

Protecting Personal Injury Recoveries for Persons on Public Benefits

NYSBA Elder & Special Needs Section CLE March 2019

**APPENDIX**

**OVERVIEW OF ELIGIBILITY FOR GOVERNMENT BENEFITS BASED ON NEED**

**Public Assistance – Cash Assistance**

1. HRA Memo Mar. 16, 2017 to Lien and Recovery Staff pursuant to settlement in *Garcia v Robert*, requiring new insert in notices sent by HRA to plaintiffs in personal injury actions, with copy of insert (fact sheet on impact of lump sum on public assistance) ..... 1
2. See other state and local directives, etc. in appendix attached to *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/>..... online

**Medicaid**

1. Chart of NYS Medicaid Income and Resource Levels (as of 1/3/19 – note that levels based on Federal Poverty Line not yet updated for 2019, though FPL has been announced by federal govt. Look for updated chart at <http://www.wnyc.com/health/download/314/> ..... 5
2. Tips for Qualifying for Medicaid in NYS by Using “Excess Resources” for **Pre-Paid Funeral Arrangements** (available for download at <http://www.wnyc.com/health/entry/36/> ..... 11
3. All NYS Dept. of Health Directives – (GIS, LCM, ADM) posted at [https://www.health.ny.gov/health\\_care/medicaid/publications/](https://www.health.ny.gov/health_care/medicaid/publications/) ..... online

**Supplemental Needs Trusts**

1. Summary of SNT Rules for Various Benefits (excerpt from NYLAG SNT Outline, available at <http://www.wnyc.com/health/entry/5/>) ..... 15
2. Chart of Expenses an SNT May Pay for – for different public benefits ..... 19

**Materials posted on <http://nyhealthaccess.org> Health Care Advocacy Webpage**

1. NYLAG Outline on SNTs and Impact of Lump Sums on Public Benefits ..... <http://www.wnyc.com/health/entry/5/>
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/>

3. How to use pooled trust to eliminate spend-down Step by Step Guide - <http://wnylc.com/health/entry/44/> and longer Memo <http://wnylc.com/health/download/4/>
4. Disability Determinations in NYS - .....<http://wnylc.com/health/entry/134/>
5. List of Pooled Trusts in NYS - .....<http://wnylc.com/health/entry/4/>
6. Legal Authorities on SNTs in NYS - .....<http://wnylc.com/health/entry/128/>
7. Keeping Medicaid after SSI or Public Assistance Terminated (*Stenson & Rosenberg* cases and procedures) ..... <http://www.wnyc.com/health/entry/85/>



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**M E M O R A N D U M**

**TO: All Liens and Recovery Staff**

**FROM: Mirta Radkov, Assistant Deputy Commissioner**

**DATE: March 16, 2017**

**RE: Compliance Directive, Policy, and Procedure**

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Pursuant to a stipulation of settlement, the Division of Liens and Recovery is required to include a new insert, FIA-1189, with some of the notices sent out by Liens and Recovery staff members. The purpose of FIA-1189 is to better inform clients and their attorneys the affects a cash settlement or other lump sum payment may have on a client's benefits.

Health Management System (HMS) is working on having the form added to Maestro, but in the interim, Liens and Recovery staff must manually include the FIA-1189 when sending out one of the following documents:

- LR-204 Right of Recovery Letter -Client Batch SOAP
- LR-204d Right of Recovery Letter-Statement of Aid Paid
- W-590RR Final Bill Letter

**Effective immediately and until further notice, all liens and recovery staff must include FIA-1189 when transmitting any of the notices listed above.**

To effectuate this policy, all Liens and Recovery staff must comply with the following procedure:

1. Verify whether the document they are generating in Maestro requires FIA-1189 be included in the transmittal. This verification is done by looking in the upper right hand corner of the letter and checking the form number.
2. If the generated document's form number is **LR-204, LR-204d, or W-590RR**; the staff member must upload FIA-1189 to the history of the case. The procedure to do so is:
  - a. Click "Add" under the history section on Maestro.
  - b. Select event code "Case Reviewed"
  - c. Check "Upload Information"
  - d. Click "Browse," select "FIA-1189," and click "Open."
  - e. Click "Insert."



## How a Lump Sum Payment May Affect Your Cash Assistance

### What is a lump sum payment?

**A lump sum payment** is a one-time payment, such as money from an insurance company or a lawsuit, an inheritance or a gambling winning that, when combined with your other monthly income, is more than your monthly Cash Assistance (CA) needs. In addition to any lien that HRA may have, any lump sum you receive may affect your benefits.

### If I get a lump sum payment, will my CA benefits be affected?

You may be allowed to keep up to \$2,000 if your household does not have anyone aged 60 or older, or up to \$3,000 if your household has someone aged 60 or older. The amount of other countable resources you have will be included in determining how much of the lump sum you may keep. The amount you may keep is called the **resource set aside**.

In addition to the resource set aside, **you have a choice to use the lump sum for one or more of the exempt resources listed below**. If, within **90 days of getting the lump sum**, you show us that you have used the money on one or more of the exempt resources listed below, then that money will not be counted in determining your eligibility for CA. The rest of the lump sum payment will be counted as income for the month in which you get it and may affect your eligibility for CA.

### EXEMPT RESOURCES

You may use the lump sum on one or more of the below exempt resources:

- to purchase a car that is needed to find or keep a job or for travel to and from work (maximum Fair Market Value \$10,000, increasing in April 2017 to \$11,000, and in April 2018 to \$12,000);
- to open a bank account, such as a First or Replacement Automobile Account, for the purpose of buying a car that is needed to find or keep a job (maximum amount \$4,650);
- to open a bank account, such as a College Tuition Account, for the purpose of paying tuition at a two-year or four-year accredited post-secondary educational institution (maximum amount \$1,400 per household member);
- to purchase one resource exempt burial plot per household member; or
- to purchase one resource exempt funeral agreement per household member (maximum amount \$1,500).

