

How Money Damages and Settlements Impact Selected Public Benefits

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Note: This chart does not examine every rule that impacts public benefits. 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 children and adults with severe disabilities and elders (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 adults 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 (not current month's income) 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 the assets exceed limit. 20 C.F.R. § 1207.</p> <ul style="list-style-type: none"> Excluded assets include: the home in which the SSI recipient lives, personal items, one vehicle per family, certain life insurance, burial plot, reasonable, irrevocably 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 POMS SI 01120.200, SI BOS01120.200 (special expertise needed to establish trusts for benefits recipients): <ul style="list-style-type: none"> Beneficiary is <u>under</u> 65 and disabled; (D4)A special needs 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 <u>under</u> 65 and 	<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, capped at 36 months. Limited exception if show severe need and transfer not made to establish SSI eligibility. POMS SI 01150.000 et seq</p> <p>Examples where there may be 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>Special expertise is needed to establish trusts for benefits recipients.</p>	<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 non-countable 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>Award 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. 20 CFR 416.1335</p>

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	disabled; asset is in pooled trust established by nonprofit association for sole benefit of individual; provides that state will receive all amounts remaining up to amount of medical assistance received.		
Supplemental Nutrition Assistance Benefits (SNAP), formerly known as “food stamps”	<p>No asset test for most* SNAP households:</p> <ul style="list-style-type: none"> Households with children under age 19, pregnant women, elders (age 60+) or persons with disabilities with gross income under 200% FPL are “categorically eligible” for SNAP, no asset test. Households comprised of childless non-disabled persons ages 18 to 60 with gross income under 130% FPL are also “categorically eligible” for SNAP, No asset test. 106 C.M.R. §§ 365.180, 363.110 - 363.140. 	<p>Transfer of asset rules do not apply to “categorically eligible” SNAP households, which is most SNAP households.</p> <p>106 C.M.R. § 363.150, 365.180</p>	<p>Interest payments, dividends, royalties paid from assets or other direct money payment is countable unearned income even though asset is not considered. 106 CFR 363.220(B)(4)</p> <p>*Households that include a “disqualified” member due to work sanction , fraud or other program sanction are not “categorically eligible” and are subject to: (1) the lower 130% FPL gross income limit, (2) the SNAP asset test and (3) the transfer of asset test, 106 CMR §§ 362.320, 363.150, 366.110(D); 367.800.</p> <p>*Households with an elder (60+) or disabled member with gross income above 200% FPL are subject to asset test of \$3,250. See 106 CMR 363.130 for list of countable assets.</p> <p>(Note, it is unusual that persons with gross income over 200% FPL will otherwise qualify for any SNAP, unless high monthly out of pocket medical expenses and allowable shelter costs reduce net income to under 100% FPL.)</p>
<p>TAFDC</p> <p>No effect if damages received by or for member of household who is recipient of SSI.</p> <p>Because of the complexity and draconian effect of the TAFDC asset and lump sum rules, it is important to consult</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 non-countable 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 106 CMR 204.400 and 106 CMR 204.415:</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"> a) at time of transfer household had enough to live on for a year after the transfer, b) transfer was to enable household 	<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> <ul 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

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<p>with an experienced advocate before a lump sum is received and before an asset is transferred.</p>		<p>to meet medical expenses or living expenses at the rate paid before the transfer or the need standard, <i>or</i></p> <ul style="list-style-type: none"> · c) transfer was result of court action; <p>(2) if transfer was for vacation, <i>or</i> (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"> · a) was for work, employment, education or job training, · b) was for prepaid funeral arrangement up to \$1,500 or burial plots, · c) meets one of the conditions in (1) above, <i>or</i> · d) 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>appliance (not television or computer)</p> <ul style="list-style-type: none"> – 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, <p>(4) personal injury award placed in irrevocable trust meeting 106 C.M.R. § 204.125 to meet needs of legally incompetent person, if</p> <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>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) <p>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.</p>
<p>Emergency Assistance</p>	<p>Ineligible if countable assets exceed \$2,500 unless participating in DTA's "Local Housing Authority Placement Program" or the assets are savings under a rehousing plan. 760 C.M.R. §§ 67.02(6)(a); 204.100.</p> <p>No effect if damages when received (in combination with household's other countable assets) do not exceed \$2,500. See 760 C.M.R. §67.02(6)(a) incorporating ; 106 C.M.R. § 204.120 - 204.140 for noncountable assets.</p>	<p>"Emergency housing assistance shall be denied to a family who, at any time within 1 year immediately prior to the filing of an application for emergency assistance, has depleted, assigned or transferred real or personal property that would have rendered such family ineligible for assistance if the depletion, transfer or assignment was not reasonable at the time or was not for good cause reasons. For purposes of the preceding sentence, good cause reasons shall include, but not be limited to, that the funds were expended for</p>	<p>Third party liability: Same as for TAFDC under language of 106 C.M.R. § 702.800. But note: EA regulations at 760 C.M.R. § 67.01(1) have been amended to say that only regulations expressly referenced in 760 C.M.R. § 67.01 <i>et seq.</i> are applicable to DHCD's administration of EA, so not clear still applies.</p>

