



Personal Injury Awards & Other Lump Sums --- Impact on public assistance/HASA, Medicaid, SNAP, SSI, Subsidized housing, SCRIE/DRIE, & Veteran's Pension

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Where to find citations

1. Supplemental Needs Trusts – Outline by NYLAG
EFLRP (direct link
<http://www.wnyc.com/health/download/9/>)
2. [Public Benefits Resource Rules and the Impact of Lump Sum Receipt on Benefits Eligibility](#),” by Paula Arboleda, Susan Antos, Saima Akhtar & Maryanne Joyce, prepared for NYSBA 2018 Partnership Conference, direct link
at <http://www.wnyc.com/health/download/676/>

Both posted at

<http://www.wnyc.com/health/entry/5/>



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The Good News: You won a \$500,000 Personal Injury Award for 2 clients

The Bad news: Sam relies on Medicaid, SSI, and Food Stamps (SNAP). Another client, Mary, receives Public Assistance, "MAGI" Medicaid and SNAP.

- Will receipt of the lawsuit settlement– jeopardize their benefits?
 - Is it income?
 - Is there a transfer penalty if he transfers it?
 - Can they put it into an SNT? If so, what expenses can SNT pay?
- What can you do to protect their benefits and when should you take these steps?



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Public Benefits and SNTs

- **How a lump sum – and transfer of the \$\$ into an SNT or to a 3rd party -- affects eligibility varies for every program, discussed in this order:**
 1. Cash public assistance/HASA + MAGI Medicaid
 2. Non-MAGI Medicaid, Medicare Savings Program
 3. SSI (automatically includes non-MAGI Medicaid)
 4. Veteran's pension – NEW asset limit, transfer penalty 2018
 5. SNAP/Food Stamps
 6. Housing Subsidies –
 - SCRIE/DRIE – rent subsidy for age 62+ or people w/disabilities
 - Public Housing / Section 8
- **Which expenses may a trust pay varies with each benefit.**



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Basic concepts – Income vs. Resources

Financial need is defined by limits on:

- **INCOME** – A lump sum is usually “income” in the month received, and becomes a “resource” if saved into the next month. But – each benefit is defined differently.
- **RESOURCES OR ASSETS** – Bank accounts, liquid savings, real property. Includes a lump sum when saved into the month after received. Not all benefits have an asset limit.
 - **1st of month Snapshot** – Medicaid and SSI eligibility is determined by balance of assets as of midnight on 1st of month for which seeking eligibility, *excluding* new income received on or after the 1st.
 - EX: \$5000 earnings received on May 3rd. Counts as Income in May. If saved into June, becomes a resource.



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For each benefit, ask these questions

1. **Income** – is receipt of the lump sum count as income when received, affecting eligibility?
2. **RESOURCE** –
 - a. Is there a resource limit for the benefit, meaning that the lump sum will result in **excess resources**, disqualifying them from benefit?
 - b. Will transfer of the lump sum into an SNT – or to a 3rd party - create a **transfer penalty**?
 - c. Is the SNT principal exempt as a **resource**?
3. **TIMING** - when to report lump sum, spend or transfer it to an SNT or otherwise?
4. What expenses may be paid by the trust – without counting as income to the beneficiary?

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Before Lawsuit is Settled -

- Find out which of the income and health insurance benefits your client is receiving;
- If client receives cash public assistance/HASA, planning must be done BEFORE lawsuit is settled!! Should plan for other benefits as well, but critical for cash assistance/HASA.
- If client is disabled and < 65, consider use of SNT (if receives SSI or Medicaid)(but not Veteran's pension!)
- Was client disabled before age 26? If so, \$14,000 can be transferred into an ABLE account

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TEMPORARY CASH ASSISTANCE/ HASA

Cites & more info in SNT Outline by NYLAG
& Legal Services lump sum materials at
<http://www.wnyc.com/health/entry/5>.

HASA: HIV/AIDS Services Administration



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Temporary Assistance (Cash assistance)

This is “welfare” cash benefit for needy families, singles and couples who are not eligible for SSI.

Same rules for HASA (HIV/AIDS) benefits & rent subsidy.

- Resource limit - \$2000 or \$3000 if 60+ in household
- Harsh “**lump sum**” rule – Lump sum deemed available for the number of months it would have lasted at the client’s benefit rate. EX: If benefit is \$350/month, a \$3500 lump sum would disqualify from TA for 10 months.
- Not just a transfer penalty. Same penalty applies if spends or keeps the lump sum.
- EXCEPTIONS and strategies below.

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PREVENT Lump Sum Penalty:

1. **CLOSE CASE BEFORE LUMP SUM RECEIVED by TA recipient.** A lump sum penalty does not apply to closed cases. Client can reapply for benefits when resources drop below the resource limit again, but may need to document how the lump sum was spent. Read Public Benefits outline for details!!
2. Settle for **relief in lieu of cash settlement**, e.g. rent abatement or agreement to repair or renovate.
3. If client is disabled, set up Supplemental Needs Trust (SNT) or ABLE account (if disabled before age 26) **BEFORE** \$\$ distributed so can be deposited **IMMEDIATELY** into SNT/ABLE account.

