

APD / AAA Q&A

Income Cap Trusts,
Disqualifying Transfers and
Resource Assessments

May 6, 2021



Income Cap Trusts (ICT)

Clients whose **countable income** exceeds the countable income limit are not eligible unless they have established an Income Cap Trust.

Federal guidelines allow a client to use an ICT to meet the income limit because the client has given up direct access to and control over their income (State Medicaid Manual 3259.7).

- This type of trusts was created for the benefit of Medicaid Long-Term Care applicants whose income is above the countable income limit (or 300% of the full SSI standard) for a single individual
- Currently the countable income limit amount is **\$2,382.00**

Note: If the client is a veteran and is over the 300% solely due to receiving Aid and Attendance from the VA then an income cap trust is not needed. (See Counting client Assets: Veterans' Benefits)

ICT Talking Points

- ▶ Must be established for the benefit of the applicant/client
- ▶ The ICT must include all the client's income
- ▶ The client should not be the Trustee of his/her own ICT
- ▶ The trust must have a provision that the income deposited into the trust be distributed monthly in a specific order set by Oregon Administrative Rules
- ▶ There must be a provision in the trust that any money remaining after the death of the client will be returned to the state up to the amount of Medicaid benefits paid on the individual's behalf
- ▶ The trust must be irrevocable. There must be no circumstances under which the trust can be revoked

NOTE: The effective date for an income cap trust is the first day of the month in which the trust document is signed (assuming all other eligibility requirements are met).

[461-180-0044](tel:461-180-0044)

ICT Terms



Grantor - A person who creates a trust



Beneficiary - A person who benefits from the trust (For the purpose of the ICT, generally the Grantor and Beneficiary is the same Medicaid applicant/client)



Trustee - A person who holds a position of trust or responsibility for the benefit of another. (This is usually a Medicaid applicant/client's representative, money manager, etc)



Successor Trustee - A person who would step in or replace the original trustee



Name of the Trust - This should include the Medicaid applicant/client's full legal name.

(Example: "The Jane A. Doe Sr. Income Cap Trust")

How Funds are Managed in an ICT

The income deposited in the trust may only be distributed as outlined in OAR [461-145-0540\(10\)\(c\)](#).

Currently allowed by this rule:

- A. Personal-needs allowance and applicable room and board standard.
- B. Reasonable administrative costs, not to exceed a total of \$50 per month.
- C. Community spouse and family monthly maintenance needs allowance.
- D. Medicare and other private medical insurance premiums.
- E. Other incurred medical costs.
- F. Child support, alimony, and income taxes.
- G. Irrevocable burial plan with a maximum value of \$5,000.
- H. Home maintenance (there are very few cases where this is allowed)
- I. Patient Liability (not to exceed the cost of care).

Excess Maintenance Income (EMI): If money is left in the trust each month after the client pays their liability, the client may need to reimburse for *past* assistance, purchase needed medical equipment, or go off of Medicaid for a month once the funds in the trust exceed the amount in [OAR 461-140-0296 \(2\)](#).

- Same as the divisor for a DQT, the amount is currently **\$9,551.00**

ONE and Income Cap Trusts

ONE sends for an Income Cap Trust

- ▶ ONE automatically sends a notice to the Oregonian letting them know they are over income for Medicaid but may still be eligible for LTC if they meet service eligibility criteria and establish an ICT.
- ▶ Oregonian should wait until *after* they have been assessed by a Case Manager and meet service eligibility criteria to set up an ICT
- ▶ If an ICT becomes necessary, their Case Manager will help the Oregonian through the process

Oregonians may choose to set up the ICT on their own or by working with an attorney. It is extremely important we do not offer financial or legal advice. Refer the Oregonian to 211 and/or the ADRC for resources



Income Cap Trusts

Correspondences

- ▶ To see the notice the client is looking at, use Correspondences in the toolbar



- ▶ When ONE pends for ICT, an RFI is generated requesting a signed ICT document. It also advises them not to do this without first speaking with their “services worker”

Proof We Need

We need proof of the items listed below. We may deny, change or stop your benefits if we do not get the proof by the date needed. If you need more time or have questions please call us at 1-800-699-9075 or 711 (TTY).

Name	Proof Needed	Program	Date Needed
UAT TEST	Signed Income Cap Trust Document	Medical	06/18/2021

You are over the income limit for Medical. If you meet Medicaid long-term care service requirements and you get an Income Cap Trust you may be eligible. Benefits may start no sooner than the first day of the month that the trust is signed. If eligible the date benefits start will depend on other factors. Before you think about getting a trust, your services worker needs to see if you meet the service requirements.

