
UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

MA-2245 UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

REISSUED 11/01/11 – CHANGE NO. 17-11

I. UNDUE HARDSHIP

An applicant/recipient (a/r) may have coverage authorized for institutional services if imposition of the transfer of asset sanction causes an undue hardship. The a/r has already been unsuccessful in demonstrating that a transfer of assets was made for a purpose other than to establish or retain Medicaid eligibility (rebuttal process). A transfer of asset sanction is also known as a penalty period.

The transfer of assets penalty is waived if the a/r demonstrates to the director or director's designee that the sanction would cause an undue hardship.

Undue hardship relates to the a/r. Undue hardship does not apply to relatives, responsible parties of the a/r or the facility. Undue hardship also does not exist when the imposition of the penalty period causes the a/r an inconvenience or restricts his lifestyle.

II. POLICY RULES

A. Undue hardship exists:

1. When imposition of a penalty period due to the asset transfer would deprive the a/r of:
 - a. Medical care such that the a/r's health or life would be endangered, or
 - b. Food, clothing, shelter, or other necessities of life.

Other necessities of life including basic life sustaining utilities, including water, heat, electricity, phone, and other items or activities without which the individual's health or life would be endangered.

And

2. No other income or assets are currently available to the a/r to provide for medical care or food, clothing, shelter, or other necessities of life.

And

3. The a/r or some other person acting on the a/r's behalf is making a good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset which may include:

UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

REVISED 11/01/11 – CHANGE NO. 17-11

(II.A.3.)

- a. Seeking advice of an attorney and pursuing legal or equitable remedies such as asset freezing, assignment, or injunction; or seeking modification, avoidance or nullification of a financial instrument, promissory note, loan, mortgage, or other property agreement, or other similar transfer agreement; and
- b. Cooperating with any attempt to recover the transferred asset or the fair market value of the transferred asset.

B. Undue hardship does not exist when the only hardship that would result is the a/r or a/r's spouse's inability to maintain a pre-existing life style or cause an inconvenience for the a/r or a/r's spouse.

C. The following persons may request an undue hardship waiver of the penalty period:

1. The a/r, or
2. The a/r's spouse or representative, or
3. The institution where the a/r resides when the a/r or the a/r's authorized representative gives written consent to the facility.

III. PROCEDURES FOR REQUESTING UNDUE HARDSHIP DETERMINATION AND DOCUMENTATION

A. After the sanction period is established and was not rebutted, notify the a/r in writing of the sanction period and the undue hardship waiver process using [DMA-5113](#), Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets). If appropriate, also send a notice of pending Medicaid application, [DMA-5098/DMA-5098S](#), Medicaid Application Pending.

B. The a/r must request the undue hardship waiver within 12 calendar days from the date of the [DMA-5113](#). If the a/r does not request an undue hardship waiver within 12 calendar days from the date of the notice, impose the transfer of asset penalty. Send the appropriate notice. See [MA-2240](#), Transfer of Assets, XIV.D.

C. The request may be made verbally or in writing.

D. Document the date of the initial request in the county record.

UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

REVISED 11/01/11 – CHANGE NO. 17-11

(III.)

- _____ E. Send a [DMA-5114](#), Request for Documentation for Undue Hardship Claim, within 5 work days of receipt of a request for a waiver.
- _____ 1. Also send the [DMA-5097/DMA-5097s](#), Request for Information. Document in the record the date the request is sent. Retain a copy of both the DMA-5114 and the DMA-5097. The individual has 12 calendar days from the date of the notice to provide the information/documentation.
- _____ 2. If information/documentation is not received by the end of the 12 calendar day period, send a second [DMA-5114](#), Request for Documentation for Undue Hardship Claim, and [DMA-5097/DMA-5097s](#), Request for Information. Document in the record the date the request is sent. Retain a copy of both the DMA-5114 and the DMA-5097. Allow an additional 12 calendar days to submit the information/documentation.
- _____ 3. If information/documentation is not received by the end of the second 12 calendar day period:
- a. For applications, continue to hold through the end of the application processing period and if not received at that time, deny the undue hardship waiver request for failure to provide information/documentation. Send a [DSS-8109/DSS-8109S](#), Notice of Benefits, Denied or Withdrawn, using the appropriate notice text code.
- b. For individuals who already receive Medicaid coverage of institutional services, send a timely notice to the individual at the end of the second 12 calendar day period.
- c. For pla recipients who apply for institutional services, send a [DSS-8109/DSS-8109S](#), Notice of Benefits, Denied or Withdrawn, using the appropriate notice text code to deny the request for those services.
- _____ 4. If information/documentation is received within the requested time period, evaluate for undue hardship. See III.G. below.
- F. For Medicaid applications, when all other information to determine eligibility is received, and only the documentation for an undue hardship is needed, follow procedures in [MA-2304](#), Processing the Application. Exclude time with a “WVR” exclusion code entry on the Date Screen in EIS. (See [EIS-2400](#), Date Screen) Do not exclude time with “WVR” if the applicant is otherwise pla eligible.**

UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

REVISED 11/01/11 – CHANGE NO. 17-11

(III.)