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Prevent LUMP Sum Penalty – con'd

4. Can settlement/payment be structured to be paid to an individual who is not required to be part of the public assistance household?

Only resources of individual REQUIRED to be part of public assistance household counts. FH No. 7597285K (NYC 2/23/18)(HRA should have counseled household that 20-year-old with asset did not have to be part of the household)(Need to consult Public assistance expert re household composition)



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Temporary Assistance –exceptions to penalty

1. SNT EXCEPTION to lump penalty: No penalty if “receipt of the lump sum monies **simultaneously coincides** with the creation of an SNT.” OTDA 01-INF-08 March 8, 2001.* Must be disabled for SNT!
 - TIMING - penalty will still apply even if the recipient intends to *later* establish an SNT with the lump sum funds. The SNT must be created *before or at the same time* the lump sum is received.
2. **Small lump sums may be kept without a penalty if do not bring resources over the resource limit.** BUT still count as *income* so result in overpayment for month of receipt. Id.

http://www.otda.state.ny.us/main/directives/2001/INF/01_INF-08.pdf

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Strategies to reduce transfer penalty

For lump sums greater than the TA resource limit, certain “**big ticket**” **expenditures** made within **90 days** from receipt do not cause a period of ineligibility:

- Savings up to resource limits;
- car for work (FMV < \$12,000) or dedicated bank account up to \$4,650 for car for work
- burial plot or funeral agreement < \$1500.
- \$1400 in separate educational account for any family member for post-secondary ed tuition

see OTDA 03 ADM-10 p. 3 and see SNT Outline at <http://www.wnylc.com/health/entry/5/>.

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Damage control AFTER Lump Sum Distributed

- **If lump sum spent on emergency expenses**, such as excess housing or utility costs, medical expenses, or circumstances beyond household’s control, penalty period might be reduced.
- **Did the client receive warning notice re the lump sum penalty?** In NYC, per *Garcia v. Roberts* 2016 lawsuit settlement, HRA must provide an informational insert in its letter to personal injury attorneys and their clients, after being given notice of the pendency of a lawsuit. (copy in Appendix p. 1)
- Technical challenges to lump sum notice (see online article)

MEDICAID & LUMP SUMS

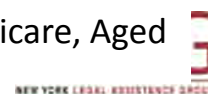
Focus on People with Medicaid Only, Not SSI

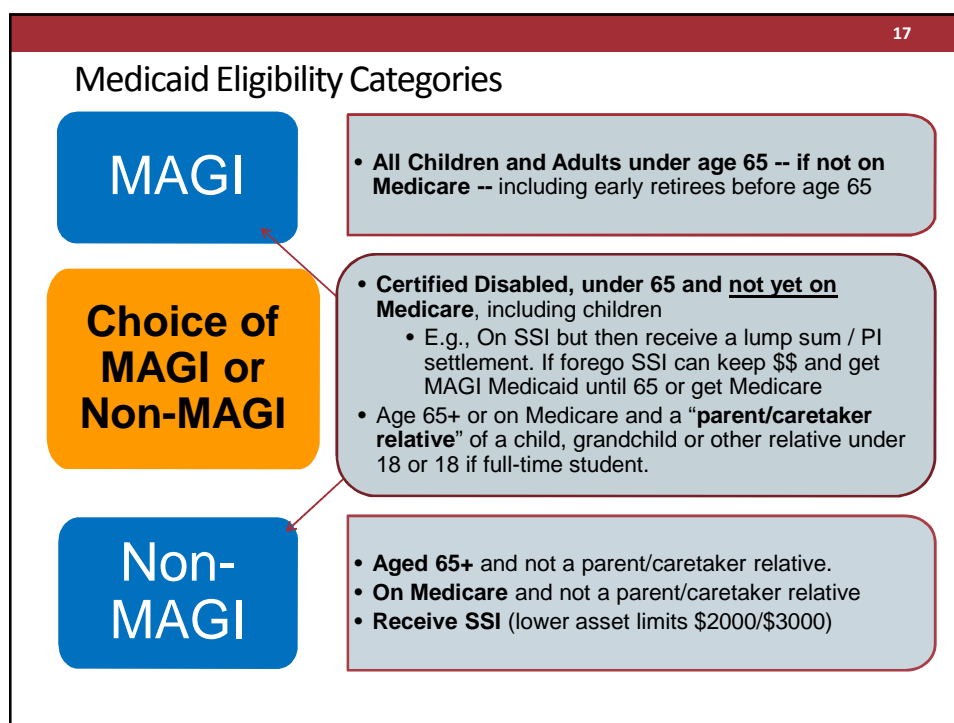
1. MAGI vs. Non-MAGI Medicaid
2. Institutional Medicaid



