



## **Policy Clarification 2019-09-01**

### **Title: Medicare Set-Aside (MSA) Account**

**Date: 2019-09-30**

**From: Erin Kelley, Senior Medical Eligibility Policy Manager**

#### **Program(s) Impacted: Elderly & Disabled Medical Assistance Programs**

The purpose of this document is to provide guidance on the resource treatment of Medicare Set-Aside (MSA) accounts.

When an individual settles a workers' compensation or personal injury claim and receives payment from that claim, the funds may in some instances be distributed to a Medicare Set-Aside (MSA) account established in the name of the individual. The funds are to be used exclusively for the medical expenses of the individual which are directly related to the settlement injury or disease. The MSA account must be an interest-bearing account that is either self-administered by the individual or by a professional account administrator.

The purpose of the MSA account is to function as a fund for primary medical coverage to current or potential secondary Medicare coverage. Once the MSA account funds have been fully utilized for designated medical expenses, Medicare is then available to pay for uncovered medical services connected to that injury or disease. In that respect, the MSA account functions like a third-party medical resource. However, the account would not be listed as a third-party resource for Medicaid purposes.

An MSA account may be funded through a structured settlement in one of two ways – (1) as a lump sum arrangement where the individual accepts a single payment intended to pay for all past and future medical expenses and disability benefits related to the injury or disease, or (2) as a defined schedule of payments to be made periodically over time to cover expenses projected for future years. Settlement payments distributed over a period of time are generally funded with the purchase of an annuity which is owned by the entity making the payments, not by the individual receiving the payments. No clearance would be needed in regard to the annuity funding these types of settlements.

An MSA is treated as follows:

1. The workers' compensation or personal injury settlement itself, either lump sum or periodic payments (including the annuity), is not an available resource to the individual. Nor are the settlement payments (either one-time or periodic) counted as income to the individual receiving the payment(s).

2. The MSA account once established and funded from the workers' compensation or personal injury settlement account is a countable resource to the individual. There is no special resource exemption for this type of account. The account is considered an available resource whether self-administered by the individual or administered by an account professional.

Treatment of the MSA account as an available resource is in accordance with Medical KEESM 5200 (3) which states:

*"Resources must be available. Resources are considered available when an applicant/recipient has a legal interest therein and the legal ability to make them available."*

Since the owner of the MSA account has a legal interest in the account and the ability to access the funds for any purpose, the account is available to him/her, and therefore a countable resource. This is because the account owner has no legal obligation to have the MSA account and can at any time spend the funds for anything he/she wants, even if that use is contrary to the purpose for which the account was created.

**Note:** There are strict rules for use of the MSA account funds for specified medical expenses. In addition, there are formal reporting requirements to Medicare for use of the funds. Contrary to these restrictions, as noted above, the individual may use the account funds for non-medical related purposes. Regardless of how the individual chooses to use the funds (for medical-related purposes or otherwise), the balance in the MSA account is a countable resource for medical assistance purposes. Eligibility staff are not responsible for ensuring that the funds are appropriately used for medical expenses, rather, staff shall only verify the account balance for eligibility purposes.

**For questions or concerns related to this clarification, please contact one of the Medical Program Eligibility Policy staff below.**

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## Questions and Answers about MSA Accounts:

Q 1: Is an annuity clearance still needed if the payments are funded through an annuity? If not, how to determine it is the type of an annuity that does not need clearance?

A-1 No clearance would be needed for an annuity funding the MSA account as they would not be, in any scenario, countable as income, nor would the annuity itself be considered an asset, only the account in which the funds are being deposited would be considered an asset. Staff will very likely request additional information at the time they see these payments anyway (given that the account has not yet been identified as an MSA account); however, upon receipt of the requested information, it should be identified at that time as coming from a workman's comp settlement for the purposes of funding an MSA account. If by chance this information is missed or is not clear and a clearance is requested, the Policy team will provide guidance to the worker as needed.

Q 2: What verifications would need to be requested to verify the countable/exempt statuses? What elements are required on the statement/court documents provided?

A 2: There is no countable vs. exempt treatment of these accounts. The MSA account will always be considered an available asset.

Q 3: What questions would need to be asked of the consumer if they report the workers comp/personal injury settlement to find out if they have the MSA?

A 3: Consumers will likely report the account and not the settlement; however, even if the consumer directly reports the account as an MSA account, there would be no need to obtain any additional information from the settlement as the account would be considered an available asset regardless.

Q 4: Does part 1 apply if the MSA is not set up after?

A 4: The intentions are that these monies are to be deposited into an interest-bearing account. Whether the consumer follows through with that, regardless of where the money is ultimately deposited, it would be considered an available resource once the monies are received. The settlement itself has no impact on the treatment of the money received.

Q 5: How to enter the exempt lump sum and exempt income in KEES?

A 5: The periodic payments are not to be considered income in any fashion (exempt/non-exempt); therefore, no income records should be entered into KEES. Also, because the lump sums are not considered income to the consumer, it would not be exempt in KEES. The account, once established, would be treated as any other bank account valued by using the lowest available balance in the month.

Q 6: Is there a time limit the lump sum/payments are exempt?

A 6: The money received from these settlements is not exempt, once the account has been established, it is a countable asset to be treated in the same manner as any other bank account.

Q 7: How to continuously track the lump sum (example- if it is deposited into an account that also has other income deposited- how to verify later on if the account over in resources is due to the previous lump sum or continuous income?)

A 7: Again, these lump sums are not to be considered income; therefore, there would be no special exemptions for the monies received. They would be treated like any other deposit. Once in the account, it is countable as an asset.