

What Personal Injury Attorneys Need to Know about Handling Claims for a Low Income Plaintiff

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Most attorneys are familiar with the government benefit programs for their disabled clients. SSI and Medicaid are benefits available to the disabled. A settlement can be placed in a special needs trust to preserve eligibility for these benefits. There are other government benefits that are available to families, not because they are disabled but because they are poor.

Your clients may be receiving very valuable cash, food, medical and housing benefits based upon their low income status. For these non-disabled, low income clients, a special needs trust is not an option to protect their settlement and preserve their government benefits. Because these benefits are based upon the family's assets and income the benefits may be lost if the family receives a lump sum or a structured personal injury settlement.

At a minimum, clients need to be warned in advance how a settlement will affect their benefits so they can take that into account in weighing whether to pursue litigation in the first place. This information is also necessary in order to evaluate whether an offered settlement will be adequate for your client. If there are strategies to minimize the loss of these benefits they should also be explored with the clients before any settlement is finalized.

This article addresses the most common government benefits for low income, non-disabled individuals, how a settlement will impact those benefits and what strategies, if any, can be considered to minimize the impact on future eligibility. To illustrate these issues it is helpful to look at a hypothetical low income family.

Susan is a 30 year old single mother with two children, Lilly, age 4, and Tim who is 6. Tim is disabled and receives SSI. Susan and Tim were in a car accident and have been offered a settlement of \$400,000 to Tim and \$200,000 to Susan.

Tim receives \$623 from **SSI** because he is a disabled child living in a low income family. Tim gets Medicaid automatically with his SSI grant. Tim's government benefit issues are easy to solve. Because Tim is disabled his settlement of \$400,000 can go into a special needs trust to preserve his eligibility for SSI and Medicaid (but see below how Susan's portion of the settlement may cause a different problem for Tim's SSI benefits).

Susan's circumstances are much more complicated. Susan and Lilly receive cash assistance from the **TANF** program (Temporary Assistance to Needy Families). TANF is a cash assistance program for families with dependent children. In most cases the benefit program cannot extend beyond five years but there are exceptions to this rule, including when there is a disabled child in the home. Susan receives \$440 per month for

an assistance unit of 2. (Tim is not included in the assistance unit because he receives SSI income separately.)

With TANF, Susan automatically receives **Medicaid** health coverage for herself and Lilly. The household receives **food stamps** of \$325 per month. The Food Stamp Program is actually a debit card that can be used at most grocery stores to purchase food items. The amount of food stamps a household receives depends upon several factors including the number of people in the household, household income, and shelter expenses. Susan has a **Section 8** certificate from the housing authority that subsidizes her rent for her 2 bedroom apartment. Susan's rent is 30% of her household income or about \$300 per month. If Susan had to pay market rent for her apartment it would be \$800 per month so this benefit is worth \$500 a month to Susan.

If you added up the family's TANF cash benefit, Tim's SSI benefit, the food stamps, the medical expenses paid by Medicaid and rent saved with the Section 8 rent subsidy, the market value of Susan's benefits is over \$2,500 per month or \$30,000 per year. How will the receipt of a \$200,000 settlement for Susan impact her household benefits for herself and her two children? Is there any advantage or disadvantage of structuring the settlement amount? At Susan's age the structure would pay her \$900 per month for her lifetime.

TANF: The TANF program has an asset limit of \$1,000 plus an additional \$3,000 in a savings account. A home, household furnishings and a car worth less than \$5,000 are exempt assets. Unearned income paid to Susan, including payments from a structure, will reduce her cash benefit dollar for dollar.

The \$200,000 settlement will disqualify Susan from TANF because her assets will exceed the \$1,000 asset limit. A structure paying \$900 per month will also disqualify her from receiving TANF because the monthly payments will exceed and replace the TANF cash assistance grant. Losing TANF cash assistance for Susan and Lilly will cost the family \$440 per month or \$5,280 per year. Some parents also receive a valuable child care subsidy from TANF if they go back to work which would also be lost if Susan loses her TANF eligibility.

