ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 91 ADM-30

DIVISION: Medical Assistance

TO: Commissioners of Social Services

DATE: August 20, 1991

SUBJECT: Treatment of Income-Producing Property as a Resource for Medical Assistance Applicants/Recipients

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SUGGESTED DISTRIBUTION:
- Medical Assistance Staff
- Income Maintenance Staff
- Fair Hearing Staff
- Legal Staff
- Third Party Resources Staff
- Staff Development Coordinators

CONTACT PERSON: MA Eligibility County Representative at 1-800-342-3715, extension 3-7581
MA New York City Representative at (212) 417-4853

ATTACHMENTS:
- Attachment I - Examples (available on-line)
- Attachment II - Comparison Chart (available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
89 ADM-45 88 ADM-31 83 ADM-17		352.23(b) 360-1.4(f) 360-4.4(b) (3), & (d) 360-4.4(e) 360-4.7(a) (2)	Section 8014 of OBRA 1989 SSA 1613 (a)(3)		GIS 90MA042 PASB XXI-A-1,2,3

DSS-296EL (REV. 9/89)

I. PURPOSE

This Directive advises social services districts of changes relating to the treatment of income-producing property as a resource in determining Medical Assistance (MA) eligibility for applicants/recipients (A/Rs) related to the Supplemental Security Income (SSI) and Aid to Dependent Children (ADC) programs. Clarification of the treatment of income-producing property and real property as a resource in determining MA eligibility for Home Relief (HR)-related A/Rs is also provided in this Directive.

II. BACKGROUND

A. SSI-RELATED A/Rs

Section 8014 of the Omnibus Budget Reconciliation Act (OBRA) of 1989 amended Section 1613(a)(3) of the Social Security Act relating to the treatment of income-producing property as a resource in determining SSI eligibility. The Medicare Catastrophic Coverage Act of 1988 requires that New York State be no more restrictive than the SSI program requirements in determining the MA eligibility of an SSI-related A/R.

As a result of the SSI program changes, income-producing property used in a trade or business will no longer be counted in determining the resources of SSI-related A/Rs.

Income-producing property used to produce rental income or land-use fees continues to be subject to a six percent (6%) rate-of-return test. If annual net income is at least 6% of the equity value of the property, the first $12,000 of equity value is not countable as a resource. If annual net income is not at least 6% of the equity value of the property, all of the equity value of the property is counted as a resource.

Income-producing property used to produce personal goods or services will continue to be exempt, except where such property is nonhomestead real property. Effective retroactive to May 1, 1990, real property used to produce personal goods or services is a countable resource for the amount of equity value which exceeds $12,000. For purposes of this Directive, the term real property includes land, buildings, mobile homes, condominiums, and cooperative apartments (for all categories of assistance).

The equity value of a countable resource is defined as the current fair market value, less any legal encumbrances. Current fair market value accounts for any appreciation or depreciation in equity value. An additional depreciation deduction is not appropriate, and is therefore discontinued.

B. ADC-RELATED A/Rs

Department regulation 18 NYCRR 360-4.4(d) requires that for MA A/Rs who are subject to ADC-related treatment of resources, non-homestead income-producing real property (business and nonbusiness) and other nonliquid property which produces rental income are subject to a 6% rate of return test to determine if the first $12,000 equity value of the property is not to be counted as a resource.

This regulation allows for the exclusion of income-producing property which is necessary to run a trade or business. Items that have been clarified as being exempt include, but are not limited to, necessary liquid resources and operating assets, motor vehicles, inventories, business and farm equipment, tools and equipment used for employment, government permits, livestock and produce. In addition, income-producing personal property used to produce personal goods or services such as gardening equipment, woodcutting tools and hunting and fishing implements remain exempt as a resource.

In light of the SSI program requirements for the treatment of income-producing real property used to produce personal goods or services, the regulation has been revised to exempt $12,000 of the equity value of such real property for ADC-related budgeting.

C. HR-RELATED A/Rs

Generally, persons between the ages of 21 and 65 who are neither SSI-related nor ADC-related must be financially eligible for HR to be eligible for MA. With few exceptions, eligibility for MA on the basis of HR eligibility is determined in accordance with Parts 352 and 370 of 18 NYCRR. Income-producing property is treated differently in determining HR-related MA eligibility than in determining ADC- or SSI-related MA eligibility.