2 Categories of Medicaid Post-ACA

1. **MAGI** - Affordable Care Act created new “MAGI” eligibility for most Medicaid recipients:
 - People not eligible for Medicare or SSI
 - Most people < 65 are MAGI. EXCEPTION – if they have Medicare based on SSD → Non-MAGI
 - Exceptions – people who have Medicare or who are >65 may be MAGI if they are caretaker relatives for a minor child or other relative (< 18 or < 19 if in school full time)
 - PA cash recipients – mostly MAGI
2. **NON-MAGI** – Disabled or Blind with Medicare, Aged 65+ (“DAB”) – includes SSI recipients





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MAGI “Obamacare” - ACA		Non-MAGI (Disabled-Aged-Blind)(“DAB”)
WHO	<ul style="list-style-type: none"> • < 65 and not on Medicare OR • any age on Medicare and caring for child/ grand-child <18 or < 19 in school 	Age 65+ OR Disability/Blind < 65
Asset limit (exclusions apply)	NO LIMIT (but interest, dividends count as income)	\$15,450-Single (\$2,000 if SSI) \$22,800 Couple (\$3,000 if SSI) HRA CHART #2* (Appendix p. 5)
Income limit Monthly	Higher Limit for Medicaid \$1,436 – single) 2019 \$1,945– couple) 138% FPL \$2,453 HH of 3) \$3,619 HH of 8) Higher FPL- pregnant or child < 5 HRA CHART #10 Essential Plan (no long term care; pay \$20/mo premium) \$2,082– single) \$2,9184– couple) 200% FPL	\$ 859 –Single (2019) \$1,267-Couple (some exclusions, deductions) HRA CHART #1 Household size never more than 2 – children of applicant don’t count *http://www.wnyc.com/health/download/314/ & App. p. 5

“MAGI” Medicaid and Lump Sums

1. WHO:
 - < 65 and don't have Medicare (includes cash PA recipients)
 - Exceptions – can be 65+ or have Medicare if they are “caretaker relative” for child/relative < 18/ <19 in school.
2. MAGI Medicaid has NO ASSET TEST. A lump sum received in the past and saved does not impact current eligibility.
3. MAGI uses federal income tax rules for Adjusted Gross Income, but slightly Modified

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Some Income NOT Counted toward MAGI

Type of income	Explanation
Gift or inheritance	Not taxable, therefore not counted. Not even cash gift. Taxed to the donor of the gift, or to the Estate, not to the recipient or beneficiary.
Personal injury settlement	Not taxable - see IRC 104(a)(2). Not MAGI income even if receive as structured settlement in monthly payments. Example below. Note that some lawsuit awards are taxable – contract, discrimination/employment, business, punitive damages. See IRS Publication 525, IRS Rev. Ruling 85-97.
Veteran's benefits	MAGI - Don't count as income – both disability and pension benefits. Non-MAGI Disabled/65+ counts VA benefits except for Aid & Attendance. Military retirement pay IS counted.
Income of child or tax dependent	Income of a child or tax dependent who is not required to file a tax return is not included in the household income. GIS 15-MA-08 (includes child's Social Security)
Workers Comp	Not Counted (both lump sums and monthly benefits)

See [13 ADM-04, Attachment 4 \(revised 8/5/2015\)](#) for additional examples of income not counted towards MAGI.

MAGI Medicaid and Lump Sums

- **COUNTED as income –**
 - **Buyout** probably taxable as ordinary income or capital gain (this is not tax advice!) so would count as MAGI income -- see https://www.brickunderground.com/blog/2014/10/buyout_tax_ask_an_expert
 - **Lottery** – 2018 changes (bad) – see Outline – lottery winnings > \$80,000 are pro-rated and deemed to be income in 2 or more months – as many as 10 years if high award.. So would disqualify recipient from MAGI Medicaid.
 - **Other lawsuits can be taxable** – lost wages, contract, discrimination/employment, business, punitive damages.
 - **Interest and dividends** on savings



MAGI Lump Sum Income only in month received

Lump sums that are COUNTED as income –

- For MAGI Medicaid, the lump sum is counted as income only in the **month** received, and is a resource in later months.
- No resource test in MAGI Medicaid, so eligibility is only affected for one month (when income received) so as a practical matter, it doesn't count.
- This is only MAGI Medicaid. If buy Qualified Health Plan, also under the ACA, the Advance Premium Tax Credits and coinsurance subsidies, however, are based on **annual** income, so a lump sum that would be taxable **is** counted as income.



MAGI Medicaid – 12 month continuous eligibility

12-months continuous eligibility from the time MAGI Medicaid is authorized (or renewed). A lump sum or other increased income received during those 12 months **will not affect eligibility**.