See next page 

If **within 90 days of receipt**, you show us that the lump sum has gone into one or more of these exempt resources, we will reopen your CA case back to the date it was closed if you reapply and are found otherwise eligible.

**If you choose not to use the money for one or more of the exempt resources or, if after doing so, the remaining amount is more than your monthly CA needs, you must choose one of the following options:**

**Choice #1**

- Turn over the lump sum payment to us to pay back the money you got in the past.
- If the lump sum payment is less than the amount of money that was paid to you in the past, your CA case may stay open.
- If the lump sum payment is more than the amount of money that was paid to you in the past, see **choice #2** below

**Choice #2**

- Keep the lump sum payment or the balance of the lump sum payment. Your case will then be closed for a certain amount of time, even if you spend all the money before the time runs out. The length of time for which your case will be closed depends on how much the lump sum payment is, and how much your CA needs are.

**EXAMPLE:** If you get \$5,000 in a lump sum, no one in your household is 60 or over and your household has no other countable resources or income, you can keep up to \$2,000. This is the resource set aside. If you do not turn the remaining \$3,000 over to HRA, it will be used to figure out how long you cannot get CA. If your monthly CA needs are \$500, your household cannot get CA for 6 months ( $\$3,000 \div \$500 = 6$  months). You must reapply to begin receiving CA again after the ineligibility period.

The ineligibility period may also be shortened if some or all of the lump sum was used for a reason you could not help. Some examples are: Your rent goes up; you have increased needs due to pregnancy; your family is faced with an emergency; you have unusually high household expenses, such as for fuel, utilities, or high medical expenses; or the money is stolen.

These choices are also explained in the What You Should Know About Your Rights and Responsibilities (**LDSS-4148A**) booklet which you got as part of your CA application and recertification kit. If you need a new copy, please contact HRA's Infoline at **1-718-557-1399**. If you have questions about your choices, please speak to your attorney.

The information above applies to Cash Assistance only. For information about Medicaid, please contact the HRA Medicaid Helpline at **1-888-692-6116**.

**2019 NYS INCOME AND RESOURCE STANDARDS AND FEDERAL POVERTY LEVELS (FPL)**



Reference Documents: GIS 19 MA/01, GIS 18 MA/15, MBL Transmittal 18-2, WLM 2017-00059-03, WLM 2018-00056-00, and WLM 2018-00381-01.

MAPDR-01 01/03/2019  
(Obsoletes MAPDR-71)

**Note: Levels that are highlighted in yellow have been updated to reflect 2019 levels. Levels that are highlighted in green are 2018 levels and are awaiting 2019 levels.**

**Financial Levels for Medicaid and Related Program Eligibility**

<b>1. Non-MAGI Medicaid Levels (SSI and SSI-Related Consumers With or Without A Surplus)</b>											
Family Size	1	2	3	4	5	6	7	8	9	10	Each Additional Person
Monthly Income	\$859	\$1,267	\$1,457	\$1,647	\$1,837	\$2,027	\$2,217	\$2,407	\$2,597	\$2,787	\$190

<b>2. Non-MAGI Resource Levels</b>											
Family Size	1	2	3	4	5	6	7	8	9	10	Each Additional Person
Resource Level	\$15,450	\$22,800	\$25,013	\$28,275	\$31,539	\$34,800	\$38,064	\$41,325	\$44,588	\$47,850	\$3,263

<b>3. Spousal Support and Resource Levels</b>		
Income (MMMNA) - \$3,160.50 (Inst Spouse) - \$50	Resources – (Minimum) - \$74,820 (Maximum) - \$126,420 (Inst Spouse) - \$15,150	<b>Family Member Allowance Formula:</b> Use - \$2,058 \$686 is the maximum family member allowance

<b>4. MBI-WPD (Persons 16-64)</b>		
Family Size	1	2
Monthly Income 250% FPL	\$2,530	\$3,430
Resources	\$20,000	\$30,000

<b>5. Family Planning Benefit Program Income Levels (No Resource Test)</b>							
Family Size	1	2	3	4	5	6	Each Additional Person
FPBP 223% FPL (Child Bearing Age)	\$2,257	\$3,059	\$3,862	\$4,665	\$5,468	\$6,271	\$803

**Note:** FPBP eligibility is to be determined using only the applicant’s income. The applicant’s income is then compared to 223% of the federal poverty level for the appropriate family size. Family size continues to be determined using legal responsibility.

