

# *Missouri Revised Statutes*

## **Chapter 208**

### **Old Age Assistance, Aid to Dependent Children and General Relief Section 208.010**

August 28, 2007

---

#### **Eligibility for public assistance, how determined--means test--certain medical assistance benefits to include payment of deductible and coinsurance--prevention of spousal impoverishments, division of assets, community spouse defined--burial lots defined--diversion of institutionalized spouse's income.**

208.010. 1. In determining the eligibility of a claimant for public assistance pursuant to this law, it shall be the duty of the division of family services to consider and take into account all facts and circumstances surrounding the claimant, including his or her living conditions, earning capacity, income and resources, from whatever source received, and if from all the facts and circumstances the claimant is not found to be in need, assistance shall be denied. In determining the need of a claimant, the costs of providing medical treatment which may be furnished pursuant to sections 208.151 to 208.158 and 208.162 shall be disregarded. The amount of benefits, when added to all other income, resources, support, and maintenance shall provide such persons with reasonable subsistence compatible with decency and health in accordance with the standards developed by the division of family services; provided, when a husband and wife are living together, the combined income and resources of both shall be considered in determining the eligibility of either or both. "Living together" for the purpose of this chapter is defined as including a husband and wife separated for the purpose of obtaining medical care or nursing home care, except that the income of a husband or wife separated for such purpose shall be considered in determining the eligibility of his or her spouse, only to the extent that such income exceeds the amount necessary to meet the needs (as defined by rule or regulation of the division) of such husband or wife living separately. In determining the need of a claimant in federally aided programs there shall be disregarded such amounts per month of earned income in making such determination as shall be required for federal participation by the provisions of the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments thereto. When federal law or regulations require the exemption of other income or resources, the division of family services may provide by rule or regulation the amount of income or resources to be disregarded.

2. Benefits shall not be payable to any claimant who:

(1) Has or whose spouse with whom he or she is living has, prior to July 1, 1989, given away or sold a resource within the time and in the manner specified in this subdivision. In determining the resources of an individual, unless prohibited by federal statutes or regulations, there shall be included (but subject to the exclusions pursuant to subdivisions (4) and (5) of this subsection, and subsection 5 of this section) any resource or interest therein owned by such individual or spouse within the twenty-four months preceding the initial investigation, or at any time during which benefits are being drawn, if such individual or spouse gave away or sold such resource or interest within such period of time at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits, including but not limited to benefits based on December, 1973, eligibility requirements, as follows:

(a) Any transaction described in this subdivision shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance pursuant to this chapter unless such individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose;

(b) The resource shall be considered in determining eligibility from the date of the transfer for the number of months the uncompensated value of the disposed of resource is divisible by the average monthly grant paid or

average Medicaid payment in the state at the time of the investigation to an individual or on his or her behalf under the program for which benefits are claimed, provided that:

a. When the uncompensated value is twelve thousand dollars or less, the resource shall not be used in determining eligibility for more than twenty-four months; or

b. When the uncompensated value exceeds twelve thousand dollars, the resource shall not be used in determining eligibility for more than sixty months;

(2) The provisions of subdivision (1) of this subsection shall not apply to a transfer, other than a transfer to claimant's spouse, made prior to March 26, 1981, when the claimant furnishes convincing evidence that the uncompensated value of the disposed of resource or any part thereof is no longer possessed or owned by the person to whom the resource was transferred;

(3) Has received, or whose spouse with whom he or she is living has received, benefits to which he or she was not entitled through misrepresentation or nondisclosure of material facts or failure to report any change in status or correct information with respect to property or income as required by section 208.210. A claimant ineligible pursuant to this subsection shall be ineligible for such period of time from the date of discovery as the division of family services may deem proper; or in the case of overpayment of benefits, future benefits may be decreased, suspended or entirely withdrawn for such period of time as the division may deem proper;

(4) Owns or possesses resources in the sum of one thousand dollars or more; provided, however, that if such person is married and living with spouse, he or she, or they, individually or jointly, may own resources not to exceed two thousand dollars; and provided further, that in the case of a temporary assistance for needy families claimant, the provision of this subsection shall not apply;

(5) Prior to October 1, 1989, owns or possesses property of any kind or character, excluding amounts placed in an irrevocable prearranged funeral or burial contract pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of section 436.053, RSMo, or has an interest in property, of which he or she is the record or beneficial owner, the value of such property, as determined by the division of family services, less encumbrances of record, exceeds twenty-nine thousand dollars, or if married and actually living together with husband or wife, if the value of his or her property, or the value of his or her interest in property, together with that of such husband and wife, exceeds such amount;

(6) In the case of temporary assistance for needy families, if the parent, stepparent, and child or children in the home owns or possesses property of any kind or character, or has an interest in property for which he or she is a record or beneficial owner, the value of such property, as determined by the division of family services and as allowed by federal law or regulation, less encumbrances of record, exceeds one thousand dollars, excluding the home occupied by the claimant, amounts placed in an irrevocable prearranged funeral or burial contract pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of section 436.053, RSMo, one automobile which shall not exceed a value set forth by federal law or regulation and for a period not to exceed six months, such other real property which the family is making a good-faith effort to sell, if the family agrees in writing with the division of family services to sell such property and from the net proceeds of the sale repay the amount of assistance received during such period. If the property has not been sold within six months, or if eligibility terminates for any other reason, the entire amount of assistance paid during such period shall be a debt due the state;

(7) Is an inmate of a public institution, except as a patient in a public medical institution.

