

10A NCAC 23E .0202 WHAT RESOURCES ARE COUNTED

(a) North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Except as specified in Paragraphs (j) and (k) of this Rule, the resources that are counted for Medicaid eligibility for individuals under any aged, blind, and disabled coverage group shall be determined based on standards and methodologies in Title XVI of the Social Security Act, which is incorporated by reference including all subsequent amendments and editions. This CFR may be accessed at <http://uscode.house.gov/> at no cost. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available.

(b) The value of resources currently available to any member of a budget unit, as defined in 10A NCAC 23A .0102, shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he or she, or someone acting in his or her behalf, can take any necessary action to make it available.

(c) Resources shall be excluded in determining financial eligibility when the budget unit member with a legal interest in the resources is declared incompetent, unless:

- (1) A guardian of the estate, a general guardian, or an interim guardian has been appointed in accordance with the law and is able to act on behalf of his or her ward in North Carolina and in any state where such resources are located; or
- (2) A durable power of attorney, valid in North Carolina and in any state where such resource is located, has been granted to a person who is authorized and able to exercise such power.

(d) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act within application processing time standards to make the resources available to meet the needs of the budget unit member, a referral shall be made to the services unit of the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.

(e) When a Medicaid application is filed on behalf of an individual who:

- (1) is alleged to be mentally incompetent;
- (2) has or may have a legal interest in a resource that affects the individual's eligibility; and does not have a representative with legal authority to use or dispose of the individual's resources the individual's representative or family member shall be instructed by the county department of social services to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to obtain a ruling on the filed proceeding within the deadlines set by the Clerk of Court in the county where the proceeding will be heard or causes it to be dismissed, a referral shall be made to the protective services unit of the county department of social services for guardianship services. If an allegation of incompetence is supported by competent evidence as defined in Paragraph (h) of this Rule, and the incompetence has lasted, or is expected to last, at least 30 consecutive days or until the individual's death, the resources shall be excluded beginning with the date that the evidence shows that he or she became incompetent, except as provided in Paragraphs (f) or (g) of this Rule.

(f) The budget unit member's resources shall be counted in determining his or her eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian, or interim guardian is appointed, provided that after the appointment, property that cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.

(g) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery from incompetence of the member, his or her resources shall be counted except for periods of time for which it can be established by competent evidence as defined in Paragraph (h) of this Rule, that the member was in fact incompetent for at least 30 consecutive days, or until his or her death. Any showing of incompetence is subject to rebuttal by competent evidence as defined in Paragraph (h) of this Rule.

(h) For purposes of this Rule, "competent evidence" is defined as the written statement or testimony at a competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the physical and mental condition of the individual, that contains information on the individual's condition, the basis of that information, the beginning date of incompetence, the reason the individual is incompetent, and, if no longer incompetent, when the individual recovered competence.

(i) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit as set out in the Medicaid State Plan, the case shall be ineligible unless one of the following is met:

- (1) For Family and Children's medically needy cases and aged, blind, or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
- (2) For categorically needy aged, blind, or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of 11:59 pm on the last day of the previous month.

(j) Resources counted in the determination of financial eligibility for categorically needy aged, blind, and disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying Individual and Qualified Disabled Working Individual cases shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) The value of tenancy in common interest in real property shall be not counted.
- (3) The value of life estate interest in real property shall be not counted.
- (4) The value of burial plots shall be not counted.
- (5) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000) shall be not counted.

(k) Resources counted in the determination of financial eligibility for medically needy aged, blind, and disabled cases shall be based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:

- (1) The value of personal effects and household goods shall be not counted.
- (2) The value of tenancy in common interest in real property shall be not counted.
- (3) The value of life estate interest in real property shall not be counted.
- (4) Individuals with resources in excess of the resource limit at 11:59 pm on the last day of the previous month, the first moment of the month may become eligible during the current month at the point that resources are reduced to the allowable limit.
- (5) The value of burial plots shall be not counted.
- (6) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000) shall be not counted.

(l) Resources counted in the determination of financial eligibility for Family and Children's medically needy cases are:

- (1) Cash on hand;
- (2) The balance of savings accounts, including savings of a student saving his or her earnings for school expenses;
- (3) The balance of checking accounts, less the current monthly income, deposited to meet the budget unit's monthly needs when reserve was verified by the county department of social services or lump sum income from self-employment deposited to pay annual expenses;
- (4) The cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500);
- (5) Stocks, bonds, mutual fund shares, certificates of deposit, and other liquid assets;
- (6) Assets held in patient accounts in long term care facilities; and
- (7) Equity in non-income producing personal property limited to:
 - (A) Mobile home not used as home;
 - (B) Boats, boat trailers, and boat motors;
 - (C) Campers;
 - (D) Farm and business equipment; and
 - (E) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

(m) Real property shall be excluded from countable resources for Family and Children's medically needy cases.

(n) One motor vehicle per adult shall be excluded for Family and Children's medically needy cases.

(o) For Family and Children's medically needy cases, income-producing vehicles and personal property shall be excluded from countable resources.

(p) For Family and Children's medically needy cases, the value of non-excluded motor vehicles is the Current Market Value as determined by the assessed county tax value, less encumbrances. If the client disagrees with the assigned value, he or she has the right to rebut the value by producing independent evidence of value.

(q) There is no resource test for Family and Children's categorically needy cases pursuant to 42 C.F.R. 435.603.

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-55; 42 U.S.C. 703; 42 U.S.C. 704; 42 U.S.C. 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.603; 4 42 C.F.R. 435.840; 42 C.F.R. 435.843; 42 C.F.R. 435.845; 45 C.F.R. 233.20;
Eff. September 1, 1984;
Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1, 1985;
Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993;
Temporary Amendment Eff. September 13, 1999;
Temporary Amendment Expired June 27, 2000;
Temporary Amendment Eff. September 12, 2000;
Amended Eff. March 19, 2001;
Temporary Amendment Eff. April 16, 2001;
Amended Eff. August 1, 2002;
Temporary Amendment Eff. March 1, 2003;
Amended Eff. August 1, 2004;
Transferred from 10A NCAC 21B .0310 Eff. May 1, 2012;
Readopted Eff. August 1, 2019;
Amended Eff. March 1, 2020.