6. Medicare Savings Program (Buy-In)				7. Other Important Figures		
	Income				1	2
	Family of 1		Family of 2			
QMB 100% FPL	Annual	\$12,140	\$16,460	<p><b>Medicare Part A Premium:</b> \$232.00 (30-39 Quarters) \$422.00 (Less than 30 Quarters)</p> <p><b>Medicare Part B Premium:</b> (Rates based upon 2016 income tax filings)</p> <ul style="list-style-type: none"> <li>The Cost of Living adjustment (COLA) for Social Security will be 2.8% percent for 2019.</li> <li>Part B Medicare Premium is \$135.50 for most Medicare Part B recipients in receipt of benefits. The standard Medicare Part B \$135.50 monthly premium is for beneficiaries with income less than or equal to \$85,000. Due to the SSA 2.8% COLA, some beneficiaries who were held harmless against Part B premium increases in 2018 will pay the full monthly premium of \$135.50 in 2019. This is because the increase in their Social Security benefits will be greater than or equal to the increase in their Part B premium.</li> </ul> <p>Under federal law commonly known as the “hold harmless” provision, Medicare Part B premiums cannot raise more than the COLA in any year for most consumers. However, this provision does not apply to the consumers listed below. Their Part B premium increased is currently \$135.50.</p> <ul style="list-style-type: none"> <li>Individuals whose income is above \$85,000 or a married individual when the couple’s combined income is over \$170,000 will pay the higher premium.</li> <li>New Medicare Part B beneficiaries will pay the higher premium. Since they did not pay the premium the previous year.</li> <li>Individuals who do not have the Part B premium deducted from their Social Security benefit. This includes individuals who are in the Medicare Buy-In program. These individuals will not to be directly affected, as the increase premium will be paid by the State.</li> </ul> <p><b>Standard Allocation:</b> From non-SSI-related parent to non-SSI- related child \$384</p> <p><b>PASS-THROUGH FACTORS:</b> .970 and .152</p> <p><b>Note:</b> Budgets with a “From” date of January 1, 2019, or later, that utilize a Federal Poverty Level (FPL) must be calculated with the 2018 Social Security benefit amount and Medicare Part B premium amount until the 2019 FPLs are available on MBL.</p>		
	Monthly	\$1,012	\$1,372			
SLIMB 120% FPL	Annual	\$14,568	\$19,752	Family Size		
	Monthly	\$1,214	\$1,646	COBRA (100% FPL)	\$1,012	\$1,372
QI-1 135% FPL	Annual	\$16,392	\$22,224	AIDS Health Ins. Program (AHIP) (185% FPL)	\$1,872	\$2,538
	Monthly	\$1,366	\$1,852	QWDI (200% FPL)	\$2,024	\$2,744
NO RESOURCE TEST FOR ANY MSP PROGRAM				COBRA, QWDI (Resource Level)	\$4,000	\$6,000
				Pickle/DAC/SSI (Resource Level)	\$2,000	\$3,000

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**8. Monthly Regional Nursing Home Rates (Use the rate for the region in which the facility is located)**

<b>NEW YORK CITY (All boroughs) - \$12,419</b>	<b>LONG ISLAND - \$13,407</b> Nassau, Suffolk
<b>NORTHEASTERN - \$11,280</b> Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	<b>NORTHERN METROPOLITAN - \$12,636</b> Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester
<b>WESTERN - \$10,556</b> Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	<b>ROCHESTER - \$12,342</b> Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates
<b>CENTRAL - \$10,068</b> Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	

**9. Fair Market Regional Rates (Averages) / Special Standards for Housing Expenses**

<b>NEW YORK CITY (All boroughs) (Shelter = 59) - \$1300</b>	<b>LONG ISLAND (Shelter = 60) - \$1269</b>
<b>NORTHEASTERN (Shelter = 54) - \$462</b>	<b>NORTHERN METROPOLITAN (Shelter = 58) - \$930</b>
<b>WESTERN (Shelter = 57) - \$360</b>	<b>ROCHESTER (Shelter = 56) - \$419</b>
<b>CENTRAL (Shelter = 55) - \$412</b>	
<b>CONGREGATE CARE LEVEL III - (42+ Regional Rate for County- Shelter = 63) - \$1,825 - \$2,765</b>	

In determining the community resource allowance on and after January 1, 2016, the community spouse is permitted to retain resources in an amount equal to the greater of the following: **\$74,820** or the amount of the spousal share up to **\$126,420**. The spousal share is the amount equal to one-half of the total value of the countable resources of the couple as of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse. The look-back period is anchored in the month the A/R is both institutionalized and applying for MA.

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**10. MAGI Levels for Medicaid and Related Program Eligibility**

Family Size	1	2	3	4	5	6	7	8	9	10	Each Add'l Person
Pregnant Women and Infants Under Age 1 (223% FPL)	\$2,257	\$3,059	\$3,862	\$4,665	\$5,468	\$6,271	\$7,073	\$7,876	\$8,679	\$9,482	\$803
Infants Under Age 1 223% FPL	\$2,257	\$3,059	\$3,862	\$4,665	\$5,468	\$6,271	\$7,073	\$7,876	\$8,679	\$9,482	\$803
Children Age 1-5 154% FPL	\$1,558	\$2,113	\$2,667	\$3,222	\$3,776	\$4,330	\$4,885	\$5,439	\$5,994	\$6,548	\$555
Children Age 6 -19 110% FPL	\$1,113	\$1,509	\$1,905	\$2,301	\$2,697	\$3,093	\$3,489	\$3,885	\$4,281	\$4,677	\$396
Children Age 6-19 (Expanded - 154% FPL)	\$1,558	\$2,113	\$2,667	\$3,222	\$3,776	\$4,330	\$4,885	\$5,439	\$5,994	\$6,548	\$555
Parents and Caretaker Relatives 138% FPL	\$1,397	\$1,893	\$2,390	\$2,887	\$3,384	\$3,881	\$4,377	\$4,874	\$5,371	\$5,868	\$497
19 and 20 Year Olds Living With Parents 138% FPL	\$1,397	\$1,893	\$2,390	\$2,887	\$3,384	\$3,881	\$4,377	\$4,874	\$5,371	\$5,868	\$497
19 and 20 Year Olds Living With Parents (Expanded - 155% FPL)	\$1,569	\$2,127	\$2,685	\$3,243	\$3,801	\$4,359	\$4,917	\$5,475	\$6,033	\$6,591	\$558
S/CCs and 19 and 20 Year Olds Living Alone (100% FPL)	\$1,012	\$1,372	\$1,732	\$2,092	\$2,452	\$2,812	\$3,172	\$3,532	\$3,892	\$4,252	\$360
S/CCs and 19 and 20 Year Olds Living Alone (Expanded 138% FPL)	\$1,397	\$1,893	\$2,390	\$2,887	\$3,384	\$3,881	\$4,377	\$4,874	\$5,371	\$5,868	\$497

