THE "OTHER" NEEDS BASED GOVERNMENT BENEFITS

Food Stamps
TANF
Subsidized Housing
General Assistance
QMB
State Psychiatric Hospital Care

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I. Introduction

Trustees and attorneys drafting special needs trusts need to keep in mind the effect of a personal injury settlement and trust distributions on all needs based government benefits received by the beneficiary or other household members. The most common benefits for disabled individuals are SSI or SSDI for income and Medicaid and Medicare for health benefits. In addition to those income and medical benefits the beneficiary may be receiving food stamps or subsidized housing. The beneficiary may be receiving General Assistance while an SSI disability determination is pending or may be receiving Veterans pension benefits. There may be other low income members of the beneficiary's household who are receiving TANF for minor children.

The following is a summary of some of the most common needs based government benefits available to low income, disabled and elderly individuals. These materials focus specifically on how a trust or lump sum personal injury settlement may affect eligibility for benefits. Unlike SSI and Medicaid, many of these other needs based benefit programs will vary substantially from state to state.

II. Food Stamps (SNAP)

A. Who Administers the Food Stamp Program?

As of October of 2008 the Food Stamp Program (FSP) is now known as the Supplemental Nutrition Assistance Program or SNAP. SNAP is administered by the U.S. Department of Agriculture (USDA). Regulations are promulgated by USDA at 7 C.F.R. 271 et seq. Deductions, income limits and benefit levels are revised annually on October 1. These figures are published on the web site for USDA's Food and Nutrition Services (FNS), the agency within USDA that administers the FSP. Even though the FSP is regulated by FNS, there are parts of the program that allow state variation. There is less state by state variation than the TANF program, however. In each state the state welfare agency administers the program. The state can delegate administration to city or county governments.

The FNS web site at http://www.snap-step1.usda.gov/fns/. has a calculator program that allows you to calculate the food stamp benefit amount for a family in your state.

B. What Is SNAP?

The former food stamp program, now known as SNAP, is a program to help low income individuals pay for food. Recipients no longer receive actual coupons and instead are given a debit card to pay for allowed purchases. This is referred to as an electronic benefits transfer or EBT. Most grocery stores are set up to process EBT benefits. The EBT card cannot be used for alcohol, tobacco, soap, paper products, pet food, hot food that is ready to eat or other non-food items. SNAP can be used to pay for "Meals-on-Wheels." States cannot charge sales tax on items purchased with a SNAP card.

C. SNAP Household

Unlike some other government benefit programs, SNAP benefits are issued to a household (7 C.F.R. 273.1(a). A household can be a person living alone or a group of people who live together and purchase and prepare meals together. There can be more than one food stamp household under the same roof. Spouses, minors living under parental control of an adult in the home (other than foster children), and parents and their children under age 22 will be considered to be in the same food stamp household if they live together even if they do not prepare and purchase their meals together.

D. Definition of Elderly or Disabled Applicant

SNAP has its own definition of who is considered elderly or disabled for purposes of the program rules. Anyone 60 years or older is considered to be "elderly." A person is "disabled" if receiving SSI or SSDI based upon disability, disability related Medicaid, GA assistance pending approval of SSI, public employment disability pension, Railroad Retirement disability pension, and certain Veterans disability benefits.

E. Resource Eligibility

1. Categorical Eligibility - If *everyone* in the household is receiving SSI or Temporary Assistance to Needy Families (TANF) the household will automatically be eligible for SNAP regardless of assets or income (categorically eligible). 7 CFR 273.2(j)(2) and (4). Some states also provide that General Assistance recipients will be categorically eligible for SNAP. States can elect an option to make the entire household eligible if only one family member is receiving TANF or SSI. The state of California does not provide SNAP benefits to its SSI recipients because the value of food is included in the SSI benefit amount (called a cash-out).

