

How Money Damages Affect Selected Public Benefits

Deborah Harris, Mass. Law Reform Institute
Ruth Bourquin, Mass. Law Reform Institute
Rochelle Hahn, Mass. Law Reform Institute
Susan Hegel, Cambridge and Somerville Legal Services
Linda Landry, Disability Law Center
Ellen Shachter, Cambridge and Somerville Legal Services

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Note: This chart does not contain every rule that might affect the treatment of damages by public benefits programs. In addition, the rules for the various programs are subject to change.

Type of Benefit	Asset Limit	Transfer of Assets Rules	Other Rules
<p>Supplemental Security Income</p> <p>SSI is a needs-based program administered by the Social Security Administration under Title XVI of the Social Security Act for the disabled and elderly (65 and older).</p> <p>Retirement, Survivors, or Disability Insurance (RSDI) is an insurance program administered by the Social Security Administration under Title II of the Social Security Act for insured retirees and disabled person and their dependents. There is no asset test or transfer of asset test for RSDI.</p>	<p>Ineligible if countable assets exceed \$2,000 for individual or \$3,000 for couple. 20 C.F.R. § 416.1205.</p> <ul style="list-style-type: none"> Countable assets include cash or other liquid assets or personal property that could be converted to cash or used for support and maintenance. 20 C.F.R. § 416.1201. <p>Ineligible for entire month that assets exceed limit. 20 C.F.R. § 1207.</p> <ul style="list-style-type: none"> Excluded assets include home personal items, one vehicle, life insurance, burial plot, prepaid funeral expenses, \$1,500 in separate bank account for burial, and property essential to self support or set aside to fulfill an approved plan to achieve self-support (PASS). 20 C.F.R. §§ 416.1210 – 416.1231. PASS allows SSI recipient to save for vocational goal; must be in writing and approved by SSA. Irrevocable trusts are generally countable assets unless they meet special requirements: <ul style="list-style-type: none"> Beneficiary is under 65 and disabled; trust established by specified relative, guardian, or court; provides that state will receive all amounts remaining up to amount of medical assistance received; Beneficiary is disabled (no age restriction); asset is in pooled trust established by nonprofit association for sole benefit of individual by specified relative, guardian, or court; provides that state will receive all amounts remaining up to amount of medical assistance received. 	<p>Period of SSI ineligibility if dispose of asset for less than fair market value (e.g., bought items for others, put money in trust) within 36 months of the date of application or, if later, the date the transfer was made. Ineligibility period calculated by dividing amount transferred by the maximum SSI payable. Limited exception if show severe need and transfer not made to establish SSI eligibility.</p> <p>No penalty or countable asset</p> <ul style="list-style-type: none"> if the court establishes a special needs trust with the funds, funds transferred to special needs trust for disabled child, funds transferred to pooled trust transferred to approved PASS. 	<p>Award (less any attorneys' fees) is counted as unearned income in month of receipt (reduces SSI benefit for that month) and as an asset to the extent it is retained in following month(s). Awards to replace specified lost, stolen or damaged resources are not counted in the month of receipt but may count as an asset in following months if retained. However, cash to replace or repair a lost, stolen or damaged noncountable resource is not treated as a resource for 9 months from the date of receipt.</p> <p>Considered available when beneficiary has legal access.</p> <p>Can be spent down (for fair market value) on items or services for beneficiary, including pre-paid rent or excluded asset, etc. If spent down in month of receipt, impact is only on benefit for month of receipt. Should put award in separate bank account and keep receipts to show SSA where money was spent.</p> <p>Benefits suspended for any month individual exceeds income or asset limits; after 12 consecutive months of suspension, SSI eligibility terminates.</p>

