

EES POLICY NO. 02-12-03	<b>RE:</b> Spousal Elective Share
<b>POLICY MEMO</b>	
<b>FROM:</b> Dennis Priest	<b>KEESM:</b> <a href="#">2124</a>
<b>DATE:</b> December 18, 2002	<b>Other:</b>
<b>Program(s):</b> Medical	<b>Where Posted on Web:</b> <a href="http://content.dcf.ks.gov/ees/KEESM/Policy_Memo/policy_memo_list.htm">http://content.dcf.ks.gov/ees/KEESM/Policy_Memo/policy_memo_list.htm</a>

The purpose of this memo is to provide instructions for situations when a medical assistance recipient may have spousal elective share rights under Kansas statute. State law allows a surviving spouse to claim a portion of assets owned by the deceased spouse upon his or her death. The amount of assets the spouse is entitled to is also called a spousal elective share. The potential value of the spousal elective share is based on the augmented estate. An augmented estate includes all assets of the decedent and surviving spouse, both probate and non-probate assets. Per KEESM 2124, medical assistance applicants and recipients are expected to fully pursue spousal elective share rights upon the death of a spouse as a potential resource. Failure to do so shall result in ineligibility. Procedural guidelines for enforcing such action are addressed in this memo.

When the agency becomes aware of the death of a spouse of a medical assistance applicant/recipient, the case must be evaluated to determine if the potential of a spousal elective share claim exists. An asset review is required for this determination. If the deceased spouse had no assets at the time of death or if the surviving spouse has received all of the assets owned by the spouse, no additional action is necessary. In addition, if all assets owned by the deceased spouse were used to pay the individual's final expenses (e.g., medical or funeral), no action is required. However, if the agency has evidence of spousal assets at the time of death, or if the assets are unknown, a request for action is to be initiated. The notification to the surviving spouse shall specifically request an asset inventory at the time of death. The inventory should ideally include an indication of current ownership (i.e. who, if anyone, inherited the asset) as well as the value of the asset. The notification will also request verification of any action taken to enforce spousal elective share rights. This verification should be provided within the time frames outlined in KEESM 1321(3). A special KAECSES notice, Spousal Elective Share Request(V601) has been created for this purpose.

Upon notification, the applicant/recipient should prepare to file a probate claim for the spousal share and to provide verification of such. The initial verification may be a copy of the initial petition or a statement indicating the intent to claim spousal rights. A copy of a file-stamped document verifying either action is sufficient to demonstrate initial cooperation with this provision. This request must be made within 6 months of the date of death or the spouse will lose the rights to the assets. Failure to cooperate in initiating this action shall result in ineligibility per KEESM 2124 as noted above.

Following the initial verification, the applicant/recipient is expected to continue to cooperate with the pending probate claim. Because a number of actions must occur before the probate action is closed, it is likely that the process will require several months to complete. This is dependent, in part, on factors such as the number of creditors and the size of the estate. To ensure the agency is aware of the status of the probate during this time quarterly contact with the applicant/recipient is necessary.

Cooperation with any action requested by the court to advance the probate is required. When the probate action has been fully adjudicated and a journal entry of final settlement signed by a judge and filed with the court, a copy of the orders shall be provided as documentation of the final disbursement of assets. The case shall be evaluated at this time to determine if excess resources exist.

If the applicant/recipient spouse indicates there is no spousal elective share due to a waiver or disclaimer of rights to some or all of the assets (due to a transferred on death deed, for example) , the case shall be referred to EES Policy. The situation will be evaluated by staff from Legal Division, Estate Recovery and EES Policy to determine appropriate action. If it is ultimately determined that rights to the spousal elective share were forfeited, this shall be viewed as a waiver of inheritance and, per KEESM 5722(2), the situation evaluated for a possible transfer of property. The penalty period begins with the date of the decedents death.

If, at any point during the process, the applicant/recipient refuses to cooperate with the process, negative action may result. It is important to ensure the client fully understands the required actions and is capable of taking such actions. If there is any question of competence, it may be necessary to await the appointment of a medical representative prior to taking any negative action. In addition, if at any time it is suspected that any disclaimer or waiver of rights was made with the influence of another individual, EES may need to consult with the Adult Protective Services supervisor for possible exploitation.

DP:jmm

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