3. In determining eligibility and the amount of benefits to be granted pursuant to federally aided programs, the income and resources of a relative or other person living in the home shall be taken into account to the extent the income, resources, support and maintenance are allowed by federal law or regulation to be considered.

4. In determining eligibility and the amount of benefits to be granted pursuant to federally aided programs, the value of burial lots or any amounts placed in an irrevocable prearranged funeral or burial contract pursuant to

subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of section 436.053, RSMo, shall not be taken into account or considered an asset of the burial lot owner or the beneficiary of an irrevocable prearranged funeral or funeral contract. For purposes of this section, "burial lots" means any burial space as defined in section 214.270, RSMo, and any memorial, monument, marker, tombstone or letter marking a burial space. If the beneficiary, as defined in chapter 436, RSMo, of an irrevocable prearranged funeral or burial contract receives any public assistance benefits pursuant to this chapter and if the purchaser of such contract or his or her successors in interest cancel or amend the contract so that any person will be entitled to a refund, such refund shall be paid to the state of Missouri up to the amount of public assistance benefits provided pursuant to this chapter with any remainder to be paid to those persons designated in chapter 436, RSMo.

5. In determining the total property owned pursuant to subdivision (5) of subsection 2 of this section, or resources, of any person claiming or for whom public assistance is claimed, there shall be disregarded any life insurance policy, or prearranged funeral or burial contract, or any two or more policies or contracts, or any combination of policies and contracts, which provides for the payment of one thousand five hundred dollars or less upon the death of any of the following:

- (1) A claimant or person for whom benefits are claimed; or
- (2) The spouse of a claimant or person for whom benefits are claimed with whom he or she is living.

If the value of such policies exceeds one thousand five hundred dollars, then the total value of such policies may be considered in determining resources; except that, in the case of temporary assistance for needy families, there shall be disregarded any prearranged funeral or burial contract, or any two or more contracts, which provides for the payment of one thousand five hundred dollars or less per family member.

6. Beginning September 30, 1989, when determining the eligibility of institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical assistance benefits as provided for in section 208.151 and 42 U.S.C. Sections 1396a et seq., the division of family services shall comply with the provisions of the federal statutes and regulations. As necessary, the division shall by rule or regulation implement the federal law and regulations which shall include but not be limited to the establishment of income and resource standards and limitations. The division shall require:

- (1) That at the beginning of a period of continuous institutionalization that is expected to last for thirty days or more, the institutionalized spouse, or the community spouse, may request an assessment by the division of family services of total countable resources owned by either or both spouses;
- (2) That the assessed resources of the institutionalized spouse and the community spouse may be allocated so that each receives an equal share;
- (3) That upon an initial eligibility determination, if the community spouse's share does not equal at least twelve thousand dollars, the institutionalized spouse may transfer to the community spouse a resource allowance to increase the community spouse's share to twelve thousand dollars;
- (4) That in the determination of initial eligibility of the institutionalized spouse, no resources attributed to the community spouse shall be used in determining the eligibility of the institutionalized spouse, except to the extent that the resources attributed to the community spouse do exceed the community spouse's resource allowance as defined in 42 U.S.C. Section 1396r-5;
- (5) That beginning in January, 1990, the amount specified in subdivision (3) of this subsection shall be increased by the percentage increase in the Consumer Price Index for All Urban Consumers between September, 1988, and the September before the calendar year involved; and
- (6) That beginning the month after initial eligibility for the institutionalized spouse is determined, the resources of the community spouse shall not be considered available to the institutionalized spouse during that continuous period of institutionalization.

7. Beginning July 1, 1989, institutionalized individuals shall be ineligible for the periods required and for the reasons specified in 42 U.S.C. Section 1396p.

8. The hearings required by 42 U.S.C. Section 1396r-5 shall be conducted pursuant to the provisions of section 208.080.

9. Beginning October 1, 1989, when determining eligibility for assistance pursuant to this chapter there shall be disregarded unless otherwise provided by federal or state statutes, the home of the applicant or recipient when the home is providing shelter to the applicant or recipient, or his or her spouse or dependent child. The division of family services shall establish by rule or regulation in conformance with applicable federal statutes and regulations a definition of the home and when the home shall be considered a resource that shall be considered in determining eligibility.

