
RESOURCES

MA-3320 RESOURCES

REISSUED 05/01/11-CHANGE NO. 07-11

I. INTRODUCTION

A resource limit of \$3,000 applies for applicants and beneficiaries of Medicaid under M-AF and H-SF. Resource limits do not apply for M-PW, M-IC, FPW (MAF-D), IAS, BCCM (MAF-W, MAF-T, MAF-U, or MAF-V) or NCHC.

Resources are assets that a Medicaid applicant, beneficiary, or member of the budget unit:

- A. Owns, or has the right, authority, or power to convert to cash, and**
- B. Are not legally restricted from using for his support and maintenance.**

II. REQUIREMENTS

- A. Count resources of applicants/beneficiaries and budget unit members. Refer to MA-3305, M-AF, MIC, H-SF Budgeting, for definition of budget unit.**
- B. The resource limit for M-AF and H-SF is \$3,000.**

HSF and IAS children eligible for the Expanded Foster Care Program (EFCP) are exempt from the assets limits through the month the child turns age 21. Refer to [MA-3230](#), Eligibility of Individuals Under Age 21

- C. Assets or resources for Medicaid purposes include liquid assets and personal property.**
- D. For applications, Medicaid can be authorized on the day of the month during the certification period (c.p.), either retroactive or ongoing, that the value of all countable resources is within the allowable limit, assuming all other eligibility requirements are met. This includes the month a change in resources occurs and is applicable regardless of classification. However, if resources go above allowable limits again, do not authorize until resources go below allowable limit.**
- E. For ongoing cases, Medicaid can not be authorized if countable resources exceed the allowable limit. This includes when a change in resources occurs and is applicable regardless of classification.**
 - 1. Deny an application unless resources will be reduced within the application processing time standard. Refer to [MA-3215](#), Processing the Application, for procedures, or
 - 2. Terminate an on-going case unless resources are reduced before the proposed termination date. When termination of benefits is proposed because excess resources have been verified, the date of verification must be no more than 30 days prior to the date of termination, except for items which are not subject to change within a 6 month period.

RESOURCES

REVISED 05/01/11 – CHANGE NO. 07-11

(II.E.)

3. If the review pends or the verifications are no longer acceptable and new verifications must be obtained, retain the previous verifications for the period they cover, in case they are needed in the future or for an appeal.

F. There are special procedures for a married individual who becomes institutionalized or applies for CAP. The spouse that remains in the community may be able to keep a share of the couple's assets. Refer to MA-3322, Community Spouse Resource Protection, for policy principles.

G. CHANGE IN SITUATION

Always verify resources for the month of change. Follow procedure in II above.

III. WHOSE RESOURCES ARE COUNTED

A. Count resources owned solely by the a/b or a b.u. member unless the a/b shows evidence of legal restraints which prevent sale, such as, judgements, estates, boundary disputes, or legally binding agreements, etc., or if the a/b or b.u. member is alleged to be incompetent. See IV.I. for resulting trusts/legally binding agreements. See V. for incompetency procedures.

The a/b or his representative must provide evidence of legal restraints which make resources unavailable.

B. Refer to [MA-3322](#), Community Spouse Resource Protection, when the a/b is institutionalized and has a spouse in the community.

C. Shared Ownership of Resources

1. Resources owned jointly by 2 or more members of the same b.u. are counted for the b.u.
2. Resources owned jointly by a b.u. member and a person who is not a member of the same b.u. may be counted for the b.u.
 - a. If the other person is a member of another public assistance b.u. (Work First, Medicaid, Special Assistance, or SSI):
 - (1) Count one-half of the value of the jointly owned resource, or
 - (2) If there is a legally binding agreement specifying how the resource is to be divided, count the share specified in the agreement as owned by the b.u. member.
 - b. If the other person is not a member of another public assistance b.u., regardless of whether it is a spouse, count the total value of resources owned if:

RESOURCES

REISSUED 03/01/012–CHANGE NO. 04-12

(III.C.b.)