- At the next renewal, eligibility will be based on the then current income. The lump sum will, by then, be a resource, and resources don't count for eligibility.
- Exception –When turn 65, cuts off 12-month eligibility, cannot keep MAGI Medicaid. Must transfer to non-MAGI Medicaid. [GIS 15 MA/022 - Continuous Coverage for MAGI Individuals](#)
- Exception - LOTTERY – now pro-rated over a number of months up to 10 years, depending on amount received – so could bar eligibility for subsequent years. See NHELP guide (cites in SNT outline n 35).

NY Soc. Serv. L. § 366 (c)(4)(c); NYS DOH 2013 ADM-03.



MAGI Medicaid – Lump Sum Strategy

- Is client close to turning 65 or obtaining Medicare?
 - **If close to 65**, this affects planning as even though lump sum won't terminate MAGI Medicaid, she needs to do asset planning for when transferred to Non-MAGI Medicaid at age 65.
 - **If <65 and receives SSD, and close to receiving Medicare** (after 24 months), 12-month continuous coverage still applies. But at end of 12 months, will transition to non-MAGI Medicaid so must do asset planning → **SNT!!!**
- If not close to 65 or getting Medicare, can keep lump sum and won't affect eligibility.



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“NON-MAGI” MEDICAID & LUMP SUMS

WHO – Disabled or Blind with Medicare OR Aged 65+ & do not live with/take care of a child/other relative < 18/ < 19 in school

- A lawsuit settlement or other lump sum is **income** in the month received. If still in one’s possession in the next month, will count as a **resource** against resource limits.
- What to do with a lump sum depends on:
 1. **AGE** – whether < 65 or age 65+
 2. **DISABILITY** – if **under 65**, is person disabled? Receive Medicare?
 3. Whether may need **Institutional Medicaid** in the next 5 years
 4. **Caretaker relative? Even if 65+ or has Medicare**, may be “MAGI” – no asset limits, different rules. (later)

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What to do with Lump sum – Community non-MAGI Medicaid

1. **Transfer of the lump sum has NO TRANSFER PENALTY for community Medicaid.** Includes MLTC, Assisted Living Program, all home care, waivers. However, if enter a nursing home in next 5 years, a non-exempt transfer will be penalized (Medicaid wouldn’t pay for nursing home care for 1 month for every \$12,139 transferred in past 5 years before admitted to NH.
 - Need proof transferred. Otherwise they see a withdrawal from your account and think it’s under your mattress.
 - If risk that client may need NH in next 5 years -- avoid transfers that cause a penalty – such as:
 - If under 65 and disabled – **transfer to own SNT** - has no transfer penalty – individual or pooled.
 - Transfer to spouse who can do spousal refusal; transfer to disabled child
2. **Save** – up to resource limit (\$15,450 single, \$22,800 couple)
3. **Spend the rest down** – see next slide

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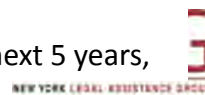
NON-MAGI MEDICAID

Spending Down Lump Sum

Must spend on one's own expenses, not as a gift for someone else. Since this is not an uncompensated transfer, would not trigger a transfer penalty if enter a nursing home in the next 5 years:

1. Pre-pay for funeral agreement for self and certain family members, buy burial space(s). See fact sheet at Appendix p. 11 and <http://www.wnyc.com/health/entry/36/>
2. Pay down mortgage
3. Pay back BONA FIDE loans, credit card debt.
4. Home improvement, buy stuff, computer, TV, travel.
5. Pre-pay rent, utility bills (even a year's rent!)

Keep receipts! Will need if enter nursing home in next 5 years, may need now to show \$ isn't under mattress!



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What to do with lump sum -- con'd.

4. **If age 65+** - Transfer into a pooled SNT will have no transfer penalty for community Medicaid, but:
 - If needs Nursing Home care in next 5 years, transfer will trigger a penalty. Not advisable if risky.
 - MAY transfer to an SNT for someone ELSE who is < 65 and disabled – need not be one's own child!
5. Other exempt transfers –
 - to **spouse**, who can do "spousal refusal" or, if client using MLTC, spouse (if not on Medicaid) can keep up to \$74,820 with Spousal Impoverishment protections
 - To **child** who is certified blind or disabled
 - For purposes other than qualifying for Medicaid

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Timing strategy – COMMUNITY MEDICAID

Act fast. Goal is to preserve future eligibility and limit liability for past ineligibility. Here's scenario:

- **January** - Bob receives payout \$. Not eligible for Medicaid because it creates excess **income**. Ideally, he takes action to bring his resources down to the Medicaid limit (Spend, save, and/or transfer) by:
- **February 1st**. If his **resources** are under limit by 1st minute of Feb. 1st (midnight of 1/31), he is eligible for Medicaid in February and it cannot be discontinued. DSS unlikely to sue for cost of Medicaid for being ineligible for just one month – January.
- **March 1st** – If it takes another month to bring resources down, still limiting potential liability to 2 months. DSS still unlikely to sue for costs of Medicaid for just 2 months – Jan. and Feb.



