

APPENDIX II-G

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2022-10 Rule Number He-W 656.04 & He-W 856.04

<p>1. Agency Name & Address: Dept. of Health and Human Services Bureau of Family Assistance 129 Pleasant St., Brown Bldg. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 167:3-c, I and RSA 167:83 II(m)</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action: <input checked="" type="checkbox"/> Adopt <input type="checkbox"/> Amendment (only if Initial Proposal was filed before 9/27/20.) <input type="checkbox"/> Repeal <input type="checkbox"/> Readoption <input checked="" type="checkbox"/> Readoption w/amendment</p>
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5. Short Title: **Personal Property Resources**

6. Contact person for copies and questions:

Name: **Nicole Burke** Title: **Rules Coordinator-
Administrative Rules Unit**

Address: **Dept. of Health & Human Services
Administrative Rules Unit
129 Pleasant Street, Brown Bldg.
Concord, NH 03301** Phone #: **(603) 271-9640**

7. The rulemaking notice appeared in the *Rulemaking Register* on **February 10, 2022**

**SEE THE INSTRUCTIONS--PLEASE SUBMIT ONE COPY OF THIS COVER SHEET AND ONE COPY OF THE FOLLOWING:
(optional to number correspondingly)**

8. The "Final Proposal-Fixed Text," including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

9. Yes N/A Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

10. Yes N/A The "Final Proposal-Annotated Text," indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(d).

11. Yes N/A The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Notice Number 2022-10

Rule Number He-W 656.04 & He-W 856.04

<p>1. Agency Name & Address: Dept. of Health and Human Services Bureau of Family Assistance 129 Pleasant St., Brown Bldg. Concord, NH 03301</p>	<p>2. RSA Authority: <u>RSA 167:3-c, I and RSA 167:83 II(m)</u></p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u>X</u></p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Personal Property Resources**

6. (a) Summary of what the rule says and of any proposed amendments:

He-W 656.04 describes the treatment of resources for all categories of financial and medical assistance including adult and Financial Assistance to Needy Families (FANF) categories. He-W 656.04 also describes resource reporting and verification requirements at the time of application and redetermination, as well changes to resources between redeterminations. This includes what resources are counted when determining eligibility, and excluded resources.

The Department of Health and Human Services (Department) is proposing to readopt with amendment He-W 656.04 by replacing the term “client” with “individual” and replacing the term “District Office” with “Department of Health and Human Services (DHHS)” throughout, correcting references to other rules, and adding specific language regarding trusts that were previously referenced in 42 USC 1396p(d).

The Department is also proposing to adopt He-W 856.04 to coincide with rules regarding eligibility for medical assistance being reorganized into Chapter He-W 800. He-W 856.04 will describe the treatment of resources for all categories of medical assistance. He-W 856.04 also describes resource reporting and verification requirements at the time of application and redetermination, as well changes to resources between redeterminations. He-W 856.04 includes what resources are factored in when determining eligibility and which resources are excluded.

6. (b) Brief description of the groups affected:

Individuals and families eligible for or receiving Financial Assistance to Needy Families or medical assistance.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule	Specific State or Federal Statutes or Regulations the Rule Implements
He-W 656.04	RSA 167:3-c,I; RSA 167:4; RSA 167:17; RSA 167:81 45 CFR 233.20(a)(3); Section 1612(a)(2)(G) of the Social Security Act (SSA) [42 USC 1382a(a)(2)(G)]; Section 1613(a) of the SSA [42 USC 1382b(a)]
He-W 856.04	RSA 167:3-c,I; RSA 167:4; RSA 167:17; RSA 167:81; RSA 167:83 II(m) 45 CFR 233.20(a)(3); Section 1612(a)(2)(G) of the Social Security Act (SSA) [42 USC 1382a(a)(2)(G)]; Section 1613 of the SSA [42 USC 1382b] Section 1902(a)(10)(A)(ii)(XIII) of the SSA [42 USC 1396a(a)(10)(A)(ii)(XIII)] Section 1917(c)(1)(H)-(I) of the SSA [42 USC 1396p(c)(1)(H)-(I)] Section 1917(d) of the (SSA) [42 USC 1396p(d)]