- (1) The b.u. member can dispose of the asset without the consent and participation of the other person, or
- (2) The other person agrees to and, if necessary, participates in the disposal of the asset.

D. Long Term Care Partnership Policy

A qualified Long Term Care Partnership policy provides the Medicaid a/b with a resource disregard up to the amount of benefits paid out by the policy, as of the date of application for LTC Medicaid or CAP, and resource protection at estate recovery equal to the full amount paid out on behalf of the insured as of the date of application for LTC or CAP Medicaid. See ABD MA-2230, Financial Resources, XII. D. Long Term Care Partnership policy for instructions on how to apply the resource disregard at application.

IV. WHAT RESOURCES ARE COUNTED

To determine what resources are counted toward the \$3,000 resource limit, use the chart below. Where additional information is needed to evaluate the resource, the appropriate part of the section is referenced in the chart.

RESOURCE	DO NOT COUNT	COUNT	VERIFICATION
Accident Insurance with Death Benefit	X		
Bank Accounts		X	See A.
Boats, boat trailers, boat motors (not income producing)		X	A/B's Statement unless questionable
Burial contracts (preneed)	X		
Burial Insurance Policies	X		
Campers not used as a homesite (not income producing)		X	A/B's Statement unless questionable See B.
Cash on Hand		X	A/B's statement
Farm or Business Equipment (not income producing)		X	A/B's Statement unless questionable See B.
Funds received from <u>Walker v. Bayer</u>	X		
Income-producing personal property, business or farm equipment	X		
Investments, such as Savings Bonds, mutual funds, and stocks See C.		X	View savings bonds, stock certificates, business records or other records
Life Insurance	X		

RESOURCES

	<u>See E.</u>	<u>See E.</u>	<u>See E.</u>
Loans/Promissory Notes			
Lump Sum <u>See D.</u> See <u>MA-3300</u> (for income instructions)	Month of receipt	Remainder in subsequent months	View check or award letter Contact provider
All Federal and State tax refunds, Including Child Tax Credit (CTC) and Earned Income Tax Credit (EITC)	Do not count for 12 calendar months beginning the month the refund is received.	Remainder in subsequent months	View check or award letter Contact provider
Motor vehicles (Also see Personal Property below)	X		
Patient Accounts in Long-Term Care Facilities		X	Contact facility
Personal effects and household goods	X		
Personal Property such as mobile home or motor home used as a home site, or recreational vehicle used as primary mode of transportation.	X		
Personal Property such as mobile home or motor home not used as a homesite or recreational vehicle not used as primary mode of transportation which are not income producing.		X	A/B’s Statement unless questionable See B.
Real Property	X		
Relocation Assistance Payments (Title XX of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970)	X		
Resulting Trusts/Legally Binding Agreements	See G.	See G.	See G.
Retirement Accounts	X		See F.
Sale of an Asset		Month after receipt of funds	A/B’s Statement
Sponsor Deeming		X	See MA- 3313
Stocks and Mutual Funds, including stock owned by an individual in his/her own C-Corporation		X	View stock certificates, business records or other records
Trust Funds	X		
Utility Trailers (not income producing)		X	A/B’s Statement unless questionable See B.

A. Bank Accounts (Checking, Savings, Credit Unions, Savings & Loans, Certificate of Deposit (CD), Direct Express Debit Cards, NCKIDSCARE Card, Medicare Health Savings Account, money market, life insurance accounts or dividends that accumulate in an account at the company, etc., as well as any item that can be converted to cash (i.e. cash value bearing life insurance policy).

RESOURCES

REISSUED 05/01/11—CHANGE NO. 07-11

(IV.A.)

1. If the a/b or b.u. member claims a resource should not be countable to him because of a resulting trust/legally binding agreement, see G. below, Resulting Trusts/Legally Binding Agreements.
2. Do not count as a resource the amount of income deposited in bank accounts to pay monthly bills or a lump sum from self-employment deposited to pay annual expenses. Accept the a/b's statement as verification.
3. Verify the current balance by:
 - a. Seeing the last account statement, or
 - b. Using the DSS-3431, "Request for Financial Information."