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More on strategy – Community Medicaid

Not All or Nothing - can put some of the lump sum into an SNT but transfer or spend the rest. Don't want to put more in SNT than expect to spend during lifetime – balance stays in trust after death or repays Medicaid.

EX. Bob receives \$50,000 in January. He is 62 and receives SSD (not SSI). He only has \$3000 in savings. By Feb. 28th he:

- \$12,000 – used to bring savings up to the \$15,450 asset limit.
 - It's OK if his monthly SSD brings his balance above that each month, as long as at the end of the month it's below the limit.
- \$10,000 - pre-pay funeral for himself and his daughter.
- \$ 6,000 – he spends on travel and stuff for his home, computer.
- \$22,000 – he puts into an SNT.
 - BUT IF he was 65+ he might instead pre-pay rent, utilities – would not be a transfer.



See funeral agreement info at <http://www.wnyc.com/health/entry/36/>

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Duty to Report

Medicaid, SSI and most other benefits impose a duty to report receipt of a lump sum to the agency.

- WHEN: SSI changes must be reported by the 10th of the month FOLLOWING the month of the receipt of the income or other change.
- Medicaid uses the same rule for DAB.
- If his assets are brought down to the limit before the 1st day of March, and he reports in March, Medicaid cannot be discontinued. Medicaid can only refer case to its Lien & Recovery unit for possible suit to repay cost of care in months he had excess income or assets. May threaten but can't enforce without lawsuit (no administrative "overpayments." Not likely to sue for short period.

20 CFR 416.701-416.714, POMS SI 02301.005

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Is the SNT a resource?

If it is a properly established SNT, then it is by definition not a countable resource for Medicaid purposes

- **Age 65 CAUTION:**
 - May only deposit assets into an individual SNT if UNDER AGE 65. This is true for Medicaid and SSI.
 - If age 65+ ---must use pooled trust.

For SSI:

Same rule; SNT doesn't count toward \$2,000 / \$3,000 resource limit but there are TRANSFER PENALTIES if > 65!!

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Lump Sums and Nursing Home Medicaid

- If in a nursing home, or in community and placement in a NH is probable in next 5 years
- **Transfers of Assets trigger transfer penalty**
 - Exception – No penalty for transfer into SNT while under age 65 if disabled
 - If age 65 or over at time of the transfer, then **Transfer Penalty**. Caution for people on COMMUNITY Medicaid at time of transfer. While there is no penalty for COMMUNITY Medicaid, if they enter a nursing home within 5 years of the transfer into the trust, there is a transfer penalty.
 - Consider other exempt transfers (Eg to spouse or disabled child, or SNT for disabled person under age 65) or spending down money, or gift & promissory note.



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Medicare Savings Programs (MSP)

- Pays Medicare Part B premium (\$135.50/mo 2019) and for lowest income people (QMB) also pays Medicare coinsurance and deductibles.
- Automatically gives Extra Help for Part D.
- NO ASSET LIMIT!
- A lump sum counts as income in month received, but so what.. If saved – no asset limit
- **TIP:** Does client really need Medicaid? If they need home care, they probably still need Medicaid. But if they don't, MSP may be enough plus they can buy a Medigap policy with the new savings.
- See <http://www.wnyc.com/health/3/>

SUPPLEMENTAL SECURITY INCOME (SSI)

Strategies for Lump Sums & SNTs



Lump Sums and SSI

- **Transfer penalty** – Unlike Community Non-MAGI Medicaid, transfers of assets that are not “exempt” trigger a harsh transfer penalty, which can cause suspension of SSI for up to 36 months.
- **Exceptions** – no transfer penalty if:
 1. Transfer into one’s own SNT (pooled or individual) *if under age 65 + disabled.*
 - **WARNING!** Transfers into a pooled trust if **age 65+** has harsh transfer penalty. Explained on next slide.
 2. Transfer into SNT for Disabled Individual < 65 or
 3. Transfer to one’s Disabled Child of any age (not necessarily in an SNT)

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SSI transfer penalty & strategies

- Penalty period is from **1 to 36 months** depending on amount of uncompensated transfer. POMS SI 01150.110, .111
- Divide amount transferred by SSI benefit rate applicable to individual. Includes state supplement.
- \$8,580 transferred -- divide by
 $\$858$ (2019 SSI rate for individual living alone) =
 10 months penalty – disqualified from SSI.
- Maximum penalty 36 months for transfer of **\$30,888** (2019).
- Strategy if age 65+ or if < 65 and want to transfer or use \$ and not use SNT: If lump sum is significantly over \$30,888, may be worth accepting penalty and living on the lump sum during the 3 years. Then reapply, show where \$ went.

