

6. Hardship

If it is determined that denial of eligibility due to the transfer of assets into a trust would work an undue hardship on an individual, the hardship provisions at MS 3335.2, #4 may be applied.

7. Inquiries to the Office of Chief Counsel

When a county worker becomes aware of the existence of a trust or of the transfer of assets into a trust, whether made by an individual, spouse, court of law, etc., the trust document along with other pertinent documents and a cover memorandum giving all information available will be sent to the Office of Program Planning and Development, P. O. Box 1437, Slot S332, Little Rock, AR 72203, with a request for review by the Office of Chief Counsel.

3336.9 Income Trusts

1. Terms and Other Conditions

The trust must be irrevocable. It can be terminated or amended only by mutual agreement between DHS and the trustee.

The trust may be used to establish Medicaid eligibility only for individuals determined to be medically in need of nursing facility care.

The trust must have been established on or after August 11, 1993.

The trust can only be funded from Social Security, pension, and all other income payable to an individual, including income earned by the trust account. If assets other than income, such as real or personal property, are placed in the trust, the individual cannot be eligible for facility services under the income trust provisions.

The trust must contain a provision that all assets remaining in the trust at the individual's death will be transferred to DHS up to an amount equal to medical payments made by DHS on behalf of the individual subsequent to establishment of the trust.

2. Consideration of Income

Only individuals with gross monthly countable income, excluding VA A&A and CME/UME, which exceeds the federal cap of 3 times the SSI payment for an individual living in his own home, may establish eligibility through income trusts.

All of an individual's income must be placed in the trust, except VA A&A and/or CME/UME.