2. Non-Categorical Eligibility – Resources - For households that are not categorically eligible for SNAP benefits the household must qualify based upon income and resources. If at least one member of the household is sixty or older or is receiving disability income benefits the countable resources for the family must be under **$3,000.** If there is no disabled or elderly member of the household the countable resources must be below **$2,000.**

3. Exempt Resources – 7 CFR 273.8 - The following resources are disregarded in determining if the household is eligible for food stamps:

a. Residence of the applicant and land it sits on (7 C.F.R. §273.8(e)(1);

b. Personal belongings and household effects;

c. One burial plot per household member and $1,500 of the value of a burial contract (one per household member);

d. Cash value of life insurance and pension funds;

e. Personal property needed to earn income;

f. Any resource of a TANF or SSI recipient (7 C.F.R. §273.8(e)(17);

g. In most states, at least one car (24 states exclude all vehicles);

h. Earned Income Tax Credit (EITC) excluded for up to 12 months;

i. Cash value of any life insurance policy;

j. Cash value of a pension fund (7 C.F.R. §273.8(e)(2)), but not including IRA or KEOGH plans;

k. Property used to make money such as a rental house or land the household farms (7 C.F.R. §273.8(e)(4) and (5));

l. Resources owned by a person not included in the food stamp household (e.g. boarder or live-in attendant) unless the person is not eligible for certain reasons (e.g. felony drug conviction) ;

m. In some cases, money in a trust (discussed below);

n. Other resources that may be exempt under state variations. States can elect to use the TANF or Medicaid resource rules if more liberal

4. Vehicle as Exempt Resource - Twenty-four states and the District of Columbia exclude **all** household vehicles regardless of value. Another fifteen states and Guam exclude one vehicle *regardless of value*. In the remaining states some adopt the TANF vehicle exclusion and the others use an equity value in the car of $4,650. Some vehicles, such as a vehicle essential for a disabled household member or ineligible household member, are excluded. 7 C.F.R. 273.8(e)(3)(i)(E).

F. Trust as a Countable Resource

The SNAP program has trust rules that are not the same as the SSI and Medicaid trust rules. A trust is an excluded resource if it is not likely to end during the household's food stamp certification period and the household cannot revoke the trust or change the beneficiary. The trustee must be someone other than a household member. The trust must not invest in businesses or property under the control of a household member. The trust funds must only be used for educational or medical expenses, unless someone outside of the household has set up the trust and funded it. 7 C.F.R. §273.8(e)(8). *Dean v. Butz*, 428 F.Supp. 477 (D. HI 1977); *Oddo v. Blum*, 442 N.Y.S.2d 23 (App. Div. 1981); *Moloshok v. Blum*, N.Y.S. 2d 331 (Sup. Ct. 1981). States vary on whether they use the above trust rules for SNAP or instead use the trust rules that would apply to TANF or Medicaid.

If individuals are disabled *and are on SSI* they are categorically eligible for SNAP. If they fund a self settled special needs trust under 42 U.S.C. §1396p(d)(4)(A), that is approved by the Social Security Administration, they should remain categorically eligible for SNAP even though assets were transferred to a grantor SNT. If the disabled person is on SSDI, not SSI, and is not categorically eligible for SNAP, then the SNT may create eligibility problems if the trustee is someone in the food stamp household or if disbursements from the trust is not limited to educational or medical expenses. Many states do not appear to enforce this rule if a disabled person who is not on SSI establishes a grantor SNT. This may be because states can elect to use the TANF or Medicaid resource rules if it would make more families eligible.

G. Transfer of Assets to Qualify

If an individual gives away a resource in order to qualify for SNAP then there is a one year maximum disqualification period for the program. There is no penalty if an exempt resource (e.g. home or vehicle) is given away. **If a person is not on food stamps when he or she gives away a resource**

there is no penalty period if the person waits at least 3 months before applying. (7 C.F.R. §283.8(h)(1)).

When the penalty period applies, take the amount given away, add other non-exempt resources of the household, and subtract the applicable non-exempt resource limit ($3,000 or $2,000). The remainder determines the number of months the household will be ineligible for food stamps:

Under $250	1 month
$250 - $999	3 months
$1,000 - $2,999	6 months
$3,000 - $4,999	9 months
$5,000 or more	12 months

Example: Tom, a single person household, gets a small settlement of $5,000. He has $50 in the bank. In order to keep his food stamp eligibility he gives the money to his brother. He is not disabled or elderly so subtract the $2,000 applicable resource limit and add his $50 of other non-exempt resources. The remaining $3,050 will disqualify him from food stamps for 9 months. If Tom was not receiving food stamps when he received the settlement, he could give the money to his brother and apply for food stamps after 3 months.