The equity value of nonhomestead real property (whether income-producing or not) is exempt for a period of up to nine months, as long as the A/R is making a "good faith" effort to liquidate the property. A summary of these provisions is contained in this Directive.

The following types of income-producing property are excluded from the $1,000 resource limit:

1. Business and farm equipment, such as machinery, tractors, supplies, essential furnishings for office/store, necessary capital and operating assets, including government permits;

2. Tools used for employment, such as machinery or tools appropriate to a trade or business; and

3. Livestock and produce.

Personal property used to produce goods or services for personal use are also exempt.

III. PROGRAM IMPLICATIONS

A. SSI-RELATED TREATMENT OF INCOME-PRODUCING PROPERTY

SSI-related treatment of income-producing property recognizes three types of income-producing property: trade or business, nonbusiness, and nonbusiness property used to produce personal goods or services. The SSI-related treatment of income-producing property will vary as outlined in this Section. See Attachment I for examples of the SSI-related treatment of the three types of income-producing property.

1. Trade or Business Property: includes, but is not limited to, the necessary capital and operating assets of the business, such as real property, buildings, inventory, equipment, machinery, livestock, motor vehicles, government permits to engage in income-producing activity (e.g., licenses, permits, and tobacco crop allotments), and property used by an employee for work (such as tools, equipment, uniforms, etc.).

   a. As of May 1, 1990, the equity value of income-producing property used in a trade or business is not countable as a resource.

   b. As of May 1, 1990, liquid resources used in the operation of a business are not countable as a resource.

2. Nonbusiness Property: includes land which produces rents or other land-use fees (e.g., ownership of timber rights, mineral or oil exploration) or other nonliquid property which provides rental or other income, but is not used as part of a trade or business (e.g., furniture provided under a furnished apartment rental where the rental is not conducted as a business).

   a. Nonbusiness income-producing property continues to be subject to a 6% rate-of-return test. If annual net income is at least 6% of the equity value of the property, the first $12,000 of equity value is not a countable resource. If annual net income is less than 6% of the equity value of the property, all of the equity value of the property is counted as a resource.

b. If an individual owns more than one piece of nonbusiness income-producing property, the 6% rate-of-return test must be applied to each property. The $12,000 equity value limit applies to the total equity value of all the properties which meet the 6% rate-of-return test.

c. If the property produces less than a 6% rate of return, the property is not a countable resource only if the lower return is for reasons beyond the individual's control (e.g., crop failure or illness), and there is a reasonable expectation that the property will again produce a 6% rate of return. Up to 24 months can be allowed for the property to resume producing a 6% rate of return. The 24-month period begins the first day of the tax year following the tax year during which the rate of return dropped below 6%.

3. Nonbusiness Property Used to Produce Personal Goods or Services: includes real or personal property necessary to produce personal goods or services such as equipment for canning fruits and vegetables, woodcutting tools, implements for hunting and fishing, mechanized equipment for gardening; it also includes nonhomestead real property such as land used to produce vegetables or livestock for personal consumption in the individual's household. It does not include any vehicle that qualifies as an automobile.

a. Effective May 1, 1990, SSI-related treatment of nonbusiness property used to produce personal goods or services includes real property.

b. The equity value of nonbusiness property used to produce personal goods or services continues to be exempt as a resource, except for real property. Nonhomestead real property used to produce personal goods or services is a countable resource for any amount of equity value which exceeds $12,000. If an individual owns more than one piece of real property used to produce personal goods/services, the $12,000 equity value limit applies to the total equity value of all the real property used to produce personal goods/services.

B. ADC-RELATED TREATMENT OF INCOME-PRODUCING PROPERTY

ADC-related policy on income-producing property follows the SSI-related policy described in this Directive, except as described in this Section.

ADC-related treatment of income-producing property differs from SSI-related treatment in that a 6% rate-of return test is applied to: nonhomestead real property used in a trade or business; and nonliquid trade or business property which produces rental income. SSI policy does not include a 6% test for any trade/business property since it is not counted as a resource.