G. The county director of social services or his designee makes the decision on undue hardship within 12 calendar days of receipt of the information/documentation.

H. If the Director or Director’s designee identifies the need for additional information and/or documentation, request the additional information/documentation. Use [DMA-5114](#), Request for Documentation for Undue Hardship Claim, along with a [DMA-5097/DMA-5097s](#), Request for Information. Document in the record the date the request is sent and retain a copy. The individual has 12 calendar days from the date of the notice to provide the information/documentation.

1. If the additional information/documentation is not received by the end of the 12 calendar day period, send a second [DMA-5114](#), Request for Documentation for Undue Hardship Claim, along with a [DMA-5097/DMA-5097s](#), Request for Information. Allow 12 additional calendar days to submit information/documentation.
2. Complete the determination within 12 calendar days of receipt of the additional information.
3. If the additional information is not received within the period described in III.H. and III.H.1. above, deny the undue hardship request as described in III.E.3.above.

IV. INFORMATION AND DOCUMENTATION TO SUPPORT CLAIM FOR UNDUE HARDSHIP

The burden of proof to show that an undue hardship exists is the responsibility of the a/r or some other person or institution acting on the a/r’s behalf.

Documentation from the a/r or the person or institution acting on the a/r’s behalf must include:

A. A written statement from a medical doctor with knowledge of the a/r’s medical condition certifying that in his or her professional opinion, the a/r will be in danger of death or the a/r’s health will suffer irreparable harm if a penalty period is imposed.

UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

ISSUED 11/01/07 – CHANGE NO. 24-07

(IV.)

B. Statements of knowledgeable persons, including but not limited to doctors, nurses, social workers or family members, establishing through the greater weight of evidence that the a/r will be deprived of food, clothing, shelter, or other necessities of life if a penalty period is imposed.

C. Verification that no other alternative income or assets exist to provide payment for institutional services, or food, clothing, shelter, or other necessities of life.

1. Consider the following:

- a. Does the a/r have assets, both countable and non-countable, to pay for medical care, shelter, clothing, and other necessities of life?
- b. Are there any other alternatives available to the a/r to provide medical care, food, clothing, shelter, and other necessities of life?
- c. Does the a/r and/or a/r's spouse, or if under age 18, a/r's parents, have sufficient assets, including all countable and excluded assets except the individual's, spouse's, or parent's home, to pay for medical care, shelter, clothing, and other necessities of life?

2. Available income means all income of the a/r and a/r's spouse less the full amount of the maximum community spouse income allowance, including the excess shelter allowance, plus 50% of other income over the maximum community spouse income allowance for the community spouse (CSP). Any income of the CSP in excess of this amount may be a source to pay for long term care costs for the institutional spouse (ISP).

EXAMPLE: The CSP has income of \$5,000/mo. Subtracting the maximum community spouse income allowance (\$2,541) leaves \$2,459 ($\$5,000 - \$2,541 = \$2,459$). Half of the \$2,459 is \$1,229.50, rounded up is \$1,230. Adding \$1,230 to the maximum community spouse income allowance is \$3,771 ($\$2,541 + \$1,230 = \$3,771$). The amount of the CSP's income over this amount, \$1,229/month ($\$5,000 - \$3,771 = \$1,229$), may be used to pay for the ISP's care.

3. When the a/r or the a/r's spouse has an equity interest in the home exceeding \$500,000, the home is an alternative source to provide payment for institutional services, or food, clothing, shelter, or other necessities of life regardless of who is living in the home.

UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

ISSUED 11/01/07 – CHANGE NO. 24-07

(IV.C.)

4. In addition to a home as described in C.3. above, alternative assets means all assets of the a/r and the a/r's spouse except:
 - a. A motor vehicle in which the a/r or the a/r's spouse has an equity interest not exceeding \$30,000, and
 - b. Personal property, and
 - c. A portion of the CSP's community spouse resource allowance (CSRA) as determined in [MA-2231](#), Community Spouse Resource Protection, but not more than 60% of the Maximum CSRA. To calculate this amount, compute the CSRA. Protect the CSRA up to 60% of the maximum CSRA.

Any assets of the CSP in excess of this amount may be a source to pay for long term care costs for the institutionalized spouse (ISP). Any CSP Resource Allowance below this amount is protected for the CSP.