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SSI: Strategy for Age 65+ and Lump Sum

Example: Sally is age 66, has SSI. PI award = \$100,000.

- Transfers \$50,000 into pooled SNT.
- Spend down \$50,000 over the next 3 years. Her SSI is cut off and she loses \$30,888 income she would have received. But her net benefit was \$70,000.
- She buys Medigap policy and applies for Medicare Savings Program – gives up Medicaid.
- Can apply for Medicaid once assets < \$15,450
- At end of 3 years, reapply for SSI – document deposit into SNT and how balance spent. Transfer penalty expired. Has SNT to use to supplement SSI.

What if she can't give Medicaid up for 3 years?

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SSI Strategy – keeping Medicaid

Though cut off SSI for assets > \$2000, or because transferred assets, can keep Community Medicaid if assets < \$15,450, even if transferred excess assets. The **Stenson** process* provides notices and seamless recertification for Medicaid-only wo/ SSI.

- She puts \$60,000 into pooled trust, keeps \$15,450, spending the rest (about \$25,000) immediately on:
 - \$10,000 on home improvement, furniture, travel, computer for herself
 - \$12,000 on funeral agreements for self, siblings, kids
 - \$ 3,000 – pre-pay rent, utilities
- When her SSI is cut off, she can keep Medicaid thru *Stenson* – showing her resources are now under \$15,450.
- No transfer penalty for community Medicaid. **CAUTION:** Nursing Home transfer penalty if enter NH in 5 years.

**Stenson* cites and info at <http://www.wnyc.com/health/entry/85/>

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VETERAN'S PENSION

NEW asset limits and transfer penalties
2018



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Veteran's Pension – NEW 2018!

- This benefit was always for low INCOME, but now has ASSET test too.
- INCOME limits – eff. Dec. 1, 2018 --
 - Single \$13,535 per year (\$1,127/mo.)
 - One Dependent \$17,724 per year (\$1,477/mo)
 - Higher if need Aid & Attendance
 - Can supplement SSI
- Asset limit eff 12/1/18 - \$127,061 (same as max CSRA for spousal impoverishment rules)
- *Sum* of claimant's + spouse's assets + annual income



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Veteran's pension – Asset Exclusions

EXCLUDE:

1. Primary residence (with up to 2 acres land; excess land counts toward asset limit)
 - Home exempt even if living in nursing home or other care facility, or with a family member for care
 - Mortgage can't be deducted from other assets
2. Car, appliances, personal effects consistent with "reasonable way of life."



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Veteran's benefits – Excess assets

1. If assets exceed the limits, may spend down assets for fair market value, but not transfer. Eligible on date bring under asset limit. Otherwise must reapply.
2. If assets exceed limits, benefits discontinued effective last day of same calendar year, unless spend it down in same calendar year.



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Veteran's pension – Transfers of assets

- Transfers of assets EXCEEDING resource limit on and after October 18, 2018 subject to transfer penalty – maximum length 5 years
 - Divide excess assets transferred by **\$2,230 = No. months penalty**
- Lookback is 36 months preceding filing original pension claim or a new pension claim after a period of non-entitlement.



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VA pension – Exceptions to Transfer Penalty

Only TWO exceptions –

- 1. Transfer result of fraud or unfair business practice** related to marketing or sale of annuity or financial products in order to get VA pension
- 2. Veteran or spouse transfers money to trust for a child incapable of self-support – NO exception for transfer to own SNT!!**

Return of assets will reduce penalty, like Medicaid.



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SNAP/ FOOD STAMPS



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Food Stamps (“SNAP”)

Is a lump sum income? State Food Stamp Source Book* at p. 276 expressly **exempts** “NON-RECURRING LUMP SUM PAYMENTS.” This includes but is not limited to the following:

- a. Income tax refunds, rebates or credits,
- b. Retroactive lump sum Social Security, SSI, TA, Railroad Retirement benefits, or other payments, or
- c. Retroactive lump-sum insurance settlements.

While FSSB doesn’t specify other lump sum sources – lottery wins, lawsuit settlements, inheritance, the “including but not limited to” language should prevail.

[*http://otda.ny.gov/programs/snap/SNAPSB.pdf](http://otda.ny.gov/programs/snap/SNAPSB.pdf)



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Food Stamps – Resource limit

If household has someone age 60+ or disabled:

- **NO RESOURCE LIMIT** as long as gross monthly income < **200%** of Federal Poverty Line (in 2018, \$2,024/mo. for single, \$2,744/mo. for couple)

If > age 60 and income > 200% FPL –

- RESOURCE LIMIT is \$3,250.

If < age 60 & no member is disabled–

- RESOURCE LIMIT IS \$2,000.

IF resource limit applies – SNT should be exempt.