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<p>Food Stamps</p>	<ul style="list-style-type: none"> • Child under age 19 or only member is pregnant woman – no limit • All members receive SSI, EAEDC, TAFDC – no asset limit • Other households with disabled or elderly (60 or older) member – \$3,000 • All other households – \$2,000 <p>Many assets are not countable. 106 C.M.R. §§ 365.180, 363.110 - 363.140.</p>	<p>Ineligible (for 1-12 mos. depending on value of asset) if knowingly sold or gave away asset while receiving food stamps or in 3 mos. before application for purpose of qualifying for food stamps. Transfer of assets rule should not result in disqualification if</p> <ul style="list-style-type: none"> • Household has no asset limit • Transferred asset was not countable • Asset transferred at or near fair market value • Asset transferred to household member • Asset transferred for reasons other than qualifying for food stamps, such as parent placing funds in educational trust • Countable household assets at the time of the transfer did not exceed asset limit. <p>106 C.M.R. § 363.150</p>	<p>Damage award is treated as an asset in the month of receipt. 106 C.M.R. § 363.130(E).</p> <p>Damage award received as reimbursement for specified items (other than lost wages) and used to pay for those items is not countable. 106 C.M.R. § 363.140(I)(9).</p>

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<p>TAFDC</p> <p>No effect if damages received by or for member of household who is recipient of SSI</p>	<p>Ineligible if countable assets exceed \$2,500. 106 C.M.R. § 204.100. See 106 C.M.R. §§ 204.120 - 204.140 for noncountable assets.</p>	<p>If household transferred asset within 12 months before application, household is ineligible for number of months calculated by dividing the fair market value by the standard of need,</p> <p>(1) if transfer was for less than fair market value or asset was placed in irrevocable trust, unless transfer was not for purpose of obtaining TAFDC and</p> <ul style="list-style-type: none"> • at time of transfer household had enough to live on for a year after the transfer, • transfer was to enable household to meet medical expenses or living expenses at the rate paid before the transfer or the need standard, <i>or</i> • transfer was result of court action; <p>(2) if transfer was for vacation, <i>or</i></p> <p>(3) if transfer was for fair market value for expense not normally incurred by household or expense that exceeds 25% of household's gross monthly income in six months before transfer unless expenditure</p> <ul style="list-style-type: none"> • was for work, employment, education or job training, • was for prepaid funeral arrangement up to \$1,500 or burial plots, • meets one of the conditions in (1) above, <i>or</i> • was for item that would qualify for exclusion from lump sum rule #(3). 106 C.M.R. § 204.135 <p>In calculating any penalty should be able to deduct \$2,500 (less any household countable assets at the time of receipt).</p>	<p>Lump sum rule: Damage awards in excess of amounts subject to assignment are subject to lump sum disqualification – household ineligible for number of months calculated by subtracting \$600 and dividing the balance by the TAFDC standard of need for the family. 106 C.M.R. § 204.240(D); 106 C.M.R. § 204.250(B).</p> <p>Exclusions from lump sum:</p> <ol style="list-style-type: none"> (1) \$600 (2) damages intended and used to replace property or reimburse for expenses, (3) expenditures to pay back bills incurred while waiting for the lump sum <ul style="list-style-type: none"> – medical care or health insurance – transportation (up to \$150/month) – purchase or repair of household equipment or appliance (not television or computer) – basic repairs up to \$2,500 for repair of home – court ordered judgments – taxes and other government debts – money received for injuries to child or other legally incompetent person, placed in trust, and restricted for specific purposes, (4) personal injury award placed in irrevocable trust meeting 106 C.M.R. § 204.125 to meet needs of legally incompetent person, if <ul style="list-style-type: none"> – placed by court order, <i>or</i> – up to \$150,000 placed immediately after award. 106 C.M.R. § 204.240(B). <p>House and Senate Responsible Welfare Reform bills would allow exclusion of up to \$5,000 if placed in a separately identifiable account; withdrawals from the account would count as an asset unless the withdrawal is for a specified purpose, such as education, home repair, etc.</p> <p>Recalculation of lump sum period:</p> <ul style="list-style-type: none"> • money spent/lost due to natural disaster or domestic violence • money spent on expenses listed above • ineligible for food stamps and spent the money on food • TAFDC standard of need has increased (e.g., due to increase in a size of household)