**11. Children's Medicaid Income Eligibility Levels**

Family Size	1	2	3	4	5	6	7	8	Each Additional Person
Children Under 1 year; Pregnant Women*	\$2,257	\$3,059	\$3,862	\$4,665	\$5,468	\$6,271	\$7,073	\$7,876	\$803
Children 1-18 Years	\$1,558	\$2,113	\$2,667	\$3,222	\$3,776	\$4,330	\$4,885	\$5,439	\$555

**Note:** \*Pregnant women household size calculation includes all expected children.

**12. Child Health Plus Premium Levels – Monthly Income by Family Size (Children Under 19 Not Medicaid Eligible)**

Premium Categories	1	2	3	4	5	6	Each Add'l Person
Free Insurance (under 222% FPL)	\$1,618	\$2,194	\$2,770	\$3,346	\$3,922	\$4,498	\$576
\$9 per child per month (Max. \$27 per family) (222% - 249% FPL)	\$2,246	\$3,046	\$3,845	\$4,644	\$5,443	\$6,242	\$800
\$15 per child per month (Max \$45/Family) (250% - 299% FPL)	\$2,530	\$3,430	\$4,330	\$5,230	\$6,130	\$7,030	\$900
\$30 per child per month (Max. \$90 per family) (300% - 349% FPL)	\$3,035	\$4,115	\$5,195	\$6,275	\$7,355	\$8,435	\$1,080
\$45 per child per month (Max. \$135 per family) (350% - 399% FPL)	\$3,541	\$4,801	\$6,061	\$7,321	\$8,581	\$9,841	\$1,260
\$60 per child per month (Max. \$180 per family) (400% FPL)	\$4,047	\$5,487	\$6,927	\$8,367	\$9,807	\$11,247	\$1,440
<b>Full Premium</b> per child/month if over 400% FPL (Premium amount varies from plan to plan)	Over \$4,047	Over \$5,487	Over \$6,927	Over \$8,367	Over \$9,807	Over \$11,247	Over 1,440

**13. Disabled Adult Children (DAC) Levels**

Living Arrangements	Shelter Types	Amount
1	15	\$1,037.48
1	28	\$999.48
1	16	\$1,206.00
1	29	\$1,176.00
1	42	\$1,465.00
1 or 5	Other than: 15, 16, 28, 29 or 42	\$858.00
2	15	\$2,074.96
2	28	\$1,998.96
2	16	\$2,412.00
2	29	\$2,352.00
2	42	\$2,930.00
2 or 6	Other than: 15, 16, 28, 29 or 42	\$1,261.00
3	All	\$999.48
4	All	\$1,037.48

**14. Congregate Care Level I, II and III Levels**

Shelter Codes	PNA	Shelter Amount
15 - (NYC, Nassau, Suffolk, Westchester, Rockland Counties) Level I	\$148.00	\$889.48
16 - (NYC, Nassau, Suffolk, Westchester, Rockland Counties) Level II	\$171.00	\$1,035.00
28 - (Rest of State) Level I	\$148.00	\$851.48
29 - (Rest of State) Level II	\$171.00	\$1005.00
42 - (NYC, Nassau, Suffolk, Westchester, Rockland Counties) Level III	\$204.00	\$1,261.00
42 - (Rest of State) Level III	\$204.00	\$1,261.00

15. SSI Levels				
SSI Consumer	Amount			
Allocation Amount (The difference between the regular Medicaid levels for a household of two [\$1,209.00] and a household of one [\$825.00])	\$408.00			
Personal Needs Allowance (Certain waiver participants subject to spousal impoverishment budgeting)	\$408.00			
Maximum Social Security Benefit at Full Retirement Age	\$2,861			
State Supplement	Individual	\$87.00	Couple	\$104.00
Federal Benefit Rate	Individual	\$771.00	Couple	\$1,157.00
SSI Resource Levels	Individual	\$2,000.00	Couple	\$3,000.00
Family Care Level (LA 3 & 4)	NYC and Nassau, Suffolk, Westchester and Rockland	1037.48	Upstate	999.48
SSI Related Student Earned Income Disregard	Monthly	\$1,870.00	Annual Max.	\$7,550.00

16. Substantial Gainful Activity (SGA) Levels		
Category	Amount	Payment Occurrence
Non-Blind	\$1,220.00	Monthly
Blind	\$2,040.00	Monthly
Month Trial Work Period	\$880.00	Monthly

17. Home Equity Maximum	
Medicaid Coverage Limit (RVI 1 and 2 cases)	\$878,000

**Tips for Qualifying for Medicaid in New York State by Using “Excess Resources” for Pre-Paid Funeral Arrangements**

REVISED JUNE 15, 2015

This fact sheet posted at <http://www.wnylc.com/health/entry/36/>

NOTE: This memorandum updates a 2006 fact sheet by Selfhelp Community Services, Inc. The applicable New York law was amended in 2011. References for state directives and laws are at the end of this fact sheet.<sup>1</sup> This fact sheet is intended for people in New York State only who are age 65+, blind or disabled. Most Medicaid applicants under age 65 who do not have Medicare have no asset test under the Affordable Care Act.