7 C.F.R. § 273.8(e)(8)(i) - (iv); OTDA Food Stamp Source Book at pp. 363 -364;
http://otda.ny.gov/policy/directives/2001/INF/01_INF-08.pdf at 5.

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Food Stamps – Transfer Penalty

- **If no resource limit applies** because age 60+ or disabled and income < 200% FPL, there should be no transfer penalty for transferring a resource – whether into an SNT or otherwise.
- **If resource limit DOES apply**, there is a penalty for “knowing” transfer 3 months before application or after approval. Up to 1 year disqualification, depending on amount transferred. \$5000 in resources above resource limit = 1 year penalty. \$250 above limit = 1 month penalty, etc.
- **TIP:** Lookback is only 3 months before application. If transfer assets wait > 3 months to apply for FS.

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HOUSING SUBSIDIES

1. SCRIE/DRIE RENT EXEMPTION
2. Section 8, Public Housing



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SCRIE/DRIE Rent Increase Exemption

- Freezes rent if age 62+ or disabled and income < \$50,000
- NYC pays rent increases thru property tax abatement to landlord.

Not counted as income --

- Gifts, inheritances, from non-legally responsible relatives **don't count**. 9 NYCRR 2202;
<http://www.nyc.gov/html/dof/downloads/pdf/brochures/scriedriebrochure.pdf>
- Personal injury damages award, HEAP, income tax refunds (in FAQ online)

Counted as income –

- Other lawsuit settlements, lottery wins, capital gains from sale of stock, trust income

No asset limit, no lookback or transfer penalty if lump sum → into an SNT.

Is SNT's payment of expenses income? State reg is silent. May be exempt as "gifts" – above? Not clear.

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SCRIE/DRIE relief for lump sum income

- Application and renewal based on income in **prior year**. Renewals done every 2 years - must report prior year income, including any lump sum received the preceding year.
- SCRIE/DRIE can be terminated the year after receipt of the lump sum, if brings income > \$50,000, or because rent is < one-third of the household income.
- May reapply the next year. If then eligible, **tax abatement amount will revert to the old level**, as if the rent exemption had not expired. SCRIE/DRIE is essentially suspended for 1 year – in which the tenant must pay the full rent. Reinstated if reapplies the next year. RPTL § 467-b(2)(3).

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Section 8 and Public Housing - General

- Both Section 8 and Public Housing provide a **rent subsidy**
- Generally rent is set at 30% of family's net countable income.
- Calculation of rent is a complicated formula, taking into account medical expenses, age, disability, etc.
- ASSETS – there is no asset limit, but if assets exceed a threshold (Now \$5000, will increase to \$100,000), interest on the excess amount will be imputed as income.



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Section 8 – Income 24 CFR 5.609(c)

“Lump sum additions to family assets” don’t count as income -- so no penalty for keeping or transferring:

- inheritances,
- temporary, nonrecurring or sporadic income (including gifts)(NYCHA defines as including one-time lottery win, retro unemployment/TA check)
- Insurance payments (health and accident, workers comp)
- reimbursement for medical expenses,
- retro SSD/SSI (but if saved counts as asset),
- settlement for personal or property losses, tax refunds, capital gains

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Section 8, Public Housing – Eligibility

NO ASSET TEST! But - For assets in excess of \$5,000 **income** is imputed and counted in rent calculation.

- Count larger of:
 1. actual income generated by the asset or
 2. “imputed” income at annual rate of .06%.
- If income generated gets high enough, rental subsidy is reduced to zero.
- TRUST assets exempt if not in control of tenant.
Trust income not counted. 24 C.F.R. § 5.603(b)(2).

24 C.F.R. § 5.609(b)(3); §5.603(b)(3) and Public Housing Occupancy Guidebook ("PHOG") p. 121-122,

<http://www.hud.gov/offices/pih/programs/ph/rhiip/phguidebooknew.pdf>).

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Section 8 – Asset Limit & Transfer Penalty

- No current asset limit but 2016 HOTMA law sets \$100,000 limit, but no regulations yet so not in effect (will exempt irrevocable trusts, IRAs, etc.)
- Tho no current asset limit:
 1. If assets > \$5000, count greater of actual interest or imputed income @ .06% of excess amount
 2. If transfer assets > \$5,000 = Transfer Penalty:
For 2 years after transfer, actual income or .06% asset (imputed income) is imputed to increase rent. Includes transfers to an SNT, but not transfer of exempt income

See outline -Housing Opportunity Through Modernization Act

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WHAT EXPENSES MAY AN SNT PAY?