Explain to the a/b that for the DSS-3431, "Request for Financial Information,"
 - (1) He has the right not to give consent;
 - (2) Once consent is given, it may not be revoked;
 - (3) The consent is valid for a period not to exceed twelve months; and
 - (4) Giving consent is not a condition of doing business with any financial institution.
 - c. Financial institutions cannot provide information on joint accounts without the consent of all account holders. It is the responsibility of the a/b to obtain consent from all the joint owners.
 - d. Explain to the a/b that refusal to give consent will result in denial or termination of benefits for failure to cooperate in establishing eligibility.
 - e. Verify the balance of an EBT account through the North Carolina EBT Production System that is located in each county.

B. Personal Property

1. Verifying Ownership

If you are unable to verify the personal property through the online verification system and the a/b's statement is questionable, check the names of the adult members of the b.u. against county property tax records, review bills of sale, titles, insurance policies, finance records, etc.

2. Exclude income-producing personal property.

RESOURCES

REISSUED 05/01/11—CHANGE NO. 07-11

(IV.B.)

- a. Ask the a/b to provide documentation of how the personal property is used to produce an income to the b.u.
 - b. Deduct the expenses of ownership of the property and expenses involved in producing the income from the payment received for use of the property. Refer to MA-3300, Income, X. (Self-Employment Income) for treatment of allowable transportation expenses.
 - c. The property is income-producing if, after deducting expenses, there is any adjusted gross income remaining, regardless of the amount.
3. Exclude personal property that is being used as the a/b's homesite, such as a mobile home, camper or motor home.
 4. Exclude personal property that is being used as the a/b, or financially responsible person's primary mode of transportation. Examples are, but not limited to, motorcycles, boats, and mopeds. Personal property such as dirt bikes, four wheelers, etc. which cannot legally be licensed for transportation would not qualify for this exemption.
 5. Determining the Equity Value
 - a. Equity is the Current Market Value (CMV) less any encumbrances ("pay-off amount").
 - b. Determine CMV by using local property tax records or DOT/DMV for licensed personal property, such as mobile homes, trailers, etc. Reviewing bills of sale, or finance records. Contact retailers of the personal property item to determine a value.

C. Stocks In A Private Corporation

1. If the a/b owns stock in a closely held corporation which is not listed on the stock market, determine the value of the stock as follows. This generally pertains to assets of self-employed individuals who own their own business.
 - a. Determine the equity value of all assets owned by the corporation, including real and personal property, vehicles and liquid assets. The equity is the value of each asset less any encumbrances on that asset.
 - b. Divide the total value among all stockholders based on each stockholders percentage of ownership, as established by the Articles of Incorporation.
 - c. The value of the stock is a countable asset to the a/b.

RESOURCES

REVISED 06/01/13—CHANGE NO. 05-13

(IV.C.)

Example: A-1 Paint Store is owned by the a/b and his two nephews. The business is incorporated and the a/b owns 60% of the stock. The corporation owns the land and the building in which the store is located. The tax value is \$150,000 and the outstanding mortgage is \$105,000, with an equity of \$45,000. The business also owns a van valued at \$7,500 on which they still owe \$5,000, with an equity of \$2,500. There is a corporate bank account with a balance of \$1,250. The total equity in assets is \$48,750. The value of the a/b's stock is \$29,250.

- d. Any assets owned by and in the name of the corporation are considered in the determination of the value of the stock and are not countable as a separate asset to the a/b.
 - e. Count stock value or self employed ownership interest in a corporation as a resource.
2. If the documents are held by another party for the b.u. member, contact the other party for verification.
 3. Record the value verified, how verified, and the date verified on the base document.