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		<p>necessary or reasonable costs of living such as rent, utilities, food, health related needs, education related expenses or transportation.” G.L. c. 23B, § 30(B).</p> <p>If 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. 760 C.M.R. § 67.02(8).</p> <p>(Regulation written before statute and may not adequately take into account good cause for transfers).</p>	
<p>EAEDC</p> <p>No effect if damages received by or for member of household who is recipient of SSI.</p>	<p>Ineligible if countable assets at time of application exceed \$250 (\$500 for couple). 106 C.M.R. § 321.110.</p>	<p>Same as for TAFDC. 106 C.M.R. § 321.135.</p>	<p>Lump sum rule: Similar to rule for TAFDC. 106 C.M.R. § 321.240.</p> <p>Third party liability: Same as for TAFDC. 106 C.M.R. § 702.800.</p>
<p>MassHealth</p> <p>MassHealth is a means-tested program that pays health care providers or managed care plans for the costs of medical services provided to eligible people. Sometimes it charges beneficiaries a premium or patient paid amount or reimburses eligible people for the premium cost of purchasing private insurance or for other</p>	<p>Lump sum payments like damage awards or settlements are counted as income in the month of receipt and, where applicable, an asset in later months. MassHealth members have a duty to report the receipt of a lump sum. Having assets in excess of the limits will result in a termination of benefits if an asset test applies. However there is no asset test for most people under 65. 130 C.M.R. §§ 506.004(I); 520.009(E).</p> <p>MassHealth programs with no asset test: Individuals eligible for MassHealth on the basis of pregnancy, being a child or young adult under 21, being a</p>	<p>Income deemed available after transfer of assets</p> <p>Persons not subject to the 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 to trusts or purchase of annuities</p> <p>Amounts transferred to trusts or used to purchase annuities may continue to be treated as available income and assets. However, trusts created under special provisions and certain annuities do not count. These rules are complex; consult an expert before creating a trust or purchasing an annuity from a damage</p>	<p>Third party liability: As a condition of eligibility, MassHealth beneficiaries agree to notify MassHealth of pending claims for accidents or injuries & repay medical benefits received after the date of the injury from the proceeds of any claim (recovery is limited to medical assistance received as a result of the accident or injury if the 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 517.012. There are several unsettled issues concerning the amount the state has a right to recover. See, 42 USC § 1396a(a)(25) and § 1396p and cases cited thereunder; statute amended eff. Oct. 1, 2014.</p> <p>Estate recovery: Subject to some limitations, MassHealth has the right to recover from the beneficiary’s probate estate the medical benefits provided to a person age 55 or older and medical benefits for institutionalized persons of any age. 130 C.M.R. § § 501.013, 515.011.</p>

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<p>costs.</p> <p>SSI, TAFDC & EAEDC cash recipients automatically receive MassHealth. Non-cash recipients must meet MassHealth eligibility criteria.</p> <p>Buy-In programs pay Part B premiums & certain other costs for Medicare beneficiaries.</p>	<p>disabled adult under 65 or disabled working adult of any age, being the parent/caretaker relative of a child under 19, being HIV+, having breast or cervical cancer or being an adult under 65 not otherwise eligible for Medicare or MassHealth do not have an asset test. For damage awards or settlement received after Jan. 1, 2014, only the taxable amount will be counted in the month of receipt for those without an asset test. 130 CMR §§ 506.002-506.004; 506.007.</p> <p>MassHealth programs with an asset test: Persons who are eligible based on being age 65 and older, living in a nursing home or other long term care facility, or receiving certain home & community based services as an alternative to institutional care have an asset test. They are not eligible for any month in which countable resources exceed the following amounts: · \$2,000 for individual; \$3,000 for couple. 130 C.M.R. § 520.003.</p> <p>Certain assets do not count such as proceeds for the repair or replacement of an asset which do not count for 9 months from receipt. 130 C.M.R. § 520.007-520.009.</p> <p>There are additional asset rules specific to the nursing facility/institutional context.</p> <p>There is a higher Asset limit for Buy-In programs for Medicare beneficiaries: \$7,160 for individual; \$10,750 for</p>	<p>award or settlement. 130 C.M.R. §§ 520.021-520.024 (trusts). 130 C.M.R. § 520.007(J) (annuities).</p> <p>Disqualification periods after transfer of assets Certain transfers for less than fair market value (and certain transfers to trusts or annuity purchases) are disqualifying if made within a 60 month “look back period” from the time a person needs a nursing facility level of care and applies for MassHealth to pay for facility care or for certain home and community based alternatives to facility care. 130 C.M.R. § 520.019.</p> <p>For a more detailed explanation of MassHealth asset rules, See <i>Estate Planning for the Aging or Incapacitated Client in Massachusetts</i> (MCLE, Inc. 4th ed. 2012 and supplements) .</p>	<p>Recovery of overpayments: If treating a lump sum as income made a beneficiary ineligible in the month of receipt, the agency may have a right to recover an overpayment for that month. However, it generally only seeks recoupment in those cases where the beneficiary is making a cash payment or receiving a cash reimbursement. 130 C.M.R. §§ 501.012; 515.010.</p> <p>Health Insurance Connector (“Obamacare”) . Sometimes clients enrolled in managed care do not know if they are enrolled in MassHealth or in the Connector –either agency can supply this information In the Connector, there is no asset test, but subsidized coverage is based on annual income not monthly income like MassHealth. There is no lump sum rule in the Connector. The taxable amount of a damage award (or cancellation of a debt that is taxable as income will be counted in determining annual income. 26 C.F.R. 1.36B. . In 2014, the Connector subsidized program called Commonwealth Care is ending and being replaced by a similar program called ConnectorCare or by Advanced Premium Tax Credits.</p>