Here are the types of documents you can send us as proof. Please send a copy of the documents. Do not send the original documents.

Disqualifying Transfers



What are Disqualifying Transfers?

Disqualifying Transfer of Assets (DQs) are when something of value is given away at less than fair market value.

DQs apply to MAGI and non-MAGI LTC clients

Why do we have DQs?

DQ rules ensure that clients do not give away or get rid of valuable assets in order to make themselves eligible for LTC or in anticipation of applying for Medicaid. It is also common to see a potential applicant transfer something into a family member's name to "keep it in the family" or pass it down to their children.

When to review for DQ?

WHEN ARE DQs LOOKED AT?

- When the Initial review of assets is completed at intake
- At annual review/recertification
- Whenever it is reported or discovered
 - If reported to CM, CM needs to communicate this to their local EW team via local process.



HOW CAN CASE MANAGERS ASSIST?

As a best practice, Case Managers can provide the following information to eligibility workers to expedite the process.

- Date(s) of transfer(s)
- Value at time of transfer
- Service request start date
- Does the individual meet level of care requirements? Yes/No

What happens when a DQ is imposed?

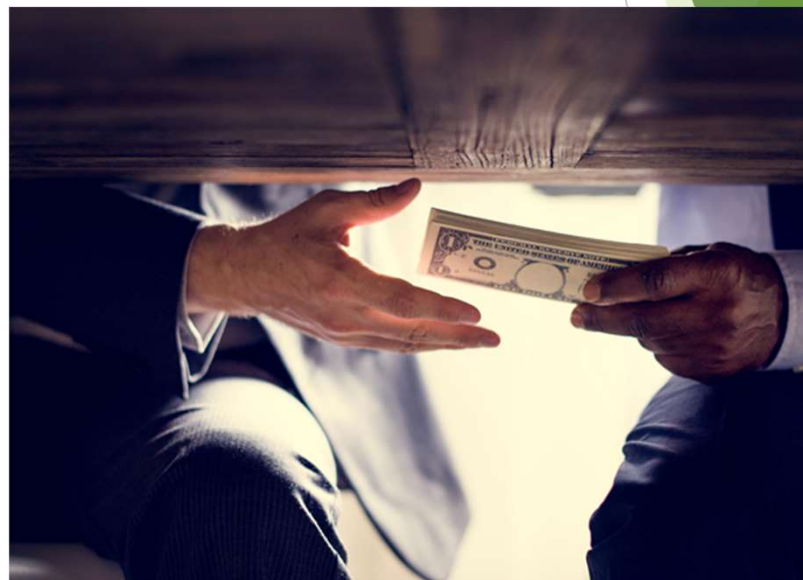
- DQ Transfers result in a penalty period in which the Oregonian cannot receive LTC services until the end of the penalty period.
- After the penalty period has passed, clients can reapply for LTC.
- For individuals who are otherwise eligible for OHP Plus (such as an SSI recipient or someone with 1619B status), DQs do not affect their medical, just eligibility to services.



Uncompensated Value of a Disqualifying Transfer

The \$ value of what was given away, sold, or transferred minus the \$ value of what was received in return = uncompensated value

- ▶ Greta gives her best friend \$200K and in exchange feels good about helping her friend = \$200K uncompensated value ($\$200K - \$0 = \$200K$)
- ▶ Greta gives her neighbor \$200K, he gives her his old Honda worth \$200 = \$199,800 uncompensated value ($\$200K - \$200 = \$199,800$)
- ▶ Home with FMV and equity value of \$500K sold for \$1 = uncompensated value \$499,999
- ▶ Home with \$500K FMV and equity value of \$25K sold for \$495K = \$5K uncompensated value



Calculating the Disqualification Period

- ▶ Uncompensated value \div monthly cost of NF care in Oregon = disqualification period
- ▶ Rate changes every two years in October
- ▶ Partial months are applied
- ▶ Uncompensated value and DQ period can be recalculated if assets are returned
- ▶ For individuals who will receive LTCSEV, the medical will always begin the 1st of the month in which the DQ period ends
- ▶ Services should begin the day after the DQ ends

Disqualification (DQ) Scenario

Intake: Violet in an RCF

8/2016 gives grandchild \$100,000

11/10/2016 applies for LTC Medicaid

\$100,000 divided by \$8425 = 11.86 months.

DOR 11/10/16

11-month DQ period

11/10/16 through 9/9/17.

The .86 is converted by multiplying it by 31 (# of days in the last full month, August).

31 X .86 = 26.66 days. Drop the partial day of .66.

9/9/17 + 26 days = 10/5/17 is the last day of her DQ period.