D. Lump Sums

1. If an a/b states that the lump sum payment has been spent:

Ask the a/b to produce receipts to show how the money was spent or if there are no receipts, accept the a/b's written statement.

a. Social Security (RSDI) and SSI

Exclude any portion of the lump sum of SSI or RSDI from resources for the 9 calendar months following the month of receipt. This includes SSA/SSI lump sums that are prorated and paid out over a period of time.

b. Federal Disaster Relief

Permanently exclude payments from Federal Disaster Relief and Emergency Assistance Act of 1974 (Public Law 93-288), or some other Federal statute because of a presidentially declared major disaster.

c. Cash and In-kind Receipts for Replacement or Repair of Lost, Damaged, or Stolen Excluded Resources:

Exclude for 9 months from the date of receipt. Extend the exclusion for up to an additional 9 months for cash receipts if, for the first 9 months, circumstances beyond the a/b's control:

RESOURCES

REVISED 06/01/13—CHANGE NO. 05-13

(IV.D.)

- (1) Prevent repair or replacement of the lost, damaged, or stolen property; and
- (2) Keep the a/b from contracting for such repair or replacement.
- (3) Exclude interest earned by these funds from income and resources for the time the funds are excluded.
- (4) Document the circumstances for excluding the resources.
- d. Child Tax Credit (CTC), North Carolina Earned Income Tax Credit (NC EITC) and Federal Earned Income Tax Credit (EITC)

Exclude refunds of Child Tax Credit (CTC), North Carolina Earned Income Tax Credit (NC EITC), and Federal Earned Income Tax Credit (EITC) for 12 calendar months beginning the month the refund or payment is received
- e. Exclude all other Federal and State tax refunds for 12 calendar months beginning the month the refund or payment is received.

E. Loans/Promissory Notes

- 1. If the a/b or b.u. member is the borrower:
 - a. Do not count a loan as a resource in the month of receipt if there is an agreement to repay.
 - b. Count any remaining funds in subsequent month.
- 2. If the a/b or b.u. member is the lender:
 - a. Do not count the value of a promissory note or the payments received from a loan or promissory note.
 - b. Count the payments as income. Refer to MA-3300, Income

RESOURCES

REISSUED 05/01/11—CHANGE NO. 07-11

(IV.)

F. Retirement Accounts

1. A formal plan, recognized by federal tax law, intended to provide income when an individual ceases working. Examples: IRA, 401(k), Simplified Employee Pension (SEP), Tax Sheltered Annuity (TSA or 403(b)), Savings Incentive Match Plan for Employees (SIMPLE) Keough (usually for self-employed workers, also called HR-10), and company sponsored retirement plans
2. If an individual withdraws the retirement funds in a lump sum, it becomes a countable asset when it is received by him. Verify by using the following methods:
 - a. The a/b provides documentation from the administrator of the retirement fund or the financial institution which verifies the total value of the account prior to withdrawal, the deductions taken prior to disbursement, the total amount refunded to the a/b or financially responsible person and the date of the transaction.
 - b. Contact the administrator of the retirement fund or the financial institution. Document in the record the total value of the account prior to withdrawal, the deductions taken prior to disbursement, the total amount refunded to the a/b or financially responsible person and the date of the transaction.

G. Resulting Trusts/Legally Binding Agreements

1. Policy Rules
 - a. It is presumed that a resource owned by an individual is also countable for him, unless there are circumstances which make the resource of no benefit to him because he is holding the resource for someone else.
 - b. The terms of a separation agreement, divorce decree, will, deed, order, resulting trust or legally binding agreement may cause a resource technically owned by an individual to be of no benefit to him.
 - c. A resulting trust exists when a person has a resource in his own name but is holding it for the benefit of another person and he:
 - (1) Retains no legal interest in the resource, and
 - (2) Will not benefit from the disposal of the resource.
 - d. If the a/b or b.u. member alleging that a resource is held in trust for someone else continues to retain a legal interest in the resource and/or will receive the proceeds from the disposal of the resource, it is not considered to be held in trust for someone else and is a countable resource.