In addition, only one quarter of the amount of liquid resources which are needed annually to operate a trade or business are exempt. However, if the A/R demonstrates that it will be necessary to expend a higher amount of liquid resources in the three-month period beginning with the month of MA application, such higher amount will be exempt.

See Attachment II for a chart listing the treatment of the types of income-producing property by category.

C. HR-RELATED TREATMENT OF INCOME-PRODUCING PROPERTY

For HR-related individuals who have income-producing property, the policy as set forth in Part 352 of Department regulations continues to apply. Under these provisions, the equity value of all nonhomestead income-producing property is counted toward the $1,000 resource limit. An exception is allowed when such property (other than real property or nonliquid property which produces rental income) is essential to a trade or business, or is personal property (other than real property) used to produce personal goods or services. Liquid resources, as described in Section III.B., are also not counted toward the $1,000 resource limit. See Attachment II for a listing of the treatment of income-producing propety by category.

If the equity value of income-producing property is in excess of the $1,000 limit, the property may be considered exempt as a countable resource for nine months if the A/R is making a "good faith" effort to sell the property and executes an assignment of proceeds of the sale of the property.

If an individual becomes ineligible during the disposal period or if the disposal is not completed within the nine-month period (at which point MA must be discontinued), the cost of any medical care received is subject to recovery pursuant to 18 NYCRR 360-4.4(e). In instances where prior to the end of a disposal period, a case is closed without property being sold, and later a re-application is submitted, the applicant is allowed nine more months in which to dispose of the property.

D. GENERAL PROVISIONS FOR ALL MA A/RS

1. Income-Producing Homestead

A homestead is defined in 18 NYCRR 1.4(f), as follows:

> Homestead means the primary residence occupied by a medical assistance applicant/recipient and/or members of his/her family. Family members may include the applicant's/recipient's spouse, minor children, certified blind or certified disabled children, and other dependent relatives. The homestead includes the home, land and integral parts such as garages and outbuildings. The homestead may be a condominium, cooperative apartment or mobile home. It may include up to three apartments, or up to two apartments along with a business location. Vacation homes, summer homes or cabins are not considered to be homesteads.

An income-producing homestead continues to be exempt as a resource for all MA A/Rs, and the equity value of an income-producing homestead continues not to be utilized in determining the current use or rate-of-return test.

Land which is not an integral part of the homestead must be evaluated according to the assistance category of the A/R and type of property (idle, income-producing real property used in a trade/business, real property used to produce personal goods/services, or nonbusiness income-producing) in order to determine whether land which can be liquidated separately from the homestead must be counted as a resource.

2. Current Use

In order for income-producing property to be excluded as a resource, the property must be in current use, or have been in use, and there must be a reasonable expectation that such use will be resumed within 12 months since the property was last used in an income-producing activity. An additional 12 months may be allowed if the property is not in current use due to a disabling condition of the A/R.

In situations where income-producing property is no longer in current use, and is not expected to resume use as income-producing property, a determination must be made whether the previously exempt property is a countable resource. If determined to be a countable resource, the equity value must be established by calculating the current fair market value of the resource less any legal encumbrances.

3. Liquidation of Property

In cases where the equity value of nonexempt real property combined with all other countable resources exceeds the appropriate resource levels, MA may be provided if the A/R is attempting in good faith to sell the nonexempt real property, and executes an assignment of proceeds.

Note: For HR-related A/Rs, MA may be provided for a period of up to nine months beginning with the month the A/R executes an assignment of proceeds.

When MA is provided to an otherwise eligible A/R, the agency must document that the A/R is making a good faith effort to sell the property, in addition to having the A/R execute an assignment of proceeds. Evidence of good faith efforts to dispose of property may include, but is not limited to the following:

a. The property is listed with a real estate or other agency that is actively attempting to sell it; or

b. The individual or family is actively trying to sell the property themselves through advertising and other efforts that are similar to those of a typical real estate or other agency; and

c. The individual or family is willing to respond to current market conditions by lowering the selling price, subdividing acreage, or otherwise being responsive to any reasonable offer.

When property is sold, the payment received is treated as a resource, unless the proceeds are paid in installments, in which case the payments are counted as unearned income in the month received.