Food Stamps: The food stamp program has an asset limit for a non-disabled household of \$2,000 and \$3,000 for a household with a disabled or elderly member. Again, Susan's receipt of \$200,000 would put her over the asset limit so the family will lose their \$325 of food stamps every month. The Food Stamp program does not count a house, one car of any value and household furnishings in determining eligibility. If Susan has a structure paying a fixed monthly amount, the payments are treated as "income" that could reduce or eliminate her food stamp benefit depending upon the amount.

Medicaid: If Susan loses her TANF she will also lose her Medicaid coverage. There is another Medicaid program for children under the age of 19, called the Medically Needy Children's program. This program does not take into account a parent's assets. Eligibility is based only on the parents' income. As long as the household income is

below 200% of the Federal Poverty Level (\$2,767 per month for a 3 person household) Lilly and Tim would qualify for this Medicaid program if they lose their Medicaid through TANF and SSI. This program will not cover Susan, however, so she will need to purchase a private health insurance policy if she wants medical coverage.

Tim's SSI: Until Tim is 18, his custodial parent's assets and income affect his eligibility for SSI. If a single parent's assets exceed \$2,000, or if the parent's income exceeds the maximum amount allowed for the parent (depending upon number of children and whether a one or two parent household), the disabled child will lose his or her SSI benefits. A special needs trust will not solve this problem because it is *Susan's* assets and income that are causing the problem, not Tim's.

Section 8: The Section 8 Program does not have an asset limit to qualify for a rent subsidy. If Susan receives a lump sum settlement, that will not disqualify her from this program. But if Susan receives a monthly structure payment, that is income to her. Rent is calculated based upon her monthly income. If Susan receives a monthly structure payment of \$900 her rent will be approximately one-third of that amount or \$300.

Are there any solutions for Susan? If you add up all of the potentially lost benefits for Susan, her settlement could cost her a substantial amount.

There are some strategies that Susan could consider to minimize the loss of benefits but some of the proposed strategies may protect one benefit but not another.

- **Trust:** This is *not* an option for Susan to protect any of her benefits. Again it only with disabled individuals that a trust can protect their SSI and Medicaid benefits.
- **Give Away Assets:** If Susan gave away her \$200,000 settlement she would be ineligible for TANF for two years and ineligible for food stamps for one year. For Tim's SSI, there is no transfer penalty if a parent gives away assets to come within the asset limit applicable to the parent. Giving away assets will increase Susan's rent under the Section 8 program for two years.
- **Purchase Exempt Resources:** If Susan purchased a home, household furnishings, a car worth less than \$5,000, she could convert countable resources into exempt resources. TANF, SSI and the food stamp program would all exempt a home if Susan can afford the purchase price with a lump sum settlement. If the goal is to purchase exempt resources with a settlement, it would not be helpful to structure the settlement.
- **Structure:** If Susan's only concern is protecting Tim's SSI eligibility until he is 18, then a structure may solve that problem. It would be important to make sure the monthly payments to Susan will be less than the maximum income allowed for the parent. Structure payments above a certain amount can also reduce Tim's SSI benefit dollar for dollar. The structure does not solve the TANF or food stamp issues and 30% of the structure will be required as rent under the Section 8 program.

- **Spend Down Assets:** Susan could decide that the best alternative for her family is to go off of all of their benefits and use her settlement to support her family. When the money is again down to \$2,000 she can reapply for SSI for Tim and food stamps for the household. When her assets are down below \$1,000 she can apply for TANF for herself and Lilly.

There is no cookie cutter formula to address the impact of a settlement on a low income client. Every case is unique in terms of the mix of government benefits, the practical options available to the client and the client's reaction to losing certain benefits. The important thing is to discuss these complexities with your client early in the development of the case and review options to minimize the loss of those benefits. Our law firm is available to consult with personal injury attorneys on these complex government benefit issues.

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