

**Public Benefits Resource Rules
and the Impact of Lump Sum Receipt
on Benefits Eligibility**

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by

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Table of Contents

I.	Introduction and Objectives.....	2
II.	Temporary Assistance	2
III.	Supplemental Nutrition Assistance Program (SNAP).....	13
IV.	Other Benefit Programs	17
	A. HEAP.....	17
	B. SCRIE/DRIE	19
	C. Subsidized Housing.....	23
	D. Subsidized Child Care	30
V.	Medicaid	31
VI.	Supplemental Security Income.....	47
VII.	Lump Sum Receipt and Benefits Planning—Case Scenarios	56

Appendices:

- A. Letter from Seymour Katz, Director, Bureau of Income Support to Cesar A. Perales, Commissioner (Aug. 20, 1984)
- B. “Dear Commissioner” Letter (Michael Dowling, June 7, 1985).
- C. *Stewart v. Roberts*, — AD3d —, 2018 NY Slip Op 04609 (Third Dep’t 2018).
- D. HRA Memorandum to All Liens and Recovery Staff (Mar. 16, 2017) and Informational Insert (*Garcia v. Roberts*).
- E. NYCHA Management Manual, Chapter III (Revised 3/8/16), selected pages.
- F. GIS 18 MA/004: 2018 Federal Poverty Levels—MAGI & Non-MAGI
- G. SSI Income and Resource Charts

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I. Introduction and Objectives

This presentation will provide a brief overview of resource rules for the most common public benefits programs in New York State. We will discuss how lump sum awards affect public benefits eligibility, provide screening tools to assist with lump sum case planning, and discuss strategies to mitigate the impact of lump sum awards on current and prospective public benefits eligibility.

II. Temporary Assistance

A. Statutes, Regulations and Policies – RESOURCE RULES

1. New York Social Services Law § 131-n and 18 NYCRR § 352.23 set out specific resource limits and list exempt resources.¹

New York Social Services Law § 131-a (1) states that only “available” resources can be considered when determining eligibility and degree of need. [*Stewart v. Roberts*, — AD3d —, 2018 NY Slip Op 04609 (Third Dep’t 2018) – car in which Plaintiff had no equity value could not be counted as a resource].

18 NYCRR § 352.23 states: Resources must be so used as to eliminate or reduce the need for public assistance, rehabilitate the client and conserve public funds through assignment and recovery. Applicants and recipients must generally be required to use available resources and to apply for and otherwise pursue potentially available resources.

Exempt and disregarded resources include:

- Basic maintenance items for day-to-day living—clothes, furniture, etc.;
- Home which is usual residence;
 - Local DSS can take a mortgage against the home to recover public assistance properly paid. SSL 106.
 - If homeowner refuses to sign a mortgage, only the needs of the homeowner will be removed from the public assistance grant. 18 NYCRR 352.27(a);

¹ 18 NYCRR § 352.22 lists additional “non-countable income and resources” which will not be covered here as they are not relevant to the “lump sum” rule discussed below.

- Local district must provide biennial statement of public assistance debt and any credits against such debts or amount of mortgage will be reduced by a credit of up to two years of public assistance paid. SSL 106(5); 15 ADM-05.²
- Cash and liquid or non-liquid resources up to \$2,000, or \$3,000 in households with 60+ member;
- Earned income tax credit and tax refunds, exempt as income in the month received and as resource for 12 months (OTDA 13 ADM 02);
- Up to \$4,650 in a separate bank account for sole purpose of purchasing a first or replacement vehicle to seek, obtain or maintain employment (current recipient only);
- Up to \$1,400 in a separate bank account for purpose of paying tuition at a two-year or four-year accredited post-secondary educational institution (current recipient only);
- One automobile, up to \$12,000 fair market value, beginning April 1, 2018, or other higher amount local social services district may adopt;
- One burial plot per household member;
- Bona fide funeral agreements up to a total of \$1,500 in equity value per household member;
- Funds in an individual development account funded with earned income, pursuant to Social Services Law § 358(5), 18 NYCRR § 352.21;
- Real property while household makes good faith effort to sell, for period of 6 months;
- Tangible personal property necessary for business or for employment purposes in accordance with department regulations.

2. 18 NYCRR § 352.16:

- When the terms of an award, the legislative intent of a government benefit, the rules of an organization paying a benefit,

² OTDA policy directives (Administrative Directives [ADMs], Informational Letters [INFs] and Local Commissioner's Letters [LCMs]) can be found on the OTDA website at: <http://otda.ny.gov/policy/directives>

the nature of a trust fund or the agreed upon intent of a friend, non-legally responsible relative, social agency or other organization limits the use of cash income, the social services official shall abide by such restriction, when verified. The restriction may limit the use of the income to a specified purpose or to a particular member or members of the household.

- OTDA has issued policy guidance, citing to this regulation, declaring the 529 educational plans are exempt from the temporary assistance resource limits. 15 LCM-15, question 6.1
- Grants or loans to undergraduate students for educational purposes are not considered as income or resources. Grants or loans to undergraduate or graduate students, that preclude use for current living costs, are not considered as income or resources. The language of the regulation appears more limiting than the language in the Temporary Assistance Sourcebook (TASB), which lists all loans and grants that are exempt. TASB, Ch. 18 § S, pp.568-69. See: <http://otda.ny.gov/programs/temporary-assistance/TASB.pdf> .
- Only the resources of those who are required to be in the public assistance household are counted. FH # 7597285K (NYC, 2/23/18)³ (Agency should have counseled household that 20 year old with a resource did not have to be part of a household).

B. Statutes, Regulations and Policies – LUMP SUM RULE

1. Social Services Law § 131-a(12) and 18 NYCRR § 352.29(h), treatment of income in excess of standard of need, describe the “lump sum penalty” rule for public assistance recipients:
 - a. Lump sum treated as income in the month received. When monthly income exceeds household’s needs because of receipt of non-recurring lump sum earned or unearned income, including:

³ Hearings dated on or after November, 2010 can be found in the OTDA decision archive, available at: <https://otda.ny.gov/hearings/search> Reliance on policy set forth in fair hearings is useful in subsequent litigation because when an administrative agency fails to conform to its precedent, it must provide a reasoned explanation (Matter of Richardson, 88 NY2d 35,40 (1996) Matter of Muhlstein, 55 AD3d 736, 738 (2d Dep’t 2008). “Unless such an explanation is furnished, a reviewing court will be unable to determine whether the agency has changed its prior interpretation of the law for valid reasons, or has simply overlooked or ignored its prior decision Absent such an explanation, failure to conform to agency precedent will, therefore, require reversal on the law as arbitrary.” Richardson at 40, quoting Matter of Charles A. Field Delivery Serv. [Roberts], 66 NY2d 516, 520 [1985].

- retirement, survivors', and disability insurance benefits or other retroactive monthly benefits; and
- payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and workers' compensation awards),

Except if lump sum income is earmarked and used for purpose for which it is paid (e.g., monies for previously incurred medical bills resulting from an accident or injury; funeral and burial costs; gift for a particular purpose [car repair](matter of T, FH # 2151432P (Onondaga Co., 7/11/94)⁴ and replacement or repair of resources),

Family will be ineligible for PA for a calculated period.

- b. Ineligibility period calculated by dividing the sum of the lump sum income and any other income received during the month, after applicable disregards, by household's standard of need.
- c. The period of ineligibility begins on the date of receipt of the lump sum. SSL § 131-a (12)(a). OTDA Temporary Assistance Source Book (TASB), Ch. 13, Sec. T.7 (Determining Length of Ineligibility) at 18-53. See also Letter from Seymour Katz, Director, Bureau of Income Support to Cesar A. Perales, Commissioner (Aug. 20, 1984), attached as Appendix A; OTDA 81-ADM-55 at 36. Matter of HW, FH # 46095745 (Nassau Co., 2/12/07). If the period expires before recipient gets notice of discontinuance, social services district can recoup as overpayment, but cannot discontinue.
- d. Ineligibility period may be shortened:
 - by excluding up to \$2,000 in cash and liquid or non-liquid resources
 - by expenditure or set-aside within 90 days on exempt resources listed in 352.23(b), i.e., car purchase, burial plot,

⁴ Selected fair hearing decisions, including many dated before November 2010 can be found on the Online Resource Center which is maintained by the Western New York Law Center and the Empire Justice Center. See: <http://onlineresources.wnyc.net/welcome.asp?index=Welcome> You must register to use this resource, but it is available to all who register.

funeral agreement, dedicated bank account for car or tuition,

- by recalculating ineligibility period based upon a new standard of need when an event occurs which, had the family been receiving assistance, would result in a change in the amount of assistance payable for such month; or
 - by recalculating the ineligibility period based on the actual amount of lump sum remaining when the lump sum or part of it is unavailable to the members of the family for reasons that were beyond their control.
 - Reasons beyond control of family include but are not limited to any event or circumstances which the family did not foresee or could not prevent, such as loss or theft of income or a life threatening circumstance;
 - by recalculating ineligibility period based on actual amount of lump sum remaining when family incurs, becomes responsible for, and pays medical expenses in the month of ineligibility; or
- e. If lump sum paid over to local district as recovery for past assistance granted, lump sum penalty rule does not apply. But lump sum amount exceeds amount of past assistance, ineligibility period calculation applies to remainder.

2. OTDA policy documents provide additional guidance on the treatment of lump sums:

Changes to lump sum policy provisions were introduced in 03 ADM-10 and required that local districts allow a resource set-aside and additional “big-ticket” set-asides from a lump sum received by a Temporary Assistance (TA) recipient. [Subsequent] changes were made to the vehicle resource exemption limits and the accounts that recipients are able to establish to pay for college tuition. In order to ensure that districts are continuing to properly apply lump sum policy, it is important for districts to process TA cases that receive a lump sum in a methodical, step-by-step fashion.⁵ See also OTDA

⁵ OTDA Informational Letter, 17-INF-09, Introduction of LDSS-5091 “Lump Sum Worksheet” Form, *See also* OTDA Administrative Directive (ADM) 16-ADM-09 (increased vehicle exemption; OTDA 14-ADM-04

Temporary Assistance Source Book (TASB), Ch. 18, Section T, 18-49 to 18-59, available at otda.ny.gov/programs/temporary-assistance/TASB.pdf

3. Additional Statutory Provisions Relevant to “Lump Sum” Cases.

CPLR § 306-c requires attorneys to give notice to DSS when filing a personal injury action on behalf of a Medicaid recipient (which would bring in those in receipt of PA as well).

Social Services Law §104 permits a social services district to sue to recover public assistance from any person who has received assistance during the preceding 10 years.

Social Services Law § 104-b — Liens for public assistance and care on claims and suits for personal injuries, gives the social services district a lien on a personal injury (PI) suit filed on behalf of a public assistance recipient, in an amount not to exceed the total assistance and care provided from the time of the injury. Notice of the commencement of a PI action on behalf of a PA or MA recipient must be served on the social services district. The district must in turn serve notice of the lien on the injured party and his or her attorney in the personal injury action and file the lien with the county clerk.

C. Options for Treatment of Lump Sums for TA recipients/Avoidance of Lump Sum Penalty

1. Since the lump sum penalty does not apply to closed cases, a PA recipient who anticipates receiving a lump sum can close his/her PA case before receiving the money. FH # 2074514J (Ontario Co. 8/23/94). Caution is advised to ensure that the case is well and truly closed. Any assistance received after receipt of the lump sum will trigger the lump sum penalty rule, even where recipient requested that case be closed before assistance was issued. FH# 2219515Z

(\$1400 savings exemption applied to 4-year colleges); OTDA 13-ADM-02 (treatment of tax credits); OTDA 09-ADM-19 (child support arrears as lump sums for PA); OTDA 05 INF-10 (lump sum Q and A); OTDA 03-ADM-10 (lump sum set-asides); OTDA 01-INF-08 (SNAP/TA and SNTs).

(Niagara County, 8/7/95) (Lump sum rule applied when district made indirect fuel payment after date of requested case closing).

2. Turn the lump sum over to the social services district to repay past assistance. If amount of lump sum exceeds past assistance, penalty period applies.
3. Set aside up to \$2000 (or \$3000 if over 60) to come up to the “case and liquid or non-liquid resource” limit. Expend the remainder of the lump sum on the “big-ticket” set-asides allowed by Soc. Serv. Law § 131-a(12) and 18 NYCRR § 352.29(h), and described in 17-INF-09, to the extent practicable: car, car bank account, educational bank account, burial fund, burial plot.
 - a. These “set asides” must be made within 90 days of receiving the lump sum. 05 INF-10, p.7
 - b. Educational accounts can be set up for any household member on the case. 05 INF-10, p.8
4. Evaluate whether lump sum expended on emergency expenditures, excess housing or utility costs, or medical expenses, circumstances “beyond household’s control,” or whether household standard of need increased to reduce penalty period.
5. Shortening the period of ineligibility
 - a. Medical expenses paid during the period of ineligibility will shorten the period of ineligibility. FH # 7397705Y (NYC, 12/30/16), citing 18 NYCRR 352.29(h);
 - b. When a lump sum results from litigation, the size of the lump sum used to calculate the period of ineligibility must not include attorneys’ fees, court costs, or payments to medical companies FH # 7187389H (NYC, 2/29/16).
 - c. Theft of benefits will shorten the period of ineligibility. FH# 7564458H (NYC, 1/10/18); FH 2119927Y (Greene Co., 7/12/94)
 - d. Excess shelter and utility costs can be used to shorten the period of ineligibility. FH # 415273J (Nassau Co., 10/22/04); FH # 3900609Q (Nassau Co., 8/4/03); “Dear Commissioner

Letter (June 7, 1985), attached as Appendix B, Question 28 and Question 30.

- e. The birth of a child increasing the household size, eligibility for a special needs item, or an increase in shelter or utility costs, will allow a recalculation of the penalty period.
6. Personal injury and other attorneys negotiating settlements on behalf of clients in receipt of temporary assistance should be aware of lump sum penalty and should explore solutions that do not involve client receiving settlement money directly.
- a. Social Services Law §104 permits a social services district to sue to recover public assistance from any person who has received assistance during the preceding 10 years. For the most part, these claims are brought after a person's death, if the deceased has assets. *See Matter of Bustamante*, 256 A.D. 2d 463 (Second Dep't 1996). However, in *Hoke v. Ortiz*, 83 N.Y. 2d 323 (1994), the Court of Appeals held that a social services had the discretion to choose whether to apply the lump sum rule to a settlement in a personal injury case received by a public assistance recipient, or to sue for the entire amount under SSL 104, or do both. (The county filed a lien against the lawsuit, the insurance company issued a check payable to both the recipient and the county, and the county sued for permission to endorse and cash the check). The Court of Appeals rejected the argument that the lump sum rule was the county's sole remedy. TASB, Ch. 18, Sec. T (14) (Attachments of Lump Sum Payments) Determining Length of Ineligibility) at 18-59. There are no resource set asides when a district recovers under SSL 104.
 - b. Settlement of landlord/tenant claim might involve agreement to repair or renovate, or give rent abatement in lieu of cash settlement.
 - c. Explore client eligibility for Supplemental Needs Trust or ABLE account

Funds deposited and interest earned in ABLE accounts are exempt as income and resources under 18 NYCRR §352.16(a) for Temporary Assistance applicants and recipients and under

18 NYCRR §387.11 and §387.9 for SNAP applicants and recipients. “Care must be taken to ensure that TA and/or SNAP benefits of ABLE program participants are not inappropriately reduced or discontinued.” OTDA GIS 17 TA/DC033, “Supplemental Nature of New York Achieving a Better Life Experience (NY ABLE) Savings Accounts,” available at <http://otda.ny.gov/policy/gis/2017/17DC033.pdf>. See also 7 U.S.C. 2014(d)(10), (g)(8)(B); 7 C.F.R. 273.9(c)(10), 273.8(e)(20)(iii); Memorandum from Lizbeth Silbermann, “Treatment of ABLE accounts in Determining SNAP Eligibility,” Food and Nutrition Service, U.S.D.A. (Apr. 4, 2016), available at <https://www.fns.usda.gov/snap/treatment-able-accounts-determining-snap-eligibility>.

For more on ABLE accounts, see SSI section of this outline.

For Supplemental Needs Trusts, see OTDA Informational Letter 01-INF-08, “Temporary Assistance (TA) and Food Stamps (FS) Policy: The Treatment of Supplemental Needs Trusts (SNTs) and Reverse Annuity Mortgage (RAM) Loans,” at otda.ny.gov/policy/directives/2001/INF/01_INF-08.pdf.

D. Tips and technicalities for avoiding the lump sum rule

1. Where notice fails to properly describe the amount and date of receipt of the lump sum, agency action will be reversed for failure to send an adequate notice. FH #7398175L (NYC 12/21/16).
2. Where agency proposes to close a public assistance case due to the receipt of a lump sum but fails to send a notice that includes all of the following, agency action will be reversed for failure to send an adequate notice. FH # 7261203L (NYC 4/29/16):
 - A timely and adequate notice of intent
<https://otda.ny.gov/policy/directives/2007/INF/07-INF-04/4015A.pdf>
 - Specific time period the case will be ineligible
 - Copy of the TA ABEL budget used to determine the closing
 - Lump sum ineligibility narrative
<https://otda.ny.gov/policy/directives/2002/INF/3954.pdf>

3. When an agency defends its actions at a fair hearing, the Agency must produce the notice of intent, documentation of the amount of the lump sum, and whether it determined that any of the lump sum could be excluded. Failure to produce this documentation will result in a reversal of the agency action. FH # 7361481N (NYC 6/5/17); FH # 7453199N (NYC 5/2/17).
4. Although the lump sum rule will disqualify an applicant or recipient from the receipt of Temporary Housing Assistance (THA) [00 INF-15, Q. 65], the period of ineligibility can be shortened by the higher shelter costs while the person is in a shelter. FH # 7628802M (Ulster Co., 10/20/17). Additionally, a person cannot be denied THA, even if the reason is the receipt of a lump sum unless the district has first done an assessment to determine if the need for THA is due to a physical or mental impairment and a referral to protective services is required. 16 ADM-11, FH # 761197H (Suffolk Co. 9/29/17).