**1. In General – Why Pre-Pay for a Funeral?**

- You are not eligible for Medicaid if your financial resources exceed the resource limits. Medicaid allows \$14,850 (Single person in 2015). Medicaid allows applicants to use excess resources to pre-pay for funerals or create burial accounts – for themselves and for some family members. This obviates the need to spend down the excess assets on the cost of medical care. It also eliminates the need to transfer excess assets which would trigger a “transfer penalty,” which disqualifies the individual from receiving Medicaid for nursing home care for a certain “penalty period,” the length of which depends on the amount transferred and where in New York State the individual resides.

**2. What is a Pre-Paid Funeral Agreement and What Expenses May it Pay?**

1. A pre-need funeral agreement is created by paying a funeral director, funeral firm, undertaker, or cemetery for specified merchandise and services upon the death of the applicant or recipient (“A/R”), or upon the death of certain immediate family members. NYS Dept. of Health 11 OHIP/ADM-4, at 2 (full cite at end).<sup>1</sup>
2. **IMMEDIATE FAMILY** - The funeral agreement may be for “*Immediate family*,” which includes the A/R’s parents, adoptive parents, spouse, children (minors or adults, and including adopted children and stepchildren), and brothers and sisters (including step-siblings and adopted siblings). The spouse of each of each of these relatives is also included in the definition of “immediate family,” provided they are still married to the A/R’s relative. For example, Susan, the A/R, may pre-pay for funeral costs for her brother’s wife or her daughter’s husband.
3. REQUIREMENTS:
  - The A/R may have **no more than one** pre-paid funeral agreement. However, certain burial space items purchased and paid for in full **prior to** entering into an irrevocable pre-need funeral agreement may remain outside the agreement, such as a cemetery plot, urn, vault, mausoleum, crypt, or headstone. 11 OHIP/ADM-4 p. 4. Such items will not be considered available resources.
  - The agreement for the applicant or immediate family must be **IRREVOCABLE** and include a specified **disclosure statement** that acknowledges that the once the payment is made to the funeral home, the A/R or legally responsible relative may not change her mind and cancel the

agreement or ask for her money back. It is permissible to change the choice of funeral home, funeral director, undertaker or cemetery. General Business Law §453, MRG p. 368.<sup>1</sup>

4. **EXPENSES THAT MAY BE PAID.** The following expenses may be included for both the applicant and the immediate family members listed above. Before 2011, only those listed as “Burial Space” items could be included in agreements for family members, as opposed to the applicant. There is no longer any distinction between which expenses may be included. However, there is still a distinction as to how these expenses are categorized, explained later.

**COVERED ITEMS INCLUDE:**

- **Burial Space Items:**
  - Casket, urn, mausoleum, vault, headstone, burial containers and headstone engraving
  - Burial plot/ gravesite
  - Cost of opening and closing of the gravesite
  - Cremation and urn
  - Perpetual care contract for the gravesite
- **Non-Burial Space Items:**
  - Embalming/ cosmetology and burial clothes
  - Funeral transportation (hearse, limousine, out of town shipping),
  - Use of funeral home facilities for services, visitation, or wake,
  - Clergy services, death notices, and flowers

**MAY NOT INCLUDE:**

- Food, lodging or transportation expenses for family, friends or guests. 11 OHIP/ADM-4 p. 6. The cost of these items will be considered an uncompensated transfer for purposes of determining eligibility for nursing home Medicaid if included in a pre-needs agreement.

5. **Is there a limit on the cost of the agreement or how it is paid?** What if there is money left over after I die?

- There is no limit on the cost but it must be for fair market value - otherwise it could be considered a transfer of assets. NYS DOH Medicaid Reference Guide [MRG] p. 365<sup>1</sup>
- Since the agreement is irrevocable, one should not pay more than one normally wants for a funeral.
- Any money left over after the funeral and burial expenses have been paid will go to the city or county Department of Social Services. N.Y. Social Services Law § 141(6)
- Payment of the agreement may be made with the money of the A/R or of a legally responsible relative. MRG. p. 365. The spouse is a legally responsible relative, as is the parent of a child under age 21. N.Y. Social Services Law § 366 (2)(b)(1). Since the spouse’s assets are deemed available to the applicant, this is a way to “spend down” those assets.
- If the cost of the NON-BURIAL SPACE ITEMS in the agreement is less than \$1500, then you may still have life insurance policies with a combined FACE VALUE under \$1500, *but may not also have a BURIAL FUND* or life insurance with a cash value over \$1500. MRG, p. 366 (see more below).

