

REGIONAL
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# SSA PROGRAM CIRCULAR

## Supplemental Security Income

No. 01-15

Chicago Region

Date: 11/8/01

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### Law Change Regarding Michigan Trusts

#### **Background:**

Regional Program Circular 01-06 dated April 5, 2001 provided detailed instructions on evaluating trusts for SSI resource purposes. A general rule of trust law, and one that is followed by all Region V states, is that any trust can be revoked with the mutual consent of the grantor and all beneficiaries. If the grantor and the beneficiary are the same person and there are no other beneficiaries, the trust is revocable.

If there are residual beneficiaries, the trust may be irrevocable. In addition, if the trust names other beneficiaries who may benefit from the trust during the SSI claimant's lifetime, this also may make the trust irrevocable. However, in that, case, even if the trust is not a resource, we need to consider whether there has been a transfer for less than fair market value. [This rule is true even if it is stated in the body of the trust that the trust is irrevocable.]

#### **Definition of a Residual Beneficiary (SI 01120.200):**

A residual beneficiary (also referred to as a contingent beneficiary) is not a current beneficiary of a trust, but is someone or some entity that will receive the residual benefit of the trust upon the occurrence of a specific event, e.g., the death of the primary beneficiary.

In the April 5, 2001 circular, we discussed the language in a trust that creates residual beneficiaries. A specific individual who is named to receive the trust qualifies as a residual beneficiary. However, the residual/contingent beneficiary does not always have to be a specifically named individual, and can be identified by category (e.g. "decedents", "children" or "issue").

A reference to the beneficiary's "estate" or "executor" does not create a residual beneficiary (i.e. would not make the trust irrevocable). Additionally, where the only language regarding other beneficiaries refers to the grantor-beneficiary's "heirs at law," "next of kin", "survivors", or persons entitled to inherit "on his/her death intestate" or under the "statute of descent and distribution", such language creates an inference that the grantor does not intend to create any trust interest in the person who may become his heirs or next of kin. For five of six states in the Chicago Region, we do not consider a trust with this language to have residual beneficiaries.

Distribution: All FOs/TSCs/ADOs/in the Chicago Region

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**The Exception for Michigan Law:**

Effective April 1, 2000, for the state of Michigan, any trust that indicates that upon the beneficiary's death, assets will be paid to "heirs at law", or "heir(s)", "next of kin", "relatives", or "family", "distributees", or similar language is considered to have residual beneficiaries. This applies to trusts created, before April 1, 2000, as well (i.e., a trust created prior to April 1, 2000, could be considered irrevocable if the requirements for this exception are met).

**Note:** If the trust was created on or after January 1, 2002, the language regarding the state being paid first as reimbursement for Medicaid expenditures must still be included in the trust in order for the trust not to be counted as a resource. (SI 01120.203)

Please inform the RO if you are aware of a case that was denied because of excess resources based on a finding that, under Michigan law, the trust was revocable because the grantor was the only beneficiary, and where the trust named as residual beneficiaries the claimant's "heirs" or "heirs at law," or similar language. Cases should be mailed to:

Social Security Administration  
Michigan Trust  
SSI Team, 10<sup>th</sup> Floor  
600 W. Madison St  
Chicago, IL 60661

We will evaluate and advise you of the policy application for the specific case.

**Conclusion:**

For states in the Region, other than Michigan, language such as "heirs at law", "heirs" survivors", "relatives", "next of kin", "family", "distributees", or similar language does not create a residual beneficiary. Such language creates an inference that the grantor does not intend to create a trust interest in the persons who may become his/her heirs or next of kin. Such trusts should be viewed as revocable.

Any questions regarding this program circular should be referred to Kay Rosen, at (312) 575-4128.