E. Selected Resource/Lump Sum Cases

Stewart v. Roberts, — AD3d —, 2018 NY Slip Op 04609 (Third Dep’t 2018). Appellate Division on June 21, 2018, affirmed the Albany County Supreme Court’s decision, holding that an automobile’s equity value, not its fair market value, is the appropriate standard to use when evaluating an automobile as a resource for public assistance eligibility. At the time the client applied for public assistance, SSL 131-n provided that a car with a fair market value (FMV) of \$9300 was exempt as a resource. Client’s car which had an FMV of \$12,113 was clearly not exempt. However, Empire Justice Center argued that because client was underwater on a car loan – she owed \$13,301 on the car, it had no countable value as a resource, and that she was eligible for public assistance. The Albany County Supreme Court agreed and the Appellate Division affirmed, stating the OTDA’s interpretation to the contrary was “irrational and unreasonable.” Decision attached as Appendix C. Available at <http://decisions.courts.state.ny.us/ad3/Decisions/2018/525064.pdf>.

Garcia v. Roberts, Index No. 101465/2015 (Sup. Ct. N.Y. County, Stipulation and Order of Settlement, Oct. 6, 2016). Petitioner found ineligible for PA benefits for almost six years due to receipt of a lump sum settlement in a personal injury lawsuit. Although PI attorney had, in accord with SSL 104-b, informed HRA's Division of Liens and Recovery of the

impending settlement and HRA asserted a lien on the proceeds, petitioner was not informed by either her attorney, or by HRA, of impact on the PA case, or of option under the lump sum rule to put all or some of the lump sum into exempt resources. Although HRA was paid a portion of the proceeds at settlement to satisfy the lien, it did not timely act to inform petitioner of impact of settlement on PA. HRA sent notice of discontinuance 10 months later, by which time petitioner had spent proceeds. Petitioner argued that HRA's failure to take timely action, and failure to provide notice of client options under the lump sum rule, deprived her of benefits contrary to law and regulation and without due process, since had she known of her options under the lump sum rule, she could have set aside all or most of the money in exempt resources and remained eligible for PA.

HRA settled, restored petitioner's PA, and agreed to provide informational inserts about client options under the lump sum rule in its letters to personal injury attorneys and their clients, when given notice of a personal injury lawsuit or impending settlement. Papers available on the Online Resource Center Benefits Law Database, at <http://onlineresources.wnyc.net>, login required. HRA Memorandum to All Liens and Recovery Staff (Mar. 16, 2017) and Informational Insert attached as Appendix D.

Yatarola v Dowling, 239 A.D.2d 804, 657 N.Y.S.2d 843 (3d Dep't 1997). Improper to terminate petitioner's public benefits for 6 months because she had received lump-sum insurance settlement for loss of her vehicle, which was exempt resource, and she did not use settlement proceeds to purchase another vehicle; petitioner's vehicle would continue to be treated as resource, not income, when converted to lump-sum cash payment.

III. Supplemental Nutrition Assistance Program (SNAP)

A. Statutes, Regulations and Policies

1. Resources (7 U.S.C. § 2014(g), (j); 7 C.F.R. § 273.8; 07-ADM-09, 08-ADM-09, 09-ADM-06; OTDA desk aid available at <http://otda.ny.gov/policy/directives/2010/INF/10-INF-07-Attachment-1.pdf>
 - a. Most households no longer have a resource test in New York State, due to the adoption of expanded categorical eligibility. (07-ADM-09, 08-ADM-09, 09-ADM-06; OTDA desk aid available at <http://otda.ny.gov/policy/directives/2010/INF/10-INF-07-Attachment-1.pdf>).
 - b. Households in which everyone receives SSI and/or temporary assistance are categorically eligible without a resource test or income test.
 - c. Other households who pass the expanded categorical eligibility gross income test (200% FPL (Federal Poverty Level) if there is an elderly/disabled member or the household pays dependent care costs; 150% of FPL for households with earned income; 130% FPL for everyone else) will not have a resource test unless:
 - i. A household member has been sanctioned from SNAP, OR
 - ii. An elderly/disabled household has gross income above 200% FPL, but net income below 100% FPL.
 - d. Non-categorically eligible households have an overall resource test of \$2000, unless there is an elderly/disabled member (\$3250 limit).
 - e. See SNAPSB Sec. 17 for more information about countable resources for non-categorically eligible households.
 - f. Liquid resources still count for expedited SNAP eligibility.

2. Income (7 U.S.C. § 2014(c)-(f), (k)-(n); 7 C.F.R. § 273.9; SNAPSB Sec. 13)
 - a. Gross Income Test for Most Households (7 U.S.C. § 2014(c); 16-ADM-06; 09-ADM-06; 10-INF-07 and attachment)
 - i. No income test for households where everyone receives SSI or temporary assistance (“TA”)
 - ii. 200% FPL for households with an elderly (60+)/disabled member (through expanded categorical eligibility)⁶
 - iii. 200% FPL for households with dependent care costs (through expanded categorical eligibility)
 - iv. 150% FPL for households with earned income
 - v. 130% FPL for everyone else
 - b. Whose Income Counts?
 - i. The income of all household members except for a child under 18 who is attending high school or earning a GED is counted when calculating the SNAP budget.
 - ii. A pro-rated share of the income of an immigrant who is excluded because of status is counted.
 - iii. The total income of sanctioned household member is counted.
 - iv. The income of an ineligible student is NOT counted.
 - c. What Income Counts?
 - i. Earned income;
 - ii. Gross wages;

⁶ The 200% FPL income limit allows these households to be counted as categorically eligible (no resource test). Elderly/disabled households with gross incomes above 200% FPL may still qualify for SNAP if their net income is at or below 100% FPL and their resources are below \$3250.

- iii. Self-employment income (minus cost of doing business);
 - iv. Income from boarder or lodger;
 - v. Unearned income;
 - vi. Public assistance;
 - vii. SSI, SSD, retirement, survivor's benefits;
 - viii. Unemployment;
 - ix. Worker's compensation;
 - x. Spousal and child support.
- d. What Does Not Count as Income? (7 U.S.C. § 2014(d))
- i. Educational loans, grants or scholarships for tuition and fees;
 - ii. Reimbursements for other than normal living expenses;
 - iii. HUD housing subsidies;
 - iv. Vendor payments to 3rd parties;
 - v. Legally obligated child support paid to non-household members;
 - vi. Income tax refunds;
 - vii. Loans.

B. Treatment of Lump Sums for SNAP recipients:

- 1. Because of SNAP's generally liberal rules for treatment of income and resources, a large single payment generally does not disqualify most SNAP recipients from ongoing receipt of benefits. The lump sum is treated as income *only in the month it is received*.

2. Once the payment is received, it becomes a resource to the SNAP household for budgetary purposes. Because of New York's simplified reporting rules, the vast majority of SNAP households (those under 200% of poverty) will have no resource test and will not be rendered ineligible because of the lump sum. The household may be subject to a case closing in the month the income is received but will be eligible again immediately in the following month for ongoing SNAP because the payment is no longer countable as income to the household. Additionally, it may be worthwhile to advocate with the local department of social services for the case to remain open and for the agency to treat the benefits issued during the month in which the lump sum is received as an overpayment so that the SNAP continues uninterrupted. This reduces administrative burden on both the department of social services and the SNAP recipient.
3. Only those households containing elderly or disabled members, with gross income over 200% of poverty and countable income at or below 100% of poverty will be subject to a resource test in New York. These household will potentially be disqualified from the SNAP program upon receipt of a lump sum until such time as they spend the lump sum down to below the applicable resource level, as might happen in Temporary Assistance.

IV. Other Benefit Programs

A. Home Energy Assistance Program (HEAP)

1. Statutes, Regulations, and Policies:
 - 42 USC 8621-8630; 42 CFR 96, et seq.
 - OTDA HEAP manual – available at <https://otda.ny.gov/programs/heap/heap-manual.pdf>
 - HEAP desk guide, available at: <http://otda.ny.gov/policy/directives/2017/LCM/17-LCM-14-Attachment-2.pdf>
2. HEAP is a federally funded program is administered by local social services districts and their subcontractors, and supervised by the N.Y. State Office of Temporary and Disability Assistance (OTDA).
3. Eligible household include those who pay to heat their dwelling and those who have heat included in their rent (the latter group gets a smaller benefit).
4. Gross monthly income must be under \$2,318/mo. for one-person or \$3,031 for two-person household (2018); OR
 - In receipt of SNAP; OR
 - In receipt of Public Assistance; OR
 - In receipt of SSI (Living Alone living arrangement).
5. Benefits may include
 - a. One-time payment annual made directly to the vendor supplying heating fuel or cash benefit to renters available through EBT card.
 - It comes in the form of a cash payment or credit to the household's energy supplier. The amount of the payment or credit depends on the household composition, the energy bills, and the income tier.
 - No asset limit.

b. Emergency HEAP

- the HEAP Emergency benefit may be disbursed when a household experiences a non-utility fuel emergency;
- Available resources must be used to ameliorate the problem. However, recipients of temporary assistance (TA) do not need to document resources, and the exemptions in the TA program will apply to them. HEAP manual at Ch. 4, p. 2.
- See HEAP manual Ch 9, pp1-3 for countable and non-countable resources.
- Money that is in an SNT is not considered a resource that is available for amelioration. Thus, an Emergency HEAP applicant who has an SNT is not expected to raid their SNT to ameliorate the emergency.

6. Home Energy Repair and Replacement Costs

- \$3000 Resource limit. See HEAP manual at Ch. 6, p. 2
- No resource test for persons on TA or Code A SSI
HEAP manual at Ch. 6, p. 2

B. SCRIE/DRIE

1. Applicable Law, Regulations and Policies

- a. NY Real Property Tax Law § 467-b. Tax abatement for rent-controlled and rent regulated property occupied by senior citizens or persons with disabilities

NY Real Property Tax Law § 467-c. Exemption for property owned by certain housing companies and occupied by senior citizens or persons with disabilities.

State law provisions empower municipalities to establish tax abatement/exemption programs.

- b. NYC Admin Code § 26-406. Tax abatement for properties subject to rent exemption orders.

NYC Admin. Code § 26-509. Application for rent increase exemptions and equivalent tax abatement for rent regulated property occupied by certain senior citizens or persons with disabilities.

NYC Admin Code § 26-601 et seq. Rent Increase Exemption for Low Income Elderly Persons and Persons with Disabilities.

- c. See also “Freeze Your Rent: A Guide for Tenants (NYC Dep’t of Finance 2017), available at

<https://www1.nyc.gov/site/rentfreeze/tools/tools.page> and

HPD info at <https://www1.nyc.gov/site/hpd/renters/scrie.page>.

2. Local Agency Administrators

New York City Department of Finance (DOF) (for rent-regulated housing)

Department of Housing Preservation and Development (HPD) (for Mitchell-Lama and other cooperative housing)

3. Eligibility

- a. Housing Type

- Rent Controlled
- Rent Stabilized

- Rent stabilized hotel unit
 - Mitchell-Lama, Limited Dividend, Redevelopment, Housing Development Fund Company (HDFC) Cooperative, HUD Section 213 Cooperative, or Rent Demand/Single Room Occupancy (SRO).
- b. Individual Eligibility
- “Eligible head of the household” means (1) a person or his or her spouse who is sixty-two years of age or older and is entitled to the possession or to the use and occupancy of a dwelling unit, or (2) a person with a disability as defined (in receipt of disability benefits or disability pension, or receiving Medicaid based on disability). NY RPTL § 467-c(1)(d). See also § 467-b(1)(b).
- c. Income – Household annual income must be \$50,000 or less.
- “Income” means income received by the eligible head of the household combined with the income of all other members of the household from all sources after deduction of all income and social security taxes and includes without limitation, social security and retirement benefits, supplemental security income and additional state payments, public assistance benefits, interest, dividends, net rental income, salary and earnings, and net income from self-employment, but shall not include gifts or inheritances, payments made to individuals because of their status as victims of Nazi persecution nor increases in benefits accorded pursuant to the social security act or a public or private pension paid to any member of the household which increase, in any given year, does not exceed the consumer price index. N.Y. RPTL § 467-b(1)(c); § 467-c(1)(d), (f); NYC Admin. Code § 26-601(d), (f).
4. Rent Increase Exemption Amount – Exempted from increases that would result in rent in excess of one-third of monthly household income, or amount in excess of public assistance shelter allowance. Eligible individuals have their rent frozen at the current level, with increases “paid” by city through tax abatements to the landlord
5. There is no resource test applicable to SCRIE/DRIE.

6. Does lump sum count as income for SCRIE/DRIE?
- a. State and city provisions exclude gifts and inheritance from the definition of income considered in determining eligibility. But note that while gifts, inheritances and other assets are not income, *income generated from assets* like an IRA/Annuity, capital gains, and net business income, as well as alimony, child support, non-personal injury settlements, and other miscellaneous income that generates a 1099 form *are* counted as income.
 - b. NYC policy re types of income **included** in determining eligibility:

Frequently Asked Questions (FAQs) section in New York City’s 2018 SCRIE Application packet, available at <https://www1.nyc.gov/site/rentfreeze/tools/scrie-applications.page>, lists sources of income included in determining eligibility: Social Security, wages, business income, interest, dividends, IRA earnings, pensions, capital gains, rental income, rent from boarder, rental assistance/subsidy, money received from family or friends for rent, workers’ compensation, income from estates or trusts, alimony, child support, gambling or lottery winnings, public assistance, and cancellation of debt.

SCRIE/DRIE Household Income Worksheet in application packet likewise lists various sources of income and states “Other income includes (but is not limited to) rental income, rent from boarders, income from estates or trusts, alimony, child support payments, gambling winnings, taxable and non-taxable dividends, cancellation of debt and monetary support received from family/friends for rent.”
 - c. NYC policy re types of income **excluded**:

FAQs section in 2018 Application packet lists income sources **excluded** when determining eligibility “which does not have to be reported”: Cash gifts, inheritance, damages

award from personal injury lawsuit, energy assistance payments, income tax refunds, IRA Rollovers, and SNAP.

- d. Recertification happens at the end of the benefit period, which is usually the end of the lease term. When an applicant is approved, the benefit period is indicated on the approval.
- e. If lump sum counts as income and causes h/h income to exceed \$50,000 and h/h found ineligible for SCRIE/DRIE, head of h/h can reapply in following year:

Head of household who has received a rent increase exemption order that has expired and who, upon renewal application for the period commencing immediately after such expiration, is determined to be ineligible for a rent increase exemption order because the combined income of all members of the household exceeds the maximum amount allowed by this section or the maximum rent or legal regulated rent does not exceed one-third of the combined income of all members of the household, may submit a new application during the following calendar year, and if such head of the household receives a rent increase exemption order that commences during such calendar year, the tax abatement amount for such order shall be calculated as if such prior rent increase exemption order had not expired. However, no tax abatement benefits may be provided for the period of ineligibility. RPTL § 467-b(2)(d).

- f. Penalty for failure to accurately report income: May be responsible to pay the City full amount of SCRIE/DRIE benefits received improperly plus any interest charges. From DRIE Application, available at <https://www1.nyc.gov/assets/rentfreeze/downloads/pdf/drie/drie-initial-packet.pdf>; SCRIE Application, available at <https://www1.nyc.gov/assets/rentfreeze/downloads/pdf/scrie/scrie-initial-packet.pdf>.

C. Subsidized Housing

1. Three types of federally subsidized housing:
 - Public Housing;
 - Section 8 Housing Choice Vouchers (i.e. the “tenant-based” subsidy program, which enables eligible families to find and lease a unit in the private sector);
 - Privately-owned, multi-family housing developments where the subsidy is linked to a particular housing site, not to the tenant (often including HUD Section 8 “Project-Based” subsidies).

Participating household pays a portion of the rent – generally thirty percent of household income after adjustments allowed by HUD. HUD or local public housing agency (PHA) pays remainder.

2. Applicable Statutes and Regulations

Housing Opportunity Through Modernization Act of 2016 (HOTMA), 114 Pub. Law. No. 201, which amended the United States Housing Act of 1937, to be codified at 42 U.S.C. 1437, et seq.⁷

42 U.S.C. § 1437a(a)(1) states: Reviews of family income shall be made at least annually.

42 USC § 1437a(b)(1) defines “low-income” and “public” housing.

42 U.S.C. § 1437f(f)(6) defines “project-based assistance.”

42 U.S.C. § 1437f(f)(7) defines “tenant-based assistance.”

⁷ Effective date: Act July 29, 2016, Pub. Law No. 114-201, Title I, § 102(h), 130 Stat. 791, provides: “The Secretary of Housing and Urban Development shall issue notice or regulations to implement this section [amending 42 USCS §§ 1437a and 1437f] and this section shall take effect after such issuance, except that this section may only take effect upon the commencement of a calendar year.” See also Housing Opportunity Through Modernization Act of 2016: Initial Guidance, 81 Fed. Reg. 73030 (Oct. 24, 2016) (new income reviews and asset limits provision require regulatory action), available at <https://www.federalregister.gov/documents/2016/10/24/2016-25147/housing-opportunity-through-modernization-act-of-2016-initial-guidance>.

24 C.F.R § 5.100 defines “public housing” and “public housing agency.”

24 C.F.R. § 5.601 states requirements for determining annual and adjusted income of families who apply for or receive assistance in the Section 8 (tenant-based and project-based) and public housing programs.

24 C.F.R. § 5.609 defines “annual income.” Under § 5.609(c), “annual income” *does not* include, inter alia:

- Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in 5.609(b)(5).
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)
- Temporary, nonrecurring or sporadic income (including gifts)

24 C.F.R. § 5.611 defines “adjusted income” and lists mandatory and additional permissible deductions from annual income:

- For public housing, PHA may adopt additional deductions from annual income. PHA must establish a written policy for such deductions.
- For HUD programs listed in § 5.601(d), the responsible entity shall calculate such other deductions as required and permitted by the applicable program regulations.