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Nicole Burke** Title: **Rules Coordinator –
Administrative Rules Unit**
Address: **Dept. of Health and Human Services** Phone #: **(603) 271-9640**
Administrative Rules Unit Fax#: **(603) 271-5590**
129 Pleasant Street, 2nd Floor E-mail: Nicole.V.Burke@dhhs.nh.gov
Concord, NH 03301

TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday, March 17, 2022**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, March 10, 2022 at 1:00 pm**

Place: [**DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 22:003, dated 1/28/2022

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in costs when comparing proposed He-W 656.04 to the existing rule. Not applicable to He-W 856.04, as this is a new rule.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed changes to He-W 656.04 remove a reference to federal regulations (42 USC 1396p(d)(1)-(3)), instead placing the substance of those regulations directly into state rules. Accordingly, the Department of Health and Human Services states the revised rule is not expected to have a fiscal impact. Likewise, the new He-W 856.04 incorporates similar language into the rules regarding eligibility for medical assistance and is not expected to have a fiscal impact.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify an existing program or responsibility, but do not mandate any fees, duties, or expenditures on the political subdivisions of the state, and therefore do not violate Part I, Article 28-a of the N.H. Constitution.

Readopt with amendment He-W 656.04, effective 2-12-12 (Document #10069), to read as follows:

He-W 656.04 Personal Property Resources.

- (a) For all categories of financial assistance, personal property resources shall be treated as follows:
- (1) At application and redetermination, the assistance group shall report and verify all resources;
 - (2) The value of accumulated interest, the equity value of life insurance policies and the value of stocks and bonds, when verified at application or redetermination, shall be considered unchanged until the next redetermination;
 - (3) Changes to the value of the resources identified in He-W 656.03(a) shall be reported between redeterminations;
 - (4) Individuals shall report the acquisition of new resources and the selling of existing resources, pursuant to RSA 167:17;
 - (5) The following resources shall not be counted when determining eligibility:
 - a. Borrowed money, except for when the individual transfers the proceeds or a portion of the proceeds of the loan to another individual pursuant to He-W 620.01(a)(6);
 - b. All household items;
 - c. Inaccessible personal property resources whose value is legally unobtainable by the individual, except as specified in (7) below;
 - d. Group, term and fraternal life insurance policies which have no equity value and are only payable upon the death of the insured;
 - e. Lump sum death payments to cover funeral and burial expenses;
 - f. Resources resulting from an accumulation of types of income that are excluded by federal mandate;
 - g. Federal, state, and local income tax refunds; and
 - h. Keogh accounts which involve a contractual relationship with a non-assistance group member, provided the contract prevents the individual from withdrawing money from the account without affecting the employer or other employees;
 - (6) All Individual Retirement Accounts (IRA), one person Keogh accounts, and non-contractual Keogh accounts shall be counted towards the resource limit as follows:
 - a. The balance in the account minus the penalty for early withdrawal for the entire account shall be counted; and
 - b. The balance amount and the amount of the penalty for early withdrawal shall be as specified on the date on which they are initially verified and these amounts shall remain in effect until the next redetermination;
 - (7) Trusts and similar legal devices shall be treated as follows:

a. Trusts and similar legal devices, including annuities, established after August 10, 1993 and trusts and legal devices that were established prior to August 11, 1993 but have been added to or otherwise augmented or amended after August 10, 1993 shall be treated as follows:

1. For purposes of determining an individual's eligibility for, or amount of, benefits, the rules established in this subparagraph shall apply to a trust established by such individual;

2. An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

(i) The individual;

(ii) The individual's spouse;

(iii) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(iv) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse;

3. In the case of a trust, the corpus of which includes assets of an individual as determined under He-W 656.04(a)(7)a.2. and assets of any other person or persons, the provisions of this subparagraph shall apply to the portion of the trust attributable to the assets of the individual;

4. Subject to He-W 656.04(a)(7)a.7., this subparagraph shall apply without regard to:

(i) The purposes for which a trust is established;

(ii) Whether the trustees have or exercise any discretion under the trust;