If an individual does not intend to liquidate income-producing property or refuses to execute an assignment of proceeds, the equity value of the property must be combined with all other countable resources and compared to the appropriate resource limit.

4. Equity Value

A determination of equity value is necessary in order to: determine the value of nonexempt income-producing property and real property used to produce personal goods or services, according to the category of the A/R; establish the amount of countable resources transferred for the purpose of obtaining MA eligibility; and establish the amount of countable resources when income-producing property is not in current use and is not expected to resume use as income-producing property.

a. Change in the Calculation of Equity Value

Equity value is defined as the current fair market value, less any legal encumbrances (e.g., mortgages). Current fair market value accounts for any depreciation/depletion in the value of real or personal property. Therefore, no separate depreciation/depletion amount is used to determine equity value.

b. Equity Value Worksheet

Prior to May 1, 1990, inventories, tools and machinery were counted for SSI-related A/Rs in determining the equity value of income-producing property. Effective retroactive to May 1, 1990, inventories, tools and machinery used in a trade or business are exempt as a resource when utilizing SSI-related treatment of resources. For ADC-related A/Rs, inventory, tools, and machinery continue to be exempt when used in a trade/business. Therefore, use of the Equity Value Worksheet on the DSS-3585 (MBL Budget Record), which contains these items, is discontinued.

V. REQUIRED ACTION

A. MA DENIALS ON OR AFTER MAY 1, 1990

On September 10, 1990, GIS 90MA042 notified social services districts of the amendment to the Social Security Act regarding the SSI treatment of income-producing property in determining resource eligibility for SSI, and the required tracking of all MA-Only denials for excess resources which included income-producing property.

1. MA Denials On or After May 1, 1990

All MA-Only SSI-related cases denied on or after May 1, 1990 for excess resources as a result of counting income-producing property as a resource must be redetermined in accordance with the policy outlined in this Directive.

MA-Only ADC-related cases denied on or after August 1, 1991 for excess resources as a result of counting income-producing property as a resource must be redetermined in accordance with the policy outlined in this Directive. For all MA-Only cases which are determined or redetermined to be MA eligible in accordance with the policy outlined in this Directive, social services districts must apply the provisions outlined in 88 ADM-31: "Medicaid Reimbursement for Certain Paid Medical Bills (Krieger v. Perales)."

MA-Only HR-related cases denied for excess resources as a result of counting income-producing property as a resource do not require rebudgeting.

2. New/Undercare Cases

Effective August 15, 1991, retroactive to May 1, 1990, the policy outlined in Section III must be applied when using SSI-related treatment of resources.

Effective August 15, 1991, retroactive to August 1, 1991, the policy outlined in Section III must be applied when using ADC-related treatment of resources.

HR-related cases must continue to be budgeted in accordance with Income Maintenance policy and procedures as clarified in Section III of this Directive.

B. Evaluation and Documentation of Income-Producing Property

1. Documentation for Trade or Business Property

a. Obtain a copy of the business tax return for the tax year prior to application/recertification. Use the return to determine the net earnings from self-employment, and the validity of the trade or business.

   If the current tax return is not available, obtain the latest available tax return; a certified statement from an accountant, if available; or review the business receipts and expenses for the past 12 months.

b. Obtain a signed statement from the A/R which describes the trade or business, the assets of the trade or business, the number of years it has been operating, and the identity of any co-owners. Absent evidence to the contrary, accept the signed statement.

c. In order to be exempt, liquid resources must be used in the trade or business. Obtain documentation that verifies the amount of liquid resources actually used in the trade or business.

   (1) Liquid resources in accounts in the name of the business: obtain a signed statement that the liquid resources are used in the business.

   (2) Liquid resources in personal accounts exclusively used for a trade or business: verify such accounts are used solely for purposes of the trade or business, and obtain a signed statement that the liquid resources are used in the business.

(3) Liquid resources in personal accounts not used solely for the trade or business are not exempt as liquid resources used in a trade or business.

*Note: For ADC- and HR-related treatment of liquid resources used in a trade/business, the amount of resources which are not considered to be necessary for the operation of the business must be counted as a resource. See Sections III. B. and C..

