

Special Needs Trusts and Subsidized Housing Benefits

By: Barbara A. Isenhour and Sean R. Bleck

Public housing and Section 8 housing are rent subsidy programs for low income, elderly and disabled individuals. Many of these programs are administered by local housing authorities. The rent subsidy programs are regulated at the federal level by the Department of Housing and Urban Development (HUD).

Housing Authorities have discretion in setting an asset limit for eligibility for some of the subsidized housing programs. Other programs, including the Section 8 program, have no asset limit to qualify for benefits.

If a tenant is the beneficiary of a special needs trust, whether funded with the tenant's own assets or established by a third party, the trust is not an available asset that will affect eligibility. In some cases, however, funding a special needs trust or distributions from a special needs trust can affect the amount of rent the tenant must pay.

How Rent Is Calculated

Rent is calculated as a percentage of the tenant's adjusted income. Typically rent for Section 8 and subsidized housing programs is 30% to 40% of the tenant's adjusted household income. There are deductions from the tenant's annual income which are not discussed in this article but which can help to reduce the tenant's rent and increase the subsidy paid by HUD.

Payments from a Special Needs Trust

If the trustee of a special needs trust makes *regular recurring* distributions from a special needs trust, those distributions will be treated as income to the tenant that will affect the amount of rent owing. So for example Susan receives \$800 per month of social security disability income and a special needs trust established by her grandmother pays her monthly utility bill of \$200 every month. The housing authority will consider her countable income to be \$1000 per month instead of \$800 per month. Her rent is one third of that amount or \$333 per month. If the trust did not make that regular recurring payment her rent would be one third of \$800 or \$266 per month.

If the trustee pays for a car repair bill one month, car insurance the next month and a utility bill the next month, those payments would not be treated as income if the payments are *temporary, sporadic or nonrecurring*. It may be advantageous for the trustee to vary the expenses paid from the trust on behalf of the tenant to avoid the appearance that the distributions are regular and recurring.

Transferring Assets to a Special Needs Trust

If a subsidized housing tenant receives a lump sum from an inheritance or personal injury settlement, that payment will not affect the tenant's eligibility for subsidized housing

unless the relevant subsidy program has an asset limit and the lump sum will exceed that limit.

The tenant may be receiving SSI or Medicaid, however, in which case the lump sum will affect the tenant's eligibility unless the funds are transferred to a special needs trust. This type of special needs trust is sometimes referred to as a "Medicaid repayment trust", a "d(4)(A) trust" or a "grantor trust." If the tenant transfers assets that he or she owns to a special needs trust, HUD will treat this as a transfer for less than fair market value. The consequence is that, for two years from the transfer, HUD will impute income earned on the principal funding the trust. The income is imputed at a HUD determined passbook rate (currently 2% per annum). This imputed income will be included with other income in calculating the tenant's rent.

To illustrate how this works, let's assume that Robert is a Section 8 tenant. He receives SSI income of \$623 per month. His rent is calculated as 30% of his adjusted SSI income or \$187 per month (for simplicity we will not discuss the deductions allowed to Robert's gross income).

Robert receives a settlement from an auto accident of \$100,000. In order to preserve his SSI eligibility, Robert transfers this settlement to a Medicaid repayment special needs trust. The housing authority will treat the transfer to the trust as a transfer for less than fair market value and impute income of 2% of \$100,000 for the next two years. This will result in an additional \$2000 per year or \$166 per month to Robert's income. Rent will be calculated based upon 30% of the total of his SSI income of \$623 and the imputed income of \$166. The resulting rent will be \$236 per month instead of \$187, or an increase of about \$50 per month for the next two years.

Applicable Regulations and Handbooks

For more information on how HUD calculates the rent subsidy for tenants see http://www.hudclips.org/sub_nonhud/cgi/nph-brs.cgi?d=HSGH&s1=@docn&l=100&SECT1=TXTHLB&SECT5=HEHB&u=./hudclip.s.cgi&p=11&r=1032&f=G

For more information on the Section 8 housing program see <http://www.section8programs.com/section8.html>

Applicable regulations are at 24 C.F.R. Part 5.