(iii) Any restrictions on when or whether distributions may be made from the trust; or

(iv) Any restrictions on the use of distributions from the trust;

5. In the case of a revocable trust:

(i) The corpus of the trust shall be considered resources available to the individual;

(ii) Payments from the trust to or for the benefit of the individual shall be considered income of the individual; and

(iii) Any other payments from the trust shall be considered assets disposed of by the individual;

6. In the case of an irrevocable trust:

(i) If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income:

i. To or for the benefit of the individual, shall be considered income of the individual; and

ii. For any other purpose, shall be considered a transfer of assets by the individual; and

(ii) Any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust or, if later, the date on which payment to the individual was foreclosed, to be assets disposed by the individual, and the value of the trust shall be determined by including the amount of any payments made from such portion of the trust after such date;

7. This subparagraph shall not apply to any of the following conforming trusts:

(i) A trust containing the assets of an individual under age 65 who is disabled and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court if the state will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a state plan;

(ii) A trust containing the assets of an individual who is disabled as defined in 42 USC 1382c(a)(3) that meets the following conditions:

i. The trust is established and managed by a non-profit association;

ii. A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts; and

iii. Accounts in the trust are established solely for the benefit of individuals who are disabled as defined in 42 USC 1382c(a)(3) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court;

b. No clause or requirement in the trust, no matter how specifically it applies to state or federal programs shall preclude a trust from being considered in accordance with He-W 656.04(a)(7)a.1.-6.;

c. Any payments from revocable trusts, which are not made to, or on behalf of, the individual shall be considered assets disposed of for less than fair market value pursuant to He-W 620;

d. Payments of income or payments from the corpus of irrevocable trusts that are not made to or for the benefit of the individual, shall be treated as a transfer of assets for less than fair market value pursuant to He-W 620;

e. Irrevocable trusts where payments from some portions or all of the trust cannot under any circumstances be made to, or for the benefit of, the individual shall be treated as follows:

1. The portion of the corpus or income on the corpus which cannot be paid to the individual shall be treated as a transfer of assets and shall be treated in accordance with He-W 620;

2. In treating portions of the corpus or income which cannot be paid to the individual as a transfer of assets, the date of the transfer shall be the date the trust was established or, if later, the date on which payment to the individual was restricted or eliminated;

3. In determining the value of the portion of the trust which cannot be paid to the individual for transfer purposes, any payments made, for whatever purpose, after the date the trust was established or, if later, the date payment to the individual was foreclosed, shall not be subtracted from the value of the trust;

4. If funds were added to that portion of the trust after these dates, those funds shall be considered to be a new transfer of assets, effective on the date the funds are added to the trust; and

5. The value of the transferred amount shall be no less than its value on the date of establishment or the date that access to the principal of the trust was restricted or eliminated;

Edit: ".(i) or (ii),"

f. When some portion of the corpus or income on the corpus of a trust is or can be paid to the individual, such portion or income shall be treated in accordance with the standards set forth in He-W 656.04(a)(7)a.5.i. or ii., as applicable;

g. Payments shall be considered to be made to the individual when any amount from the trust, including an amount from the corpus, or income produced by the corpus, is paid directly to the individual, or to someone acting on the individual's behalf; and

h. Payments made for the benefit of the individual shall be payments of any sort, including an amount from the corpus, or income produced by the corpus, paid to another entity such that the individual derives some benefit from the payment;

(8) An irrevocable burial trust established by an individual for the purpose of paying, at some point in the future, for the various expenses associated with the individual's funeral and burial shall be an exempt trust if the individual has a signed contract with a funeral home and the corpus of the trust does not exceed the contracted amount;

(9) Annuities shall be excluded from the resource computation when the expected return on the annuity is commensurate with the life expectancy of the beneficiary in accordance with He-W 620.01(i)(2);

(10) Annuities excluded from the resource computation pursuant to (9) above shall be treated as follows:

- a. When an individual cannot access the principal of an annuity, the annuity shall be treated as an irrevocable trust;
- b. If an annuity provides for payments to be made to the individual, those payments shall be considered unearned income to the individual;
- c. Any portion of the principal of the annuity that is paid to or on behalf of the individual shall be considered unearned income to the individual; and
- d. Portions of the annuity that cannot be paid to or for the benefit of the individual shall be treated as transfers of assets and shall be evaluated in accordance with He-W 620; and

(11) Where application of the trust provisions discussed in He-W 656.04(a)(7)a.7.i. and iii. would cause an undue hardship as specified in He-W 602.08(c), those provisions shall not apply.