2. Documentation for 6% Rate-of-Return Test

a. Determine the rate of return based on income and value figures shown on Internal Revenue Service tax returns (e.g., Schedule E-Supplemental Income Schedule) for the tax year prior to application/recertification. If no tax return is available, use other appropriate evidence (e.g., a copy of the lease agreement).

b. If tax returns show that the income-producing activity has operated at a loss for the two most recent years or longer, the first $12,000 of equity value cannot be excluded unless current receipts and records show that it currently is producing a 6% rate of return.

(1) If evidence establishes that a lower rate of return is due to reasons beyond the control of the A/R, the A/R has up to 24 months from the end of the tax year in which the lower rate of return occurred to meet the 6% rate of return. At application or recertification, if the activity is not producing a 6% rate of return, but the A/R is actively pursuing such a return, the property can not be counted as a resource for up to 12 months, but in no event can it be excluded beyond 24 months from the end of the tax year in which the lower rate of return occurred. The equity value of the property must be counted as a resource beginning the month following the month the A/R ceased actively pursuing a 6% rate of return, or ceased the activity.

(2) At the end of 24 months, if the property still is not producing a 6% rate of return, the equity value of the property must be counted as a resource.

c. Absent evidence to the contrary, accept the signed statement of the A/R indicating: the number of years the A/R has owned the property; the identity of any co-owners; and a description of the property.

3. <u>Documentation for Nonbusiness Property Used to Produce Personal Goods or Services</u>

   a. Property used to produce personal goods or services, other than real property.

      Obtain a signed statement describing the property, how it is used, and an estimate of fair market value and any encumbrances on it. Absent evidence to the contrary, accept the statement.

   b. Nonhomestead real property used to produce personal goods or services.

      Obtain a signed statement describing the property, and how it is used. Obtain documentation of the current fair market value and any legal encumbrances.

   c. If the property is not currently used to produce personal goods or services, and is not expected to be used again to produce personal goods and services, the property must be evaluated to determine whether it must be counted as a resource.

4. <u>Documentation of Current Use</u>

   a. If income-producing property is not in current use, the property can remain exempt if current use can reasonably be expected to resume within 12 months following the last month the property was in use. Obtain a signed statement indicating: the date of last use; the reason the property is not in use; and when the A/R expects to resume use, if at all.

   b. If after the initial 12 months, the property is not in current use because of a disabling condition, the property can remain exempt for an additional 12 months if current use can reasonably be expected to resume within the additional 12 months. Obtain a signed statement indicating: the nature of the condition; the date of last use; and when the A/R expects to resume use, if at all.

   c. If the individual does not intend to resume the income-producing activty, the property is a countable resource as of the month after the month of last use.

   d. Medical evidence is an indicator of whether medical improvement is expected. It is not conclusive of an A/R's intent and ability to do at least some work and cannot be the sole factor used to determine if current use can be reasonably expected to resume.

C. EQUITY VALUE WORKSHEET

1. The equity value of a countable resource is the current fair market value, less any legal encumbrances. No depreciation deduction is allowed in the calculation of equity value.

2. The Equity Value Worksheet on the DSS-3585 (MBL Budget Record) is discontinued.

V. SYSTEMS IMPLICATIONS

There are no systems implications.

VI. EFFECTIVE DATE

For SSI-related cases, the provisions of this Directive are effective August 15, 1991, retroactive to May 1, 1990.

For ADC-related cases, the provisions of this Directive are effective as of August 15, 1991, retroactive to August 1, 1991.

Jo-Ann A. Costantino
Deputy Commissioner
Division of Medical Assistance

TREATMENT OF INCOME-PRODUCING PROPERTY AS A RESOURCE

EXAMPLES

1. Income-producing property used in a trade

The tools and equipment owned by an auto mechanic used in his or her trade are exempt for all categories.

The 18-wheeler rig owned by a self-employed truck driver is exempt for all categories.

2. Income-producing property used in a business

Mr. Rodriguez owns and operates Acme Drycleaners. The business owns the building and equipment, a Certificate of Deposit (CD) for $80,000, and a checking account with $12,000.

<u>SSI-related</u>

The real property, equipment, CD, and checking account of ACME Drycleaners are exempt as a resource.