H. Income

1. Categorical Eligibility - Again, if *everyone* in the household is receiving SSI or Temporary Assistance to Needy Families (TANF) the household will categorically be eligible for SNAP regardless of income.

2. Non-Categorical Eligibility – Income - To qualify for SNAP the household income must be below the allowed amount. 7 CFR 272.9. The value of the SNAP allotted to the household will vary depending upon the net income available to the household. For households with no elderly or disabled member, *gross* income must be below 130% of the Federal Poverty Level (FPL). For all food stamp households *net* income must be below 100% of the FPL to qualify for SNAP unless everyone in the household is receiving either SSI or TANF cash assistance.

3. Disregarded Income - Federal regulations disregard the following income in determining if the net household income is below the allowed amount:

a. Benefits that are not cash such as free food, public housing, WIC benefits;

b. Third party supplementation when some else pays a bill for the household;

c. Earnings of a child under 18 who is at least a ½ time student;

d. Non-recurring small income of less than $30 per quarter;

e. Donations from charities of less than $300 per quarter;

f. Loans except student loans that are not due until graduation;

g. Student loans under Title IV of Higher Education Act such as Pell Grants;

h. Work expenses or reimbursement;

i. Lump sum payments that are not regular such as EITC, tax refund, retroactive government benefits;

j. Work or business expenses if self-employed;

k. Child support payments required by court order to a non-household member;

4. Deductions from Income

The following deductions are allowed from gross countable income:

a. A standard deduction depending upon household size, typically $134. The deduction is higher for households with more than 4 members and households in Hawaii, Alaska, and Guam;

b. 20% of earned income;

c. Child care deduction;

d. Child support owed to another non-household member;

e. Medical expenses for elder and disabled;

f. Excess shelter expenses up to $400.

5. Structured Settlements - A structured settlement paid directly to a SNAP household member is "income" for purposes of qualifying for benefits. The monthly payment could disqualify the household if the monthly benefit amount puts the household above the gross household income limit. Even if the structure does not put the household above the gross income limit, the monthly payments could reduce or eliminate the amount of food stamps for the household because household income determines the allotment amount.

I. Citizenship

1. <u>Citizenship Requirement for SNAP</u> - SNAP beneficiaries must be citizens or a "qualified immigrant." A qualified immigrant means one of the following:

a. legal permanent status (green card holder);

b. refugee or asylee.

Undocumented immigrants are not qualified immigrants and are not eligible for SNAP. If an immigrant is a "qualified" immigrant, they must fit into one of the following categories to qualify for SNAP:

a. A qualified immigrant in the U.S. for five years or more; or

b. Under age 18; or

c. Disabled; or

d. Veteran or current member of U.S. military or spouse or child of military member or veteran; or

e. Lawful permanent resident who has worked at least 40 quarters in US (or parent or spouse died); or

f. A member of Hmong or Laotian tribe that fought with U.S. military during Vietnam War (or spouse or child of such member); or

g. A person born before August 22, 1931 and lawfully residing in U.S. on August 22, 1996; or

h. One of the following immigration statuses: refugee, asylee, granted withholding from deportation, Cuban or Haitian entrant, victim of trafficking in persons, Amerasian, or a legal permanent resident who used to have one of these immigration statuses.

2. Citizen Children of Undocumented Parents - All children born in the U.S. are U.S. citizens and eligible for SNAP if they are in a low income household. The undocumented parents cannot be recipients of SNAP but they can apply for their children. The food program agency cannot require the parents to state their immigration status or provide a social security number. The nonqualified parents' resources will be counted; state option as to whether to count all of the parents' income and deductions.

J. Other Program Requirements

1. Social Security Number - All members of the SNAP household must have a social security number.

2. Work Requirements - Unlike most of the SNAP rules, the work requirements will vary in each state. The basic SNAP work requirements are:

- Adults must register for work when applying for food stamps;
- Some states require adults to participate in an employment and training program or workfare program;
- Adults must accept a job if offered by the food stamp office unless it is unsuitable (7 C.F.R. 273.7(a)(1)(v) and (vi);
- Adults may not voluntarily quit work where working 30 hours a week or more or reduce hours to less than 30 per week without good cause.

3. Exemption from Work Requirements - All household members must comply with the SNAP work rules unless exempt under the following categories:

- Under 18 or attending school or a training program at least part-time;

- Age 60 or older;
- Physical or mental problems that make member "unfit" to work;
- Caring for a child under 6 or another household member who cannot care for him/herself;
- Already working at least 30 hours per week or make at least $154.50 per week gross income;
- Receive TANF and are complying with applicable TANF work rules;
- Receive Unemployment Compensation;
- In substance abuse treatment program;
- Migrant worker under contract to work in next 30 days;
- Other exemptions adopted by your state.

4. Limited Benefits if Able Bodied/No Dependents - If a person is unemployed, has no dependents and is between age 18 and 50 he or she may only qualify for food stamps three months out of every 3 year period. These people are referred to as **ABAWD** (able bodied adult without dependents). The limitation of 3 months of food stamps every three years does not apply if a person is in one of the above categories or is pregnant. States can elect to cut off food stamps if a parent fails to comply with TANF rules. States can waive the ABAWD 3 month limit in geographic areas with high unemployment. Under the American Recovery and Reinvestment Act of 2009 states that accept SNAP money are to apply the ABAWD time limits except in limited circumstances.

K. Benefit Amount

The amount of food stamps a household will receive depends upon the following:

- Number of people in the household
- Remaining net income after deductions

The amount of food stamps for the household will be the difference between the maximum food stamp amount for the number of people in the household and 30% of net income. In other words, for every $10 dollars of countable income the household will lose $3 of food stamps. If there is no net income after subtracting allowed deductions the household will receive the maximum food stamp amount for that family size. A work sheet and charts are attached to calculate the amount of food stamps a family will receive.

III. Temporary Assistance to Needy Families (TANF)

A. Program Summary

In 1935 the Aid to Dependant Children (ADC) program was enacted by Congress to help states provide a small amount of income to make it possible for poor children without a parent's support to live at home. The program became Aid to **Families** with Dependent Children (AFDC) when Congress extended coverage to the child's parent or other caretaker relative. Until the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), states had to comply with federal law in the administration of the AFDC program. In particular, they had to provide benefits to everyone who met federal eligibility rules. However, PRWORA converted AFDC to a block grant program, eliminating the guarantee that all children meeting federal eligibility standards will get assistance.

The family benefit provided after the PRWORA is generally referred to as Temporary Assistance to Needy Families (TANF). There are substantial state-to-state variations in the

TANF program because of this block grant structure. PRWORA, with very limited exceptions, requires the states to limit the use of federal funds to families that have received assistance for less than five years. Work requirements are also imposed on families receiving assistance.

Though states must spend state funds on programs for needy families in order to qualify for the federal block grant, they can use the required state expenditures to provide benefits for families that are not eligible for benefits under the federal block grant. Thus, the states can use their funds for families that have reached the federal five year limit, immigrants excluded by PRWORA, and families that the state wants to exempt from strict federal work requirements.

Most states, after the passage of the PRWORA, adopted the rules of the existing AFDC program superimposing the PRWORA rules. Some imposed those rules strictly while others allowed, through the state funds appropriated for the program, for the continued eligibility of persons not otherwise eligible for PRWORA payments. Accordingly, the rules of the TANF programs vary from state to state and there are very few federal regulations for the program.

B. TANF Benefits

1. Cash Assistance - TANF provides cash assistance to eligible families. The amount of assistance varies from state to state. TANF is paid to eligible household members. The benefit supplements other household income up to the maximum benefit level. The benefit amount depends upon the number of eligible household members and the method adopted by the state. In Washington state, a TANF family of 3 will receive a cash assistance grant of $562 per month plus food stamps.

2. Child Care - Many states provide child care subsidies while a custodial parent is working or participating in a job training program. This benefit is often more valuable than the

cash benefit to the family. A working parent may have too much income to qualify for the cash benefit but may still qualify for the child care benefit.

3. Medicaid - In most if not all states, all members of the TANF household have Medicaid coverage for health care.

C. Work Requirement

With few exceptions, the TANF program requires that the custodial parent work or get job training while receiving the income benefit. States have discretion in deciding who will be exempt from this work requirement but in most cases only disabled parents or parents of very young children are exempt.

D. Time Limit on Benefits

With few exceptions the TANF benefit is limited to a maximum time period of five years.

E. Income Eligibility for TANF

TANF is a needs based program based upon the family's income and assets. The income eligibility rules vary with each state. Here are some state variations on how income is treated.

1. In most states, a portion of earned income is disregarded leaving net income to be counted.
2. In some states, the TANF benefit is determine by subtracting the net income from a state determined payment standard for the assistance unit of the appropriate size. This is sometimes referred to as the *income deficit.*
3. Some states impose a statutory maximum or the *income deficit*, whichever is less.
4. In some states the TANF benefit is a percentage of the *income deficit.* This is sometimes referred to as the *benefit reduction rate.*

5. States have discretion to establish criteria for what income is countable and what income is exempt. Income of all members of the assistance unit is taken into account. States may decide to deem income from a non-assistance unit member to the assistance unit. Income received from a structured personal injury settlement will probably be countable income if paid directly to the assistance unit member.

F. Asset Eligibility for TANF

States vary in terms of assets that are counted and assets that are exempt. All states exempt the family residence. States vary as to whether all household furnishings are exempt or only a certain dollar amount of furnishings is exempt. States vary in terms of whether there is a dollar limit on an exempt vehicle owned by the family. In addition to exempt assets the state will adopt a non-exempt asset limit which varies from $1,000 to $6,000 depending upon the state. If a TANF recipient is the beneficiary of a third party trust TANF will probably not count the trust as an asset in determining if the trustee has discretion in making distributions.

G. Non-Financial Eligibility Criteria

TANF eligibility is limited to families with children under a certain age and certain pregnant women. Recipients must meet certain citizenship criteria and must comply with work requirements unless they are exempted. Some states provide benefits to two parent families while other states do not. States may have additional requirements including school attendance and immunization and health screening compliance. Some states exclude former felons from the assistance unit.

H. TANF Assistance Unit

TANF pays benefits to members of the "assistance unit." Composition of the assistance will vary among states. Only members of the assistance unit will receive benefits but also the assets and income of the assistance unit will affect benefits for the entire unit. All states exclude an SSI child or parent from the TANF assistance unit. Some states include or exclude step parents. Some individuals are not members of the assistance unit but their assets and income are taken into account in determining eligibility for members of the assistance unit. For example, a non-citizen parent or a stepparent may not be a member of the assistance unit but their assets and income may affect eligibility. In most states the custodial parent is in the assistance unit unless excluded for citizenship issues but a parent can remove a child from the assistance unit if they choose to do so. This can be important if a child in the assistance unit is going to receive a settlement. States vary on whether a former felon can be included in the assistance unit.

I. Personal Injury Settlements, Trusts and TANF

1. Custodial Parent Receives Lump Sum - In most cases if the TANF parent receives a lump sum from a personal injury settlement the family will lose their TANF benefit because a household member has excess resources. The parent may be able to purchase an exempt resource and preserve eligibility (house, car, household furnishings). States will vary as to whether the lump sum is treated as income in the month of receipt or just as a resource in the month after receipt. If the custodial parent is on SSI and the lump sum is put into a special needs trust the settlement will not affect the children's TANF benefits because the parent is not in the TANF assistance unit. If a parent is not in the assistance unit but assets or income are deemed to the assistance unit then a lump sum will affect the TANF benefits for the assistance unit.

2. Child in Assistance Unit Receives Lump Sum - If a non-disabled child receives a lump sum then it may or may not affect TANF benefits for the child and other household

members. Assets of all members of the assistance unit affect benefits. In some states if the settlement is held in a court supervised trust and unavailable until the child is eighteen, the lump sum will not affect benefits. In other states the parent can remove that child from the assistance unit so that the lump sum will not hurt the TANF benefits for the other family members and only the child with the settlement will lose benefits.

3. Structured Settlements - A structured settlement will be treated as income of the plaintiff. If the plaintiff is in the assistance unit the structure will reduce or eliminate TANF for all members of the unit. Again, if the recipient of the structure can be voluntarily removed from the assistance unit it would protect benefits for the other household members. If the structure is paid to a court supervised trust for a minor your state may disregard the payments. If the structure is paid to a special needs trust your state may disregard the payments.

4. Transfer of Asset Penalty - If a member of the assistance unit is going to receive a lump sum, can the asset be transferred outside of the assistance unit to preserve eligibility for TANF? There is no uniform, federal transfer of asset penalty for TANF. States vary on the length of the penalty and exceptions to a transfer penalty. In Washington, the transfer penalty for TANF is two years but the state welfare agency usually does not impose this penalty if there is a court established settlement trust to protect a minor child who is a member of the assistance unit.

5. Prospective Budgeting - The predecessor to TANF, the AFDC program, had a draconian rule that if a recipient received a settlement while still on AFDC benefits the lump sum was budgeted prospectively, often disqualifying a recipient for several years. If the AFDC recipient terminated benefits before receiving a lump sum there would be no budgeting. TANF does not require this rule but you should check to see if your state still has this rule. If so, it is critical for a TANF recipient to terminate benefits before receiving a lump sum.

6. Trust to Protect TANF Benefits Unlike SSI and Medicaid recipients there is no specific TANF trust to shelter a lump sum and preserve eligibility for benefits. Some states will disregard a trust established by the court for the settlement proceeds of a minor child in the assistance unit if the parent is not the trustee and the trustee cannot access the trust assets without a court order.

IV. Subsidized Housing

A. Program Summary

Some subsidized housing is owned and operated by local housing authorities. Another rent subsidy program is the Section 8 Program which gives rent vouchers to tenants to subsidize their rent with a private landlord. The rent subsidy programs are administered at the federal level by the Department of Housing and Urban Development. Federal regulations are found at 24 C.F.R. 5.601 et seq. The HUD Occupancy Manual is also a helpful source for the subsidized housing rules, http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/index.cfm.

Tenants who are enrolled in the subsidized housing programs pay about 30 percent of their income for rent, while the rest of the rent is paid with federal money. Many of the rent subsidy benefits are administered by local, public housing authorities (PHAs). The numbers of units a local housing authority can subsidize under its Section 8 programs is determined by Congressional funding. Subsidized housing is not an entitlement benefit and in most states the demand for rent subsidies far exceeds the available subsidies.

For the rent voucher program, landlords must charge a fair market rent (FMR) which is determined by HUD. The landlord cannot charge a Section 8 tenant more than FMR, even if the owner does so for non-Section 8 tenants in similar units. The tenant pays their portion of the rent, based upon income, to the landlord and the local housing authority will pay the balance of the FMR directly to the landlord.

B. How Assets Affect Eligibility

Unlike other government benefit programs, there is no asset limit for the rent subsidy programs. Income generated from assets that exceeds $5,000 will be counted in calculating the tenant's rent. 24 C.F.R. §5.603. Assets that are transferred for less than fair market value can affect a tenant's rent for up to two years. This can include assets transferred to a special needs trust. Income can be imputed from the transferred assets by taking 2% of the transferred assets. So, for example if $200,000 is transferred by the tenant to a special needs trust income will be imputed of 2% or $4,000 per year. This imputed income will be added to the tenant's other income in calculating rent.

Receipt of a lump sum, such as a law suit settlement, is not considered income in the month of receipt and the lump sum is not annualized. The lump sum is an asset, and there is no asset limit affecting tenant's eligibility. Tenant Occupancy Handbook, 5-6 P.

C. How Income Affects Tenant's Rent

The tenant's rent is calculated at 30% of the tenant's countable income. Income is defined in 24 C.F.R. Part 5.

1. Whose Income Is Counted. The rent is based on income received by household members with a few exclusions. Earned income from minors is not counted but child support and government benefits paid on behalf of a minor is counted. Some earnings of a disabled

household member can be excluded for a limited time period. Income of family members temporarily absent from the home is counted.

2. Income. Income is defined in 24 C.F.R. §5.609(b) to include most monthly or periodic payments including wages, retirement and disability income, interest and dividend income, child support and alimony, regular contributions from others, TANF, and unemployment payments.

3. Income Generated from Family Assets. In calculating income for purposes of determining rent, the subsidy programs include income derived from *net family assets* in excess of $5,000 which shall be the greater of *(1) actual* income derived from all net family assets or (2) *imputed* income based on the current passbook savings rate determined by HUD (typically a rate of 2%). So, for example, the fact that a tenant has a CD worth $100,000 does not create an asset eligibility problem because there is no asset limit for subsidized housing. The interest income earned on $95,000 of the CD will be added to other tenant income to calculate the rent or alternatively the subsidy program may impute interest income of 2% and annualize that as additional income (2% of $95,000 would be additional income of $158 per month and 30% of that would result in a rent increase of $47 per month).

4. Trust Income Included in Family Assets. Assets held in an irrevocable trust that is not under the control of a tenant family member will not be included in the family assets used to calculate rent discussed above. This is true whether the trust is a first party or a third party trust. So for example, if a family member is the beneficiary of a third party irrevocable trust that has $200,000 of assets, the process discussed above to count either actual interest income or imputed

income for purposes of the rent calculation does not apply as long as no family member is the trustee.

5. Income Distributed from a Trust. Cash distributed from a trust to a tenant family member will be included in the rent calculation.

6. Structured Settlement. A structured settlement paid directly to a tenant family member is income that will affect the rent calculation.

7. Distributions from Trust to Tenant. Even though the trust corpus may not be counted as an asset in determining rent (actual or imputed interest on family assets), distributions from the trust may be treated as income even when the distribution is not cash. Distributions that are regular and recurring are counted as income in doing the rent calculation. So, for example, if the trust pays the tenant's internet and cell phone bill every month in the amount of $100, the program will treat that as a regular payment and add that amount to the tenant's other income to calculate the 30% rent amount.

8. Imputed Income from Transfer of Assets. If the tenant transfers assets for less than fair market value, including transfers to an irrevocable grantor special needs trust, that will affect the tenant's rent calculation for two years. The imputed passbook savings rate set by HUD will be used to impute income to the tenant for a two year period. So, if a tenant receives $200,000 which is transferred to a grantor special needs trust, and assuming the imputed passbook savings rate is 2%, the imputed income will be $4,000 for a 2 year period. That will result in additional imputed income for 2 years of $333 per month and 30% of that imputed income will become increased rent for that two year period.

D. Excluded Income in Rent Calculation. 24 C.F.R. §5.609(c). Excluded income in the rent calculation includes but is not limited to the following:

1. Lump Sum. A lump sum from an inheritance, law suit settlement or insurance payments is excluded from family assets in calculating actual or imputed assets that exceed $5,000. Some workers compensation payments are excluded.

2. Temporary Income. Temporary, sporadic, or nonrecurring income (including gifts) is not treated as income for purposes of any rent calculation.

3. Income of Full Time Students. Earned income of full time adult students above $480 per month is excluded in the rent calculation.

4. Adjustments to Gross Income. For elderly or disabled households, there is a $400 deduction from annual household income. Medical expenses in excess of 3% of gross income can be deducted for elderly and disabled households. Households can deduct child care expenses from gross income in some cases.

V. General Assistance

A. Program Summary. Many states allocate state welfare funds to establish benefit programs designed to help people who fall through the cracks for the federal poverty programs including TANF, SSI and Medicaid. These programs are typically referred to as General Assistance or General Relief but many states have different names for their programs. Eligibility rules and specific program coverage will vary state by state and even within a state. Benefits can include income and medical benefit for disabled people, unemployed healthy adults, and families with dependents who are waiting for an SSI/SSDI disability determination or who are disqualified from receiving TANF for various reasons. Some states also provide a housing subsidy or utility subsidy.

B. SSI Reimbursement for GA. Most GA programs that provide income benefits while SSI/SSDI claims are pending have a requirement that the program has an absolute right to reimbursement from retroactive benefits paid by the Social Security Administration, up to the amount of GA income benefits paid by the state.

C. Eligibility Criteria. The General Assistance programs are need based. The eligibility rules are almost always more restrictive than the TANF/SSI/Medicaid eligibility rules and vary with each state. You need to find out your state's asset limits for GA, including exempt assets, income disregards if any, and how receipt of a settlement by one member of the family will affect the eligibility for others in the assistance unit.

D. Receipt of Lump Sum Settlement. In almost all cases a recipient of General Assistance will lose eligibility if he or she receives a personal injury settlement. You will need to know if your GA program has any exempt resources such as a car or home. If so, there may be an option to purchase exempt resources to preserve eligibility for benefits. You will need to find out if your state GA program has an option to transfer assets to a special needs trust to preserve eligibility for GA. Your state may have a transfer of assets penalty period if assets are transferred in order to preserve eligibility for benefits. If a client is on GA while waiting for approval of an application for SSI benefits, he or she may need a special needs trust to preserve eligibility for SSI while the application is pending but the trust may not preserve eligibility for GA benefits in the interim.

E. Subrogation and General Assistance. If your state has a general assistance medical program for people not eligible for Medicaid, the state probably applies its Medicaid subrogation procedures to cases involving General Assistance medical payments. The state may take the position, though, that the *Ahlborn* limitations on subrogation for the Medicaid program do not apply and the state is entitled to 100% recovery of subrogation claims.

VI. State Psychiatric Hospital Care

The Medicaid program does not cover psychiatric hospital care for mental illness for patients over 21 and under 65. It is an optional Medicaid benefit for states to cover psychiatric hospital care for patients under 22 or over 64. Medicare has an in-patient psychiatric hospital benefit but it has a lifetime cap of 190 days. Many states have state funded programs that pay for psychiatric hospital care for individuals not covered by Medicaid or Medicare.

It is important to know for your state what psychiatric hospital care services are provided, which programs pay for that care and the asset and income limits. How is a lump sum settlement treated in terms of continuing eligibility? Does the program recognize a grantor special needs trust as an option to preserve eligibility for the program? Is there a transfer of assets penalty if a lump sum is transferred in order to qualify for benefits?

VII. Qualified Medicare Beneficiaries (QMB)

A. Program Summary

The QMB program is a Medicaid program. Recipients have their Medicare premium paid by Medicaid so the amount is not deducted from their social security check. This saves the recipient at least $96.40 per month and $110.50 for some. If the recipient is not automatically eligible for Part A of Medicare the QMB program can pay those premiums as well which can be as high as $461 per month. QMB also pays Medicare co-payments and deductibles under Part A and Part B of Medicare. QMB automatically enrolls the recipient in the Medicare Part D Low Income Subsidy program (Extra Help) that covers the Part D premium and co-payments otherwise applicable for Part D insurance.

B. Eligibility Requirements

1. Applicant's income must be below 100% of the FPL. For a single person in 2010 that amount is $903 per month. Most states also allow a $20 disregard of income to determine eligibility.

2. Assets must be below $6,600 for a single person or $9,900 for a couple. The residence and one car are disregarded in determining eligibility. CN does not have an asset limit for QMB.

3. Applicant must be eligible for Part A of Medicare. If an applicant is not automatically eligible for Part A of Medicare they can conditionally enroll in Part A to qualify for QMB even if they cannot continue to afford the premiums. QMB will then pay both the Part A and Part B premiums.

C. Affect of Settlement on QMB

A lump sum settlement may put the beneficiary above the asset limit. A structured settlement will create monthly income that may put the beneficiary above 100% of the FPL. QMB is a non-institutional Medicaid program so there is no transfer penalty if a lump sum is transferred to another person to protect benefits.