Edit: ".(i) and (iii)"

(b) For the adult categories of financial assistance, personal property resources shall be treated as follows:

(1) The following resources shall not be counted when determining eligibility for the adult categories of financial assistance:

- a. All vehicles such as but not limited to cars, trucks, boats, motorcycles, and snowmobiles; and
- b. Farm machinery, livestock, tools, and equipment;

(2) The equity value of the following resources shall be counted when determining eligibility for all adult categories of financial assistance:

- a. Bank accounts, including checking accounts;
- b. Stocks and bonds; and
- c. Pre-paid debit cards, such as direct express cards.

(3) Accessible burial funds shall be treated in the following manner:

- a. Up to \$1500 of the burial funds shall not be counted when determining eligibility for the adult categories of financial assistance when the value of the burial funds, added to the individual's other countable resources, exceeds the resource limits as specified in He-W 656.06;
- b. The amount of the burial fund exclusion shall be reduced by:
 - 1. The combined face value of any life insurance policies; and
 - 2. Any irrevocable trusts or irrevocable funds identified as available to meet burial expenses;

- c. Interest earned on excluded burial funds and appreciation on the value of excluded burial arrangements shall be excluded as a resource, if left to accumulate as part of the separately identified burial fund;
 - d. Interest earned on any portion of the burial fund not excluded as a resource shall be excluded only if inaccessible to the individual; and
 - e. Accumulated interest which is accessible to the individual shall be counted as a resource at each eligibility determination;
- (4) Resources set aside under a Social Security Administration (SSA) approved plan for self-support (PASS) shall be excluded for the duration of the plan;
- (5) Life insurance policies shall be:
- a. A countable resource when the combined equity value of all an individual's policies exceeds \$1,500; or
 - b. An excluded resource when:
 - 1. The total combined equity value of all the individual's policies is equal to or less than \$1,500; or
 - 2. The combined equity value of the individual's policies exceeds \$1,500, but the state of New Hampshire has been made the beneficiary to the policies pursuant to RSA 167:4, IV(c);
- (6) Applicants whose life insurance policies have a combined face value exceeding \$1,500 shall be allowed to offset the excess equity value of life insurance for 3 months if:
- a. The equity value of life insurance exceeds resource limits in He-W 656.06, but other countable resources do not exceed the resource limits; and
 - b. The applicant or the applicant's legal spouse who is living with the applicant has incurred and is liable for unpaid medical expenses;
- (7) The excess value of life insurance shall be offset as follows:
- a. Unpaid medical bills which were incurred before the period for which eligibility is requested shall be deducted from the equity value of the life insurance policies;
 - b. If there are not enough prior unpaid medical bills to offset the equity value of life insurance, unpaid medical bills incurred within the period of which eligibility is requested shall be deducted from the equity value of the life insurance policies in chronological sequence, starting with the earliest unpaid bill; and
 - c. No incurred unpaid medical bill shall be offset more than once;
- (8) The period of offsetting incurred medical expenses shall begin on the date that the applicant provides verification to the department of health and human services (DHHS) of resources and incurred medical expenses, and shall end 3 months thereafter;
- (9) At the end of the 3 month period, the equity value of life insurance shall be counted in full without any offset for medical expenses; and

(10) Lump sum payments, with the exception of lump sum earned income and excludable lump sum payments paid to cover funeral expenses and portions of third party medical and other expenses directly associated with receipt of the lump sum, shall be counted as a resource when determining eligibility for the adult categories of financial assistance.