### 3. May you have a Burial Fund or Life Insurance in addition to a Funeral Agreement?

1. The A/R and/or his or her **spouse** may have a \$1500 “burial fund” in addition to the pre-paid funeral agreement above, **unless** the pre-paid funeral agreement includes \$1500 or more worth of “non-burial space” items, as defined on page 2 above. 11 OHIP/ADM-4 pg. 5. If there is less than \$1500 in non-burial space items in the pre-paid agreement, the A/R and his spouse may set up separate burial fund.
2. Type of Burial Fund – the \$1500 may be in the form of a bank account or life insurance or a combination.
3. A bank account is an account separate from one’s regular bank account(s) designated as a burial fund. The maximum balance of the account at the time of application combined with the cash value of any life insurance policy(ies) must be no more than \$1500.
  - A burial account may not be treated like most savings accounts. Once money is deposited, no withdrawals may be made. Otherwise the account will no longer be exempt and will be counted against the Medicaid resource limit.
  - Medicaid does not count accumulated interest earned on a burial account. 11 OHIP/ADM-4 p. 9.
4. Life Insurance – A life insurance policy that has both a “face value” and a “cash value” is generally a so-called “whole life” policy. The face value is the amount to be paid on death. The cash value is the amount that the policy owner would get if s/he cashed in the policy and forfeited any payment on death. The cash value is usually the total amount of premiums paid in plus interest. To learn the cash value, call the life insurance company and ask for a statement. There is no other way to calculate the cash value.
  - **If the FACE VALUE of the policy is under \$1500**, the A/R may keep this policy even if the pre-paid funeral agreement *does* include non-burial space items worth more than \$1500. MRG p. 366. If the FACE VALUE exceeds \$1500, then look at the cash value.
  - **If the CASH VALUE of the policy is less than \$1500** at the time of the application, then the applicant may also have a separate burial fund in an amount that brings the total combined burial amount up to \$1500 (life insurance cash value + burial fund = \$1500) MRG, p. 365.1
  - **If the CASH VALUE exceeds \$1,500 at the time of application, the A/R may keep the policy, but:**
    - the amount that exceeds \$1,500 will count toward the resource limit, AND
    - The A/R must provide a written statement that the entire cash value is intended for burial expenses. This avoids the prohibition against commingling the burial account with regular savings. Without this statement, the \$1,500 is not exempt. MRG, p. 370
    - **EXAMPLE:** Cash value of life insurance is \$3500. This is permissible if the A/R provides a written statement that the entire \$3500 is intended for burial expenses. Because the cash value is \$2000 over the \$1500 burial limit, the A/R must keep his or her regular savings/checking accounts \$2000 below the usual limit. In 2015, the Medicaid limit is \$14,850 for a single person, so the balance in this example must be kept under \$12,850.
    - If the cash value is still too high, a **loan may be taken** on the policy. MRG p. 324. Proceeds of a bona fide loan are not counted as income. MRG p. 221. The money received would count as a resource if saved into the month after the loan is issued.
    - Planning tip: These rule are complicated. Whether or not you may have a burial fund depends on the cash value of your life insurance policy, if any, whether your pre-paid funeral agreement has “non-burial space” items valued over \$1500, and the amount of your total countable resources.

#### **4. When is one Eligible for Medicaid after creating a Funeral Agreement or Burial Fund?**

1. The answer to this depends on whether the funeral arrangements are for the A/R and his/her spouse or other members of the immediate family, as defined above on page 1.
2. **Applicant or spouse create the funeral agreement for themselves:**
  - As long as the funeral agreement and/or burial fund is established for the applicant or spouse within 10 days of being notified by Medicaid that the applicant has excess resources, the funeral agreement **retroactively** brings the excess resources down to the allowed limits. If the resources were otherwise below the limit during the retroactive period, the A/R is eligible for Medicaid for up to **3 months** before the month in which the application was filed.
  - Example: Betty is single and has \$25,850 in resources at the time of her Medicaid application in April 2015. She is \$11,000 over resourced (using the 2015 resource limit of \$14,850). She is notified in June 2015 that she is over-resourced. Within 10 days of receiving this notification she establishes an irrevocable pre-needs agreement for herself in an amount of \$11,000. She is eligible for Medicaid as of January 2015, the third month prior to the month of application. This assumes that her resources during the three month retroactive period were \$25,850 or less. See 11 OHIP/ADM-4 p. 8, MRG p. 368.1.
3. **Applicant creates funeral agreement for “immediate family members” other than spouse:**
  - The 3-month retroactive eligibility cannot be established through the purchase of irrevocable pre – need funeral agreements for immediate family members other than the spouse. If creating the pre-need funeral agreements for immediate family members brings the excess resources down to the allowed limits, the A/R is eligible for Medicaid the following month after payment. MRG. 366.1
  - Example: Betty is single and has \$25,000 when she applies for Medicaid in January 2015. She is \$10,150 over resourced. She already has a pre-paid funeral agreement for herself and does not wish to add additional funds to it. She is eligible for Medicaid for Feb. 2015 if she establishes a pre-paid irrevocable funeral agreement with her excess resources in Jan. 2015 for her sister, son, and/or other immediate family members listed on page 1 of this fact sheet. If the agreement were for her spouse, it could be retroactive, but not for other family.

**Contact the Evelyn Frank Legal Resources Program with any questions**

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This fact sheet posted at <http://www.wnylc.com/health/entry/36/>

See more info about Medicaid at <http://nyhealthaccess.org>

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<sup>1</sup> The laws about pre-paid funeral agreements are N.Y. Social Services Law Section 141(6) and General Business Law Sect. 453. The NYS Dept. of Health directive implementing the 2011 change is [11 OHIP/ADM-04 - Treatment of Irrevocable Pre-Need Funeral Agreements](#) (July 11, 2011) available at [http://www.health.ny.gov/health\\_care/medicaid/publications/pub2011adm.htm](http://www.health.ny.gov/health_care/medicaid/publications/pub2011adm.htm). See also the NYS DOH Medicaid Reference Guide [MRG] section on funeral agreements and burial funds, available at [http://www.health.ny.gov/health\\_care/medicaid/reference/mrg/index.htm](http://www.health.ny.gov/health_care/medicaid/reference/mrg/index.htm) - click on [Medicaid Reference Guide \(Full Version\)](#) pp. 365-371.