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TAFDC , continued			Third party liability: If benefits needed because of accident or illness, must assign to state right to recover from damage award an amount equal to benefits paid out. 106 C.M.R. 702.800.
Emergency Assistance No effect if damages received by or for member of household who is recipient of SSI	Ineligible if countable assets exceed \$2,500 unless participating in DTA’s “Local Housing Authority Placement Program.” 106 C.M.R. §§ 309.020; 204.100. Amounts in excess of eligibility limits that have been escrowed in accordance with 106 C.M.R. § 309.020 do not count towards the asset limit. No effect if damages when received (in combination with household’s other countable assets) do not exceed \$2,500. See 106 C.M.R. §§ 309.020; 204.120 - 204.140 for noncountable assets.	If damages when received plus other countable assets exceeded \$2,500 during 12 mos. before application, household is ineligible if household transferred the asset in order to become eligible for Emergency Assistance. 106 C.M.R. § 309.020(H).	Third party liability: Same as for TAFDC. 106 C.M.R. 702.800
EAEDC No effect if damages received by or for member of household who is recipient of SSI	Ineligible if countable assets at time of application exceed \$250 (\$500 for couple). 106 C.M.R. § 321.110.	Same as for TAFDC. 106 C.M.R. § 321.135.	Lump sum rule: Similar to rule for TAFDC. 106 C.M.R. § 321.240. Third party liability: Same as for TAFDC. 106 C.M.R. § 702.800.

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<p>MassHealth</p> <p>In general, damages do not affect eligibility unless the applicant or recipient is subject to an asset test.</p>	<p>No asset tests for groups under Medicaid waiver: pregnant women, children parents, persons with disabilities that meet SSI standards, long term unemployed adults, HIV positive, workers with subsidized premiums</p> <p>Asset test for traditional Medicaid including persons who are 65 and older or institutionalized:</p> <ul style="list-style-type: none"> • \$2,000 for individual; \$3,000 for couple <p>Asset test for Buy-In programs for Medicare beneficiaries:</p> <ul style="list-style-type: none"> • \$4,000 for individual; \$6,000 for couple <p>130 C.M.R. § 520.003. For noncountable assets see 130 C.M.R. § 520.007-520.009.</p> <p>Deeming of income from an asset. Persons not subject to asset test may have income deemed to them from an income-producing asset transferred for the purpose of qualifying for MassHealth. 130 C.M.R. § 506.006.</p>	<p>Transfers for fair market value not disqualifying. Certain transfers for less than fair market value are disqualifying if within “look back period” (36-60 mos), 130 C.M.R. § 520.019. Congress may change the look back period.</p>	<p>Division of assets between institutionalized and community spouse. See 130 C.M.R. §§ 520.002, 520.016(B). See also <i>Estate Planning for the Aging or Incapacitated Client in Massachusetts</i> (MCLE, Inc. 1998 and supplements).</p> <p>Third party liability: MassHealth agency has right to recover medical benefits from the proceeds of any claim for accident or injury (limited to medical assistance received as a result of the accident or injury if individual was already a recipient of medical assistance on the date of the loss). G.L. c. 118E, § 22; 130 C.M.R. §§ 503.006 and 517.011. State courts differ on whether Medicaid recovery is limited to awards for medical expenses. No Mass. court decision on this point.</p> <p>Estate recovery: Subject to some limitations, MassHealth agency has right to recover from probate estate medical benefits provided to person age 55 or older and medical benefits for institutionalized person of any age. 130 C.M.R. § § 501.013, 515.011.</p>