Rules are different for each benefit. Must consider if practical to use an SNT, If expense payment counts as “income” an SNT may not be useful

See summary chart, Appendix p. 19



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What may trust pay for? (basics)

	TA/HASA	SSI	Non-MAGI Medicaid	SNAP
CASH:	NEVER! SNT MAY NEVER GIVE CASH to BENEFICIARY, including gift or debit cards, unless restricted.			
SHELTER: Rent/mortgage/ maintenance, property taxes, heating fuel, gas, electricity, water, sewer, garbage removal	NO – counts as income (may not supplement benefits provided for in the TA standard of need)	YES but will re- duce SSI by lesser of \$257 (1/3 FBR) or actual cost	YES if direct pay to landlord/ supplier or credit card	YES but can't deduct excess shelter/medical expenses from income if trust pays them.
FOOD (bills, restaurant)				
Clothing, Cable, phone, cell phone, internet, transportation.		YES – won't reduce SSI.		
Longer chart – see Appendix p. 19				

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Non-MAGI Medicaid

Do payments from the SNT count as income?

- **Bills paid by SNT on behalf of beneficiary** are not countable income for Medicaid purposes, regardless of type of expense. Trust may pay rent, mortgage, maintenance, all utilities, food.
- This is because Medicaid does not count **in-kind income** at all unless from legally responsible relatives (meaning trustee or adult child can pay rent directly to landlord – this is not counted as income).
- Medicaid more liberal than SSI (next slide).

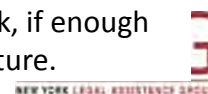


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SSI -- What May Trust pay for?

SSI Stricter than Medicaid

- Payments made by the trust to third parties (landlord, Con Ed, grocery store) for **food** or **shelter** are considered **In-kind Support and Maintenance (ISM)** and will reduce SSI by the lower of (1) the actual value or (2) maximum of one-third of monthly Federal Benefit Rate (FBR) ($1/3$ of \$771 = \$257)(2019)
- Shelter includes rent, mortgage, maintenance, property taxes, heating fuel, gas, electricity, water, sewer, garbage removal
- Reduction may be worth accepting if rent is very high, say \$1,500 – it's worth a \$257 reduction in SSI check, if enough principal in SNT to subsidize the rent for the future.



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Allowed trust payments without reducing SSI; also OK for non-MAGI Medicaid

- Trust **may** pay for cable, phone, cell phone, internet, travel, local transportation, entertainment, education, and clothing. An account could be set up with a car service that would bill the trust monthly.
- Pre-payment of burial expenses is OK thru a funeral agreement. (May enter into a monthly payment agreement with funeral home, which trust can pay).
- Trust **MAY NOT PAY** funeral expense after beneficiary dies! So pay them before!



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“Sole Benefit Rule” – 2018 updates – for both SSI and Non-MAGI Medicaid

The SSA POMS manual was updated in 2018 to clarify that expenditures for which others receive a collateral benefit are OK if they primarily benefit the beneficiary.

- Trust may buy house, TV even though others live there, watch the TV. Special rules for cars.
- The trust may pay a third party for companion services for a disabled beneficiary or a minor disabled child, and for incidental expenses of the companion. May not require that aide be certified. Family may be paid.
- Travel expenses of 3rd party to visit beneficiary allowed.

See cites in SNT Outline pp. 27-28



Public Assistance/ HASA

Are trust expenditures income?

- **Trust may not supplement benefits provided for in the standard of need**
– rent, utilities, travel, food, clothing, phone, recreation and entertainment – all count as income
- **Income earmarked for a specific purpose that do NOT supplement benefits provided for in the TA standard of need. OTDA 01-INF-08 are NOT COUNTED AS INCOME:**
 - education expenses, medical expenses (private health insurance premium, medical expenses not covered by Medicaid or health insurance), child care costs,
 - expenses of disabled beneficiary such as housekeeping, aides, social workers, therapists, and vocational rehabilitation aides, and legal expenses.

TIP: Draft SNT to ensure that expenditures by the SNT are earmarked for allowed purposes listed above, so would not count as income.

2001 OTDA 01-INF-08; 18 N.Y.C.R.R. § 352.16(a).

Food Stamps – Expenditures by Trust

Vendor in-kind payments by SNT don't count as income. But if SNT paying rent or other expense that would otherwise be deductible from income, can't use that income deduction. OTDA 01-INF-8.

- Direct payments to household (as opposed to vendor payments) **do count as income** if reimbursing for normal living expenses (food, shelter, clothing). Id.
- Direct payments to household OK if reimbursing for past or future actual expenses and are not a gain or benefit to the household

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Section 8 – What can Trust pay for? Is it Countable as Income?

No specific mention in regs what trust may or may not pay for, but regs say what is not income, e.g.

“temporary, non-recurring or sporadic income”

(including gifts) – so **trust should pay non-recurring** expenses, not regular recurring expenses.

- Withdrawal of the principal, not earnings, of family assets is not “income.” 24 C.F.R. § 5.609(b).
DeCambre 1st Circuit 2016 decision (not binding in 2nd Circuit)(held withdrawal of trust assets from personal injury settlement not income, since settlement wasn’t countable as income in 1st place)

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THE END

**See APPENDIX for referenced documents
and online links for more information.**

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