# Summary of SNT Rules for Various Benefits

Benefit	SNT considered a resource?	Is Transfer of a Lump sum or Asset into an SNT Penalized?	SNT disbursements that ARE counted as income	SNT disbursements that ARE NOT counted as income
<b>Temporary Assistance</b>	No.	No, but only IF SNT created before or simultaneously with receipt of lump sum. Otherwise, harsh "lump sum" rule deems lump sum available as income for penalty period.	Expenses related to: <ul style="list-style-type: none"> <li>• Day-to-day living</li> <li>• Hobbies</li> <li>• Vacations</li> <li>• Recreation</li> <li>• Entertainment</li> </ul>	Expenses related to "supplemental" needs: <ul style="list-style-type: none"> <li>• Education</li> <li>• Medical (including health insurance)</li> <li>• Childcare</li> <li>• Special needs of disabled (housekeeping, social workers, therapists, aides, legal expenses)</li> </ul>
<b>SNAP</b>	Most SNAP recipients have no resource test. For those who do, the SNT should not be considered a resource, but may require court order if individual (d)(4)(A) trust.	Disqualification up to 12 months based on "knowing" transfers within 3 months pre-application or after eligibility determination, made with intent to obtain or maintain eligibility.	Disbursements directly to the household for normal living expenses (e.g. rent or mortgage, clothing, food eaten at home)	<ul style="list-style-type: none"> <li>• Reimbursements or past or future expenses that are 1) not a gain or benefit to the household AND 2) are not a normal living expense</li> <li>• Vendor payments directly to third party</li> </ul>
<b>HEAP</b>	No resource test.	No transfer penalty.	Unclear.	Unclear.
<b>SCRIE</b>	No resource test.	No transfer penalty.	Unclear.	Unclear.

Summary of SNT Rules for Various Benefits

Benefit	SNT considered a resource?	Is Transfer of a Lump sum or Asset into an SNT Penalized?	SNT disbursements that ARE counted as income	SNT disbursements that ARE NOT counted as income
<b>Section 8 / Public Housing</b>	No as long as trustee is not a household member.	<p>Under <i>DeCambre</i> 1<sup>st</sup> Circuit decision, no penalty if lump sum transferred into trust would not count as income (inheritance, insurance payments – health, accident insurance and worker’s compensation, capital gains and settlement for personal or property losses; retro Social Security/SSI).</p> <p>Otherwise, if principal more than \$5000, for two years following the transfer into trust, the family’s Annual Income increases by the greater of:</p> <ul style="list-style-type: none"> <li>• actual income from the assets or</li> <li>• 0.06% of the value of the transferred asset.</li> </ul> <p>When 2016 law is implemented, actual income from assets will be counted when determining rent. Imputed income is only counted to the extent that net family assets exceed \$50,000. (law not implemented as of 1/8/2019)</p>	<ul style="list-style-type: none"> <li>• Regular payments to household</li> <li>• Distribution of interest or dividend income earned by trust</li> </ul>	<ul style="list-style-type: none"> <li>• Reimbursed medical costs</li> <li>• Sporadic, nonrecurring, or temporary payments</li> <li>• Distribution of the principal of the trust should not count</li> <li>• cable, internet, travel and medical expenses (per <i>DeCambre</i> 1<sup>st</sup> Circuit decision)</li> </ul>

Benefit	SNT considered a resource?	Is Transfer of a Lump sum or Asset into an SNT Penalized?	SNT disbursements that ARE counted as income	SNT disbursements that ARE NOT counted as income
<b>SSI</b>	No.	<ul style="list-style-type: none"> <li>Under age 65: No transfer penalty for assets placed in trust; may use individual SNT or pooled trust.</li> <li>Age 65+: YES- Transfer penalty for assets placed in trust for up to 36-month disqualification, with 36-month look-back.</li> <li>Age 65+ may only use pooled trust, though assets placed in individual SNT prior to age 65 remain exempt.</li> </ul>	<ul style="list-style-type: none"> <li>Payments for food or shelter items will reduce SSI benefit by lower of actual value of benefit or one-third of the Federal Benefit Rate.</li> <li>Shelter items include rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewer, garbage removal, property insurance required by a mortgage</li> <li>Think about ABLE Acct?</li> <li>Cash</li> <li>Payments not for sole benefit of beneficiary, though incidental benefit ok for others (purchase of home, TV)</li> </ul>	<ul style="list-style-type: none"> <li>Clothing purchase</li> <li>Insurance (property, fire, theft, etc.) held at the owner's or renter's option</li> <li>Cable, telephone, cell phone, and internet service</li> <li>Travel, local transportation, entertainment, educational expenses</li> <li>Pre-payment of burial expenses is permitted through a funeral agreement – but only before death of beneficiary</li> <li>Payment for companion services for a disabled beneficiary or a minor disabled child, and for incidental expenses of the companion, can be a valid expense</li> </ul>
<b>Non-MAGI Medicaid – Institutional</b> (nursing home)	No – if individual trust established before age 65, or funds deposited into pooled trust account before age 65.	<ul style="list-style-type: none"> <li>NO if individual under age 65.</li> <li>YES if individual age 65+.</li> </ul>	<ul style="list-style-type: none"> <li>Cash</li> <li>Trust may not pay for services that could be covered by Medicaid or that are not solely for benefit of beneficiary</li> </ul>	<ul style="list-style-type: none"> <li>In-kind 3<sup>rd</sup> party vendor payments for expenses not covered by Medicaid are OK</li> <li>Since nursing home rate includes food, etc. must be items or services to supplement Medicaid, e.g. private aide, clothing, entertainment</li> </ul>