She will not be eligible until 10/6/17.

Assets returned- recalculate DQ period

8/16 - Violet gave \$100,000 to grandchild.

DOR for LTC Medicaid 11/10/16.

DQ period assessed thru 10/5/17.

Grandchild returned \$50,000 in 5/17.

Recalculate:

\$50,000 divided by \$8425 = 5.93 months.

New DQ period is 11/10/16 - 04/06/17.

Exceptions and Hardship Waivers

General

- Before look-back period
- Transfer to spouse or child who is under 21 OR blind OR disabled
- Transfer into certain trusts
- Victim of fraud, misrepresentation or coercion and attempts have been made to recover
- Clearly not done to qualify for Medicaid - not easy to prove but is a rebuttable assumption

Transfer of home

- ▶ Transferred to spouse
- ▶ Transferred to child who is under 21 or blind or disabled
- ▶ Transferred to caregiving child (must meet specific criteria)
- ▶ Transferred to sibling with equity interest and resided for one year immediately prior to LTC admission

Applicants can request hardship waiver from Central Office

DQ Forms

- The 540T (Notice of DQ Transfer) was replaced by the MED 061 which ONE sends automatically when LTCSERV, NMAGISERV or MSERV have been authorized.
- The SDS 0544 (Application for Hardship Waiver) remains a manual notice that workers need to complete outside of ONE.
- The SDS 3306, 3307, and 3308 are not required, but use as best practice

Long Term Care Disqualification

You are getting this notice because [REDACTED] in your household is disqualified from getting Long Term Care benefits. This disqualification is in effect from 02/03/2021 to 10/24/2021.

This is because an asset has been transferred for less than its fair market value. This transfer was at least partially for the purpose of Establishing eligibility for benefits.

You will receive separate notice(s) informing you of how this disqualification affects your eligibility for medical benefits.

We used the information below to calculate your disqualification period:
The asset was Cash
We are counting the value of this asset as \$76,758
The result is 8 months and 22 days.

If you want to request an undue hardship waiver of this decision, see below. You must fill out a separate form.

Waiver request

If you believe that this disqualification will create a severe hardship for you, contact your worker. Your worker will send you a form to fill out. You or someone who represents you may fill out the form. Also, with your permission, the facility in which you reside may fill it out.

Resource Assessments (CSRA) (OSIPM and LTSS Applicants)

Prevents the spouse of
LTSS client from going into
poverty in order to meet
Medicaid resource limits

Solely for OSIPM
individuals who do not
qualify for MAGI

Minimum & maximum
allowance amounts

Marital status: legal,
common law, separated

Ownership and transfers

Assumed Eligible
applicants still require
CSRA

Note: Resource Assessments can be done without an application.

Total and Divide



=



Community Spouse Resource Allowance



- ▶ The community spouse's half of the couple's combined countable resources at the **beginning** of the continuous period of care, **but not more than \$130,380**
- ▶ The state minimum community spouse resource allowance, **\$26,076**
- ▶ A court-ordered community spouse resource allowance
- ▶ The amount which, if invested into a single premium immediate annuity, would raise the community spouse's income to the monthly maintenance needs allowance.

Minimum CSRA

Total Resources \$25K

Applying Spouse



$\$12,500 - \$2,000 =$
 $\$10,500$ minimum
available to assign to
community spouse

We want the community spouse to have at least \$26,076, so we can move money from the service spouse's bag into the community spouse's bag to bring them up to the minimum (assuming there's enough available). Since the service spouse can keep \$2,000, if they walk in with no more than \$28,076 between the two of them, they are resource-eligible.

Community Spouse



$\$26,076 - \$12,500 =$
 $\$13,576$ amount needed
to bring up to minimum

Maximum CSRA

Total Resources \$300K

Applying - Pat



So, you can see that in order to be eligible, Pat and Bobbie will need to spend or otherwise legally dispose of a total of \$167,620 (\$148,000 of Pat's half + \$19,620 of Bobbie's half = \$167,620).

$\$150K - \$2K = \$148K$ too much

Comm. Spouse - Bobbie



$\$150K - \$130,380 = \$19,620$ too much

Resource Assessments (CSRA)

- If **both** spouses are **applying for services**, each applicant can only have \$2,000 in countable resources in their name and no CSRA is needed.
- If client is over resource at initial LTC application, client will be denied. Client can reapply when they believe they are under the resource limit.