(c) For the Financial Assistance for Needy Families (FANF) categories of financial assistance, personal property resources shall be treated as follows:

(1) Liquid resources such as bank accounts, stocks, bonds, and savings certificates, owned by an alien's sponsor or sponsor's spouse, shall be deemed to be available to the alien when determining an alien's eligibility for FANF financial assistance;

(2) Liquid resources such as vehicles which are owned by an alien's sponsor or sponsor's spouse shall not be deemed to be available to the alien;

(3) Junk vehicles used only to supply parts for the individual's main vehicle, are in such dilapidated condition that they cannot be reasonably repaired for sale or use, or which can only be sold for scrap or parts, and vehicles which are jointly owned with a non-assistance group member, shall be excluded as a resource when determining eligibility for FANF financial assistance;

(4) Lump sum payments derived from converting a non-liquid resource to cash shall be counted as a lump sum resource when determining eligibility for FANF financial assistance;

(5) The remaining balance of the working checking account or pre-paid debit card on the day it is reviewed, reduced by the amount that represents the FANF payment standard for an assistance group of comparable size with no income, shall be counted as a resource for FANF financial assistance;

(6) The following special provisions shall apply to FANF recipients whose countable resources exceed the allowable limit because their sole resources consist of personal property assets which cannot be readily converted to cash, or which consist of such assets and real property as follows:

a. Recipients shall reduce excess resources to within allowable limits no later than the month following the month in which resources first exceed the limit;

b. The recipient shall verify that the recipient is making a good faith effort to sell the personal property resource which caused the resource limit to be exceeded; and

c. Financial assistance shall terminate if the recipient fails to reduce resources within the above time frames;

(7) The equity value of each individual's life insurance policies shall be counted as a resource when determining eligibility for FANF financial assistance, when the total combined value of the policies is greater than \$1,500;

(8) For the purposes of the FANF vehicle exclusion specified in RSA 167:81,IV(b), the total number of vehicles excluded as a resource, regardless of ownership or value, shall not exceed the number of parents or caretaker relatives of the assistance group; and

(9) The equity value of all life insurance policies shall be excluded as a resource when determining eligibility for FANF financial assistance, when:

a. The combined value of each individual's policies is \$1,500 or less; or

b. The total combined value of each individual's policies exceeds \$1,500, but the state of New Hampshire has been made the beneficiary to the policies pursuant to RSA 167:4,IV(c).

Adopt He-W 856.04 to read as follows.

He-W 856.04 Personal Property Resources.

(a) For all non-MAGI categories of medical assistance except as specified in (11) and (12) below, personal property resources shall be treated as follows:

- (1) At application and redetermination, the assistance group shall report and verify all resources;
- (2) The value of accumulated interest, the equity value of life insurance policies and the value of stocks and bonds, when verified at application or redetermination, shall be considered unchanged until the next redetermination;
- (3) Changes to the value of the resources identified in He-W 856.03(a) shall be reported between redeterminations;
- (4) Individuals shall report the acquisition of new resources and the selling of existing resources, pursuant to RSA 167:17;
- (5) The following resources shall not be counted when determining eligibility:
 - a. Borrowed money, except for when the individual transfers the proceeds or a portion of the proceeds of the loan to another individual pursuant to He-W 820.03(d)(7);
 - b. All household items;
 - c. Inaccessible personal property resources whose value is legally unobtainable by the individual, except as specified in (7) below;
 - d. Group, term, and fraternal life insurance policies which have no equity value and are only payable upon the death of the insured;
 - e. Lump sum death payments to cover funeral and burial expenses;
 - f. Resources resulting from an accumulation of types of income that are excluded by federal mandate;
 - g. Federal, state, and local income tax refunds; and
 - h. Keogh accounts which involve a contractual relationship with a non-assistance group member, provided the contract prevents the individual from withdrawing money from the account without affecting the employer or other employees;

(6) All Individual Retirement Accounts (IRA), one-person Keogh accounts, and non-contractual Keogh accounts shall be counted towards the resource limit as follows:

- a. The balance in the account minus the penalty for early withdrawal for the entire account shall be counted; and
- b. The balance amount and the amount of the penalty for early withdrawal shall be as specified on the date on which they are initially verified and these amounts shall remain in effect until the next redetermination;