Summary of SNT Rules for Various Benefits

<b>Benefit</b>	<b>SNT considered a resource?</b>	<b>Is Transfer of a Lump sum or Asset into an SNT Penalized?</b>	<b>SNT disbursements that ARE counted as income</b>	<b>SNT disbursements that ARE NOT counted as income</b>
<b>Non-MAGI Medicaid – Community</b> (includes most home care, assisted living, and waivers)	No	<ul style="list-style-type: none"> <li>• NO if individual under age 65.</li> <li>• NO if individual age 65+, but if later needs Institutional Medicaid within 5 years of transfer, there will be a transfer penalty</li> </ul>	<ul style="list-style-type: none"> <li>• Cash</li> <li>• Payment for items that could be covered by Medicaid</li> <li>• Payments not solely for benefit of beneficiary (but incidental benefit to others OK – purchase of home, TV, etc.)</li> </ul>	<p>In-kind 3<sup>rd</sup> party vendor payments for any expenses – rent, food, clothing, travel, entertainment, education, household items, etc.</p> <p>Payment for companion services for a disabled beneficiary or a minor disabled child, and for incidental expenses of the companion, can be a valid expense.</p>
<b>MAGI Medicaid</b>	No (but no asset limit)	<ul style="list-style-type: none"> <li>• No. MAGI Medicaid has transfer penalties for institutional care but transfer to SNT presumably exempt.</li> </ul>		
<b>Veteran's Pension</b>	Yes	<ul style="list-style-type: none"> <li>• Yes. Transfer to SNT for child determined incapable of self-support allowed. But not to one's own SNT.</li> </ul>		NA

WHAT EXPENSES MAY A SUPPLEMENTAL NEEDS TRUST (SNT) PAY?					
	TA/HASA	SSI	Non-MAGI Medicaid	SNAP	Section 8/Public Housing
<b>CASH OR DEBIT CARD</b>	<b>NO</b>	<b>NO</b> but SNT may reimburse a 3 <sup>rd</sup> party for allowed expense. Some restricted debit cards OK if owned by trust, bar access to cash or to prohibited expenses (2018 POMS)		<b>NO</b>	<b>NO</b>
<b>SHELTER:</b> Rent/mortgage/maintenance, property taxes, heating fuel, gas, electricity, water, sewer, garbage removal	<b>NO</b> – counts as income (may not supplement benefits provided for in the TA standard of need)	<b>YES but will reduce SSI</b> by lesser of \$257 or actual cost <sup>1</sup>	<b>YES</b> if direct pay to vendor/supplier or beneficiary's credit card	<b>YES but only direct pay to vendor;</b> can't deduct excess shelter/medical expenses if trust pays them.	Probably is income, since reg says payment of "sporadic, nonrecurring, temporary" expenses is <b>not</b> income. <i>Decambre</i> case – look at source of SNT. Personal injury settlement would have been exempt as an asset, so withdrawal of <i>principal</i> isn't income.
<b>FOOD</b> (groceries, restaurant)		<b>YES won't reduce SSI</b>			
<b>Clothing</b>					
<b>Cable, phone, cell phone, internet, transportation, property/fire/theft insurance</b>					
Disabled beneficiary expenses - housekeeping, aides, social worker, therapist, vocational rehab aides, legal expenses	<b>YES</b>	<b>YES</b> if direct pay. 2018 POMS changes allow trust to pay 3 <sup>rd</sup> party for companion services for a disabled beneficiary or a minor disabled child, and for incidental expenses of the companion. 3 <sup>rd</sup> party may be family member, not only certified aides. No proof medical necessity required.  "Reasonableness test" to evaluate the number of people who may accompany the beneficiary and have their expenses paid.			Probably ok as "temporary, nonrecurring or sporadic income," which is exempt. <i>DeCambre</i> remanded to see if pet was companion animal, so vet expenses were medical.
<b>Hobbies, vacations, travel, transportation,</b> recreation and entertainment.	<b>No</b> - counts as income (part of standard of need).	<b>YES</b> if direct pay to vendor/supplier or beneficiary's credit card			
<b>Education expenses, medical expenses not covered by Medicaid, child care</b>	<b>YES</b> OK - Earmarked for purpose not provided for in standard of need	<b>YES</b> if direct pay to vendor/supplier or beneficiary's credit card and if not covered by Medicaid.			

WHAT EXPENSES MAY A SUPPLEMENTAL NEEDS TRUST (SNT) PAY?					
	TA/HASA	SSI	Non-MAGI Medicaid	SNAP	Section 8/Public Housing
<b>FUNERAL EXPENSES</b>					
<b>May trust pay for funeral after beneficiary dies?</b>		NO			
<b>Pre-pay for funeral arrangement</b> before beneficiary's death		YES – may enter payment agreement.			Probably ok

<sup>1</sup> Generally expenses must be for “sole benefit” of beneficiary. 2018 POMS clarifies trust may pay rent or for other goods or services if for the primary benefit of the beneficiary, tho others may receive a collateral benefit. For example, beneficiary lives with others – trust may pay rent tho benefits others. See POMS for rules about when title must be in name of beneficiary if SNT pays for house or car.

If beneficiary became disabled before age 26, consider using ABLE account instead of or in conjunction with SNT. ABLE account may pay rent and not affect SSI. So parent/3<sup>rd</sup> party may contribute to ABLE account which in turn pays rent. Or client may transfer \$ from SNT to ABLE account with no adverse impact on SSI.

All cites in *Supplemental Needs Trusts -- Impact on Medicaid, SSI and Other Public Benefits – With Rules about Strategies for Handling Lump Sums for Various Benefits*, NYLAG EFLRP, revised Jan. 14, 2019, available at <http://www.wnylc.com/health/entry/5/>.