

**75-02-02.1-43. Payment for Services by Attorney-in-Fact.**

1. For purposes of determining an individual's eligibility under this chapter, if payment is made by the individual to the individual's attorney-in-fact for services or assistance furnished to the individual by the attorney-in-fact, the department may not treat the services or assistance furnished as consideration for the transferred income or asset unless:
  - a.
    - (1) The payment is made pursuant to a valid written contract entered between the individual and the attorney-in-fact prior to the attorney-in-fact rendering the services.
    - (2) The contract was executed by the individual or the individual's fiduciary who is not the provider of services or assistance under the contract.
    - (3) Compensation is reasonable and consistent with rates paid in the open market for the services actually provided, and
    - (4) The services are necessary and reasonable; or
  - b. The prior course of dealing between the individual and the attorney-in-fact included the individual paying compensation to the attorney-in-fact upon the attorney-in-fact's rendering of services or assistance to the individual, or within 30 days thereafter, or according to some other agreed payment schedule as shown in the evidence of the prior course of dealing.
2. Reasonable payments are allowed as a spend-down of assets but not as a deduction from income.