(7) Trusts and similar legal devices shall be treated as follows:

- a. Trusts and similar legal devices, including annuities, established after August 10, 1993, and trusts and legal devices that were established prior to August 11, 1993 but have been added to or otherwise augmented after August 10, 1993, shall be treated in accordance with 42 USC 1396p(d)(1)-(3);
- b. No clause or requirement in the trust, no matter how specifically it applies to state or federal programs, shall preclude a trust from being considered in accordance with 42 USC 1396p(d)(1)-(3);
- c. Any payments from revocable trusts, which are not made to, or on behalf of, the individual shall be considered assets disposed of for less than fair market value pursuant to He-W 820;
- d. Payments of income or payments from the corpus of irrevocable trusts that are not made to or for the benefit of the individual, shall be treated as a transfer of assets for less than fair market value pursuant to He-W 820;
- e. Irrevocable trusts where payments from some portions or all of the trust cannot under any circumstances be made to, or for the benefit of, the individual shall be treated as follows:
 1. The portion of the corpus or income on the corpus which cannot be paid to the individual shall be treated as a transfer of assets and shall be treated in accordance with He-W 820;
 2. In treating portions of the corpus or income which cannot be paid to the individual as a transfer of assets, the date of the transfer shall be the date the trust was established or, if later, the date on which payment to the individual was restricted or eliminated;
 3. In determining the value of the portion of the trust which cannot be paid to the individual for transfer purposes, any payments made, for whatever purpose, after the date the trust was established or, if later, the date payment to the individual was foreclosed, shall not be subtracted from the value of the trust;
 4. If funds were added to that portion of the trust after these dates, those funds shall be considered to be a new transfer of assets, effective on the date the funds are added to the trust; and
 5. The value of the transferred amount shall be no less than its value on the date of establishment or the date that access to the principal of the trust was restricted or eliminated;

f. When some portion of the corpus or income on the corpus of a trust is or can be paid to the individual, such portion or income shall be treated in accordance with the standards set forth in 42 USC 1396p(d)(3)(A) or (B), as applicable;

g. Payments shall be considered to be made to the individual when any amount from the trust, including an amount from the corpus, or income produced by the corpus, is paid directly to the individual, or to someone acting on the individual's behalf; and

h. Payments made for the benefit of the individual shall be payments of any sort, including an amount from the corpus, or income produced by the corpus, paid to another entity such that the individual derives some benefit from the payment;

(8) An irrevocable burial trust established by an individual for the purpose of paying, at some point in the future, for the various expenses associated with the individual's funeral and burial shall be an exempt trust if the individual has a signed contract with a funeral home and the corpus of the trust does not exceed the contracted amount;

(9) Annuities shall be excluded from the resource computation only if all of the following are true:

a. The expected return on the annuity is commensurate with the life expectancy of the beneficiary in accordance with He-W 820.03(l);

b. The annuity is owned by an individual applying for medical assistance on or after November 1, 2003, and the state of New Hampshire is selected as the:

1. Contingent beneficiary in the event that the individual's spouse, minor child, or permanently and totally disabled child, if any, predeceases the individual; or

2. Secondary beneficiary if the individual has no spouse, minor child, or permanently and totally disabled child at the time the annuity is purchased; and

c. The annuity is owned by an individual applying for medical assistance on or after November 1, 2003, and the payment structure provides equal or nearly equal payments to the individual for the duration of the annuity;

(10) Annuities excluded from the resource computation pursuant to (9) above shall be treated as follows:

a. When an individual cannot access the principal of an annuity, the annuity shall be treated as an irrevocable trust;

b. If an annuity provides for payments to be made to the individual, those payments shall be considered unearned income to the individual;

c. Any portion of the principal of the annuity that is paid to or on behalf of the individual shall be considered unearned income to the individual; and

d. Portions of the annuity that cannot be paid to or for the benefit of the individual shall be treated as transfers of assets and shall be evaluated in accordance with He-W 820;

(11) Trusts described in 42 USC 1396p(d)(4)(A) shall continue to be excluded when determining eligibility for medical assistance-only even after the individual becomes age 65,

except that any addition to the trust or augmentation of the trust after the individual turns age 65 shall be treated as a transfer of assets for less than fair market value;

(12) Trusts described in 42 USC 1396p(d)(4)(C) shall include a provision specifically providing for payment to the state pursuant to 42 USC 1396p(d)(4)(C)(iv); and

(13) Where application of the trust provisions discussed in 42 USC 1396p(d)(4)(A) and (C) would cause an undue hardship as specified in He-W 821.01(a)(6), those provisions shall not apply.

