

1 10A NCAC 23E .0207 is proposed for readoption with substantive changes as follows:

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3 **10A NCAC 23E .0207 WHOSE RESOURCES ARE COUNTED RESERVE**

4 (a) The value of resources held by the client or by a financially responsible person shall be considered by the county  
5 department of social services to be available to the client in determining countable reserve for the budget unit.

6 (b) Jointly owned resources shall be counted as follows:

7 (1) The value of resources owned jointly with a person who is not a member of the client's budget unit  
8 ~~non financially responsible person~~ who is a recipient of another public assistance budget unit shall  
9 be divided in parts of equal value equally between the budget units;

10 (2) The value of liquid assets and personal property owned jointly with a person who is not a member  
11 of the client's budget unit ~~non financially responsible person~~ who is also not a client of another  
12 public assistance budget unit shall be available to the client budget unit member if he or she can  
13 dispose of the resource without the consent and participation of the joint-owner or the joint-owner  
14 ~~other owner or the other owner~~ consents to and, if necessary, participates in the disposal of the  
15 resource;

16 (3) The client's share of the value of real property owned jointly with a person who is not a member of  
17 the client's budget unit ~~non financially responsible person~~ who is also not a member of another  
18 public assistance budget unit shall be available to the client budget unit member if he or she can  
19 dispose of his or her share of the resource without the consent and participation of the joint-owner  
20 or the joint-owner ~~other owner or the other owner~~ consents to and, if necessary, participates in the  
21 disposal of the resource.

22 (c) The terms of a separation agreement, divorce decree, will, deed or other legally binding agreement or legally  
23 binding order shall take precedence over ownership of resources as stated in (a) and (b) of this Rule, except as provided  
24 in Paragraph ~~(k)~~ (g) of this Rule.

25 (d) For all aged, blind, and disabled cases, the resource limit, financial responsibility, and countable and non-countable  
26 assets ~~are~~ shall be based on standards and methodology in Title XVI of the Social Security Act except as specified in  
27 ~~Items (4) and (5) in~~ Rule .0202 of this Section.

28 (e) Countable resources for Family and Children's medically needy ~~related~~ cases shall be determined as follows:

29 (1) The resources of a spouse, who is not a stepparent, shall be counted in the budget unit's reserve  
30 allowance if: ~~if~~

31 (A) the spouses live together; ~~together~~ or

32 (B) one spouse is temporarily absent for twelve months or less in long-term ~~long-term~~ care and  
33 the spouse is not a member of another public assistance budget unit;

34 (2) The resources of a client and a financially responsible parent or parents shall be counted in the  
35 budget unit's reserve limit if: ~~if~~

36 (A) the parents live together; ~~together~~ or

1                   (B) one parent is temporarily absent for twelve months or less in long-term ~~long-term~~ care and  
2                   the parent is not a member of another public assistance budget unit;

3           (3)       The resources of the parent or parents shall not be considered if a child under age 21 requires care  
4                   and treatment in a medical institution and his or her physician certifies that the care and treatment  
5                   are expected to exceed 12 months.

6 ~~(f) Real property shall be excluded from countable resources for Family and Children's related cases.~~

7 ~~(g) One motor vehicle per adult shall be excluded for Family and Children's related cases.~~

8 ~~(h) For medically needy family and children's related cases, income producing vehicles and personal property shall  
9 be excluded from countable resources.~~

10 ~~(i) For family and children's related cases the value of non-excluded motor vehicles is the Current Market Value, less  
11 encumbrances. If the applicant/recipient disagrees with the assigned value, he has the right to rebut the value.~~

12 ~~(f)(j)~~ For a married individual:

13           (1)       Resources available to the individual are available to his or her spouse who is a noninstitutionalized  
14                   applicant or recipient and who is either living with the individual or temporarily absent for twelve  
15                   months or less from the home, irrespective of the terms of any will, deed, contract, antenuptial  
16                   agreement, or other agreement, and irrespective of whether or not the individual actually contributed  
17                   the resources to the applicant or recipient. All resources available to an applicant or recipient under  
18                   the rules of this Section must be considered by the county department of social services when  
19                   determining his or her countable reserve.

20           (2)       For an institutionalized spouse as defined in 42 U.S.C. 1396r-5(h), available resources shall be  
21                   determined in accordance with 42 U.S.C. 1396r-5(c), except as specified in Paragraph ~~(g)~~ ~~(m)~~ of  
22                   this Rule.

23 ~~(g)(k)~~ For an institutionalized individual, the availability of resources are determined in accordance with 42 U.S.C.  
24 1396r-5. Resources of the community spouse ~~are~~ shall not be counted for the institutionalized spouse when:

25           (1)       Resources of the community spouse cannot be determined or cannot be made available to the  
26                   institutionalized spouse because the community spouse cannot be located; or

27           (2)       The couple has been continuously separated for 12 months at the time the institutionalized spouse  
28                   enters the institution.

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30 *History Note:*     *Authority G.S. 108A-54; 108A-54.1B; 108A-55; S.L. 1983, c. 1116; 42 U.S.C. 1396r-5; 42 U.S.C.*  
31 *1396a(a)(17); 42 U.S.C. 1396a(a)(51); 42 C.F.R. 435.602; 42 C.F.R. 435.711; 42 C.F.R. 435.712;*  
32 *42 C.F.R. 435.723; 42 C.F.R. 435.734; 42 C.F.R. 435.821; 42 C.F.R. 435.822; 42 C.F.R. 435.823;*  
33 *42 C.F.R. 435.724; 42 C.F.R. 435.726; 42 C.F.R. 435.733; 42 C.F.R. 435.735; 42 C.F.R. 435.840;*  
34 *42 C.F.R. 435.832; 42 C.F.R. 435.845; 45 C.F.R. 233.20; 45 C.F.R. 233.51; Deficit Reduction Act*  
35 *of 1984 (P.L. 98-369), Section 2373; Correll v. DSS/DMA/DHR, 418 S.E.2d 232 (1992); No.*  
36 *406P491 (North Carolina Supreme Court); Schweiker v. Gray Panthers, 453 U.S. 34, 101 S.Ct.*  
37 *2633, 69 L. Ed.2d 460 (1981);*

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*Eff. September 1, 1984;*  
*Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; April 1, 1993;*  
*Temporary Amendment Eff. September 13, 1999;*  
*Temporary Amendment Expired June 27, 2000;*  
*Temporary Amendment Eff. September 12, 2000;*  
*Amended Eff. August 1, 2002;*  
*Transferred from 10A NCAC 21B .0403 Eff. May 1, 2012; ~~2012~~.*  
*Readopted Eff. May 1, 2019.*