

477-000-033 – Deprivation of Resources Hardship Waiver Procedure

The individual may request in writing to the agency a hardship waiver exception when imposing a period of ineligibility for transfer of assets would deprive the individual of medical care so that his/her health or his/her life would be endangered. A notice of discharge from the facility is not necessary to demonstrate that health or life would be endangered. Undue hardship also exists when application of the transfer of assets provisions would deprive the individual of food, clothing, shelter, or other necessities of life.

Central Office will make a determination within 30 days from receipt of the hardship waiver request by the Central Office. If circumstances beyond the control of the agency prevent action within the required time, the Central Office will send a notice to the individual who filed the hardship waiver request. The guardian, conservator, or anyone acting on behalf of the client must attempt to recover transferred assets. Up to 30 days of nursing home services may be provided if the individual is cooperating to the fullest extent in attempting to recover transferred assets. If cooperation ceases, undue hardship no longer exists.

For deprivation transactions 2/8/2006 or later, the following procedure will be followed for a Hardship Waiver:

- a. The Notice of Action for Medicaid denial or closure because of existing period of ineligibility for deprivation of resources will include a statement of the individual's right to request a Hardship Waiver.
- b. The Hardship Waiver written request must be submitted to the Local Office. The facility may file this request with the written consent of the individual or his/her legal representative.
- c. The Local Office will then submit this request to Medicaid Policy Staff at Central Office with the following information attached:
 - a. Living arrangement of the individual/spouse at time of transfer;
 - b. Documentation of spouse and/or individual's current resources;
 - c. Documentation of transferred resource dates, signatory(s)/requester (person signing or requesting the transfer), amounts, and relationship of individual to whom the resource was transferred;
 - d. Copies of any informal or legal action already initiated to recover resources
- d. If the client/spouse did **not** participate in the transfer, then Central Office will immediately notify the Local Office to open the case for 30 days/one month while the final decision on the Hardship Waiver is made.
 - (1) This specific month will be determined in consultation with the worker. (Open for specified month and close for the following month.)
 - (2) This will apply to nursing facility services (assisted living waiver, nursing home, acute care hospital, IMD).
 - (3) If a Hardship Waiver decision cannot be made within the 30 days, then Central Office will notify the individual and Local Office that the decision remains pending.
 - i. Note: If the client/spouse participated in the transfer, hardship will be denied. If it is demonstrated that the client/spouse had a guardian and/or conservator on the date of the client/spouse signature, then the signature of that client/spouse on a transfer action does not constitute participation and a fraud referral must be made.
 - (4) Central Office will notify the Local Office of the Hardship Waiver decision.

1. Hardship Waiver **Denial**

1. The client/representative may appeal the denial. Do not open the case for other than the notified 30 day/month temporary period if an appeal is filed.

2. Hardship Waiver **Approval**

- a. Local Office will open the case.
- b. Local Office will notify in comment section of the approval notice of action that the client is "required to immediately and continuously pursue recovery of the transferred resources, including, but not limited to, full cooperation with Adult Protective Services, Attorney General Fraud Unit, and any court proceedings. Failure to take action to recover or cooperate will immediately end Medicaid eligibility."