EXAMPLES:

- d. A couple had total assets of \$200,000. One-half, \$100,000 is assigned to the CSP as the Community Spouse Resource Allowance (CSRA) as determined in [MA-2231](#), Community Spouse Resource Protection. This is greater than 60% of the Maximum CSRA (\$60,984). When determining potential sources for payment of the ISP's care in determining if undue hardship exists \$60,984 is protected for the CSP. Any amount of the CSP's assets in excess of \$60,984 may be used to pay for the ISP's care. (\$100,000 minus \$60,984 equals \$39,016 available to pay for the ISP's care.)
- e. The couple had total assets of \$50,000. Half, \$25,000 is assigned to the CSP as the CSRA. This amount is less than 60% of the Maximum CSRA (\$60,984). Therefore, the CSRA, \$25,000, is protected for the CSP.
- f. The couple had total assets of \$300,000. Half, \$150,000 exceeds the maximum CSRA. Therefore, the maximum CSRA, \$101,640, is assigned to the CSP as the CSRA. When determining potential sources for payment of the ISP's care in determining if undue hardship exists, protect 60% of the Maximum CSRA (\$60,984) for the CSP. Any amount of the CSP's assets in excess of that amount (\$40,656) may be used for the ISP's care.

UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

ISSUED 11/01/07 – CHANGE NO. 24-07

(IV.C.4.)

- g. The couple had total assets of \$40,000. Since this amount is less than the 60% of the maximum CSRA, the minimum CSRA, \$20,328, is protected for the CSP. The CSRA is actually \$20,000 (\$40,000 divided by 2 = \$20,000). However, this is less than the minimum CSRA which is \$20,328 so the CSP amount is \$20,328.

D. The a/r or person or institution acting on the a/r's behalf provides the information and documentation necessary to demonstrate by greater weight of evidence that:

1. He is making a good faith effort to pursue all means to recover the transferred asset or the fair market value of the asset such as but not limited to the following:
 - a. Contacting the individual(s) or entity to whom the asset was transferred to try to have the asset returned, and
 - b. Seeking advice from an attorney or seeking advice from an individual or other entity who was involved in the creation of a financial instrument, promissory note, loan, mortgage or life estate interest regarding nullification, and
 - c. Cooperating with any attempt to recover the asset or the fair market value of the transferred asset.

And

2. The individual can not recover any portion of the transferred asset.

V. UNDUE HARDSHIP DECISION

A. Approve undue hardship when:

1. The written statement from the medical doctor with knowledge of the a/r's medical condition states that depriving the a/r's health will suffer irreparable harm or be in danger of death if a penalty period is imposed.

Note: If the a/r is in a nursing home or hospital or a facility like ACH, and not facing discharge, then a/r's life or health is not endangered.

And

UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

ISSUED 11/01/07 – CHANGE NO. 24-07

(V.A.)

2. Statements from knowledgeable persons establishing through the greater weight of evidence that no other sources are available to the a/r to provide for medical care, food, clothing, shelter, or other necessities of life that are essential to the a/r's health and life.

And

3. The a/r or person or institution acting on behalf of the a/r is making a good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset as described in IV.D. above.

B. Deny undue hardship when:

1. The a/r or some other person or facility acting on the a/r's behalf fails to provide information and documentation in the time allowed or fails to fully cooperate.
2. The a/r or some other person or facility acting on the a/r's behalf fails to make a good faith effort to recover the transferred asset as described in IV.D. above.
3. The a/r or a/r's spouse only provide proof that they cannot maintain their existing life style or the undue hardship only causes an inconvenience.
4. The a/r's total available assets (or if a couple, the total combined available assets of the a/r and the a/r's spouse, or if under age 18, the combined available assets of the a/r's parents), including all countable and excluded assets except as determined in IV.C. above, are sufficient to provide the a/r medical care, food, clothing, shelter, and other necessities of life.
5. The a/r has transferred income and/or assets to the community spouse and the community spouse refuses to cooperate in making the assets available to the a/r.

- C. If it is determined that an undue hardship exists, waive the penalty period and notify the a/r, the a/r's spouse or representative, or the institution acting on the a/r's behalf. Approve the application provided all other requirements are met. Send a manual [DSS-8108/DSS-8108s](#), Notice of Benefits, stating approval for the request for undue hardship for Medical Assistance coverage of institutional services because the a/r demonstrated that denial of payment for these services will cause an undue hardship.**

UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

ISSUED 11/01/07 – CHANGE NO. 24-07

(V.)

- D. If it is determined that an undue hardship does not exist, deny the request for the waiver. Send a manual [DSS-8109/DSS-8109s](#), Your Application for Benefits are Being Denied or Withdrawn, stating denial of the request for undue hardship for Medical Assistance coverage of institutional services and the reason for the denial. Impose the transfer of asset penalty sanction.**