RESOURCES

REISSUED 05/01/11—CHANGE NO. 07-11

(IV.G.1.)

- e. If the a/b or b.u. member claims a resource should not be countable to him because of a resulting trust/legally binding agreement, he must cooperate by presenting necessary supporting documentary evidence.
- f. A legally binding agreement may be either a written or a verbal contract. The evidence must be sufficient to:
 - (1) Convince others of the validity of the agreement,
 - (2) Show that the agreement existed at the time of the purchase/deposit of the resource, and
 - (3) Show that the legal title holder holds the resource/property in trust for the other party who is making payments or deposits.

2. Verification

When a resource is owned by an individual who has applied for Medicaid, determine whether it may not be countable to him because of a legally binding agreement or resulting trust.

a. Written Contract:

- (1) Review the contract and determine if it affects whether the resource is countable to the a/b.
- (2) Determine the intent and terms of the agreement between parties, including the type of resource, the date of the contract, reason for its existence, and specific terms of the agreement.
- (3) Contact the county or agency attorney if there are questions regarding the terms or validity of the written contract.

b. Verbal Contract/Agreement:

Ask the a/b to submit 2 different types of the following evidence:

- (1) Written statement(s)/affidavit(s) from the parties involved in the verbal agreement:
 - (a) Giving the type of resource,
 - (b) The intent and terms of the agreement, and
 - (c) Describing the involvement of the parties to the agreement.
- (2) Cancelled checks or receipts for payments on a loan showing who is making payments on the resource,

RESOURCES

REVISED 05/01/11—CHANGE NO. 06-11

(IV.G.2.b.)

- (3) Letter(s) or statement(s) from finance companies, banks, loan officers, credit unions, automobile salespersons, insurance companies or agents, or others identifying the type of resource and supporting claims that the resource is held for another individual who is making payments on the resource, or
- (4) Written statements from at least 2 knowledgeable persons:
 - (a) Identifying the type of resource, and
 - (b) Giving the circumstances surrounding ownership, and
 - (c) Who benefits from the resource and the basis for their knowledge.

V. INCOMPETENCY

A. General

1. Resources owned by or in which the a/b or b.u. member has a legal interest are not available to the a/b if:
 - a. He is alleged to be incompetent and has no legal guardian or someone with previously established power of attorney (POA) to make the resources available,
 - or
 - b. He has a legal guardian/durable POA who does not act to make the resources available.
2. If an a/b does not have resources that exceed the resource limit for the number in the b.u., incompetence is not an issue.
3. When an a/b has excess resources and he is alleged to be incompetent **or** has been ruled incompetent by a North Carolina court, use the following policy to determine if the resources may be excluded.

B. Definitions

1. Incompetent Adult or Emancipated Minor

"Incompetent adult" means an adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, inebriety, senility, disease, injury, or similar cause or condition.

RESOURCES

REISSUED 05/01/11—CHANGE NO. 07-11

(V.B.1.)

2. Guardian of the Estate

A guardian of the estate, which may be awarded by a court permanently or for an interim period of time, allows the lawfully appointed guardian to act on behalf of the incompetent individual in any state where resources belonging to the individual are located.

3. Guardian of the Person

A court may appoint a guardian of the person to take care of an individual's personal needs, but the guardian of the person does not have authority to access resources of the individual.

4. General Guardian

A general guardian is a guardian of both the estate and the person. He can access the individual's assets.

5. Interim Guardian

An interim guardian is appointed only to handle an immediate crisis or need before an incompetence hearing process is completed. Interim guardianship may be of the person,

the estate, or a general guardian. He may be able to access the individual's assets if the court so orders. Examine the order appointing the interim guardian to determine his authority.

6. Durable Power of Attorney

a. A durable power of attorney is a document by which an individual grants authority to (an) other individual(s) to serve as his attorney-in-fact to act on his behalf in legal and financial matters.

b. It must be executed when the individual granting the POA is fully competent, and it remains valid after incompetence occurs.

c. It must be registered with the Register of Deeds with a copy provided for the Clerk of the Court for accounting purposes.

d. The date of execution of the document must predate the onset of incompetence.

