

10A NCAC 23E .0207 WHOSE RESOURCES ARE COUNTED

(a) The value of resources held by the client or by a financially responsible person shall be considered by the county department of social services to be available to the client in determining countable reserve for the budget unit.

(b) Jointly owned resources shall be counted as follows:

- (1) The value of resources owned jointly with a person who is not a member of the client's budget unit who is a recipient of another public assistance budget unit shall be divided in parts of equal value between the budget units.
- (2) The value of liquid assets and personal property owned jointly with a person who is not a member of the client's budget unit who is also not a client of another public assistance budget unit shall be available to the client if he or she can dispose of the resource without the consent and participation of the joint-owner or the joint-owner consents to and, if necessary, participates in the disposal of the resource.
- (3) The client's share of the value of real property owned jointly with a person who is not a member of the client's budget unit who is also not a member of another public assistance budget unit shall be available to the client if he or she can dispose of his or her share of the resource without the consent and participation of the joint-owner or the joint-owner consents to and, if necessary, participates in the disposal of the resource.

(c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or court order shall take precedence over ownership of resources as stated in Paragraphs (a) and (b) of this Rule, except as provided in Paragraph (g) of this Rule.

(d) For all aged, blind, and disabled cases, the resource limit, financial responsibility, and countable and non-countable assets shall be based on standards and methodology in Title XVI of the Social Security Act except as specified in Rule .0202 of this Section.

(e) Countable resources for Family and Children's medically needy cases shall be determined as follows:

- (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve allowance if:
 - (A) the spouses live together; or
 - (B) one spouse is temporarily absent for twelve months or less in long-term care and the spouse is not a member of another public assistance budget unit;
- (2) The resources of a client and a financially responsible parent or parents shall be counted in the budget unit's reserve limit if:
 - (A) the parents live together; or
 - (B) one parent is temporarily absent for 12 months or less in long-term care and the parent is not a member of another public assistance budget unit;
- (3) The resources of the parent or parents shall not be considered if a child under age 21 requires care and treatment in a medical institution and his or her physician certifies that the care and treatment are expected to exceed 12 months.

(f) For a married individual:

- (1) Resources available to the individual are available to his or her spouse who is a noninstitutionalized applicant or recipient and who is either living with the individual or temporarily absent for twelve months or less from the home, irrespective of the terms of any will, deed, contract, antenuptial agreement, or other agreement, and irrespective of whether or not the individual actually contributed the resources to the applicant or recipient. All resources available to an applicant or recipient under the rules of this Section must be considered by the county department of social services when determining his or her countable reserve.
- (2) For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph (g) of this Rule.

(g) For an institutionalized individual, the availability of resources shall be determined in accordance with 42 U.S.C. 1396r-5. Resources of the community spouse shall not be counted for the institutionalized spouse when:

- (1) Resources of the community spouse cannot be determined or cannot be made available to the institutionalized spouse because the community spouse cannot be located by the county department of social services; or
- (2) The couple has been continuously separated for 12 months at the time the institutionalized spouse enters the institution.

History Note: Authority G.S. 108A-54; 108A-54.1B; 108A-55; 42 U.S.C. 1396r-5; 42 U.S.C. 1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; 42 C.F.R. 435.725; 42 C.F.R. 435.726; 42 C.F.R. 435.733; 42 C.F.R. 435.735; 42 C.F.R. 435.840; 42 C.F.R. 435.832; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; *Correll v. DSS/DMA/DHR*, 418 S.E.2d 232 (1992); *Schweiker v. Gray Panthers*, 453 U.S. 34, 101 S.Ct. 2633, 69 L. Ed.2d 460 (1981);
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