

	GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES MEDICAID POLICY MANUAL			
	Chapter:	2300	Effective Date:	April 2020
	Policy Title:	Trust Property		
	Policy Number:	2338	Previous Policy Update:	MT 37

REQUIREMENTS

The trust principal is a resource to an individual who is legally empowered to revoke the trust and use the principal for his/her own support and maintenance.

BASIC CONSIDERATIONS

A trust is a legal arrangement by which one person holds property for the benefit of another. The person who makes the arrangement is the trustor/grantor/settlor. The person who holds the property is the trustee. The person for whom the property is held is the beneficiary.

Totten Trust

A Totten Trust is a trust in which an individual makes himself/herself trustee of his/her own funds for the benefit of another. The trustor/trustee can revoke a Totten Trust at any time. Should the trustor/trustee die without revoking the trust, the principal of the trust reverts to the beneficiary.

If the A/R is the trustor of a Totten Trust, the principal of the trust is a resource to the A/R, and any income generated by the principal is income to the A/R.

If the A/R is the beneficiary of a Totten Trust, the principal of the trust is **not** a resource to the A/R **unless** the trust itself gives the A/R access to the property without the intervention of the trustee. When the beneficiary has no control over the trust, count as income only trust distributions actually received by the beneficiary, regardless of what the trust specifies the beneficiary should receive.

MQT

A Medicaid Qualifying Trust (MQT) is a trust created prior to 8-11-93 by an individual, spouse, or someone acting on his/her behalf, with his/her own funds, and with him/her named as the beneficiary of the trust. Refer to Section 2336, Trust Property Medicaid Qualifying.

BASIC CONSIDERATIONS (cont.)**OBRA '93**

An OBRA'93 trust is a trust created on or after 8-11-93 by an individual, spouse, or someone acting on his/her behalf, with his/her own funds, and with his/her named as the beneficiary of the trust. Refer to Section 2337, Trust Property-OBRA'93.

Other Trusts

Trust property which is neither an MQT nor a Totten Trust, such as a trust created by a will, will be treated as follows:

- The trust principal is not a resource to an individual who is not legally empowered to revoke the trust and use the principal for his/her own support and maintenance.
- Revocability of a trust depends on the terms of the trust agreement and/or on state law. If a trust is irrevocable, the trust principal is not anyone's resource.
- Trust earnings and disbursements are not income to the trustor or trustee unless designated as belonging to the trustor or trustee under the terms of the trust, such as fees payable to a trustee or interest payable to a trustor rather than feeding into the trust itself.
- Additions to the trust principal are not income to a trustor or trustee. However, they may be income to a trustor or trustee prior to becoming part of the trust principal. For example, if the trustor or trustee is a deemor who receives RSDI benefits and adds to the trust principal, consider the RSDI as income for deeming purposes.
- Trust earnings are not income to the beneficiary unless the trust dictates, or the trustee allows, payment to a beneficiary.
- Trust distributions are income to the beneficiary if paid to him/her in cash. They may result in income to the beneficiary if used to make certain third-party vendor payments on his/her behalf.

NOTE: The transfer of assets policy can be applied whenever a trustor who is an A/R establishes a trust fund for the benefit of another person.

PROCEDURES

Review the trust document and determine whether any of the following conditions applies to the trust:

- The individual (A/R or deemor) is the trustor, trustee or beneficiary.
- The trust is revocable and, if so, whether the individual has the authority to revoke and to use the principal for his/her own support and maintenance.
- The individual has unrestricted access to the trust principal.
- The trust provides for payments to the individual or on his/her behalf.
- The trust principal generates income and, if so, whether the individual has the right to any of that income.

PROCEDURES (cont.)

NOTE: If the A/R is the beneficiary of a non-MQT trust, contact the trustee to verify the actual income from the trust received by the A/R.

When trust property is a resource and its value is material to eligibility, determine the type of the property and establish its value by one of the following means:

- Contact the holder of the funds if they are in cash.
- Develop the resource value of the property as outlined in the applicable section in this chapter dealing with the specific type of property.
- Record all information used in determining whether the trust is a resource or creates income. Record your conclusions and include a copy of the trust document, if any.

Forward a copy of the trust attached to a completed Form DMA-285 to: (signature of A/R or RP not required)

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