<u>ADC-related</u>

The equipment is exempt. The 6% test must be applied to the building. One calendar quarter of projected operating expenses is exempt, unless a need for additional expenses is documented.

<u>HR-related</u>

The equipment is exempt. The building can be exempt for nine months if Mr. Rodriguez executes an assignment of proceeds and is actively attempting to sell the property. One calendar quarter of projected operating expenses is exempt, unless a need for additional expenses is documented.

3. Nonbusiness income-producing property

Mr. Spring owns his own home, and also owns two two-family rental buildings. Mr. Spring does not operate the rentals as a business. Mrs. Spring is in Autumn Valley Nursing Home. The Spring's each have a $10,000 CD.

TREATMENT OF INCOME-PRODUCING PROPERTY AS A RESOURCE

EXAMPLES (continued)

As of 4/1/91:

	23 Madison Street	2 Waverly Avenue
Fair Market Value	57,000	64,000
Mortgage	19,000	40,000
Equity Value	38,000	24,000
6% of Equity	2,280	1,040
Net rental Income	7,200	4,800

Each property meets the 6% rate of return test. The combined equity value of the properties is $62,000. $62,000 minus $12,000 exemption leaves $50,000 countable as a resource. As a community spouse, Mr. Spring may retain $66,480 (the maximum community spouse resource allowance as of 1/1/91). In addition to the $50,000 of the rental property counted as a resource, Mr. Spring may retain $16,480 of the couple's CDs.

4. Nonbusiness income-producing property used to produce personal goods or services

Mr. Winters owns a dairy farm (his homestead) which has 120 acres, 4 barns, 200 cows, and assorted machinery and equipment. Mr. Winters also owns 10 wooded acres (current fair market value $22,000), with an $8,000 mortgage, one mile away from his home. Mr. Winters uses the 10 acres for firewood for personal consumption only. Mr. Winters has no other countable resources.

<u>SSI-related</u>

The income-producing homestead is exempt as a resource. All other assets of the dairy farm are exempt as income-producing property used in a business. The current fair market value of the 10 wooded acres ($22,000) less the $8,000 mortgage, leaves $14,000 equity value. The $14,000 equity value less $12,000 exemption leaves $2,000 of the equity value of the property used to produce personal goods/services countable as a resource.

<u>ADC-related</u>

Same as SSI-related, except that the land which is not essential to the home would be considered income-producing property subject to the 6% rate-of-return test.

TREATMENT OF INCOME-PRODUCING PROPERTY AS A RESOURCE

EXAMPLES (continued)

HR-related

The income-producing homestead is exempt as a resource. The equity value of the land that is not essential to the home, and the 10 wooded acres used to produce personal goods/services can be exempt for nine months if Mr. Winters executes an assignment of proceeds and is actively attempting to sell the property.

All other assets of the dairy farm are exempt as income-producing property used in a business.

ATTACHMENT II

MA RESOURCE TREATMENT OF INCOME-PRODUCING PROPERTY

TYPE OF INCOME-PRODUCING PROPERTY	SSI	ADC	HR
TRADE/BUSINESS			
Homestead	EXEMPT		
Other Real Property/Buildings and Other Nonliquid Property Which Produces Rental Income	Exempt	6% test	*Nonexempt
Business Property: motor vehicles machinery/farm equipment inventories/supplies tools/equipment government permits livestock produce	EXEMPT IF IN CURRENT USE		
Liquid business resources	Exempt	¼ annual expenses** exempt	¼ annual expenses** exempt
NONBUSINESS			
Homestead	EXEMPT		
Other Real Property/Buildings and Other Nonliquid Property Which Produces Rental Income	6% test	6% test	*Nonexempt
PROPERTY USED TO PRODUCE PERSONAL GOODS/SERVICES			
Real Property/Buildings	Equity Value Above $12,000 Nonexempt	Equity Value Above $12,000 Nonexempt	*Nonexempt
Personal Property including but not limited to: tools/woodcutting gardening equipment/machinery livestock/produce canning equipment hunting/fishing implements	EXEMPT IF IN CURRENT USE		

* Nonexempt income-producing property may be disregarded for 9 months if A/R actively trying to sell property and executes an assignment.

** Unless need for additional liquid resources is documented.