10. Reimbursement for services provided by an enrolled Medicaid provider to a recipient who is duly entitled to Title XIX Medicaid and Title XVIII Medicare Part B, Supplementary Medical Insurance (SMI) shall include payment in full of deductible and coinsurance amounts as determined due pursuant to the applicable provisions of federal regulations pertaining to Title XVIII Medicare Part B, except the applicable Title XIX cost sharing.

11. A "community spouse" is defined as being the noninstitutionalized spouse.

12. An institutionalized spouse applying for Medicaid and having a spouse living in the community shall be required, to the maximum extent permitted by law, to divert income to such community spouse to raise the community spouse's income to the level of the minimum monthly needs allowance, as described in 42 U.S.C. Section 1396r-5. Such diversion of income shall occur before the community spouse is allowed to retain assets in excess of the community spouse protected amount described in 42 U.S.C. Section 1396r-5\*.

(RSMo 1939 § 9406, A.L. 1943 p. 950, A.L. 1949 p. 597, A.L. 1953 p. 644, A.L. 1955 p. 688, A.L. 1957 p. 694, A.L. 1959 H.B. 131, A.L. 1963 p. 377, A.L. 1965 1st Ex. Sess. p. 807, A.L. 1967 pp. 321, 323, A.L. 1969 H.B. 804, A.L. 1973 S.B. 325, A.L. 1974 S.B. 577, A.L. 1978 S.B. 596, A.L. 1981 H.B. 894, H.B. 901, A.L. 1982 H.B. 1462, A.L. 1985 H.B. 803, A.L. 1986 S.B. 463 & 629 merged with S.B. 555 & 570, A.L. 1988 S.B. 494 & 556, A.L. 1989 S.B. 203 & 270, A.L. 1998 S.B. 701, A.L. 2005 S.B. 539)

\*Original rolls contain "1396-r", a typographical error.

#### CROSS REFERENCE:

Spousal impoverishment or premature placement in institutional care, protection against by compliance with section 208.010, RSMo, in determination of Medicaid eligibility, RSMo 660.690

(1960) On application of individual for old age assistance where it was admitted that the applicant had turned over to his daughters certain amounts of money, the burden was upon him to show that he was indebted to such daughters and his failure to show it by convincing evidence was sufficient to authorize the denial of his application for benefits. *Carlisle v. State Department of Public Health and Welfare (A.)*, 341 S.W.2d 617

(1962) Director of welfare acted arbitrarily in determining eligibility of claimant and failed to grant fair hearing by refusing to consider evidence as to equitable ownership of property. Claimant was not required to establish by court action that beneficial ownership of property was in another. *Powers v. State Department of Public Health and Welfare (A.)*, 359 S.W.2d 33.

(1962) Claimant's execution of a deed of trust against his property to secure a loan for \$2,000 of which \$1,000 went to his daughter-in-law and balance was used to pay off claimant's prior indebtedness secured by the property and the interest payments were paid by daughter-in-law, did not render claimant ineligible for benefits. *Dysart v. State Dept. of Public Health & Welfare (A.)*, 361 S.W.2d 347.

(1962) Director's decision that claimants were ineligible for old age assistance in that they had sold real estate in which they had one-half interest without receiving anything of value therefor was not supported where uncontradicted evidence was that claimants had been made joint tenants with their daughter to prevent daughter's divorced husband acquiring an interest therein and there was no evidence that claimants had paid anything on purchase price. *Velghe v. State Dept. of Public Health and Welfare (A.)*, 362 S.W.2d 747.

(1964) Finding of director that applicant for old age assistance had transferred \$1500 to daughter without receiving fair and valuable consideration was based upon substantial evidence and decision denying compensation was not unreasonable or arbitrary. *Dunnegan v. Gallop (A.)*, 374 S.W.2d 407.

(1972) Finding by director of public health and welfare that transfer of life estate of 68 year old claimant in business building which was in state of disrepair and disuse and encumbered by \$1,500 in back taxes for payment of \$50 for each month of her life with a minimum total payment of \$1,000 was made without fair and valuable consideration was arbitrary and unreasonable. *Davis v. State Dept. of Public Health and Welfare (A.)*, S.W.2d 775.

(1973) Held, verbal promise to pay for land conveyed by deed is within statutory definition of "fair and valuable consideration." *Hill v. State Dept. of Public Health & Welfare (Mo. Banc)*, 503 S.W.2d 6.

(1975) Evidence held not to sustain a finding that property was transferred without fair and valuable consideration. Value of undivided interest of a cotenant out of possession is not necessarily one-half of market value. *Brumit v. State Department of Public Health and Welfare (Mo.)*, 521 S.W.2d 445.

(1985) In determining entitlement to medical assistance to pay for the cost of residential care, the director may not consider the value of the assets of a spendthrift trust where the settlor intended that the payments from the trust to his retarded son were to supplement rather than supplant benefits to which the son would otherwise be entitled. *Tidrow v. Director of Mo. State Division of Family Services (Mo. App.)*, 688 S.W.2d 9.

---

[© Copyright](#)



[Missouri General Assembly](#)