(b) For the adult categories of medical assistance, personal property resources, with the exception of additional resources of individuals eligible for Medicaid for Employed Adults with Disabilities (MEAD) pursuant to He-W 841.03, shall be treated as follows:

(1) The following resources shall not be counted when determining eligibility for the adult categories of medical assistance:

- a. All vehicles such as but not limited to cars, trucks, boats, motorcycles and snowmobiles; and
- b. Farm machinery, livestock, tools, and equipment;

(2) The equity value of the following resources shall be counted when determining eligibility for all adult categories of medical assistance:

- a. Bank accounts, including checking accounts;
- b. Stocks and bonds; and
- c. Pre-paid debit card, such as Direct Express card.

Edit: semicolon

(3) Accessible burial funds shall be treated in the following manner:

- a. Up to \$1500 of the burial funds shall not be counted when determining eligibility for the adult categories of medical assistance when the value of the burial funds, added to the individual's other countable resources, exceeds the resource limits as specified in He-W 856.06;
- b. The amount of the burial fund exclusion shall be reduced by:
 1. The combined face value of any life insurance policies; and
 2. Any irrevocable trusts or irrevocable funds identified as available to meet burial expenses;
- c. Interest earned on excluded burial funds and appreciation on the value of excluded burial arrangements shall be excluded as a resource, if left to accumulate as part of the separately identified burial fund;
- d. Interest earned on any portion of the burial fund not excluded as a resource shall be excluded only if inaccessible to the individual; and
- e. Accumulated interest which is accessible to the individual shall be counted as a resource at each eligibility determination;

- (4) Resources set aside under an SSA-approved PASS shall be excluded for the duration of the plan;
- (5) Life insurance policies shall be:
 - a. A countable resource when the combined equity value of all an individual's policies exceeds \$1,500; or
 - b. An excluded resource when:
 1. The total combined equity value of all the individual's policies is equal to or less than \$1,500; or
 2. The combined equity value of the individual's policies exceeds \$1,500, but the state of New Hampshire has been made the beneficiary to the policies pursuant to RSA 167:4, IV(c);
- (6) Applicants whose life insurance policies have a combined face value exceeding \$1,500 shall be allowed to offset the excess equity value of life insurance for 3 months if:
 - a. The equity value of life insurance exceeds resource limits in He-W 856.06, but other countable resources do not exceed the resource limits; and
 - b. The applicant or the applicant's legal spouse who is living with the applicant has incurred and is liable for unpaid medical expenses;
- (7) The excess value of life insurance shall be offset as follows:
 - a. Unpaid medical bills which were incurred before the period for which eligibility is requested shall be deducted from the equity value of the life insurance policies;
 - b. If there are not enough prior unpaid medical bills to offset the equity value of life insurance, unpaid medical bills incurred within the period of which eligibility is requested shall be deducted from the equity value of the life insurance policies in chronological sequence, starting with the earliest unpaid bill;
 - c. The medical expense offset shall occur prior to the determination of eligibility for in and out medical assistance described in He-W 878.01; and
 - d. No incurred unpaid medical bill shall be offset more than once;
- (8) The period of offsetting incurred medical expenses shall begin on the date that the applicant provides verification to the department of health and human services (DHHS) of resources and incurred medical expenses, and shall end 3 months thereafter;
- (9) At the end of the 3 month period, the equity value of life insurance shall be counted in full without any offset for medical expenses;
- (10) Lump sum payments, with the exception of lump sum earned income and excludable lump sum payments paid to cover funeral expenses and portions of third party medical and other expenses directly associated with receipt of the lump sum, shall be counted as a resource when determining eligibility for the adult categories of medical assistance; and

(11) For medical assistance services described in He-W 820.03(s), entrance fees paid to a continuing care retirement community (CCRC) shall be considered available to the individual if:

- a. The entrance fee may be used to pay for care;
- b. The individual is entitled to a refund when the individual dies or terminates the CCRC; and
- c. The entrance fee does not confer an ownership interest in the CCRC.