Case 1

Spouse A (Requesting)
Spouse B

Case 2

Spouse B (Requesting)
Spouse A

Resource Assessments in ONE

Resources

- Resource Assessment ✔
- Resource Questions ✔
- Liquid Resource ✔
- Vehicle ✔

- Resource Summary ✔
- Resource Assessment Summary

Resource Assessment Summary

ID#	CPC Start Date	Authorization Date	CSRA	Status	Actions
13	10/07/2020	09/01/2020	25157.98	Authorized	
45	11/22/2019	12/29/2020	25728	Authorized	

Resource Assessment Details

Continuous Period of Care(CPC) Start Date *

If resource was acquired prior to continuous period of care start date make sure to enter resources to reflect the amount at the time of the start date AND the current amounts if still owned

Reason for computing Community Spouse Resource Assessment (CSRA) *

Court Ordered Amount




Living Arrangement to be used for computation *

Final Community Spouse Resource Assessment (CSRA) amount in Oregon Access

View Resource Assessment Summary

View Individual Resource Summary

Reading the Individual Resource Summary

Individual Resource Summary   

Individual	Resource Type	Value	Excluded Reason	Excluded Amount	Countable Amount
	VEHICLE	\$ 400.00		0.00	\$ 400.00
	REAL PROPERTY	\$ 300.00	Spouse occupies the home or is temporarily absent	\$ 300.00	0.00
	LIQUID RESOURCE	\$ 450.00		0.00	\$ 450.00
	LIFE INSURANCE	\$ 600.00		\$ 600.00	0.00
	TRUST	\$ 300.00	Excluded Per Policy	\$ 300.00	0.00

Reading the Resource Assessment Summary

Resources	
Resource Assessment	✓
Resource Questions	✓
Liquid Resource	✓
Vehicle	✓

Resource Summary	✓
Resource Assessment Summary	

Total Countable Resource Amount	
1. Combined Resources	\$850.00
a. Total Real Property	\$0.00
b. Total Vehicles	\$400.00
c. Total Liquid Resource	\$450.00
d. Total Burial Reserves	\$0.00
e. Total Life Insurance	\$0.00
f. Total Trust Resource	\$0.00
g. Total Other Resource	\$0.00
2. Community Spouse Resource Allowance	
a. Divide combined resources by 2	\$425.00
b. Minimum community spouse resource allowance	\$25284.00
c. Maximum community spouse resource allowance	\$126420.00
d. Court-Ordered Amount	\$0.00
f. Calculated community spouse resource allowance	\$25284.00
h. Single Premium Immediate Annuity Premium	\$0.00
3. Status	Pending
4. Resource Assessment Date	10/05/2020

Forms

MED-113 (*currently being revised*)

<<Resource Spend Down>>

We need more information to make sure you qualify (or still qualify) for Long-Term Care medical benefits. Here's what you need to do:

We need to know if excess resources have been spent down as agreed. Below is the information we have of the agreed spending. This must occur by the due date listed.

Amount	Name	Due Date
<<\$ 00000>>	<<TransferFrom>>	<<DueDate>>

MED-109 Resource Assessment Summary

Resource Assessment Summary

This letter gives you a summary of the information used in your resource assessment. A resource assessment is used to find the amount your spouse can keep while you receive long-term care services. The amounts below were used to figure the resource allowance for your spouse.

Date Care Started: 07/07/2020

This is the date the person started getting care in their home or a facility. If there was a break in this care of 30 days or more, it is the date care began again after the break.

Resources below are as of the date care started:

Combined Resources for

Total Property	\$0.00
Total Vehicles	\$0.00
Total Liquid Resource	\$186,038.13
Total Burial Reserves	\$0.00
Total Life Insurance	\$0.00
Total Trust Resource	\$0.00
Total Other Resource	\$0.00
Total Resources divided by 2	\$93,019.07



Your calculated current Minimum Community Spouse Resource Allowance is \$25,728.00 and your Maximum Community Spouse Resource Allowance is \$128,640.00. Your Court Ordered Community Spouse Resource Allowance Amount is \$0.00.

Your Community Spouse Resource Allowance is \$93,019.06.

Some changes could make the resource allowance go up or down before you become eligible for services. Examples that could change the allowance include: a change in income, a change in living situation, or a change in shelter costs. This allowance will not change once you are eligible.

What questions do you have?

Please type your questions into the broadcast text box and our moderator will ask the panel

Session	Date
Medical Deductions & Liability	05/13/2021
Forms, Notices & Reports	05/20/2021
Medical Related Payments (MRP's)	05/27/2021
Renewals in ONE	06/03/2021
Wrap up: Review & Open Q&A	06/10/2021

APD/AAA LTC & ONE Q&A Series