3. Asset Test

- a. HOTMA established a \$100,000 limit on “net family assets,” to be adjusted annually based on inflation index, 42 U.S.C. 1437n(e). Ownership interest in, legal right to reside in and authority to sell real property suitable for occupancy by the family is disqualifying, unless: property for sale; tenant or applicant is victim of domestic violence; home is a

manufactured home; or pursuing homeownership option under 42 U.S.C. § 1437(f)(y).

b. Exemptions from assets include:

- personal property, except for items of significant value, as Secretary may establish or PHA may determine;
- retirement accounts;
- real property which family does not have legal authority to sell;
- civil action or settlement for malpractice, negligence, or other breach of duty owed to family member and arising out of law, that resulted in family member being disabled;
- Coverdell education savings account or other qualified tuition;
- Trust excluded as asset so long as trust not revocable by or under control of household member. 42 U.S.C. § 1437n(e)(2)(C); 24 C.F.R. § 5.603(b)(defining “net family assets”). Any income **distributed from** irrevocable trust fund shall be considered income except in the case of medical expenses for a minor.” 42 U.S.C. §1437n(e)(2)(C).
- Other exclusions as Secretary may establish.

42 U.S.C. § 1437n(e)(2)(B), (C).

c. Certification and Verification of Income and Assets:

i. Family May Self-Certify

- Net family assets
PHA or owner may determine net assets of a family based on a certification by family that net assets do not exceed \$50,000 (adjusted annually for inflation).
- No current real property ownership
PHA or owner may determine compliance based on certification by family that does not have any current ownership interest in any real property at the time the agency or owner reviews the family’s income.

42 U.S.C. § 1437n(e)(3).

ii. Income/Assets Verification Generally

Applicant/recipient (or other person whose income/resources material to determination) required to provide authorization for the PHA to obtain from any financial institution any financial record held by institution with respect to applicant or recipient (or any such other person) whenever PHA determines record is needed in connection with determination with respect to eligibility or amount of benefits.

42 U.S.C. § 1437n(e)(7); 24 C.F.R. § 5.230; 24 C.F.R. § 5.659.

Section 8 and PHA Administrators must use HUD's Enterprise Income Verification System to verify tenant employment and income information. 24 C.F.R. § 5.233. Under § 5.240 families are required to furnish income information and "responsible entity" must verify accuracy.

iii. Owner Responsibility to Verify [Project-based Section 8]

Owner must obtain third party verification or document why not available:

- Reported family annual income;
- Value of assets;
- Expenses related to deductions from annual income; and
- Other factors that affect determination of adjusted income.

Net assets equal to or less than \$5,000, owner may accept family's declaration at recertification, without taking additional steps to verify accuracy.

- Declaration must state amount of income family expects to receive from such assets; amount must be included in family's income.

- Owner must obtain third-party verification of all family assets every 3 years.

24 C.F.R. § 5.659.

For tenant-based Section 8 verification requirements see 24 C.F.R. § 982.516. For public housing, see 24 C.F.R. § 960.259.

d. PHA Option Not to Enforce Asset Limit on Recertification

PHA or owner may choose not to enforce asset limit at recertification, or may establish exceptions based on eligibility criteria, but only pursuant to a policy that is set forth in PHA plan or under policy adopted by owner. Eligibility criteria for establishing exceptions may provide for separate treatment based on family type, may be based on different factors, such as age, disability, income, ability of the family to find suitable alternative housing, and whether supportive services are being provided. 42 U.S.C. § 1437n(e)(4), (5).

4. Imputing Income from Assets

Actual income from assets is counted when determining eligibility.

The 2016 HOTMA amendments to 42 U.S.C § 1437a, subsection (a) and (b), provide that imputed income is counted only to the extent that net family assets exceed \$50,000. But see Note 7, above, re effective date. 24 C.F.R. § 5.659, § 982.516, and § 960.259, still refer to “net family assets in excess of \$5,000.”

5. Impact of Lump Sum Receipt and Reporting Requirement

a. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses, amounts for or in reimbursement of medical expenses, temporary, non-recurring or sporadic income (including gifts) not counted as income. 24 C.F.R. § 5.609(c)(3), (4), (9).

b. Retroactive payments made at the time a person is approved for SSA, SSI, or VA benefits not counted as income. 42 U.S.C. § 1437a(b)(4); 24 C.F.R. § 5.609(c)(14).

- c. According to the New York City Housing Authority (NYCHA) Management Manual, tenants are required to report only at recertification.

The NYCHA Manual further states: “Lump sum receipts such as deferred periodic amounts of SS or SSI benefits are excluded from annual income but may be included in a family’s assets.” Other examples of lump sums not intended as periodic payments listed by NYCHA include:

- Inheritances
- Capital gains
- Settlement payments from:
 - Insurance claims (including health and accident insurance, worker’s compensation, and insurance against personal or property losses)
 - Claim disputes over welfare, unemployment, and similar benefits
- Lottery winnings received in one payment.

“Lump sum receipts not intended as periodic payments are included in a family’s assets only if the family retains some or all of the money in a form recognizable as an asset. For example, a lump sum deposited in a savings account or invested in a Certificate of Deposit. If a family spends the lump sum, the lump sum is not counted as an asset. Lump sum receipts that were never classified as assets cannot be considered assets disposed of for less than fair market value.”

See NYCHA Management Manual, Chapter III (Revised 3/8/16), with examples, selected pages attached as Appendix E at 25–26.

6. Penalty for Asset Transfer

- a. In determining net family assets, PHAs or owners, shall include value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust) during two years preceding date of application or recertification for program in excess of the consideration received. (If in separation or divorce,

disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.) 24 C.F.R. § 5.603(b)(3).

- b. Where family has assets in excess of \$5,000, Annual Income includes greater of:
- Actual income from all net family assets; or
 - Percentage of the value of such assets based on the current passbook savings rate, as determined by HUD (0.06% of the value of the transferred/disposed of asset current as of January 19 2016.)

24 C.F.R. § 5.609(b)(3). See HUD Memorandum, “Passbook Savings Rate Effective February 1, 2016” (Jan. 19, 2016), available at www.hud.gov/sites/documents/16-01HSGN.PDF.

Note: 2016 HOTMA amendment excludes from income imputed return on assets except to extent that assets exceed \$50,000. Effective when HUD Secretary issues implementing regulations. See Note 7 above.

Note: If applicant or recipient transfers into an SNT assets other than excluded types of lump sum additions to assets described above, income based on principal transferred will be imputed to the applicant or recipient for two years following the transfer.

D. Subsidized Child Care

1. Statutes, Regulations, and Policies:

- 42 USC 9858n(4)(b);
- 45 CFR 98.20(a)(2)(ii);
- Social Services Law 410-x,
- 18 NYCRR 415.2;
- 18 OCFS LCM-1

Resource rule: Applicants for child care assistance must certify that their family resources do not exceed \$1,000,000. Resources include, but are not limited to, cash, bank accounts, real estate, stocks, bonds, mutual funds, IRAs, 401(k) accounts, life insurance, trust accounts, annuities, burial funds/spaces.

Lump sum implications: There is no lump sum rule for child care assistance. Many lump sums are expressly excluded from monthly gross income, including inheritance, insurance payments, capital gains, money from the sale of real or personal property. 18 NYCRR 405.5 (b)(6).

However, families who lose temporary assistance due to a lump sum penalty may lose their child care assistance because the child care guarantee only applies to families who are eligible for temporary assistance.

- Families who lose eligibility due to receipt of lump sums are eligible for child care if they are income eligible, but if the social services district has used all of its allocated funds, the family may have to wait in line for an available subsidy.
- To trigger eligibility for transitional child care, the family must have become ineligible because of earned income or increased child support [SSL 410-w(3)], so TCC is not an option for these families.

V. Medicaid: MAGI and Non-MAGI

The effects of receiving a lump sum on a Medicaid recipient's eligibility depend on the recipient's "category." Before 2014, Medicaid eligibility was assessed using five categories: SSI recipients, SSI-related, AFDC expanded eligibility for children, AFDC related for parents and caretaker relatives, and Single or Childless Couples.

In 2014, Medicaid categories changed because the Affordable Care Act (ACA) introduced a new methodology to evaluate financial eligibility for Medicaid and other health insurance programs: Modified Adjusted Gross Income (MAGI). Since then, there are two main Medicaid categories: MAGI and Non-MAGI.

By understanding these two Medicaid categories, you will be able to determine:

1. the income limit,
2. the resource limit if there is one,
3. the effects of a lump sum on Medicaid eligibility, and
4. the factors involved in retaining Medicaid eligibility when a lump sum is received.

A. MAGI MEDICAID

MAGI Medicaid is administered by the New York State of Health (NYSOH) and on some occasions by the Local District of Social Services (LDSS/HRA). MAGI Medicaid is available to:

- Adults under the age of 65; this includes disabled adults receiving Social Security Disability benefits who don't have Medicare insurance
- Pregnant Women
- Children under the age of 19
- Parents and Caretaker relatives⁸ even if they have Medicare insurance

1. Sources of Law for MAGI Medicaid:

- 42 U.S.C. § 1396a(a)(7); 42 C.F.R. § 435; N.Y. Soc. Serv. Law § 366, subd. 1
- Household size: 42 CFR 435.603(d); 42 CFR 435.603(b); 42 CFR 435.603(f)

⁸ See 42 CFR § 435.4 for definitions of "parent," "child," and "caretaker relative" under the Parent and Caretaker Relative category.

- "MAGI-based Income" means income calculated using the same methodologies used to determine MAGI as under the Internal Revenue Code (Section 36B(d)(2)(B)), with the exception of lump sum payments, certain educational scholarships, and certain American Indian and Alaska Native income, as specified by the Commissioner of Health consistent with federal regulation at 42 CFR 435.603 or any successor regulation;
- Policies: 13 ADM-03, 13 ADM-04, GIS 13/MA 021, GIS 14/MA-007, GIS 14 MA/016, GIS 14 MA/022, 2014 LCM-02, GIS 15 MA/008 GIS 15 MA/022

2. Does a lump sum award count as income for MAGI Medicaid?

In Medicaid, an amount received as a “lump sum” counts as income in the month received. An example of a lump sum would be an inheritance, lawsuit award, or lottery winnings. MAGI Medicaid maintains the existing Medicaid rules, where lump sums are treated as income in the month received.

Because MAGI Medicaid uses federal income tax rules for Adjusted Gross Income, with some modifications outlined in the ACA, you have to know the source of the lump sum to determine whether the lump sum is treated as income under federal income tax rules.⁹ For example, lottery winnings are counted as income but inheritances or gifts are not.

3. Does MAGI Medicaid have a resource test?

The ACA prohibits consideration of assets when determining MAGI-based eligibility.¹⁰ Therefore, MAGI Medicaid has NO RESOURCE TEST

4. If MAGI Medicaid has no resource test, does a MAGI Medicaid recipient still qualify if they receive a lump sum award?

In many circumstances, the answer is yes. Since MAGI Medicaid has no resource test, the recipient’s Medicaid eligibility is only affected for one month—the month of receipt, even if the MAGI Medicaid recipient saved the entire award into the following month.

⁹ 26 USC §102(a). See also IRS Publication 525 Taxable and Non Taxable Income (Jan. 24, 2018) available at <https://www.irs.gov/pub/irs-pdf/p525.pdf>

¹⁰ 42 CFR § 435.603(g).

Even if a lump sum or other new income caused a MAGI Medicaid recipient to become ineligible by having income above the MAGI Medicaid income limits for their household size, “individuals who had a Medicaid eligibility determination that was based on MAGI budgeting and who subsequently lose Medicaid eligibility, are eligible to have Medicaid coverage continue until the end of the 12-month authorization period.”¹¹ This is called **12 month continuous coverage**.

5. Is the MAGI Medicaid recipient required to report the receipt of a lump sum award to the Medicaid agency?

Yes. The MAGI Medicaid recipient is required to report the receipt of the lump sum award to the Medicaid Agency administering their MAGI Medicaid coverage—the New York State of Health (NYSOH) or the LDSS/HRA. This is true even if the MAGI Medicaid recipient will retain their Medicaid eligibility—through the 12 month continuous coverage provision or because they’ve already regained MAGI Medicaid eligibility the month following the month they received the lump sum award.

¹¹ NY SSL § 366 (c)(4)(c); NYS DOH 13 OHIP/ADM-03, https://www.health.ny.gov/health_care/medicaid/publications/docs/adm/13adm03.pdf

B. NON-MAGI MEDICAID

Non-MAGI Medicaid is also known as Disabled, Aged, Blind (DAB) Medicaid and it is administered through the Local District of Social Services (LDSS/HRA).

Under federal law, Medicaid rules cannot be stricter than the rules governing the federal "category" through which the recipient receives Medicaid.¹² SSI is the federal category through which Non-MAGI Medicaid applicants and recipients would have eligibility determined. This is why Non-MAGI Medicaid is also referred to as SSI related. When there is no Medicaid regulation, policy, or manual that specifically addresses a particular type of income, resource, disregard, exemption, or exclusion, one must research the SSI rules to determine how Non-MAGI Medicaid should treat it. The SSI rules could also be utilized if the LDSS/HRA is applying rules to Non-MAGI Medicaid that are stricter than those within SSI. When an applicant or recipient can qualify for Medicaid under more than one category (MAGI and/or Non-MAGI), the individual can choose the budgeting that is most favorable.¹³

Non-MAGI Medicaid is available to:

- SSI recipients
- Individuals or couples aged 65 years of age and older
- Disabled or blind adults of any age with or without Medicare

Medicaid programs that use Non-MAGI financial eligibility methodologies include, but are not limited to:

- DAB Medicaid
- Medicaid Spend Down
- Medicaid Buy in for Working People with Disabilities (MBI-WPD)¹⁴
- Medicare Savings Program (MSP)¹⁵

¹² 42 USC § 1396(a)(10)(C)(i) (III); 42 CFR § 435.831 (b) [income]; 42 CFR § 435.845 [resources]; 42 CFR § 435.601 [Application of Financial Eligibility Methodologies]

¹³ 42 CFR § 436.404

¹⁴ NY SSL § 366, subd. 1(c)(5)

¹⁵ The Medicare Savings Program (MSP) is a Medicaid-administered program available to Medicare consumers with limited income. This program will pay the Medicare Part B premium and for some individuals, it may also pay the Medicare Part A premium and other Medicare cost-sharing expenses. In NYS, MSP has no resource test. NY SSL § 367-a(3)(a), (b), and (d);

1. Sources of Law for Non-MAGI Medicaid:

- 42 U.S.C. § 1396a(a)(10); 42 C.F.R. § 435.603(j); N.Y. SSL § 366, subd. 1(c), 18 NYCRR § 360
- Household size: 18 NYCRR 360-4.2
- NYS DOH Library of Official Documents: Policy directives - ADMs, GIS, LCMs¹⁶
- Medicaid Reference Guide (MRG)¹⁷

2. Does a lump sum award count as income for Non-MAGI Medicaid?

Non-MAGI Medicaid also considers a lump sum award as income in the month received. Non-MAGI Medicaid does not use federal income tax rules to count income and/or lump sum awards. When determining Medicaid eligibility for Non-MAGI Medicaid in New York state, the local district of social services (LDSS/HRA) uses the gross income and resources of the applicant and their legally responsible relative (spouse or minor child), and then certain deductions are made; these income or resource deductions are called “disregards.”¹⁸

3. Does income become a resource?

Yes, any income received, including a lump sum, is considered income in the month received. If that income or lump sum is saved in whole or in part into the next month, it is considered a resource the following month. That amount gets added to the individual’s existing resource, and is compared to the Non-MAGI Medicaid resource limit for the household size to determine initial eligibility or ongoing eligibility.

- Example: Thomas is 65 years old and receives SSA retirement income of \$800 per month; he spends all of his monthly income. He has a checking account with a zero balance. Thomas likes to play the lottery

¹⁶ Available at http://www.health.ny.gov/health_care/medicaid/publications/index.htm

¹⁷ Available at https://www.health.ny.gov/health_care/medicaid/reference/mrg/index.htm

¹⁸ For Income and Resources Disregards in Non-MAGI Medicaid, see 18 NYCRR § 360-4.6(a), Medicaid Reference Guide, and <http://www.wnylc.com/health/entry/113/>

and won \$5,000 on June 10, 2018. Thomas spent \$2000 of his lottery winnings by June 30, 2018.

- What is Thomas' income in June and July? Resources in June and July?
 - June 2018:
 - Thomas' income is \$5,800 (SSA + lottery winnings)
 - Thomas' resource balance is \$0
 - July 2018
 - Thomas' income is \$800
 - Thomas' resource balance is \$3000 (the unspent portion of his lottery winnings from June + \$0 from his checking account)

Thomas is ineligible for Non-MAGI Medicaid for the month of June due to excess income, but regains eligibility in July 2018 because his income and resources are below the Non-MAGI limits.

4. Does Non-MAGI Medicaid have a resource test?

Yes. The resource limits change yearly and it is announced by the New York State Department of Health in December. In 2018, the resource limit is \$15,150 for a single person and \$22,200 for a couple.¹⁹

Understanding the Non-MAGI Medicaid resource limits, disregards, and lump sum exceptions will help you determine whether Non-MAGI Medicaid resource eligibility can be maintained to avoid the discontinuance of Non-MAGI Medicaid coverage and services. If Non-MAGI Medicaid eligibility cannot be maintained, the client may need to terminate Medicaid coverage and do Medicaid planning before reapplying for Medicaid coverage in the future.

5. Is the Non-MAGI Medicaid recipient required to report the receipt of a lump sum award to the Medicaid agency?

Yes, Medicaid recipients have the responsibility to report changes in circumstances that affect their eligibility, including receipt of a lump sum. At the very least, receipt must be disclosed in the next annual Medicaid recertification, but client should report it sooner. SSI requires notice by the

¹⁹ GIS 17 MA/020, https://www.health.ny.gov/health_care/medicaid/publications/gis/17ma020.htm

10th day of the month following the month of receipt. This will be discussed in the SSI section.

