

## § 416.1246

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at least two-thirds of the latest estimate of current market value, the individual must present evidence to establish that the offer was unreasonable and was rejected.

(4) An individual will be found to have “good cause” for failing to make reasonable efforts to sell under paragraph (b)(3) of this section if he or she was prevented by circumstances beyond his or her control from taking the steps specified in paragraph (b)(3) (i) through (ii) of this section.

(5) An individual who has received conditional benefits through the expiration of the 9 month disposal period and whose benefits have been suspended as described at § 416.1321 for reasons unrelated to the property excluded under the conditional benefits agreement, but whose eligibility has not been terminated as defined at §§ 416.1331 through 416.1335, can continue to have the excess real property not included in countable resources upon reinstatement of SSI payments if reasonable efforts to sell the property resume within 1 week of reinstatement. Such an individual will not have to go through a subsequent conditional benefits period. However, the individual whose eligibility has been terminated as defined at §§ 416.1331 through 416.1335 and who subsequently reapplies would be subject to a new conditional benefits period if there is still excess real property.

[55 FR 10419, Mar. 21, 1990, as amended at 62 FR 30983, June 6, 1997; 64 FR 31975, June 15, 1999]

### § 416.1246 Disposal of resources at less than fair market value.

(a) *General.* (1) An individual (or eligible spouse) who gives away or sells a nonexcluded resource for less than fair market value for the purpose of establishing SSI or Medicaid eligibility will be charged with the difference between the fair market value of the resource and the amount of compensation received. The difference is referred to as uncompensated value and is counted toward the resource limit (see § 416.1205) for a period of 24 months from the date of transfer.

(2) If the transferred resource (asset) is returned to the individual, the uncompensated value is no longer count-

ed as of the date of return. If the transferred asset is cash, the uncompensated value is reduced as of the date of return by the amount of cash that is returned. No income will be charged as a result of such returns. The returned asset will be evaluated as a resource according to the rules described in §§ 416.1201 through 416.1230 as of the first day of the following month.

(3) If the individual receives additional compensation in the form of cash for the transferred asset the uncompensated value is reduced, as of the date the additional cash compensation is received, by the amount of that additional compensation.

(b) *Fair market value.* Fair market value is equal to the current market value of a resource at the time of transfer or contract of sale, if earlier. See § 416.1101 for definition of current market value.

(c) *Compensation.* The compensation for a resource includes all money, real or personal property, food, shelter, or services received by the individual (or eligible spouse) at or after the time of transfer in exchange for the resource if the compensation was provided pursuant to a binding (legally enforceable) agreement in effect at the time of transfer. Compensation also includes all money, real or personal property, food, shelter, or services received prior to the actual transfer if they were provided pursuant to a binding (legally enforceable) agreement whereby the eligible individual would transfer the resource or otherwise pay for such items. In addition, payment or assumption of a legal debt owed by the eligible individual in exchange for the asset is considered compensation.

(d)(1) *Uncompensated value—General.* The uncompensated value is the fair market value of a resource at the time of transfer minus the amount of compensation received by the individual (or eligible spouse) in exchange for the resource. However, if the transferred resource was partially excluded, we will not count uncompensated value in an amount greater than the countable value of the resources at the time of transfer.

(2) *Suspension of counting as a resource the uncompensated value where necessary*

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to avoid undue hardship. We will suspend counting as a resource the uncompensated value of the transferred asset for any month in the 24-month period if such counting will result in undue hardship. We will resume counting the uncompensated value as a resource for any month of the 24-month period in which counting will not result in undue hardship. We will treat as part of the 24-month any months during which we suspend the counting of uncompensated value.

(3) *When undue hardship exists.* Undue hardship exists when:

(i) An individual alleges that failure to receive SSI benefits would deprive the individual of food or shelter; and

(ii) The applicable Federal benefit rate (plus the federally-administered State supplementary payment level) exceeds the sum of: The individual's monthly countable and excludable income and monthly countable and excludable liquid resources.

(e) *Presumption that resource was transferred to establish SSI or Medicaid eligibility.* Transfer of a resource for less than fair market value is presumed to have been made for the purpose of establishing SSI or Medicaid eligibility unless the individual (or eligible spouse) furnishes convincing evidence that the resource was transferred exclusively for some other reason. Convincing evidence may be pertinent documentary or non-documentary evidence which shows, for example, that the transfer was ordered by a court, or that at the time of transfer the individual could not have anticipated becoming eligible due to the existence of other circumstances which would have precluded eligibility. The burden of rebutting the presumption that a resource was transferred to establish SSI or Medicaid eligibility rests with the individual (or eligible spouse).

(f) *Applicability.* This section applies only to transfers of resources that occurred before July 1, 1988. Paragraphs (d)(2) and (d)(3) of this section, regarding undue hardship, are effective for such transfers on or after April 1, 1988.

[48 FR 40885, Sept. 12, 1983, as amended at 50 FR 38982, Sept. 26, 1985; 53 FR 13257, Apr. 22, 1988; 55 FR 10419, Mar. 21, 1990]

### § 416.1247 Exclusion of a dedicated account in a financial institution.

(a) *General.* In determining the resources of an individual (or spouse, if any), the funds in a dedicated account in a financial institution established and maintained in accordance with § 416.640(e) will be excluded from resources. This exclusion applies only to benefits which must or may be deposited in such an account, as specified in § 416.546, and accrued interest or other earnings on these benefits. If these funds are commingled with any other funds (other than accumulated earnings or interest) this exclusion will not apply to any portion of the funds in the dedicated account.

(b) *Exclusion during a period of suspension or termination—(1) Suspension.* The exclusion of funds in a dedicated account and interest and other earnings thereon continues to apply during a period of suspension due to ineligibility as described in § 416.1321, administrative suspension, or a period of eligibility for which no payment is due, so long as the individual's eligibility has not been terminated as described in §§ 416.1331 through 416.1335.

(2) *Termination.* Once an individual's eligibility has been terminated, any funds previously excluded under paragraph (a) of this section may not be excluded if the individual establishes a subsequent period of eligibility by filing a new application.

[61 FR 67207, Dec. 20, 1996]

### § 416.1260 Special resource provision for recipients under a State plan.

(a) *General.* In the case of any individual (or individual and spouse, as the case may be) who for the month of December 1973 was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI, of the Act (see § 416.121), the resources of such individual (or individual and spouse, as the case may be) shall be deemed not to exceed the amount specified in § 416.1205 during any period that the resources of such individual (or individual and spouse, as the case may be) do not exceed the maximum amount of resources specified in such State plan as in effect in October 1972, provided that such individual: