she can") since she is a seasonal worker. Bob will transfer title ("give her the title") to Darlene when she has paid \$10,000. At the time of the Medicaid application, Darlene had paid Bob in sporadic payments totaling nearly \$8000.

---

---

---

---

---

---

---

---

**Hypo 2 (continued)**

- What are Bob's assets?
- What is the trailer?
- What about the contract?
- Is this an available or unavailable asset?

---

---

---

---

---

---

---

---

**Hypothetical 3**

Jasper and Sarah, both in their 80s, own a modest home with a tax value of \$65,000 that they purchased shortly after they were married 60 years ago. There is no mortgage. They have \$1500 in their checking account and live off their social security checks. Eight months ago, Jasper suffered from a bad stroke, which along with numerous other health conditions, left him unable to care for himself. He also had dementia, which seemed to become worse after the stroke. Sarah's chronic health problems also left her unable to care for him at home.

---

---

---

---

---

---

---

---

**Hypothetical 3 (continued)**

Sarah places Jasper in Happy Times Nursing Home. Jasper handled all the financial transactions during the marriage, but she provides the information that she knows about to the facility and to the DSS for the Medicaid application. Happy Times tells her not to worry, they will take care of everything, and Jasper will most certainly be eligible for Medicaid.

---

---

---

---

---

---

---

---

**Hypothetical 3 (continued)**

While the Medicaid application process is ongoing, the facility has difficulty communicating with Sarah about Jasper's care and about his financial account with Happy Times. His bill has not been paid and the Medicaid application has not been approved. Meanwhile, Sarah's neighbors have become concerned about her erratic behavior and appearance and have contacted APS.

---

---

---

---

---

---

---

---

**Hypothetical 3 (continued)**

APS becomes involved and determines that Sarah is in need of services, and consequently, Jasper, as neither have any significant close family members still alive. The DSS files an incompetency petition for both Sarah and Jasper. DSS is appointed guardian of the estate for both as a first cousin has been found who is willing to serve as guardian of the person for them both, but for a variety of reasons, is not appropriate to serve as guardian of their estate.

---

---

---

---

---

---

---

---

**Hypothetical 3 (continued)**

DSS learns that Sarah's mother owned an empty lot two blocks away. She died intestate several years ago. Sarah was her only heir. She and Jasper had been paying taxes on the property, valued at \$17,000. Sarah could live safely on her own with a little help, but Happy Times has now sued Sarah and Jasper, for non-payment for Jasper's care. No other facilities are willing to take Jasper without Medicaid.

What is your advice to the DSS director?

---

---

---

---

---

---

---

---

**Questions?**

Angeleigh Dorsey  
angied@legalaiddnc.org

---

---

---

---

---

---

---

---