6. Exemptions, Deductions, or Availability of Lump Sum Awards in Non-MAGI Medicaid

If a lump sum award is exempt or excluded, the Non-MAGI Medicaid recipient may retain it without it affecting their income or resource Medicaid eligibility. The following types of lump sum awards are exempt and will not impact Medicaid eligibility:

- Disaster Assistance benefits²⁰
- Reparation Payments: Payments made because of an individual's status as a victim of Nazi persecution, including reparation payments (German, Austrian, etc.), Blue Card payments, and payments to Japanese-Americans.²¹
- Money received in a legal action against a residential care facility (nursing home) for improper treatment.²²

Deductions from Lump Sum Awards and Availability of a resource:

- Essential expenses incurred in obtaining a lump sum payment are deducted from the actual payment. They include legal, medical, and other expenses connected with damages resulting from an accident, or legal expenses from pursuing benefit claim other than SSI.²³
- Lump sum awards may be considered earned income if received as a result of employment (bonuses, retroactive pay increases, severance pay).²⁴
 - Earned income deductions will apply: subtract the first \$65 of earned income and divide the remaining by half. If income retained into the month following receipt, it will count as a resource.
- Inheritances are not considered available resources until actually received. Matter of Little, 684 N.Y.S.2d 124 (4th Dept. 1998). If a client is merely named in a decedent's will, the resource does not yet

²⁰ 18 NYCRR § 360-4.6(a)(1)(xxvi) for income and 18 NYCRR § 360-4.6(b)(11) for resources.

²¹ N Y SSL § 131-n(2); 18 NYCRR § 360-4.6(b)(2)(iv) [German]; 18 NYCRR 360-4.6(b)(2)(viii) [Austrian]; 18 NYCRR § 360-4.6(b)(6) [Japanese]

²² 18 NYCRR § 360-4.9(a)(5)(i)

²³ Medicaid Reference Guide (MRG), Income Chapter, pages 154-156

²⁴ MRG, Income Chapter, page 154

count.²⁵

7. What happens when the lump sum award exceeds the Non-MAGI Medicaid resource limit for the household?

As discussed earlier, a lump sum award is "income" in the month received and if retained into the following month(s), the funds become a "resource." In the month of receipt and in months the money is retained as a resource, the Non-MAGI Medicaid recipient may be ineligible for Medicaid and is potentially liable to repay Medicaid for the cost of services received to the extent that they had excess income and/or resources.

Unlike most other benefit programs, Medicaid has no overpayment mechanism. Medicaid can recover benefits improperly paid during the months the client had excess income or resources only by bringing legal action against the client. They might send a letter to the client asking for repayment, but they can't force recovery except with a lawsuit, or in some cases against the estate after the client has died.

When a Non-MAGI Medicaid recipient receives a lump sum award, the goal is to minimize potential liability for repayment to Medicaid. If the funds are transferred, spent, or converted into an exempt resource in the same month the lump sum award is received, then the client limits their ineligibility to one month—the month the lump sum was received. If the client delays transferring/spending/converting excess resources until the next month or later, then the client is potentially liable for repayment for two or more months of medical expenses.

8. Determining Amount of Excess Resources and Resource Spend Down

- a. Non-MAGI Medicaid resource eligibility is determined month to month. The LDSS/HRA takes a snapshot of the client's combined resources as of the first moment of the month to determine the resource balance for that month.
 - Ramona is a 66 year old widow. She receives Social Security Widow's Benefits of \$740 per month and a pension of \$100 per month. She has \$7,000 in her checking account. She receives

²⁵ *Matter of Little*, 684 N.Y.S.2d 124 (4th Dept. 1998)

\$20,000 on August 5th, 2018 from a personal injury settlement. The \$20,000 award represents the amount due to her after medical and legal fees. She bought a new couch and television on August 20th and these purchases cost \$3000.

Since she is single, she is a household size of 1 for income and resources. \$842 MA income limit and \$15,150 MA resource limit.

- In August 2018, the \$20,000 PI award is income. Ramona is ineligible for Medicaid because her countable income is \$20,840, which far exceeds the Medicaid income limit of \$842.
- In August 2018, she was Medicaid resource eligible because her account balance as of August 1st was \$7000, an amount below the MA resource limit of \$15,150.
- In September 2018, Ramona is income eligible for full Medicaid because her countable income in that month is her Social Security and pension, totaling \$840.
- In September 2018, Ramona is Medicaid resource ineligible because her countable resources as of September 1, 2018 exceed the MA resource limit of \$15,150.

\$20,000 PI award
+\$4,000 [Checking Acct balance: \$7000-\$3000 for couch/TV]
\$24,000 total resources as of September 1, 2018
-15,150 MA resource limit
\$8,850 over the MA resource limit on September 1, 2018

- In order for Ramona to regain Non-MAGI Medicaid resource eligibility by October 1, 2018, she must spend, transfer, or convert the amount of excess resources (\$8,850) by no later than September 30, 2018.

b. Resource spend-down:²⁶

Whether a client was entirely Medicaid ineligible depends on the amount of the excess income and/or resources and the amount of medical expenses incurred in that particular month.

- In the above example, if Ramona's resources had been only \$1000 over the Medicaid resource limit, but Medicaid paid \$5000

²⁶ 18 NYCRR § 360-4.1(b)(v), -4.8(b); 91 ADM-17

in that month for home care and/or other services, then Ramona has a “resource spend-down.” Her potential liability to LDSS/HRA is \$1000, and she is entitled to Medicaid payment for \$4000 of the \$5000 expense.

c. Fair Hearing Decision Involving Excess Resources:
FH # 7660482M (Monroe County, EJC) ²⁷

An attorney from Empire Justice Center contested the Agency’s determination that the Appellant was over-resourced for Medicaid. The questions were:

- What evidence is required to demonstrate that a resource has been spent?
- When does that transaction occur – when it leaves the Appellant’s hands or when it clears the bank?

According to an October 2017 notice, the client had excess resources and her Medicaid case would be closed as of December 1, 2017. The county representative informed the Appellant that if she depleted her resources prior to December 1, then the Medicaid coverage would be restored. The Appellant spent the money by writing checks in November 2017, some of which had not cleared until December. Because her December bank statement showed resources in excess of the Non-MAGI resource limit as of December 1, 2017, the county determined that she was ineligible for Medicaid that month, but would be eligible the following month, January 2018. The county representative insisted that any money showing in an account as of 12:01 a.m. on the first of the month is found to be available to the beneficiary no matter what may have been done previously to deplete that resource. That was found to be incorrect:

“Without disputing the snapshot date policy, the Appellant persuasively argued that the check drawn on November 29, 2017, and hand-delivered to the Center for Disability Rights on November 30, 2017 for deposit into a pooled supplemental needs trust, should not have been counted in determining available resource as of December 1, 2017 ...despite the fact that the check didn’t ‘clear’ until December 5, 2017. Since the check was not only written, but also out of the Appellant’s control on November 30th, this amount

²⁷ http://otda.ny.gov/fair%20hearing%20images/2018-5/Redacted_7660482M.pdf

should have been deducted from the resource calculation for December.”

9. What options are available in order to maintain or regain Non-Medicaid eligibility? Spend, Convert, or Transfer

a. Spend excess resources:

- Purchase items for fair market value (clothes, furniture, household goods, vacations etc.);
- Pre-pay household expenses (cable, electricity, water, gas, cellphone, property taxes, home owner’s insurance, rent but must be done carefully, etc.);
- Pay credit cards or repay other types of loans owed by the Medicaid recipient;
- Make modifications to apartment/house to make it accessible if permitted; and/or
- Pre-pay funeral expenses for the Medicaid recipient and certain family members.²⁸

b. Convert excess resources into an exempt resource:

- Purchase an automobile or vehicle.²⁹
“Any automobile of any value is exempt as long as the SSI A/R or a member of his/her household is using it.”³⁰
- Purchase a homestead not to exceed \$858,000 in equity if no spouse, minor, or disabled child reside in the home.³¹
- If the Non-MAGI Medicaid recipient is working, the individual may consider depositing some funds into an Individual Retirement Account (IRA) but the IRA’s principal is only exempt as a resource only if the fund is in periodic payment status. The payments would be considered unearned income and could cause or increase a Medicaid income spend down.³²
- Refer to the SSI section for information on PASS plans and ABLE accounts as a strategy for converting excess resources into an

²⁸ NY SSL § 141(6); NY GBS § 453; 11 OHIP/ADM-04 - Treatment of Irrevocable Pre-Need Funeral Agreements (July 11, 2011)

²⁹ 18 NYCRR § 360-4.7(a)(2)(iv)

³⁰ Medicaid Reference Guide (MRG), Resource Chapter, pages 348-349

³¹ NY SSL § 366 (2)(a)(1); 18 NYCRR § 360-4.7(a)(1); MRG Resource Chapter, pages 337-339; GIS 17 MA/020

³² GIS 98 MA/024

exempt resource.

c. Transfers of excess resources to maintain Community Medicaid

The Non-MAGI Medicaid applicant or recipient may transfer (or spend or convert into exempt resources) the entire lump sum and be eligible for Medicaid on the first day of the following month, if assets are within the allowable Medicaid resource limits.

There is no penalty on transfers of assets for Community Medicaid. Community based care includes all inpatient and outpatient Medicaid coverage received when residing in the community. This includes: Medicaid Assisted Living programs (ALP), Medicaid adult homes, home care services including MLTC, FIDA, PACE, and other waiver programs. There are 2 exceptions:

- Alternate level of care (ALOC) - hospital care given to someone ready for discharge but who is waiting for a nursing home bed, or
- Nursing home or institutional care recipient.³³

i. Impact of Current Transfers on Future Nursing Home Medicaid Eligibility

Although there is no transfer penalty for Community Medicaid, the Non-MAGI Medicaid recipient must be advised of the implication for making transfers on their future nursing home Medicaid eligibility, which has different transfer of asset rules. A transfer may disqualify the individual from receiving Medicaid long-term care in a nursing home or alternate level of care in a hospital any time in the next 5 years after the transfer was made.

Because aged, blind and/or disabled individuals cannot predict whether they will need nursing home care in the next 5 years, it is important to understand the transfer of asset rules and utilize any available exceptions to mitigate the impact of transfers on future nursing home Medicaid eligibility.

On February 8, 2006, President Bush signed into law the Deficit

³³ NY SSL § 366 (2)(b)(2)(a)

Reduction Act of 2005, which imposed harsh cuts in the Medicaid program and was responsible for changing what Medicaid services were subject to transfer of assets rules and when the transfer penalty period would begin.³⁴

A penalty period is a waiting period that can be days, months, or years during which an individual is not eligible for Medicaid to pay for long term care (nursing home care), because of transfers of assets made during the "look back period."

- Length: To calculate the penalty period, divide the total value of assets transferred by the regional average monthly cost of private nursing facility services, which is \$12,319 in NYC in 2018.³⁵
- Commencement: A penalty period does not start until the individual is in the nursing home and applying for nursing home Medicaid at any time within 5 years after the transfer.
 - Ex: George transferred \$38,000 before he applied for Medicaid nursing home care. The penalty is just over 3 months: $\$38,000 \div \$12,319 = 3.08$ months. If he transferred \$380,000 instead, the penalty would be 30.85 months.

ii. Exceptions to the Transfer Penalty:³⁶ What transfers can a client make after receiving a lump sum without jeopardizing future Nursing Home Medicaid eligibility within the next 5 years?

- Transfers to spouses and a disabled child³⁷
- Transfers to a supplemental needs trust
 - Established by and for the benefit of the Non-MAGI Medicaid recipient if disabled and under the age of 65;
 - Established by the Non- MAGI Medicaid recipient for their disabled child; or
 - Established by the Non-MAGI Medicaid recipient for an individual who is disabled and is under the age of

³⁴These changes were incorporated into 42 USC § 1396p

³⁵ Penalty amounts change yearly and vary throughout the state. See https://www.health.ny.gov/health_care/medicaid/publications/gis/17ma019.htm

³⁶ 42 USC § 1396p(c)(2)(B)

³⁷ It is important to know what benefits, including the type of Medicaid and services used by the spouse and/or disabled child before using this strategy.

65 (does not have to be related to the individual).

- Transfers of the home has no penalty if transferred to³⁸
 - A spouse,
 - A child under the age of 21 or of any age if disabled or blind,
 - A child who lived in the home for 2 years immediately before the date the individual becomes an institutionalized individual and cared for client, or
 - A sibling with equity interest who lived in the home for 1 year immediately before the date the individual was institutionalized

10. Maintaining Medicaid Coverage when TA or SSI Eligibility Ends or is Terminated

a. “STENSON” Process:³⁹

An individual whose SSI is terminated after receipt of a lump sum (because of the transfer of assets penalty or retention of the lump sum as an resource), should not have Medicaid and/or the Medicare Savings Program terminated, but rather the coverage should continue until the LDSS/HRA makes a separate determination of Medicaid eligibility under MAGI and/or Non-MAGI.

After the individual’s SSI has been terminated by the Social Security Administration, they should receive a notice with a renewal from LDSS/HRA that gives them an opportunity to recertify for Medicaid and/or the Medicare Savings Program. The Stenson renewal should be completed to preserve MAGI/Non-MAGI Medicaid coverage depending on their category or choice of categories, the Medicare Savings Program, or both. The coverage being sought through this renewal depends on:

- the client’s Medicaid category,
- whether the value of these resources exceed the Non-MAGI resource limit,

³⁸ 42 U.S.C. 1396p(c)(2)(A); NY SSL § 366(5)(d)(3)(i)(B)

³⁹ Stenson v. Blum, 467 F. Supp. 1331 (SDNY 1979), *aff’d w.o. opinion*, 628 F.2d 1343 (2d Cir. 1980); 42 CFR § 435.930(b) [“The agency must . . . (b) Continue to furnish Medicaid regularly to all eligible individuals until they are found to be ineligible”]; 18 NYCRR § 360-2.6(b), 18 NYCRR § 360-2.2; Medicaid Reference Guide pages 87-88 (https://www.health.ny.gov/health_care/medicaid/reference/mrg/category.pdf)

- if the client has resources over the Non-MAGI resource limit, but has Medicare, they can complete the Stenson renewal to recertify their Medicare Savings Program only, which has no resource test.

The renewal form asks for information about their household composition, their income, resources, household expenses, and Medicare status. In order to maintain Medicaid and/or MSP coverage, the individual MUST complete and return this Stenson renewal timely. The Medicaid coverage should continue while the Stenson renewal is pending and until LDSS/HRA makes a separate eligibility determination.

If the LDSS/HRA determines that the individual is no longer eligible for Medicaid/MSP coverage, they must issue a timely notice of intent to terminate the coverage with Aid Continuing and fair hearing rights. If the individual fails to meet deadlines along the way such as submitting the renewal, supporting documents, etc., LDSS/HRA may issue a notice of termination at an earlier stage, again, with Aid Continuing and hearing rights.

b. “ROSENBERG” Process:⁴⁰

An individual whose Temporary Assistance is terminated after receipt of a lump sum should not have Medicaid and/or the Medicare Savings Program terminated, but rather the coverage should continue until the LDSS/HRA makes a separate determination of Medicaid eligibility under MAGI and/or Non-MAGI following a process similar to the Stenson process discussed above. The renewal form issued by the LDSS/HRA may be different from the Stenson renewal form.

If the former Temporary Assistance recipient qualifies for Medicaid under the MAGI category, they are entitled to 12 months of continuous coverage when their TA case closes. The system should generate the balance of the 12 months of MAGI Medicaid using the “from date” on the authorization, unless certain exceptions to providing continuous coverage exist.

11. Best Practices in Medicaid and Lump Sum Awards

- a. Determine category and choose the most favorable budgeting option:
 - MAGI,

⁴⁰ Rosenberg v The City of New York, 80 Civ. 6198 (SDNY 1981), see footnote #39 for additional citations.

- Non-MAGI, or
 - Both
- b. Determine whether Medicaid coverage must be maintained by discussing:
- the availability of any other health insurance (Medicare, employer, union etc.)
 - if have Medicare as primary insurance whether purchasing a Medigap or qualifying/remaining in the Medicare Savings Program is sufficient to meet their health care needs
 - the services utilized by the Medicaid recipient especially if these services are only covered by Medicaid such as home care
- c. Determine the total value of resources (existing resources + lump sum award) in order to calculate the amount of excess resources
- Refer to the spend, convert, and/or transfer section to develop a plan for dealing with excess resources
- d. Develop a timeline for when Medicaid resource eligibility will be achieved and advise the client of potential liability during the months the individual was ineligible
- e. Maintain careful records of the lump sum award with documentation of source, proof of deposit into bank account, receipts/documents demonstrating how the lump sum award was spent, converted, or transferred
- f. Report the lump sum award to NYSOH or LDSS/HRA in order to:
- keep Medicaid coverage and avoid a termination by emphasizing that resources are within the Non-MAGI resource limit and include current financial statements to establish the current resource balance, or
 - close the Medicaid case if the lump sum award is so significant or there are other challenges that prevent the individual from spending, converting, or transferring excess resources in a timely manner. It is important to provide the individual with resources or referrals that would help them with Medicaid planning and/or transition from Medicaid paid care to private paid care especially if home care services are involved.

VI. Supplemental Security Income (SSI)

Supplemental Security Income (SSI) is a federal monthly cash income benefit provided to people with very low income and resources who are either aged (65 or over), blind or disabled. It is administered by the Social Security Administration (SSA). The applicant/recipient must also have a qualifying immigration status to receive SSI benefits—typically the applicant must be a US citizen or legal permanent resident with forty qualifying quarters with some exceptions.⁴¹

The income limit and the amount of the monthly benefit depend upon the individual's other income and living arrangement but the maximum is \$837/mo. for a single person and \$1229 for a couple. The resource limits are \$2000 for a single person and \$3000 for a couple. See chart at Appendix G.

As of October 1, 2014, SSI benefits are administered by two government agencies—the Social Security Administration administers the federal portion of the SSI benefit and the Office of Temporary and Disability Assistance (OTDA) administers the state portion. The amount of the state portion depends on the living arrangement, income, and county of residence. Those who are approved for SSI receive Medicaid automatically in New York State.

1. Sources of Law

- 42 U.S.C. §1381-1385; 20 CFR 416, POMS⁴² SI 005-040
- SSP Payments: 18 NYCRR § 398

2. Does a lump sum award count as income for SSI purposes?

Yes, anything received in a month, from any source, is income to an individual, subject to the definition of income for SSI purposes, which says “Income is any item an individual receives in cash or in-kind that can be used to meet his or her need for food or shelter.”⁴³

⁴¹ POMS SI 00502.100 <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500502100>

⁴² POMS is the Social Security Administration's Program Operations Manual System. The POMS is a primary source of information used by Social Security employees to process Social Security claims.

<https://secure.ssa.gov/poms.nsf/home!readform>

⁴³ POMS SI 00810.005, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500810005>

3. Does income become a resource?

Yes, any income retained beyond the month of receipt becomes a resource the following month.⁴⁴

4. Is the SSI recipient required to report the receipt of a lump sum award to SSA/OTDA?

An SSI recipient is required to report any changes in income, resources, living arrangements as well as other factors.⁴⁵ POMS SI 02301.005 states, “a report is due within 10 calendar days after the month in which the change occurred. A report by mail is timely when the postmark date is within the same 10-day period.”

5. Exemptions, Deductions, or Availability of Lump Sum Awards in the SSI Program

If a lump sum award is exempt or excluded, the SSI recipient may retain it without it affecting their income and/or resource eligibility. The following types of lump sum awards are exempt and will not impact SSI eligibility:

a. Special Funds:⁴⁶

- Agent Orange settlement payments,
- Payments to Japanese internees,
- Reparation payments to Holocaust survivors, and/or
- Assistance received on account of a major disaster from federal, state or local government.⁴⁷

b. Exclusion is limited to nine months:

- SSI/SSD retro payments,⁴⁸
- State and local relocation assistance,⁴⁹
- Any amount received from a fund established by a State to aid victims of a crime beginning with the month following the month of receipt,⁵⁰

⁴⁴ POMS SI 01110.600, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501110600>

⁴⁵ POMS SI 02301.005, <https://secure.ssa.gov/poms.nsf/lnx/0502301005>

⁴⁶ 20 CFR § 416.1236

⁴⁷ 20 CFR § 416.1237

⁴⁸ 20 CFR § 416.1233

⁴⁹ 20 CFR § 416.1239

⁵⁰ 20 CFR § 416.1229

- Earned Income Tax Credit (EITC) after the month of receipt,⁵¹
- Cash or in-kind replacement received from any source for the purposes of replacing an excluded resource that is lost, damaged or stolen is excluded for nine months from receipt, with the possibility of a nine month extension.⁵²

c. Deductions from Lump Sum Awards and Availability of a resource:

- Essential expenses incurred in obtaining a lump sum payment are deducted from the actual payment. They include legal, medical, and other expenses connected with damages resulting from an accident, or legal expenses from pursuing benefit claim other than SSI.⁵³
- An inheritance is “cash, a right, or a noncash item(s) received as the result of someone's death. An inheritance is a death benefit. Until an item or right has a value (i.e., can be used to meet the heir's need for food or shelter), it is neither income nor a resource.”⁵⁴
- Special Wage Payments such as bonuses, retroactive pay increases, severance pay from an employer may be considered wages and would be subject to the earned income disregard discussed in the Non-MAGI Medicaid section.⁵⁵

6. What happens when the lump sum award exceeds the SSI resource limit for the household? Overpayments and Waivers

As discussed earlier, a lump sum award is "income" in the month received and if retained into the following month(s), the funds become a "resource." In the month of receipt and in the months the money is retained as a resource, the SSI recipient is ineligible for any federal or state SSI payments and is liable to repay SSA/OTDA for SSI benefits received while being over income or over resourced if the lump sum is not otherwise exempt or excluded.

If the funds are transferred, spent, or converted into an exempt resource in the same month the lump sum award is received, then the client limits their ineligibility to one month. If the countable resource is not

⁵¹ 20 CFR § 416.1235

⁵² 20 CFR § 416.1232

⁵³ POMS SI 00830.100, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500830100>

⁵⁴ POMS SI 00830.550, <https://secure.ssa.gov/poms.nsf/lnx/0500830550>. See also SI 00830.545 (death benefit)

⁵⁵ POMS RS 02505.025, <https://secure.ssa.gov/poms.nsf/lnx/0302505025>. Earned income disregards, POMS SI 00820.500, <https://secure.ssa.gov/poms.nsf/lnx/0500820500#a3>

spent/converted/transferred in a timely fashion, the SSI recipient will have excess resources for the amount above the \$2000 SSI resource limit if they're single or \$3000 if they're a couple, and it may result in:

- termination of SSI benefits, AND
- overpayment for any past period when resources exceeded allowable limit and benefits continued to be paid.⁵⁶

Even if the SSI recipient was overpaid, overpayments may be challenged by:

- requesting reconsideration of fact or amount of the overpayment, and/or
- requesting a waiver

What must be shown to challenge an overpayment determination?

- Reconsideration: that the OP did not occur or that the overpayment amount is incorrect; or
- Request a Waiver:⁵⁷
 - that the claimant was "not at fault," in causing the OP [Mandatory] and
 - that claimant cannot afford to repay, or that making them repay would be against equity and good conscience, or impede efficient or effective administration due to the small amount involved.

7. Determining the amount of excess resources

The process for determining the amount of excess resources is the same as in Non-MAGI Medicaid. SSI uses the "First-of-the month (FOM)" rule for making resource determinations, "we consider any increase in the value of an individual's resources in the resources determination as of the first moment of the month following the month in which the value of an existing resource increases, an individual acquires an additional resource, an individual replaces an excluded resource with one that is not excluded."⁵⁸

⁵⁶ 20 CFR § 416.537

⁵⁷ 20 CFR § 416.550-556

⁵⁸ POMS SI 01110.600, <https://secure.ssa.gov/poms.nsf/lnx/0501110600>

8. What options are available in order to maintain or regain SSI eligibility? Spend, Convert, or Transfer

a. Spend Excess Resources:

- Purchase household goods and personal effects for fair market value (clothes, furniture, appliances, etc.);⁵⁹
- Pay credit card debts or other loans;⁶⁰

b. Convert excess resources into an exempt/excluded resource:⁶¹

- Purchase an automobile or vehicle;
- Purchase a home in which the client will reside;
- Purchase burial space and/or establish a burial fund;⁶²
 - Burial account: \$1,500 (\$3,000 for couple) plus any interest which accrues; it must be set aside in specifically designated account and cannot be used for any other purpose); or,
 - Irrevocable burial contract for any amount (the contract must state it is Irrevocable); or,
 - A whole life burial insurance policy with a face value not more than \$1,500 plus any accrued interest. A term life policy, however, can be in any amount because no equity is built.
 - a burial account is an alternative to a life insurance policy; an individual cannot have both.
 - Burial spaces for individual and immediate family members are fully excludable, including burial plots, gravesites, crypts mausoleums, urns, niches etc.
- Establish and contribute to a plan to achieve self-support (PASS) plan. A PASS plan is a work incentive which allows an individual to preserve a fund in excess of the allowable resource limit for purposes of achieving a plan for self-support, such as returning to school, setting up one's own business, learning a trade, or obtaining job coaching to maintain employment etc. The PASS Plan must meet several requirements:⁶³

⁵⁹ 20 CFR § 416.1216

⁶⁰ SSA POMS SI 01120.220

⁶¹ 20 CFR § 416, Subpart L-Resources and Exclusions

⁶² 20 CFR § 416.1231

⁶³ 20 CFR § 416.1226 and SSA POMS SI 00870.000, <https://secure.ssa.gov/poms.nsf/lnx/0500870000>

- Must be in writing and it must be approved by Social Security;
 - Must be feasible: the individual must be able to achieve its stated goals;
 - Must identify how the goal(s) will be achieved, i.e. indicate all costs related to achieving the goal, how long the plan will take to complete and the steps needed to achieve completion;
 - To accomplish the goal, the plan must be funded with an available asset, such as an inheritance, judgment or other settlement;
 - Fund must be established in a separate, identifiable bank account and must be used on the planned timetable, unless SSA gives permission to deviate; and
 - If a PASS plan is suspended or terminated, the PASS fund becomes countable as a resource as of the first moment of the month following suspension or termination.
- Establish an Achieving a Better Life Experience (ABLE) account:⁶⁴
 - A tax advantaged savings account that an eligible individual can use to pay for qualified disability expenses and housing expenses;
 - The account can be established if the individual is blind or disabled by a condition that began before the age of 26;
 - It can be established by the eligible individual, parent or legal guardian, or a person granted Power of Attorney on behalf of the eligible individual;
 - Balances under \$100,000 are excluded from the SSI and Medicaid resource limit.

9. Transfer Penalty and Exceptions to the Transfer Penalty in the SSI Program

Generally, an SSI recipient **may not** transfer excess resources in order to initially obtain or maintain SSI eligibility. Because SSI is a needs based program, the expectation is that the SSI applicant or recipient will use excess resources to meet their needs before applying for SSI or will terminate their

⁶⁴ SSA POMS SI 01130.740, <https://secure.ssa.gov/poms.nsf/lnx/0501130740>; <https://www.mynyable.org/home/benefits--eligibility/eligibility.html>, <https://www.osc.state.ny.us/savings/able.htm>; For Medicaid, refer to GIS 18/MA 002

SSI until the excess resources are spent.

A transfer of assets for less than fair market value for purposes of getting or retaining SSI eligibility may subject an applicant or recipient to a penalty period, not exceeding 36 months.⁶⁵

Length of penalty period: to determine the length of the penalty period take the full uncompensated value of the transferred asset and divide it by the full FBR plus the actual amount of any state supplemental payment the individual is entitled to receive based on the actual living arrangement in the month of transfer. The result is the number of months in the penalty period.⁶⁶

- Client A, lives alone, and gives his sister \$10,000 after receiving a personal injury settlement. The client is already on SSI. While conducting a redetermination in June 2018, the SSA representative learns that Client A gave these funds to his sister in January 2018. To determine the number of months in the period of ineligibility, the SSA rep. looks at the living arrangement in January 2018—the month of the transfer, which is FLA/A. The penalty period would be 11.9 months, calculated as follows: $\$10,000/\837 ($\$750$ FBR + $\$87$ SSP]. The period of ineligibility begins in February 2018—the month after the transfer.

Client A would have an overpayment for 6 months:

- was over-resourced in January 2018 if they had the \$10,000 as of the first of the month,
- February through June 2018 because they received SSI benefits and they weren't eligible because they transferred a resource
- Client A would owe SSA \$4500 ($\750 FBR X 6 mos.)
- Client A would owe OTDA \$522 ($\87 SSP X 6 mos.)

Client A would have SSI benefits suspended:

- July through December 2018, the 6 remaining months of the period of ineligibility
- The example in POMS SI 01150.111D.2 rounds down

⁶⁵ SSA POMS SI 01150.001, <https://secure.ssa.gov/poms.nsf/lnx/0501150001>

⁶⁶ SSA POMS SI 01150.110 for transfers made on or after Dec. 14, 1999, <https://secure.ssa.gov/poms.nsf/lnx/0501150110>; SSA POMS SI 01150.111 for computing the period of ineligibility, <https://secure.ssa.gov/poms.nsf/lnx/0501150111>

- a. Exceptions to the SSI transfer of assets penalty:⁶⁷
- Certain kinds of trusts may be used to transfer excess resources if certain conditions are met;⁶⁸
 - The trust can be established for the sole benefit of the individual's child of any age who is blind or disabled,
 - The trust can be established for the sole benefit of a disabled or blind individual including themselves who is under the age of 65
 - REMINDER: The individual cannot place excess resources in a trust if they are over the age of 65. This would create up to a three year transfer penalty for the SSI applicant/recipient.
 - transfers of the home and/or non-home resources to certain allowable family members;
 - transferred resource returned to SSI recipient in the same month;
 - transfer of resource for purposes other than becoming or continuing to be SSI eligible;
 - The presumption is rebutted only if the individual provides convincing evidence that the resources were transferred exclusively for a purpose other than to become or remain eligible for SSI.
 - If the individual had some other purpose for transferring the resource, but an expectation of establishing or maintaining SSI eligibility was also a factor, the period of ineligibility would apply.
 - Undue hardship exists if:
 - the individual alleges that failure to receive SSI payments would deprive the individual of food or shelter; **and**

⁶⁷ POMS SI 01150.120-126, <https://secure.ssa.gov/poms.nsf/lnx/0501150120>

⁶⁸ POMS SI 01120.203, <https://secure.ssa.gov/poms.nsf/lnx/0501120203>; 42 USC § 1382b(e)(5); Trust must be drafted to comply with rules in Federal Medicaid Statute, 42 USC § 1396(d)(4). See NYLAG's SNT Outline for additional information on trusts and its impact on SSI, Medicaid, and other public benefits. <http://www.wnyc.com/health/entry/5/>.

- the individual's total available funds do not equal or exceed assets in any month that do not exceed the FBR+SSP based on the living arrangement for the month that undue hardship is alleged.

12. Best Practices in SSI and Lump Sum Awards

- a. Determine the total value of all resources (existing resources + lump sum award) in order to calculate the amount of excess resources;
 - Refer to the spend, convert, and/or transfer section to develop a plan for dealing with excess resources
 - Age/disability is extremely important because it determines whether a trust is an option to deposit excess resources for SSI purposes.
 - If under the age of 65 and disabled, the individual can establish a trust and deposit their own excess resources into the trust.
 - If over the age of 65, they cannot establish their own trust to deposit excess resources because it will result in a transfer penalty of up to three years.
 - The pros and cons should be weighed carefully, including factors related to the individual's ability to manage a trust if they establish a pooled trust to deposit excess resources.
- b. Determine whether SSI eligibility must be maintained and if so, develop a timeline for when the resources will have a value under the SSI resource limit;
 - Advise on reporting requirements under the Social Security Administration
 - Advise on overpayments and waivers during the period of ineligibility
- c. Maintain careful records of the lump sum award with documentation of source, proof of deposit into bank account, receipts/documents demonstrating how the lump sum award was spent, converted, or transferred; and
- d. If the SSI is terminated by the Social Security Administration, determine what Medicaid services are being utilized, discuss Medicaid/MSP eligibility, and advise on the Stenson renewal process.

VII. Lump Sum Benefit Planning and Case Scenarios

- A. Alicia Apple, age 48, lives in NYC with her three children, ages 2, 5, and 16. She rents an apartment in a private house, and has a Section 8 voucher which subsidizes her monthly rent. She receives public assistance for herself and two of her children, in the total monthly amount of \$596 (\$389 Basic/HEA/SHEA + \$207 shelter). Her third child receives SSI. The family also receives SNAP benefits and has health insurance through the Medicaid program.

Two years ago, Ms. Apple was riding in a friend's car when it was hit by a delivery truck running a red light. Ms. Apple suffered a broken leg and other minor injuries and hired a lawyer to file a personal injury action on her behalf. Two years later the case settled and after her attorney received his share, Ms. Apple received a check for \$25,000 in full settlement of her claims against the delivery company and the driver. She paid off her credit card debt, paid an outstanding electric bill, made some repairs to her kitchen and bathroom that the landlord had long refused to make, bought some new furniture for the apartment, and took her children on a vacation. Last week, three months after receiving the \$25,000 (and spending most of it), she received a notice from the local Job Center that her public assistance benefits will be discontinued for 42 months. What questions would you ask? / How would you advise/assist Alicia?

- B. Assume the same facts as above, but Ms. Apple comes to you after she learns that her case is going to settle, but before her attorney receives a check. What can she do to minimize the effect of the lump sum rule?
- C. Assume Ms. Apple is single, age 70, only has SSI income, has Medicare, and receives 12 hours daily of personal care services through a Managed Long Term Care plan. What are her options before she receives the award? What are her options if she's already spent the award?
- D. Now Assume Ms. Apple is single, age 45, has a combination of SSD of \$400 and \$437 in SSI. She won't get Medicare until June 2019. She doesn't have home care at this time. What are her options before getting the award? After? Do those options change if she has Medicare? What if she had Medicare and was taking care of her 5yo grandson, who lived with her?

Exhibit A



August 20, 1984

Dear Commissioner :

The purpose of this letter is to provide policy clarification of several issues related to the lump sum provision, as defined in 18 NYCRR 352.29(h). This letter provides clarification of additional issues related to the lump sum provision.

Statement to Recipients

As soon as the local social services district is informed, or receives information that a public assistance recipient will be receiving, or has already received, a lump sum payment, the local district must immediately provide a written statement to the recipient. This statement must inform the PA recipient of his/her options concerning the lump sum payment: that he/she may voluntarily transfer the lump sum payment to the local district to repay past assistance, or that he/she may keep the lump sum and the case will be closed for a calculated period of time based upon public assistance standards. The recipient must also be informed that the public assistance household will not be allowed to receive public assistance during the period of ineligibility, unless a life threatening circumstance occurs and all the following conditions are met:

- o the lump sum payment has been or will be used in connection with the life threatening circumstance;
- o until the time of the life threatening circumstance, the lump sum payment must have been used to meet essential needs; and
- o the assistance unit has no other income or resources sufficient to meet the life threatening circumstance.

Notice to Recipients Upon Receipt of Lump Sum Payment

When the PA recipient has received a lump sum payment, and has refused to voluntarily assign the lump sum to the local district, the local district must immediately take steps to close the case for the calculated period of time. This includes sending the client timely and adequate Notice of Intent. The Notice must include all details of the reason for the proposed action including the following:

**RETURN TO
BRIEF BANK**

- o the case is ineligible for assistance due to the receipt of a lump sum payment, as required by Department regulation 352.29(h); and
- o the specific period of time the case will be ineligible for assistance.

Budgeting of Lump Sum Payments

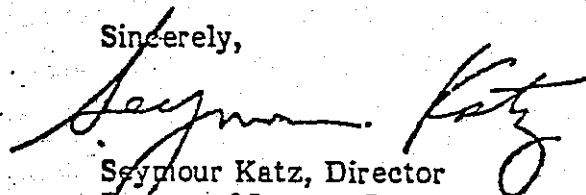
There has been some confusion in local districts concerning the budgeting of lump sum payments. All lump sum payments are to be budgeted prospectively, beginning with the month of receipt, as specified in 81 ADM-55. Any assistance received by the PA recipient during the period of ineligibility must be recouped as an overpayment. Retrospective budgeting does not apply to lump sums.

Lump Sum Payments Received By Non-Applying Stepparents

The lump sum provision as defined in 18 NYCRR 352.29(h) does not apply to non-applying stepparents who receive a lump sum payment. Any lump sum income must be added to all the stepparent's other countable income for the month and deemed to the public assistance household for that month only, as specified in 81 ADM-55, 83 ADM-30 and 83 ADM-55. In addition, any portion of the lump sum income retained by the stepparent subsequent to the month of receipt must be treated as a resource to the stepparent and is not to be considered in the determination of eligibility and amount of assistance for the PA Unit, except to the extent the stepparent actually contributes any of the lump sum money to the PA household needs in any subsequent month.

Any questions concerning the above should be directed to Pat Chmielewski or Bob Sharkey at 1(800) 342-3715, extension 4-9327.

Sincerely,



Seymour Katz, Director
Bureau of Income Support

- cc: IM Directors
Mel Kelsey
Charlie Kavanaugh
Larry Gambino
Ed Iovinelli
Linda Ross
Russ Bennett
Bernice Sprecher
Jack Hickey
Bob Seaman
Al Noto
Mike Pomodoro

Exhibit B

NEW YORK STATE

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243

CESAR A. PERALES
Commissioner



MICHAEL J. DOWLING
Deputy Commissioner
Division of Income Maintenance

June 7, 1985

Dear Commissioner :

Attached is a listing of all the questions and answers that were discussed during the winter 1984 Regional Meetings. We believe the information will help clarify many of the issues regarding the DEFRA provisions. We have not included the questions regarding the filing unit in this package. Material on the filing unit will be provided at regional meetings to be held in September.

We hope you find this information helpful. If you have further questions, please contact Robin Johnson at 1-800-342-3715, extension 3-7992.

Sincerely,

Michael J. Dowling 6/7

Michael J. Dowling
Deputy Commissioner

Attachment

bcc: Mel Kelsey
Charlie Kavanaugh
Larry Gambino
Ed Iovinelli
Linda Ross
Russ Bennett
Bernice Sprecher
Jack Hickey
Bob Seaman
Mike Pomodoro ✓
Peter Kircher
Eugene Doyle
Joseph Ferrone
Linda Muncil
Ian Feldman
Richard Finkelstein

Lump Sum

16. Q. In calculating the lump sum payment, is it true that you only count recurring income once, during the first month, in calculating the lump sum?
- A. Yes, that rule still stands.
17. Q. What deductions do you give on EIC?
- A. If there is no other earned income received in the month of lump sum receipt, you would give the \$30 plus 1/3 extension, if applicable.
18. Q. If the person is working, would he get the \$30 extension for eight months in calculating the lump sum period of ineligibility?
- A. If entitled to the disregard, it would be applied in the month of lump sum receipt only.
19. Q. Since RAM is lifted and taxes are included in the \$75, will the \$75 be used in calculating an earned income lump sum when there is no other recurring income?
- A. No. There are no taxes deducted from EIC. However, the \$75 would be used for other earned income lump sums.
20. Q. If a case is determined ineligible for the month of January only, due to receipt of a lump sum, can the case be suspended rather than closed?
- A. No, the case must be closed.
21. Q. In example C on page 12 of the lump sum training material, they have \$402.82 remaining to be applied against their needs in February, is the \$402.82 combined with existing earnings?
- A. Yes. Even if the person is not working the \$402.82 is still available prospectively and not subject to supplementation.
22. Q. What kind of documentation do you need when the client spends the lump sum and is reapplying before his period of ineligibility has ended?
- A. You don't necessarily need receipts for everything. You may accept receipts, signed statements, collateral contacts, etc.

Lump Sum (Cont.)

23. Q. Do local districts have the option of requiring clients to apply for an advance EIC payment as an available resource?
- A. Local districts may still require recipients to apply for an advance payment as an available resource.
24. Q. How do you verify that income has stopped (such as someone paying excess rent for the public assistance household?)
- A. A statement from the person formerly providing the income should suffice.
25. Q. When an applicant receives a lump sum payment before the case is opened, why should he withdraw his application rather than be denied because of excess resources?
- A. It really doesn't matter. The agency can deny based on resources.
26. Q. Agency opens a case on an emergency basis for EAF and client then receives a lump sum before the case is actually opened. Do you count the lump sum?
- A. The lump sum provision does not apply to EAF. You just have to determine that they have no resources immediately available to meet the emergency. If the case had been opened on ADC or HR, the lump sum would be calculated.
27. Q. What if an HR case transferred all or part of their lump sum during their period of ineligibility and then reapplies for assistance?
- A. It wouldn't be any different than the way it would be treated for ADC. It depends on the reason for the transfer. If you determine that the transfer was essential, you can shorten the period of ineligibility.
28. Q. Can you shorten the period of ineligibility by counting excess utility costs (over the standard)?
- A. Yes.
29. Q. Would we ever lengthen the period of ineligibility?
- A. No. The federal regulations do not allow this.

Lump Sum (Cont.)

30. Q. Does excess shelter count as an allowable expense in shortening the period of ineligibility?
- A. Yes.
31. Q. Can a person use the lump sum to purchase a house?
- A. It may be an allowable expense depending on the case situation. The local districts would make this determination on a case-by-case basis. If it is considered an allowable expense a lien may be taken on the property.
32. Q. Would the disregards be withheld if the EIC was not reported in a timely manner in determining the period of ineligibility?
- A. Yes.
33. Q. How is a lump sum treated for food stamps?
- A. Lump sum payments are excluded as food stamp income and, unless specifically excludable as a resource, are countable as a resource in the month received.
34. Q. Is paying back an old debt a legitimate expense to shorten the period of ineligibility?
- A. Yes, if the client had no option.
35. Q. When someone is born or returns to the home during the period of ineligibility, why can't the period be shortened instead of opening a case for the new household member?
- A. In this situation, federal regulations are clear that any person not in the assistance unit during the month of lump sum receipt must be budgeted as a separate assistance unit.
36. Q. What if the client moves from one county to another, does the lump sum follow them?
- A. Yes. The lump sum would follow from county to county but not from one state to another.

Lump Sum (Cont.)

37. Q. What should we do if a recipient doesn't notify the agency of receipt of a lump sum and just lets the case expire, doesn't show for recert, then reapplies when the money is gone? The county applies the lump sum and the client asks for a Fair Hearing based on agency's failure to notify him of the period of ineligibility.
- A. Since it is not the agency's fault that the client wasn't notified of the period of ineligibility, it would be correct to apply the lump sum provision back to the date they received the money and recoup any assistance given during that time. If the money is gone and the client reapplies before the calculated period of ineligibility, the agency must determine if the period can be shortened.
38. Q. Could you give us an example of how to treat EIC lump sum payment and how it affects retrospective budgeting?
- A. The following example is provided:

ADC case of two. Mother is currently working and receives an EIC lump sum payment of \$125 on February 12. Recipient notifies the agency on this date. The first step is to determine if the EIC, together with her projected earnings for February, is greater than one month's needs and should be budgeted as a lump sum.

<u>Needs</u>		<u>Income</u>	
Pre-Add	\$150.00	Gross	\$400.00
HEA	22.50	EIC	+ 125.00
Rent Allowance	183.00	Work Exp.	- 75.00
	<u>\$355.00</u>	30 + 1/3	- 170.00
		Net Income	<u>\$280.00</u>

Since the net income is not greater than one month's needs, the EIC and wages are budgeted retrospectively in April. (The need for supplementation must be considered.)

Continuing with this example, the February monthly report is received on March 8 which indicates that the client worked overtime for the last half of February due to a co-worker's illness. Based upon this new information, February's budget must be recalculated to determine if the lump sum provision should have been applied.

<u>Needs</u>		<u>Income</u>	
Pre-Add	\$150.00	Gross	\$725.00
HEA	22.50	EIC	+ 125.00
Rent Allowance	183.00	Work Exp.	- 75.00
	<u>\$355.00</u>	30 + 1/3	- 278.33
		Net Income	<u>\$496.67</u>

$\$496.67 \div \$355.00 = 1 \text{ month's ineligibility} + \$141.67 \text{ applied in March.}$

Lump Sum (Cont.)

Since the PA grants for February and March have already been issued, assistance for February would be an overpayment and March's PA benefit would be recalculated using January's recurring income and the \$141.67 excess from the lump sum payment.

April's PA grant would continue to be calculated retrospectively since the case was never closed. However, February's income would not be used again since it was already used to determine the lump sum.

Using this example, but rather than \$725 earned in March, \$625 is earned and reported on the February monthly report. February's budget would be redone to determine if the lump sum provisions apply.

<u>Needs</u>		<u>Income</u>	
Pre-Add	\$150.00	Gross	\$625.00
HEA	22.50	EIC	125.00
Rent Allowance	183.00	Work Exp.	75.00
	<u>\$355.00</u>	Child Care	160.00
		30 + 1/3	<u>191.67</u>
			<u>\$323.37</u>

Since the total net applicable income is less than one month's needs, it would not be considered a lump sum. Normal budgeting rules would be applied. In this instance, the household fails the gross income test due to combination of gross earnings and EIC.

Total Gross Income \$750.00 > \$657.68 185% Standard of Need.

Since ineligibility exists for only one month, assistance for April would be suspended.

39. Q. If a family member leaves the household and takes all or part of the lump sum, would the period of ineligibility be shortened for the remaining family members?
- A. Yes. They no longer have use of that portion of the lump sum.

Exhibit C

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: June 21, 2018

525064

In the Matter of TRICIA
STEWART, Individually and
as the Parent of ZAS et al.,
and on Behalf of Similarly
Situated Individuals,
Respondent-
Appellant,

v

OPINION AND ORDER

SAMUEL D. ROBERTS, as
Commissioner of the Office
of Temporary and Disability
Assistance,
Appellant-
Respondent,
et al.,
Respondent.

Calendar Date: May 2, 2018

Before: Egan Jr., J.P., Lynch, Clark, Mulvey and Rumsey, JJ.

Barbara D. Underwood, Attorney General, Albany (Laura
Etlinger of counsel), for appellant-respondent.

Susan C. Antos, Empire Justice Center, Albany, and Julie B.
Morse, Legal Services of Central New York, Syracuse, for
respondent-appellant.

Rumsey, J.

Cross appeal from a judgment of the Supreme Court (Collins, J.), entered August 23, 2017 in Albany County, which, among other things, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, (1) partially granted petitioner's cross motion for summary judgment, and (2) denied petitioner's motion for class certification.

In May 2015, the Onondaga County Department of Social Services (hereinafter DSS) denied petitioner's application for public assistance on the basis that she had resources in excess of the permitted limit of \$2,000. At the time of her application, petitioner had bank accounts with a total balance of \$248 and owned an automobile with a fair market value (hereinafter FMV) of \$12,113. As relevant here, an automobile is exempt, by statute, from consideration as an available resource, up to a FMV of \$9,300. DSS determined that \$2,813 – the amount by which the FMV of petitioner's automobile exceeded the \$9,300 exemption amount – was an available resource, and, therefore, that petitioner had available resources totaling \$3,061. Petitioner appealed to the Office of Temporary and Disability Assistance (hereinafter OTDA) for a fair hearing, which was held in July 2015. Petitioner submitted proof showing that she had financed her purchase of the automobile, in part, with a loan that was secured by a lien on the automobile on which the outstanding principal balance was \$13,301, and argued that her automobile should not be considered an available resource because the outstanding loan balance exceeded the FMV by \$1,188. The Administrative Law Judge affirmed DSS's denial of benefits.

In November 2015, petitioner commenced this combined CPLR article 78 proceeding and action for declaratory judgment seeking class certification and to annul OTDA's fair hearing determination and directing DSS to award her benefits. After answering, respondent Commissioner of OTDA (hereinafter respondent) moved for summary judgment dismissing the petition/complaint. Petitioner cross-moved for summary judgment on all of her claims for relief and separately moved for class certification. Upon determining that OTDA's policy regarding automobile valuation for purposes of determining available

resources violates applicable law, Supreme Court partially granted petitioner's cross motion by annulling OTDA's determination, and it remitted the matter to OTDA for calculation of the amount of retroactive benefits due petitioner. In addition, the court denied petitioner's motion for class certification and respondent's motion for summary judgment. Respondent appeals, and petitioner cross-appeals the denial of her motion for class certification.¹

Respondent argues that Supreme Court erred in annulling OTDA's determination because the FMV in excess of the exempt amount (\$9,300) is always an available resource, regardless of whether an automobile is encumbered by debt. Petitioner contends that only an applicant's equity interest in the automobile may be considered an available resource. "Where, as here, the issue is one of pure statutory construction, no deference need be accorded to [OTDA's] interpretation of the statutory framework" (Matter of Liberius v New York City Health & Hosps. Corp., 129 AD3d 1170, 1171 [2015] [citations omitted]; see Matter of Madison County Indus. Dev. Agency v State of N.Y. Auths. Budget Off., 151 AD3d 1532, 1535 [2017], lv granted 30 NY3d 913 [2018]; Matter of Logan v New York City Health & Hosp. Corp., 139 AD3d 1200, 1202 [2016]).

Public assistance must be provided only to individuals who are in need – a determination that the statute provides is based on the extent of their "available income or resources which are not required to be disregarded by other provisions of this chapter" (Social Services Law § 131-a [1]). Notably, available resources must be utilized to eliminate or reduce the need for public assistance (see 18 NYCRR 352.23 [a]). As relevant here, the following resources are exempt and, therefore, are disregarded in determining the eligibility of any household for public assistance: (1) cash and resources of up to \$2,000, and (2) one automobile with a FMV of up to \$9,300 (see Social

¹ Supreme Court also granted a motion by respondent Commissioner of Social Services of Onondaga County for dismissal of the petition/complaint against her, but petitioner does not challenge said determination on her cross appeal.

Services Law § 131-n [1] [a], [former (e)]).²

The first step in determining the extent to which an applicant's automobile is an available resource is to determine the extent of the available exemption based on the FMV of the automobile (see Social Services Law § 131-n). If the automobile has a FMV of less than the amount specified by statute, the inquiry ends; in such cases, the automobile is exempt regardless of whether it is encumbered by a loan. However, where, as here, the FMV of the vehicle exceeds the specified maximum exemption, a second determination must be made regarding the extent to which the excess FMV constitutes an available resource (see Social Services Law § 131-a; 18 NYCRR 352.23). In that regard, it is instructive that "[t]he amount of real and personal property, including liquid assets, that can be reserved for each public assistance household must not be in excess of \$2,000 equity value" (18 NYCRR 352.23 [b] [emphasis added]). Only the net amount that could be received upon the sale of an asset that is encumbered by an outstanding loan balance, i.e., the FMV less the outstanding loan balance, could be available to eliminate or reduce an applicant's need for public assistance. The arbitrary nature of OTDA's contrary position is aptly illustrated in this case, where the sale of the vehicle would not have generated any resources that petitioner could have used to meet her own support needs. Indeed, based on the automobile's FMV, she would not have received enough upon its sale to pay the entire outstanding loan balance. For these reasons, we conclude that Supreme Court properly held that the extent to which the FMV of an automobile that exceeds the exempt amount is an available resource must be determined based on the applicant's equity interest therein, and that OTDA's contrary interpretation was irrational and unreasonable.

² When petitioner applied for public assistance, the exemption for an automobile used to seek or retain employment was limited to \$9,300. Social Services Law § 131-n was amended, effective May 19, 2016, increasing the exemption for that purpose; it is currently \$12,000 (see L 2016, ch 54, § 1).

With regard to petitioner's cross appeal, we find that Supreme Court erred in denying her motion for class certification without affording her the opportunity for discovery on this issue.³ To prevail on her motion, petitioner was required to establish "1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; 2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members; 3. the claims or defenses of the representative parties are typical of the claims or defenses of the class; 4. the representative parties will fairly and adequately protect the interests of the class; and 5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy" (CPLR 901 [a]).

Initially, in opposition to petitioner's motion for class certification, respondent relied primarily on the governmental operations rule, which provides that class actions are not a superior method for resolving multiple claims against administrative agencies because stare decisis will protect the potential class members by ensuring prospective application of a favorable judgment. Although that principle applies to prospective claims, petitioner also seeks retroactive benefits for prospective class members whose applications have already been denied. Where, as here, a class action provides the only mechanism available to secure retroactive benefits for potential class members, the governmental operations rule does not bar maintenance of a class action (see Matter of Brown v Wing, 170 Misc 2d 554, 560 [Sup Ct, Monroe County 1996], affd for reasons stated below 241 AD2d 956 [1997]). Moreover, class actions are deemed a superior method for adjudication of a controversy where, as here, the members of a proposed class are indigent individuals who seek modest benefits and for whom commencement of individual

³ Petitioner's motion for class certification was timely because it was made less than 60 days after respondent's answer was served (see CPLR 902). Moreover, it was served concurrently with her opposition to respondent's summary judgment motion before submission of respondent's motion for a determination on the merits (cf. O'Hara v Del Bello, 47 NY2d 363, 369 [1979]).

actions would be burdensome (see id.).

With respect to the first factor set forth in CPLR 901 (a), there is no bright-line test for determining whether the requirement of numerosity has been met; rather, each case depends on the particular circumstances of the proposed class (see Friar v Vanguard Holding Corp., 78 AD2d 83, 96 [1980]; Vincent C. Alexander, Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C901:4). Notwithstanding the lack of a bright-line rule, the Court of Appeals has noted that the Legislature contemplated classes with as few as 18 members (see Borden v 400 E. 55th St. Assoc., L.P., 24 NY3d 382, 399 [2014]; see also Zeitlin v New York Islanders Hockey Club, L.P., 49 Misc 3d 511, 516-517 [Sup Ct, Nassau County 2015] [reviewing cases and concluding that the lower limit for class sizes is approximately 20 members]; Vincent C. Alexander, 2016 Supp Practice Commentaries, McKinney's Cons Laws of NY, Book 7B, CPLR C901:4, 2018 Supp Pamph, at 12).