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<p>Federal public housing, Section 8 (tenant-based)</p>	<p>No asset limit</p> <p>Interest on net family assets is treated as income:</p> <ul style="list-style-type: none"> • If net family assets are \$5,000 or less, actual interest counts as income. • If net family assets exceed \$5,000, actual interest or HUD-established value counts, whichever is higher. HUD-established value for MA is currently 1%. • Asset disposed of for less than fair market value within past two years counts as an asset (and interest from it is counted) to the extent fair market value exceeds consideration. 24 C.F.R. § 5.603 (definition of net family assets); 24 C.F.R. § 5.609(b)(3). 	<p>Asset disposed of for less than fair market value within past two years counts as an asset (and interest from it is counted) to the extent fair market value exceeds consideration. See second column.</p>	<p>Damages are not counted as income unless the damages are replacement of earnings. 24 C.F.R. § 5.609(c)(3) and (4).</p> <p>Interest from an asset (see second column) counts in calculating rent amount and may put family over income limit:</p> <ul style="list-style-type: none"> • Applicants : Gross income cannot exceed 50% - 80% of Area Median Income • Tenants <ul style="list-style-type: none"> - Federal public housing: Most housing authorities do not have income limits for federal public housing, but they do have authority to set a policy to evict if over 80% AMI. 24 C.F.R. § 960.261. - Section 8: There are no per se income limits, but tenant at zero subsidy for 180 consecutive days will lose his/her tenant-based housing subsidy. 24 C.F.R. § 982.455.

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<p>State public or state subsidized housing</p> <p>State public housing, Mass. Rental Voucher Program (MRVP), and Alternative Housing Voucher Program (AHVP)</p>	<p>State public housing and AHVP: No asset limit</p> <p>MRVP: Asset limit for applicants is 1.5 times gross household income or \$15,000, whichever is higher. Assets include money received or to be received for settlement of personal or property loss. No asset limit for tenants. 760 C.M.R. § 49.03(1)(d).</p> <p>Interest on net family assets is treated as income:</p> <ul style="list-style-type: none"> • For state public housing and AHVP, <ul style="list-style-type: none"> – If net family assets are \$5,000 or less, actual interest counts as income. – If family assets exceed \$5,000, housing authority will count actual interest, HUD-established value, or DHCD value, whichever is higher. 760 C.M.R. §§ 5.06 and 6.05(2). • For MRVP, count only actual interest. 760 C.M.R. §§ 49.03(1)(a) and 49.05(6)(b)(4). • Asset disposed of for less than fair market value within past two years counts as an asset (and interest from it is counted) to the extent fair market value exceeds consideration. 	<p>Asset disposed of for less than fair market value within past two years counts as an asset (and interest from it is counted) to the extent fair market value exceeds consideration. See second column.</p>	<p>Damages are not counted as income unless the damages are replacement of earnings. 760 C.M.R. § 6.05(2)(e).</p> <p>Interest from an asset (see second column) counts in calculating rent amount and may put family over income limit:</p> <ul style="list-style-type: none"> • State public housing: <ul style="list-style-type: none"> – Applicants: Net income cannot exceed 80% of Area Median Income as of August in the most recent even numbered year. On Aug. 25, 2004, DHCD issued AMI limits for use from 8/9/04 until 8/06. 760 C.M.R. § 5.06(1) <ul style="list-style-type: none"> – Existing tenants: Households remain eligible until 30% (elder/handicapped) or 32% (family) of monthly net household income equals or exceeds the fair market rent for a similar sized unit in area (under Section 8 rules). 760 C.M.R. § 5.06 (2) and (3) • AHVP: <ul style="list-style-type: none"> – Applicants: Same as State public housing. – Existing tenants: No gross income limit. Tenant loses eligibility if at zero subsidy for 90 consecutive days. 760 C.M.R. § 5.06(4) • MRVP <ul style="list-style-type: none"> – Applicants: Net income cannot exceed 200% of federal poverty level. 760 C.M.R. § 49.03 (1)(a) – Existing tenants: If net income exceeds 200% of poverty level for 90 days, then lose subsidy. 760 C.M.R. § 49.03 (1)(b) and (c).