7. General or Limited Power of Attorney

a. A general or limited power of attorney authorizes one or more persons to act in the absence of the person granting it.

b. It ends if the individual becomes incompetent.

RESOURCES

REVISED 05/01/11—CHANGE NO. 06-11

(V.)

C. Policy Rules

1. Otherwise countable and available/accessible resources, held solely or jointly by an allegedly incompetent a/b, are exempt prior to a formal declaration of incompetency if:
 - a. A written statement as described in V.D.1.c., from a knowledgeable source supports the allegation of incompetence, and
 - b. The a/b is allegedly incompetent for a period of at least 30 consecutive days or until his death, and

NOTE: If applicant has not yet been incompetent for 30 days hold the application for the 30-day period.
 - c. The resources cannot be accessed on behalf of the a/b because:
 - (1) He has no legal representative/guardian/durable POA, or
 - (2) His legal representative/guardian/durable POA is unable, fails or refuses to act to make the resources available.
2. Incompetency for Medicaid eligibility purposes may be:
 - a. Alleged by someone who is in a position to know, as indicated in V.D.1.b., **or**
 - b. Formally declared by a North Carolina court.
3. Incompetency may be alleged at any time including, but not limited to:
 - a. During the application/redetermination processing time, or
 - b. When an a/b receives new resources, or
 - c. When unreported resources are discovered, or
 - d. When a change in situation causes a previously exempt resource to become countable,
or
 - e. When the value of a resource increases; or
 - f. When the a/b's medical condition changes.
4. Exclude otherwise countable resources of an allegedly incompetent individual if a representative has not been previously established who is legally authorized to act on the incompetent individual's behalf in legal matters, including accessing his resources.
5. For purposes of Medicaid eligibility, a formal judgment of incompetence is not required if the a/b has previously executed a valid durable power of attorney and his attorney-in-fact is able and willing to act in the a/b's behalf.

RESOURCES

REVISED 05/01/11—CHANGE NO. 06-11

(V.C.5.)

- a. Resources held by the incompetent a/b with a valid durable POA are considered available and countable.
 - b. If the durable POA is unable or unwilling or otherwise fails or refuses to act on the a/b's behalf to make the resources available, the resources are unavailable, but a legal guardian of the estate must be established for the a/b. See V.D.1 and 4, for procedures.
6. When the a/b has been formally declared incompetent by a North Carolina court and a guardian of the estate has been appointed by the court, resources are available under certain conditions described in procedures below.

D. Procedures

1. Alleged Incompetence

Inform the family member or representative of an a/b who may not be competent, including a public agency acting on the a/b's behalf, that:

- a. Otherwise countable resources may be exempt for a certain period of time if the a/b is alleged to be incompetent for a period of 30 consecutive days or until his death, and
 - (1) The a/b does not have someone legally authorized to act on his behalf to access his resources, or
 - (2) His legal representative/guardian/durable POA is unable, fails or refuses to act to make the resources available,

NOTE: The individual must have been allegedly incompetent for at least 30 consecutive days or have died before resources may be exempt.

And

- b. The alleged incompetence is supported by the written statement, or testimony at a competency hearing, by one of the following:
 - (1) A physician, or
 - (2) A nurse, social worker, or psychologist, and
- c. The statement/testimony includes:
 - (1) An explanation of the reasons the a/b is believed to be incompetent, such as medical conditions or diagnoses, and
 - (2) The approximate onset of the alleged incompetence, and

RESOURCES

REVISED 05/01/11—CHANGE NO. 06-11

(V.D.1.c.)

- (3) Ending date of alleged incompetence, if the person has improved, and
- (4) The basis for the knowledge or opinion of the individual alleging the incompetence.