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	couple (2014). 130 C.M.R. §§ 519.010-519.011.		
Federal public housing, Section 8 (tenant-based)	<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. Some exceptions. <p>24 C.F.R. § 5.603 (definition of net family assets); 24 C.F.R. § 5.609(b)(3).</p> <p>Note: Different rules apply to Cambridge Housing Authority programs and most of the DHCD vouchers administered by regional non-profits due to their “Moving to Work” authority.</p>	<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). Damages might be counted as income if placed in a trust and distributions made. 24 C.F.R. 5.603 (definition of net family asset)</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 <i>per se</i> income limits, but tenant with a zero subsidy (they pay all the rent) for 180 consecutive days will lose his/her tenant-based housing subsidy. 24 C.F.R. § 982.455.
State public or state subsidized housing State public housing, Mass. Rental Voucher Program (MRVP), and Alternative Housing Voucher Program (AHVP)	<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>For admission: 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 the consideration received 760 C.M.R. § 5.06(1) and §49.03(1)(d)(5). 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 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 (AMI) as of August in the most recent even numbered year. On Aug. 9, 2012, DHCD issued AMI limits for use from 8/9/12 until 8/14. 760 C.M.R. § 5.06(1) - Existing tenants: Households remain eligible until

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	<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). 		<p>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)</p> <ul style="list-style-type: none"> · AHVP: <ul style="list-style-type: none"> – Applicants: Same as State public housing. – Existing tenants: No gross income limit. Tenant loses eligibility if receives a zero subsidy for 90 consecutive days. 760 C.M.R. § 5.06(4) · MRVP <ul style="list-style-type: none"> – Applicants and Existing Tenants: Effective July 1, 2013 net income cannot exceed 50% Area Median Income (MRVP Notice 2013-02). For existing tenants, if net income exceeds the 50% of Area Median Income for 90 days, then lose subsidy. 760 C.M.R. § 49.03 (1)(b) and (c).
<p>Medicare</p> <p>Because Medicare is not need based, but rather an insurance program, cash settlements and damages usually do not have any effect on coverage. However, there are instances where issues need to be addressed.</p> <p>Regulations relating to Medicare Secondary Payments can be found at 42 USC 1395y(b) [§1862(b) of the Social Security Act) and at 42 CFR 411.</p>		<p>For Medicare beneficiaries, Medicare is usually the primary insurer (they pay first on claims). In situations involving workers' compensation and no-fault or liability insurance claims, however, Medicare is the secondary insurer, and sometimes coverage has to be coordinated.</p>	<p>In workers' compensation claims, if there is a delay (typically 120 days or longer) in the insurer making a determination for payment, Medicare may make a conditional payment. If your claim is subsequently settled, you or your attorney need to contact Medicare's Benefits Coordination & Recovery Center (BCRC)—toll free 1-855-798-2627 to be sure that Medicare's conditional payments are repaid as part of a settlement or judgment.</p> <p>Sometimes the settlement of a worker's compensation claim sets aside funds for future medical and prescription drug expenses related to the injury. If you are a Medicare beneficiary, you or your attorney should consider setting up a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) for depositing those funds. You need to submit a proposed WCMSA to the BCRC at: WCMSA Proposal/Final Settlement, P.O. Box 138899, Oklahoma City, OK 73113-8899.</p> <p>If your workers' compensation claim is denied, proof of the denial should be provided to Medicare, and Medicare will pay Medicare covered items and services.</p> <p>In no-fault and liability claims, Medicare may make conditional payments if liability is disputed. If they do, and you subsequently get a settlement, award or other payment</p>

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			<p>from the insurance company, you are responsible for making sure Medicare is reimbursed for their conditional payment. Again, the BCRC should be contacted and kept informed whenever any conditional Medicare payments are made. If you have questions about liability or payment responsibility, you or your lawyer should contact the BCRC.</p>