(c) For the parents and other caretaker relatives category of medically needy medical assistance, personal property resources shall be treated as follows:

(1) Liquid resources such as bank accounts, stocks, bonds, and savings certificates, owned by an alien's sponsor or sponsor's spouse, shall be deemed to be available to the alien when determining an alien's eligibility for parents and other caretaker relatives category of medically needy medical assistance;

(2) Liquid resources such as vehicles which are owned by an alien's sponsor or sponsor's spouse shall not be deemed to be available to the alien;

(3) Junk vehicles used only to supply parts for the individual's main vehicle, are in such dilapidated condition that they cannot be reasonably repaired for sale or use, or which can only be sold for scrap or parts, and vehicles which are jointly owned with a non-assistance group member, shall be excluded as a resource when determining eligibility for parents and other caretaker relatives category of medically needy medical assistance;

(4) Lump sum payments derived from converting a non-liquid resource to cash shall be counted as a lump sum resource when determining eligibility for parents and other caretaker relatives category of medically needy medical assistance;

(5) The remaining balance of the working checking account and pre-paid debit card on the day it is reviewed, reduced by the amount that represents the FANF payment standard for an assistance group of comparable size with no income, shall be counted as a resource for parents and other caretaker relatives category of medically needy medical assistance;

(6) The following special provisions shall apply to parents and other caretaker relatives category of medically needy medical assistance recipients whose countable resources exceed the allowable limit because their sole resources consist of personal property assets which cannot be readily converted to cash, or which consist of such assets and real property as follows:

- a. Recipients shall reduce excess resources to within allowable limits no later than the month following the month in which resources first exceed the limit;
- b. The recipient shall verify the recipient is making a good faith effort to sell the personal property resource which caused the resource limit to be exceeded; and
- c. Medical assistance shall terminate if the recipient fails to reduce resources within the above time frames;

(7) The equity value of each individual's life insurance policies shall be counted as a resource when determining eligibility for parents and other caretaker relatives category of medically needy medical assistance, when the total combined value of the policies is greater than \$1,500;

(8) For the purposes of the vehicle exclusion specified in RSA 167:81,IV(b), the total number of vehicles excluded as a resource, regardless of ownership or value, should not to exceed the number of adult members of the assistance group; and

(9) The equity value of all life insurance policies shall be excluded as a resource when determining eligibility for parents and other caretaker relatives category of medically needy medical assistance, when:

- a. The combined value of each individual's policies is \$1,500 or less; or
- b. The total combined value of each individual's policies exceeds \$1,500, but the state of New Hampshire has been made the beneficiary to the policies pursuant to RSA 167:4,IV(c).

APPENDIX

Rule	Specific State or Federal Statutes or Regulations the Rule Implements
He-W 656.04	RSA 167:3-c,I; RSA 167:4; RSA 167:17; RSA 167:81 45 CFR 233.20(a)(3); Section 1612(a)(2)(G) of the Social Security Act (SSA) [42 USC 1382a(a)(2)(G)]; Section 1613(a) of the SSA [42 USC 1382b(a)]
He-W 856.04	RSA 167:3-c,I; RSA 167:4; RSA 167:17; RSA 167:81; RSA 167:83 II(m) 45 CFR 233.20(a)(3); Section 1612(a)(2)(G) of the Social Security Act (SSA) [42 USC 1382a(a)(2)(G)]; Section 1613 of the SSA [42 USC 1382b] Section 1902(a)(10)(A)(ii)(XIII) of the SSA [42 USC 1396a(a)(10)(A)(ii)(XIII)] Section 1917(c)(1)(H)-(I) of the SSA [42 USC 1396p(c)(1)(H)-(I)] Section 1917(d) of the (SSA) [42 USC 1396p(d)]