



Policy Clarification 2019-08-02

Title: Treatment of Trust Assets for the Community Spouse Resource Allowance (CSRA)

Date: 2019-08-21

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 how assets in an available trust are to be counted when calculating the Community Spouse Resource Allowance (CSRA).

The following Medical KEESM provisions state the basic policy:

5330 Exempt Real Property – Exempt Values – *“The resource value of the following classifications of real property shall be exempt. However, if such property is transferred to a trust, it loses its exempt status as the trust becomes the legal owner of the property.”*

5430 Exempt Personal Property – *“The resource value of the following classifications of personal property shall be exempt. However, if such property is transferred to a trust, it loses its exempt status as the trust becomes the legal owner of the property.”*

8144.1 Spousal Resource Provisions – *“(2) Assessment Process – NOTE: The special treatment of resources contained in an available trust (5330 and 5430) does not apply to the assessment process. Trust resources shall be considered exempt or countable based on the non-trust treatment of assets. Therefore, a residence or primary vehicle contained in an available trust would be an exempt resource in determining the Community Spouse Resource Allowance. Those same trust assets would still be countable when determining the amount of resources available to the couple in the eligibility process.”*

8244.1 Spousal Resource Provisions – *“(2) Assessment Process – NOTE: The special treatment of resources contained in an available trust (5330 and 5430) does not apply to the assessment process. Trust resources shall be considered exempt or countable based on the non-trust treatment of assets. Therefore, a residence or primary vehicle contained in an available trust would be an exempt resource in determining the Community Spouse Resource Allowance. Those same trust assets would still be countable when determining the amount of resources available to the couple in the eligibility process.”*

See also [Policy Memo 2008-04-01](#) (Section III.D.) and [Summary of Changes \(SOC\) 2008-05](#) (Section VI.A.8.) for additional guidance.

When determining eligibility for a married individual requesting long term care coverage, there are two (2) separate calculations to be made – the Community Spouse Resource Allowance (CSRA) determination based on total countable assets owned at the time of the first long term care arrangement in excess of 30 days began, and the determination of countable assets owned by the couple at the time of application for medical assistance. When a trust is involved, the assets in the trust are treated differently for each determination.

1. **CSRA Determination** – For purposes of the CSRA, assets in an available trust at the time the long term care arrangement began shall be treated as though the assets were owned by the couple in their own name and not by the trust. This means that the assets will be considered countable or exempt based on the normal asset counting rules. The basis of this provision is to prevent the manipulation of a CSRA by creating an available trust and moving assets in and out of the trust in order to artificially inflate the amount of value of countable assets used in the calculation of the CSRA.

Example: A married couple applies for long term care coverage for an institutionalized spouse. The other spouse lives in the community. All of the couple's assets are in an available trust, including the house (\$120,000), one vehicle (\$12,000), a checking account (\$3,000), and a savings account (\$87,000).

Normally, all assets in an available trust would be considered countable; however, due to this provision which only applies to the CSRA determination, the value of the house and the vehicle is excluded as those assets would be exempted if not in the trust. Assuming no other reported assets, the CSRA in this case is \$45,000 (\$3,000 checking + \$87,000 savings = \$90,000 / 2 = \$45,000).

To put the importance of this provision in perspective; if the house and the vehicle were included in the determination, the CSRA would have been \$111,000 (\$120,000 house + \$12,000 vehicle + \$3,000 checking + \$87,000 savings = \$222,000 / 2 = \$111,000). This would allow the potential for the applicant to simply remove the house and vehicle from the trust at the time of application in order to make those assets exempt in the eligibility determination without having spent down any actual value of their assets.

2. **Eligibility Determination** – For purposes of the medical assistance eligibility determination, assets in an available trust shall be counted in full regardless of the normal asset counting rules. This means that assets which would normally be exempt, will be fully countable when determining the amount of assets to count against the allowable resource limit calculated.

Example: Using the scenario in example (1) above, the countable assets at the time of application (assuming the values are the same as when the CSRA was calculated) is \$222,000. This makes the applicant ineligible for medical assistance due to excess resources as \$222,000 minus \$45,000 (CSRA) minus \$2,000 (resource standard) = \$175,000 in excess resources attributed to the long term care spouse.

Note: If the couple removed the house and vehicle from the trust at the time of application (or shortly thereafter), those assets would be exempted, making the applicant resource eligible; however, the assets would no longer be protected in the trust nor potentially outside reach of the Estate Recovery Unit upon the death of the surviving spouse.

Note: These provisions only apply to an *available* trust where, pursuant to Medical KEESM 5620, the trust assets are considered accessible to the applicant/recipient. These provisions do not apply to an *unavailable* trust where the trust assets are not considered accessible. None of the trust assets in an unavailable trust would ever be counted in either the CSRA or eligibility determination. However, funding of an unavailable trust must be reviewed as a potential inappropriate transfer subject to penalty if funding occurred within the appropriate look back period. See Medical KEESM 5620(2)(b) and 5720(4).

For questions or concerns related to this document, please contact one of the KDHE Medical Policy Staff listed below.

Erin Kelley, Senior Manager – Erin.Kelley@ks.gov

Kristopher Smith, Elderly and Disabled Program Manager- Kristopher.C.Smith@ks.gov

Jessica Pearson, Elderly and Disabled Program Manager- Jessica.Pearson@ks.gov

Jerri Camargo, Family Medical Program Manager - Jerri.M.Camargo@ks.gov