2. Exclude Resources

Exclude all resources, beginning with the first month for which assistance is requested:

- a. For all months that the evidence as defined in V.D. clearly shows the a/b was incompetent, or
- b. Until one of the following occurs:
 - (1) A North Carolina court rules that the a/b is incompetent and appoints a guardian of the estate or general guardian, or
 - (2) The court rules that the a/b is not incompetent, or
 - (3) The court dismisses the case because of the death or recovery of the a/b.

3. Requirement to Formally Establish Incompetence

Inform the a/b's family or representative that steps must be taken to establish the a/b's incompetence formally in a North Carolina court.

If the a/b's representative states that he is willing and able to act on the a/b's behalf, explain that:

- a. All documents and petitions necessary to have the a/b formally declared incompetent must be filed with a North Carolina court in order to have a guardian of the estate or general guardian appointed by the court, and
- b. The necessary legal documents must be filed with the court within 30 calendar days of the latter of:
 - (1) The date of application for Medicaid, or
 - (2) The discovery of a previously unreported resource or receipt of a new resource in an ongoing case.

4. Referral for Guardianship Services

Refer the case to the county dss director's designee in the services unit at any point that the a/b's representative:

RESOURCES

REISSUED 05/01/11—CHANGE NO. 07-11

(V.D.4.)

- a. Requests guardianship services, or
- b. If the family or representative pursues guardianship, but only guardian of person is appointed, or
- c. Is offered and accepts the assistance of the dss in filing the necessary legal documents,
or
- d. States that he is unwilling or unable to file the necessary documents, or
- e. Refuses to participate or cooperate in the court proceedings required to make the resources available to the a/b, or
- f. Fails to take the necessary steps outlined in V.D.3., within 30 calendar days of contact by the IMC regarding his responsibilities.
NOTE: The county is to always pursue general guardian or guardian of the estate.

5. No Ruling of Incompetence

Count resources at the beginning of the next month if:

- a. The court finds that the a/b is not incompetent, or
- b. The court dismisses the case because of the death or recovery of the a/b, or
- c. The services unit determines that guardianship is not the appropriate alternative to meet the a/b's needs.
 - (1) Document the period of alleged incompetence, beginning and ending dates or date of death, as indicated in V.D.1.c., or
 - (2) Document that prior to the date of a finding of competence the a/b's medical condition substantially improved.

6. Incompetence Is Established by the Court

When a formal declaration of incompetence has been determined by a North Carolina court and a general guardian or guardian of the estate appointed, regard the resources as follows:

Count liquid resources and personal property resources beginning with the first day of the month immediately following the month in which the legal guardian is appointed.

RESOURCES

REISSUED 05/01/11—CHANGE NO. 07-11

(V.D.)

7. Failure of Legal Guardian to Act
 - a. If a legal guardian fails to access resources for the a/b's use within 30 calendar days of appointment, make a referral to the county director's designee.
 - b. The county director's designee must:
 - (1) Determine if the guardian is acting in the a/b's best interests, and
 - (2) Inform the IMC either that the present guardian is acting in the a/b's best interests or that a new guardian must be appointed.
 - c. The director's designee must make a referral to the Clerk of Court for intervention if he determines that the a/b's interests are not being served or are questionable.
 - d. Continue to exclude the resources until the Clerk of Court acts to appoint a new guardian.
 - e. Count the resources as described in V.D.2., if the director's designee determines that the a/b's best interests are being served or if the Clerk of Court appoints a new guardian.
8. Documentation
 - a. File copies of the durable power of attorney and/or order of guardianship in the a/b's case record.
 - b. File copies of documents to show that all required steps have been taken to establish formal guardianship and that the guardian has taken the necessary actions to make the a/b's resources available.
9. Computation of Countable Resources
 - a. Exclude all resources for any month or portion of a month for which assistance is requested and there is documentation that the a/b is not competent to access his resources.
 - b. Count all resources to the a/b either because he has recovered sufficiently to access his resources himself or because of the appointment of a legal guardian of the estate who has authority to access his resources, beginning with the first day of the month following his recovery or the appointment of a legal guardian.