The present record does not permit a determination of whether petitioner met her burden of establishing that the class is sufficiently numerous under the foregoing principles. The class proposed by petitioner includes all individuals who were negatively affected by a determination that was made within the four months immediately prior to commencement of this proceeding/action, based upon their ownership of an automobile with a FMV exceeding the amount of the exemption established by Social Services Law § 131-n who also had equity in the automobile less than the amount of the general resource exemption. Respondent argues that the proposed class must be limited to those individuals who exhausted their administrative remedies; on the present record, there appear to be only seven such individuals, which would be an insufficient number to warrant certification of a class action. However, although administrative remedies must ordinarily be exhausted prior to commencing litigation against an administrative agency, exhaustion is not required where resort to an administrative remedy would be futile (see Coleman v Daines, 79 AD3d 554, 560-561 [2010], affd 19 NY3d 1087 [2012]; see also Matter of Amsterdam Nursing Home Corp. v Commissioner of N.Y. State Dept. of Health, 192 AD2d 945, 947 [1993], lv denied 82 NY2d 654

[1993]). Here, an administrative appeal would have been futile in light of respondent's policy that required hearing officers to apply, in all cases, the very rule that petitioner now challenges. Accordingly, the prospective class properly includes all individuals who were negatively affected by a determination that was made within the four months immediately prior to commencement of this proceeding/action based on application of the challenged rule.

However, the present record does not permit identification of the number of individuals who were the subject of adverse action based on application of respondent's erroneous rule within the specified time period. The petition seeks a judgment directing respondent to identify all individuals meeting the characteristics of the proposed class and, in her brief on appeal, she again seeks discovery regarding class size. Timely requests for disclosure on the issue of numerosity must be granted (see Meraner v Albany Med. Ctr., 199 AD2d 740, 742 [1993]; Chimenti v American Express Co., 97 AD2d 351, 352 [1983], appeal dismissed 61 NY2d 669 [1983]; Spatz v Wide World Travel Serv., 80 AD2d 519, 520 [1981]; Simon v Cunard Line, 75 AD2d 283, 289-290 [1980]; see also DeLuca v Tonawanda Coke Corp., 134 AD3d 1534, 1535 [2015], lv denied 137 AD3d 1633 [2016]; Chavarria v Crest Hollow Country Club at Woodbury, Inc., 109 AD3d 634, 634 [2013]).

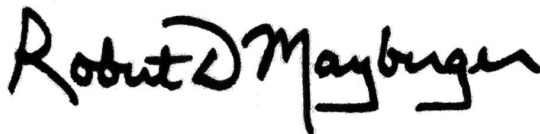
Supreme Court found that requiring respondent to identify proposed class members would be administratively cumbersome because it would require review of more than 12,000 applications. However, petitioner noted that OTDA maintains a coding system that would permit a search of its electronic database to identify applicants who were denied benefits for having excess resources where the disqualifying resources included an automobile. Petitioner's request for discovery on the issue of numerosity is governed by "the broad disclosure standard articulated in CPLR 3101 (a) encompassing 'all matter material and necessary in the prosecution or defense of an action', balanced by the court's ability to issue a protective order to prevent abuse" (Casey v Prudential Sec., 268 AD2d 833, 834 [2000, Graffeo, J.], quoting CPLR 3103 [a]). Moreover, her request must be evaluated based on the possibility that a search of OTDA's electronic database would

sufficiently identify the likely size of the proposed class, even if the resulting evidence would be insufficient to establish the precise number of class members (see e.g. Kudinov v Kel-Tech Constr., Inc., 65 AD3d 481, 481 [2009]; Weinberg v Hertz Corp., 116 AD2d 1, 6 [1986], affd 69 NY2d 979 [1987]). Accordingly, respondent failed to establish that the requested discovery should be denied, and Supreme Court erred in denying petitioner's motion for class certification without first granting her request for discovery on the issue of numerosity. Thus, the matter must be remitted to permit such discovery and, upon completion of that discovery, for Supreme Court to decide petitioner's motion for class certification.

Egan Jr., J.P., Lynch, Clark and Mulvey, JJ., concur.

ORDERED that the judgment is modified, on the law, without costs, by reversing so much thereof as denied petitioner's motion for class certification; matter remitted to the Supreme Court for further proceedings not inconsistent with this Court's decision; and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court

Exhibit D



**Department of
Social Services**

Human Resources
Administration

Department of
Homeless Services

Steven Banks
Commissioner

Saratu Gharney
Chief Program
Accountability Officer

250 Church Street
New York, NY 10013

212 274 5600

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

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."

- f. FIA-1189 should now be an attachment in the History section of the case in Maestro.
3. Once FIA-1189 is included in the history, the staff member must send a fax or secure email that includes both the generated document and FIA-1189 as an attachment. The procedure to send a fax or secure email with FIA-1189 as an attachment is:
 - a. Click on “View” under “Attachments” until you get to the Document screen.
 - b. Select either “Fax” or “Secure Email.”
 - c. Complete the information as you normally would.
 - d. Under “Attachments,” click FIA-1189 so that it is highlighted.
 - e. Press “Fax” or “Send Mail.”
 - f. Verify that the fax was transmitted successfully or that the secure email was received.

If there are any questions about this policy and procedure, or you need additional guidance or training on how to properly include FIA-1189 as an attachment in Maestro, please do not hesitate to contact me.

Thank you.

Enclosure

FIA-1189 Garcia Insert (How a Lump Sum May Affect Your Cash Assistance 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 divided by \$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**.

Exhibit E

NYCHA MANAGEMENT MANUAL – CHAPTER III
INCOME REVIEW AND VERIFICATION & INTERIM CHANGES

Type of Asset	Verification Required
Savings, Checking, Certificate of Deposit, Stocks, Bonds, Mutual Funds, Pensions and Retirement Funds, Individual Retirement Accounts (e.g. IRA, Keogh Accounts), Annuities, and other investment accounts	Copy of the most recent financial statement for each account. The statement must list the asset type for each account, the account numbers, current balance, and the interest or dividends earned for each account for the past 12 months
Life Insurance (Whole Life or Universal Life) <i>Do not include Term Life insurance.</i>	Copy of the most recent annual insurance policy statement, including the account number(s), total monetary value of the insurance policy, and the full name of the business institution with address and telephone number
Real Property	If the property is sold: Use Fair Market Value, less mortgage, less selling cost equals the cash value of the property If the property was not sold: Tenant submits a notarized statement for each property, indicating the type of property, address, percent of ownership, date of purchase, original purchase price, amount of existing loan that includes the name of the lender, current value, and income, if any, for the past 12 months
Personal Property held for Investment purposes e.g., gems, jewelry, coin collections, and antique cars	Written appraisal from a licensed appraiser, indicating the current market value and income, if any, for the past 12 months
Cash	None-Use amount indicated on <i>Occupant's Affidavit of Income</i> .
Trusts Funds	Statement from the Trustee of the account detailing the terms for dispersion of the trust
Mortgage or Deed of Trust	Original Mortgage or deed of trust documents detailing the terms, the remaining balance, and interest earned

Refer to Section VI. H. for more asset income verification.

6. Assets \$5,000 or Greater - Imputed Income

If the total cash value of the family's assets is \$5,000 or greater, the income used for income reviews is the greater of:

- The actual income from the assets
- The imputed income from the assets. Imputed income is calculated by multiplying the total cash value of a family's assets by a HUD authorized imputed passbook rate of interest. Starting with the 2015 First Quarter Annual Income Reviews, effective 5/1/2015, the imputed interest rate is being lowered from 2% to .8%.

TDS automatically determines the higher amount. Development staff must determine the asset's cash value as follows:

NYCHA MANAGEMENT MANUAL – CHAPTER III
INCOME REVIEW AND VERIFICATION & INTERIM CHANGES

- a. The cash value of an asset is determined by subtracting any reasonable costs that may be incurred in liquidating an asset from the verified market value.

Reasonable costs may include:

- Penalties for premature withdrawal of funds
- Broker and legal fees for selling assets or converting them to cash
- Settlement costs for real estate transactions

- b. If the resident's asset verification documentation does not contain sufficient information to determine reasonable costs and the cash value, development staff sends NYCHA form 040.297B, *Additional Information Letter*, requesting from the resident any reasonable cost verification associated with converting the asset(s) to cash.

If the additional information is not submitted within 15 days, development staff uses the full market value of the asset in determining the asset value and entering the amount into TDS.

Example - Determining Final Asset Income for Assets \$5,000 or Greater

Example : Henry Smith, a resident of Wagner Houses, has the following assets:					
Asset Type	Market Value	Reasonable Cost Expense for Conversion to Cash	Cash Value	Actual Income	Imputed Income
Checking account	\$450	\$0	\$450	\$0	\$3.60
CD	\$6,000	\$400	\$5,600	\$39.72	\$44.80
Coin collection	\$3,000	\$50	\$2,950	\$0	\$23.60
Total			\$9,000	\$39.72	\$72*
<p>Since the total cash value of Mr. Smith's assets is \$5,000 or greater, imputed income must be calculated. Assuming the passbook rate for imputed income is .08%: Imputed asset income = \$9,000 × 0.008 = \$72.00</p> <p>* Mr. Smith's imputed asset income (\$72) is greater than his actual asset income (\$39.72), his final asset income is \$72. Development staff must enter the Market or cash value of the asset income, as applicable and the actual asset income in TDS. TDS projects as income the greater of the actual or imputed asset income.</p>					

NYCHA MANAGEMENT MANUAL – CHAPTER III
INCOME REVIEW AND VERIFICATION & INTERIM CHANGES

7. Special Asset Issues

a. Assets Ownership

(1) Joint Ownership

Assets may be owned by more than one person. If any family member has unrestricted access or can legally dispose of the jointly owned asset, the full value of the asset and any income it produces is counted.

An asset owned by more than one person may be prorated according to the percentage of ownership. If no percentage is specified or provided by a state or local law, the asset is prorated evenly among all owners.

(2) Asset Not Owned by an Individual

If an asset is not effectively owned by an individual, it is not counted as an asset. For example, a joint checking account on which the individual is a signatory solely for the purpose of handling payments for someone else, (e.g., an elderly parent) in the event of an emergency would not be owned by that individual.

b. Assets Greater than \$1000 Disposed of for Less than Fair Market Value

Assets greater than \$1,000 disposed of for less than fair market value during the two years prior to the effective date of the annual review are counted as assets. Business assets disposed of for less than fair market value are also counted. Assets disposed of under the following circumstances are not considered assets disposed of for less than fair market value:

- In a foreclosure or bankruptcy sale
- As part of a separation or divorce settlement when the individual disposing of an asset receives "important consideration not measurable in dollar terms"

(1) Valuing and Imputing Income to Disposed Assets

For assets disposed of for less than fair market value, count the difference between the fair market value of the asset and the "compensation received" for it (i.e., the amount actually paid to the family).

If a family member has disposed of assets greater than \$1,000 over the last 2 years as indicated on NYCHA form, 040.694, *Disposition of Assets Notice* in the Annual Review booklet, development staff:

- Reviews the *Disposition of Assets Notice* form and determines the difference between the fair market value and the compensation received and projects this amount as an asset.

NYCHA MANAGEMENT MANUAL – CHAPTER III
INCOME REVIEW AND VERIFICATION & INTERIM CHANGES

Assets disposed of for less than fair market value produce no actual income for a family. However, NYCHA staff must impute income to these assets if the total cash value of all family assets is **\$5,000 or greater** including the cash value of disposed assets.

The period for which an asset disposed of for less than fair market value must be counted ends two years after the date of disposition. When the two-year period expires, any income assigned to the disposed asset is no longer counted.

(2) Documenting and Verifying Disposed Assets

Residents declare on NYCHA form, 040.694, *Disposition of Assets Notice* in the Annual Review booklet, the value of the disposed asset. Development staff, if warranted, may request verification of disposed asset values if the declaration does not agree with other information provided by the family.

c. Lump-Sum Receipts

Lump sum receipts such as deferred periodic amounts of SS or SSI benefits are excluded from annual income but may be included in a family's assets. Typical examples of lump sums not intended as periodic payments include:

- Inheritances
- Capital gains
- Settlement payments from:
 - Insurance claims (including health and accident insurance, worker's compensation, and insurance against personal or property losses)
 - Claim disputes over welfare, unemployment, and similar benefits
- Lottery winnings received in one payment

Lump sum receipts not intended as periodic payments are included in a family's assets only if the family retains some or all of the money in a form recognizable as an asset. For example, a lump sum deposited in a savings account or invested in a Certificate of Deposit. If a family spends the lump sum, the lump sum is not counted as an asset. Lump sum receipts that were never classified as assets cannot be considered assets disposed of for less than fair market value.

NYCHA MANAGEMENT MANUAL – CHAPTER III
INCOME REVIEW AND VERIFICATION & INTERIM CHANGES

EXAMPLES - LUMP-SUM RECEIPTS

Example 1: Joanne Wettig received an inheritance of \$10,000 and invested the entire amount in a CD. NYCHA does not require participants to report interim increases in assets. Therefore, she does not have to report the lump sum immediately. However, at her next annual recertification, she must report the CD as an asset.

Example 2: At his annual recertification in June, Horace Park reported that he expected to receive a deferred periodic amount of \$4,400 in a lump sum from the Social Security Administration in October. The entire amount is excluded for the June recertification but may be considered an asset for the next recertification.

Example 3: Mia LaRue bought a state lottery ticket and won \$100,000 in a single lump sum. She spent \$25,000 on a car, and she opened a money market account at her bank with the remaining \$75,000. At her next annual recertification, Mia reports the lump sum. No retroactive adjustments are necessary. NYCHA will treat the lump-sum lottery winnings as follows: It will not include the \$25,000 as an asset that Mia spent, and it will count as an asset whatever balance remains in the money market account (its current verified cash value) minus any management fees, broker, or transaction charges and sales commissions.

d. Cash from the Sale of Assets

If a family sells an asset, such as a house, the cash it receives from the sale is excluded from the annual income, and is counted as an asset only if it is retained by the family as an asset.

If the family sells an asset for less than fair market value, the sale is treated as follows:

- The amount the family receives is treated as a lump sum not intended as a deferred periodic payment
- The difference between the amount received and the cash value of the asset is treated as an asset disposed of for less than fair market value

e. Withdrawals of Cash from Assets

(1) Withdrawals of cash from investment accounts are not included in annual income if a family can document and NYCHA verifies that amounts withdrawn are reimbursement of amounts invested by the family.

- For example, John Smith receives \$300 per month for an annuity that he invested \$36,000. The annuity payment of \$300 monthly is not counted as annual income until after the entire \$36,000 investment is reclaimed.

(2) Withdrawals are included in annual income only if they are made on a periodic basis and are not reimbursements of amounts invested by the

NYCHA MANAGEMENT MANUAL – CHAPTER III
INCOME REVIEW AND VERIFICATION & INTERIM CHANGES

family. If the withdrawals are not made on a periodic basis, they are treated as lump sums not intended as periodic payments and are not included.

- For example, Isaac Freeman makes a sporadic **lump sum** withdrawal from his IRA account to pay for trips for his children. This sporadic cash withdrawal is not counted as annual income.
- For example, Sandra Whitman makes **periodic withdrawals** of \$300 monthly from an IRA to supplement her social security benefits. These periodic cash withdrawals are counted as annual income if the amount withdrawn is not reimbursement of amounts invested by Sandra Whitman.

D. SOCIAL SECURITY

1. Old Age Survivor's Insurance

The Social Security Administration provides a monthly benefit that retired employees receive based on employment history. The benefits are payable to the insured employee, as well as to other family members (spouse, dependent or surviving children, and dependent parents). Lump sum deferred periodic payments are NOT included as income. Refer to example in Section E.

2. Social Security Disability/Old Age Survivor's Disability Insurance

SSD/OASDI is a monthly benefit received from the Federal government if the tenant is not eligible for regular Social Security benefits, but must stop working because of a disability. Minor children may be entitled to a small portion of their parent's benefits.

For verification of SSD/OASDI refer to Section VI.

NOTE: Medicare, a Federal health insurance program, is available for OASI, SSD, OASDI recipients who are:

- 65 years of age, OR
- Disabled, regardless of age, provided they have been entitled to the benefits for two or more consecutive years

Medicare premiums are included in gross income calculations, but not if the recipient also receives Supplemental Security Income (SSI).

E. SUPPLEMENTAL SECURITY INCOME (SSI)

SSI, administered by the Social Security Administration, pays a monthly benefit to people with low income and limited assets who are 65 years of age or older, blind or disabled.

Exhibit F

TO: Local District Commissioners, Medicaid Directors

FROM: Judith Arnold, Director
Division of Eligibility and Marketplace Integration

SUBJECT: 2018 Federal Poverty Levels

EFFECTIVE DATE: January 1, 2018

CONTACT PERSON: Local District Support Unit
Upstate (518) 474-8887 NYC (212) 417-4500

The purpose of this General Information System (GIS) message is to inform local departments of social services (LDSS) of the revised federal poverty levels (FPLs). The revised FPLs are effective January 1, 2018, as published in the Federal Register.

The new FPLs should be used for all transactions with a January 1, 2018 MBL/eligibility "From" date. The revised figures will be available on MBL on March 19, 2018. For all new and pending applications, income must be compared to the 2018 FPLs.

Due to the increase in the FPLs, some Specified Low-Income Medicare Beneficiaries (SLIMB) may be income eligible for the Qualified Medicare Beneficiary (QMB) benefit and some Qualified Individuals-1 (QI-1) may become eligible for SLIMB. In such cases, staff must complete a 99-change transaction on the eMedNY Buy-in span, with the effective date of January 1, 2018, and change the Medicare Savings Program (MSP) code appropriately. For NYC, the change in MSP level can be transmitted via an undercare case transaction.

To assist districts with evaluating possible necessary changes, the following will occur:

- Upstate will perform a limited Mass Re-Budget (MRB) on March 17, 2018. The cases to be re-budgeted and have a 2018 Cost of Living Adjustment (COLA) applied are those that are included in the Aged, Blind, Disabled (ABD) or Medicare Savings Program (MSP) Automated Renewal Process. Upstate will not perform a MRB on any other budgets. Districts are required to manually update all other affected budgets at next contact or at renewal.
- New York City will perform a MRB on April 7, 2018 on Budget Types 01 - 07 for qualified budgets on open Case Type 20. The MRB will only impact cases with Social Security income. A closing transaction will be established for cases as appropriate. The MRB Reports of Exclusions and Exceptions will be created for the following budgets:
 - Budget 01 with EEC Code of "M";
 - Budget 04 with EEC codes of "E", "A", "H";
 - Budget 04, 05, 06, 07 with Buy-In Indicator = "A"; and
 - Budget 04 for MBI-WPD cases with MA RESP area code = "WD" or "PD".

The Human Resources Administration must evaluate and take appropriate action on these cases.

Medicare Part B Premium

In 2018, there is a COLA of 2% for Social Security benefits. Under a “hold-harmless” provision of federal law, basic Medicare Part B premiums in any year cannot rise higher than that year’s COLA.

Many people were held harmless in 2017 because the COLA for that year (0.3%) was not large enough to cover the full amount of the increased Part B premium (\$134.00).

In 2018, most of those who will be held harmless, will pay the full Part B premium. In other words, the 2% COLA will generate enough increased income for them to pay \$134.00 without reducing their net Social Security benefits.

For the remainder of those held harmless, their 2% Social Security COLA increase will not be sufficient to cover the entire Part B premium. They will pay a range of smaller Part B premiums, based on their 2018 COLAs.

The “hold-harmless” provision does not apply to all beneficiaries. The Medicare Part B premium for individuals in the following categories will pay the standard premium of \$134.00 (or higher) in 2018:

- Individuals whose income is above \$85,000, or a married individual when the couple’s combined income is over \$170,000, will pay the standard premium and an Income Related Monthly Adjustment Amount (IRMAA);
- New Medicare Part B beneficiaries. Since these individuals did not pay the Medicare Part B premium in 2017, the “hold harmless” provision does not apply; and
- Individuals who do not have the Medicare Part B premium deducted from their Social Security benefit. This includes individuals who are enrolled in the Medicare Savings Program. These individuals will not be directly affected; the increased premium will be paid by Medicaid.

If a person has chosen to pay the Medicare Part B premium to reduce excess income, the actual premium that is paid must be used in calculating the individual’s budget.

Family Member Allowance

As a result of the increase in the FPLs, the amount used in the Family Member Allowance (FMA) formula increased to \$2,058. The maximum monthly FMA increased to \$686. All spousal impoverishment cases involving a family member entitled to the family member allowance, which were active on or after January 1, 2018, and which were budgeted using the 2017 Family Member Allowance, must be re-budgeted using the 2018 Family Member Allowance. In addition, the increased Family Member Allowance must be used effective January 1, 2018, in determining any requested contribution of income from a community spouse or from a spouse living apart from an SSI-related applicant/recipient. Budget adjustments should be made at next contact or renewal.

If a district determines that a previously budgeted case has been negatively affected due to use of the 2017 FPL, or a case is brought to the district’s attention, the case should be re-budgeted using the revised FPLs. If eligible, covered medical expenses paid by an individual as a result of an improper calculation, must be reimbursed pursuant to 10 OHIP/ADM-9, “Reimbursement of Paid Medical Expenses Under 18 NYCCR §360-7.5(a).”

Charts with the 2018 FPLs for the various categories of Medicaid eligibility are attached to this GIS.

**NEW YORK STATE INCOME AND RESOURCE STANDARDS FOR NON-MAGI POPULATION
EFFECTIVE JANUARY 1, 2018**

HOUSE HOLD SIZE	MEDICAID INCOME LEVEL		100% FPL		120% FPL		133% FPL		135% FPL		150% FPL		185% FPL		200% FPL		250% FPL		RESOURCES	
	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY		
ONE	10,100	842	12,140	1,012	14,568	1,214	16,147	1,346	16,389	1,366	18,210	1,518	22,459	1,872	24,280	2,024	30,350	2,530	15,150	1
TWO	14,800	1,233	16,460	1,372	19,752	1,646	21,892	1,825	22,221	1,852	24,690	2,058	30,451	2,538	32,920	2,744	41,150	3,430	22,200	2
THREE	17,020	1,418	20,780	1,732			27,638	2,304			31,170	2,598	38,443	3,204	41,560	3,464				3
FOUR	19,240	1,603	25,100	2,092			33,383	2,782			37,650	3,138	46,435	3,870	50,200	4,184				4
FIVE	21,460	1,788	29,420	2,452			39,129	3,261			44,130	3,678	54,427	4,536	58,840	4,904				5
SIX	23,680	1,973	33,740	2,812			44,875	3,740			50,610	4,218	62,419	5,202	67,480	5,624				6
SEVEN	25,900	2,158	38,060	3,172			50,620	4,219			57,090	4,758	70,411	5,868	76,120	6,344				7
EIGHT	28,120	2,343	42,380	3,532			56,366	4,698			63,570	5,298	78,403	6,534	84,760	7,064				8
NINE	30,340	2,528	46,700	3,892			62,111	5,176			70,050	5,838	86,395	7,200	93,400	7,784				9
TEN	32,560	2,713	51,020	4,252			67,857	5,655			76,530	6,378	94,387	7,866	102,040	8,504				10
EACH ADD'L PERSON	2,220	185	4,320	360			5,746	479			6,480	540	7,992	666	8,640	720				+

SPOUSAL IMPOVERISHMENT	INCOME	RESOURCES
Community Spouse	\$3,090.00	\$123,600
Institutionalized Spouse	\$50	\$15,150
Family Member Allowance	\$2,058 (150% of FPL for 2) is used in the FMA formula the maximum allowance is \$686.	N/A

SPECIAL STANDARDS FOR HOUSING EXPENSES					
REGION	Amount	REGION	Amount	REGION	Amount
Central	\$417	Northeastern	\$467	Northern Metropolitan	\$935
Rochester	\$424	Long Island	\$1,274		
Western	\$365	New York City	\$1,305		

*In determining the community resource allowance on and after January 1, 2018, 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 \$123,600. 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 on or after September 30, 1989.



NON-MAGI POPULATION

CATEGORY	INCOME COMPARED TO	HOUSEHOLD SIZE		RESOURCE LEVEL		SPECIAL NOTES
		1	2	1	2	
		UNDER 21, ADC-RELATED	MEDICAID LEVEL	842	1,233	
SSI-RELATED	MEDICAID LEVEL	842	1,233	15,150	22,200	Household size is always one or two.
Qualified Medicare Beneficiary (QMB)	AT OR BELOW 100% FPL	1,012	1,372	NO RESOURCE TEST		Medicare Part A & B, coinsurance, deductible and premium will be paid if eligible.
COBRA CONTINUATION COVERAGE	100% FPL	1,012	1,372	4,000	6,000	A/R may be eligible for Medicaid to pay the COBRA premium.
AIDS INSURANCE	185% FPL	1,872	2,538	NO RESOURCE TEST		A/R must be ineligible for Medicaid, including COBRA continuation.
QUALIFIED DISABLED & WORKING INDIVIDUAL	200% FPL	2,024	2,744	4,000	6,000	Medicaid will pay Medicare Part A premium.
SPECIFIED LOW INCOME MEDICARE BENEFICIARIES (SLIMBS)	OVER 100% BUT BELOW 120% FPL	1,012	1,372	NO RESOURCE TEST		If the A/R is determined eligible, Medicaid will pay Medicare Part B premium.
		1,214	1,646			
QUALIFIED INDIVIDUALS (QI-1)	GREATER THAN OR EQUAL TO 120% BUT LESS THAN 135% FPL	1,214	1,646	NO RESOURCE TEST		If the A/R is determined eligible, Medicaid will pay Medicare Part B premium.
		1,366	1,852			
MEDICAID BUY-IN PROGRAM FOR WORKING PEOPLE WITH DISABILITIES (MBI-WPD)	250%	2,530	3,430	20,000	30,000	Countable retirement accounts are disregarded as resources effective 10/01/11.



**New York State Income Standards for MAGI Population
Effective January 1, 2018**

House Hold Size	LIF LEVEL		100% FPL		110% FPL		138% FPL		154% FPL		155% FPL		223% FPL	
	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY	ANNUAL	MONTHLY
One	12,211	1,018	12,140	1,012	13,354	1,113	16,754	1,397	18,696	1,558	18,817	1,569	27,073	2,257
Two	15,504	1,292	16,460	1,372	18,106	1,509	22,715	1,893	25,349	2,113	25,513	2,127	36,706	3,059
Three	18,691	1,558	20,780	1,732	22,858	1,905	28,677	2,390	32,002	2,667	32,209	2,685	46,340	3,862
Four	21,897	1,825	25,100	2,092	27,610	2,301	34,638	2,887	38,654	3,222	38,905	3,243	55,973	4,665
Five	25,195	2,100	29,420	2,452	32,362	2,697	40,600	3,384	45,307	3,776	45,601	3,801	65,607	5,468
Six	27,848	2,321	33,740	2,812	37,114	3,093	46,562	3,881	51,960	4,330	52,297	4,359	75,241	6,271
Seven	30,594	2,550	38,060	3,172	41,866	3,489	52,523	4,377	58,613	4,885	58,993	4,917	84,874	7,073
Eight	33,851	2,821	42,380	3,532	46,618	3,885	58,485	4,874	65,266	5,439	65,689	5,475	94,508	7,876
Nine	36,117	3,010	46,700	3,892	51,370	4,281	64,446	5,371	71,918	5,994	72,385	6,033	104,141	8,679
Ten	38,385	3,199	51,020	4,252	56,122	4,677	70,408	5,868	78,571	6,548	79,081	6,591	113,775	9,482
Each Add't Person	2,269	190	4,320	360	4,752	396	5,962	497	6,653	555	6,696	558	9,634	803

Revised January 30, 2018



MAGI POPULATION

CATEGORY	INCOME COMPARED TO	HOUSEHOLD SIZE		RESOURCE LEVEL		SPECIAL NOTES
		1	2	1	2	
PRESUMPTIVE ELIGIBILITY FOR PREGNANT WOMEN	223% FPL	N/A	3,059	NO RESOURCE TEST		Qualified provider makes the presumptive eligibility determination. Cannot spenddown to become eligible for presumptive eligibility.
PREGNANT WOMEN	223% FPL	N/A	3,059	NO RESOURCE TEST		A woman determined eligible for Medicaid for any time during her pregnancy remains eligible for Medicaid coverage until the last day of the month in which the 60th day from the date the pregnancy ends occurs, regardless of any change in income or household size composition. If the income is above 223% FPL the A/R must spenddown to the Medicaid income level. The baby will have guaranteed eligibility for one year.
CHILDREN UNDER ONE	223% FPL	2,257	3,059	NO RESOURCE TEST		If the income is above 223% FPL the A/R may apply for CHPlus or if chooses to spenddown, must spenddown to the Medicaid level. One year guaranteed eligibility if mother is in receipt of Medicaid on delivery. Eligibility can be determined in the 3 months retro to obtain the one year extension.
CHILDREN AGE 1 THROUGH 5	154% FPL	1,558	2,113	NO RESOURCE TEST		If income is above 154% FPL the A/R may apply for CHPlus or if chooses to spenddown, must spenddown to the Medicaid level.
CHILDREN AGE 6 THROUGH 18	110% FPL	1,113	1,509	NO RESOURCE TEST		If income is above 154% FPL the A/R may apply for CHPlus or if chooses to spenddown, must spenddown to the Medicaid level.
	154% FPL	1,558	2,113			
PARENTS/CARETAKER RELATIVES	138% FPL	1,397	1,893	NO RESOURCE TEST		If income is above 138% FPL the A/R may apply for APTC or if chooses to spenddown, must spenddown to the Medicaid Level.
19 AND 20 YEAR OLDS LIVING WITH PARENTS	138% FPL	1,397	1,893	NO RESOURCE TEST		If income is above 155% FPL the A/R can apply for APTC or if chooses to spenddown, must spenddown to Medicaid level.
	155% FPL	1,569	2,127			
SINGLE/CHILDLESS COUPLES AND 19 AND 20 YEARS LIVING ALONE	100% FPL	1,012	1,372	NO RESOURCE TEST		S/CCs cannot spenddown, but can apply for APTC. 19 and 20 year olds if income over 138% may apply for APTC or if chooses to spenddown, must spenddown to the Medicaid level.
	138% FPL	1,397	1,893			
FAMILY PLANNING PROGRAM	223% FPL	2,257	3,059	NO RESOURCE TEST		Eligibility determined using only applicant's income.

Section 503 of Public Law 94-566, referred to as the Pickle Amendment, protects Medicaid eligibility for all recipients of Retirement Survivors and Disability Insurance (RSDI) who were previously eligible for SSI benefits concurrently. These recipients are individuals who would be eligible for SSI, if all RSDI Cost of Living Allowances (COLAs) received since they were last eligible for and receiving RSDI and SSI benefits concurrently, were deducted from their countable income. (See 85 ADM-35 for further information). The reduction factors in the chart below, "REDUCTION FACTORS FOR CALCULATING MEDICAID ELIGIBILITY UNDER THE PICKLE AMENDMENT", should be used when determining Medicaid eligibility for individuals who are entitled to a reduction to their countable SSI Income.

If SSI was terminated during this period:	Multiply 2018 Social Security income by:	If SS was terminated during this period:	Multiply 2018 Social Security income by:	If SSI was terminated during this period:	Multiply 2018 Social Security income by:
May – June 1977	0.240	Jan. 1990 – Dec. 1990	0.515	Jan. 2003 – Dec. 2003	0.736
July 1977 – June 1978	0.254	Jan. 1991 – Dec. 1991	0.542	Jan. 2004 – Dec. 2004	0.752
July 1978 – June 1979	0.270	Jan. 1992 – Dec. 1992	0.562	Jan. 2005 – Dec. 2005	0.772
July 1979 – June 1980	0.297	Jan. 1993 – Dec. 1993	0.579	Jan. 2006 – Dec. 2006	0.804
July 1980 – June 1981	0.339	Jan. 1994 – Dec. 1994	0.594	Jan. 2007 – Dec. 2007	0.830
July 1981 – June 1982	0.377	Jan. 1995 – Dec. 1995	0.611	Jan. 2008 – Dec. 2008	0.849
July 1982 – Dec. 1983	0.405	Jan. 1996 – Dec. 1996	0.627	Jan. 2009 – Dec. 2011	0.899
Jan. 1984 – Dec. 1984	0.420	Jan. 1997 – Dec. 1997	0.645	Jan. 2012 – Dec. 2012	0.931
Jan. 1985 – Dec. 1985	0.434	Jan. 1998 – Dec. 1998	0.659	Jan. 2013 – Dec. 2013	0.947
Jan. 1986 – Dec. 1986	0.448	Jan. 1999 – Dec. 1999	0.667	Jan. 2014 – Dec. 2014	0.961
Jan. 1987 – Dec. 1987	0.454	Jan. 2000 – Dec. 2000	0.684	Jan. 2015 -Dec 2016	0.977
Jan. 1988 – Dec. 1988	0.473	Jan. 2001 – Dec. 2001	0.708	Jan. 2017 - Dec. 2017	0.980
Jan. 1989 – Dec. 1989	0.492	Jan. 2002 – Dec. 2002	0.726		

Note: This updates the Reduction Factors included in the Medicaid Reference Guide (MRG). The MRG table should no longer be used.

Revised January 30, 2018

Exhibit G

SSI and SSP Benefit Levels Chart effective January 1, 2018 (reflects the 2.0% federal COLA for January 2018)

Fed L/A Code	State Supp Code	New York State Living Arrangement	Individual			Couple		
			Federal	State	Total ¹	Federal	State	Total
A	A	Living Alone	\$750	\$87	\$837	\$1,125	\$104	\$1,229
A, C	B	Living With Others	\$750	\$23	\$773	\$1,125	\$46	\$1,171
B	F	Living in the Household of Another ²	\$500	\$23	\$523	\$750	\$46	\$796
A	C	Congregate Care Level 1 - Family Care OCFS certified Family Type Homes for Adults; and OMH or OPWDD certified Family Care Homes <i>NYC, Nassau, Rockland, Suffolk and Westchester Counties</i>	\$750	\$266.48	\$1,016.48	\$1,125	\$907.96	\$2,032.96
		<i>Rest of State</i>	\$750	\$228.48	\$978.48	\$1,125	\$831.96	\$1,956.96
A	D	Congregate Care Level 2 - Residential Care OMH or OPWDD certified Community Residences, Individualized Residential Alternatives and OASAS certified Chemical Dependence Residential Services <i>NYC, Nassau, Rockland, Suffolk and Westchester Counties</i>	\$750	\$435	\$1,185	\$1,125	\$1,245	\$2,370
		<i>Rest of State</i>	\$750	\$405	\$1,155	\$1,125	\$1,185	\$2,310
A	E	Congregate Care Level 3 – Enhanced Residential Care DOH certified Adult Homes and Enriched Housing programs; and OPWDD certified Schools for the Developmentally Disabled	\$750	\$694	\$1,444	\$1,125	\$1,763	\$2,888
D	Z	Title XIX (Medicaid certified) Institutions ³	\$30	0 ⁴	\$30	N/A		
A	Z	(see below) ⁵	\$750	0	\$750	\$1,125	0	\$1,125

Minimum Personal Needs Allowances

Congregate Care Level 1	-	\$ 144
Congregate Care Level 2	-	\$ 166
Congregate Care Level 3	-	\$ 198

Limits on Countable Resources

Individuals	\$2,000
Couples	\$3,000

Statutory References: Chap. 56 of L. 2017

Revised 6 Nov 2017

¹ The combined federal and State SSI benefit provided to eligible individuals and eligible couples with no countable income.

² The *Living With Others* category includes recipients whose federal benefit has been reduced by the "value of the 1/3 reduction" (VTR) due to the federal determination that they are both:

a) Living in someone else's household, and b) receiving some amount of free or subsidized food and shelter (room and board).

³ Applies when an SSI recipient is residing in a medical facility, is not expected to return home within 90 days, and Medicaid is paying for at least 50% of the cost of care.

⁴ Recipients in nursing homes licensed by DOH receive an additional monthly grant of \$25 issued by OTDA called a State Supplemental Personal Needs Allowance (SSPNA). Residents of other medical facilities receive an SSPNA of \$5.

⁵ No State supplement is provided: a) when an SSI recipient is residing in a private medical facility and Medicaid is paying for less than 50% of the cost of care, or b) when a recipient resides in certain publicly operated residential facilities serving 16 or fewer residents, or c) while a recipient resides in a public emergency shelter for 6 calendar months during a 9 month period.