

# Benefits Preservation

Case considerations for  
handling money  
damages or settlements

Day One

# We're about to settle...



# Case Example: Meet John

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John is a 63-year-old disabled individual living in an apartment that is subsidized through a tenant-based voucher program. John's landlord neglects the property, and John has been dealing with mice, bed bugs, mold, and dirty water for months. After months of John's landlord ignoring his complaints, John finally calls the Board of Health. "Coincidentally," the next week John receives an eviction notice.

Generic Legal Aid (GLA) represents John in his eviction case. Not only is the landlord ordered to make extensive repairs to the apartment, but also John is allowed to stay. He also wins \$35,000 in damages.

John saves most of his settlement, but he gives \$5,000 to each of his three grandkids. Unfortunately, three years later, he gets injured and needs to move into a nursing home on a long-term basis.

# Did GLA Really Help John?

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Unfortunately, no one at GLA was paying attention to John's income and benefits, and John did not report the settlement to any entity. As a result:

- (1) He may have to pay back the Social Security Administration for any SSI benefits he received when he had more than \$2000 in his bank account.
- (2) He might be excluded from MassHealth nursing home coverage for a set period of time because he gave monetary gifts.
- (3) He could have lost his SNAP for any month where he had more in the bank than DTA allows.

# Session Objectives: Day One

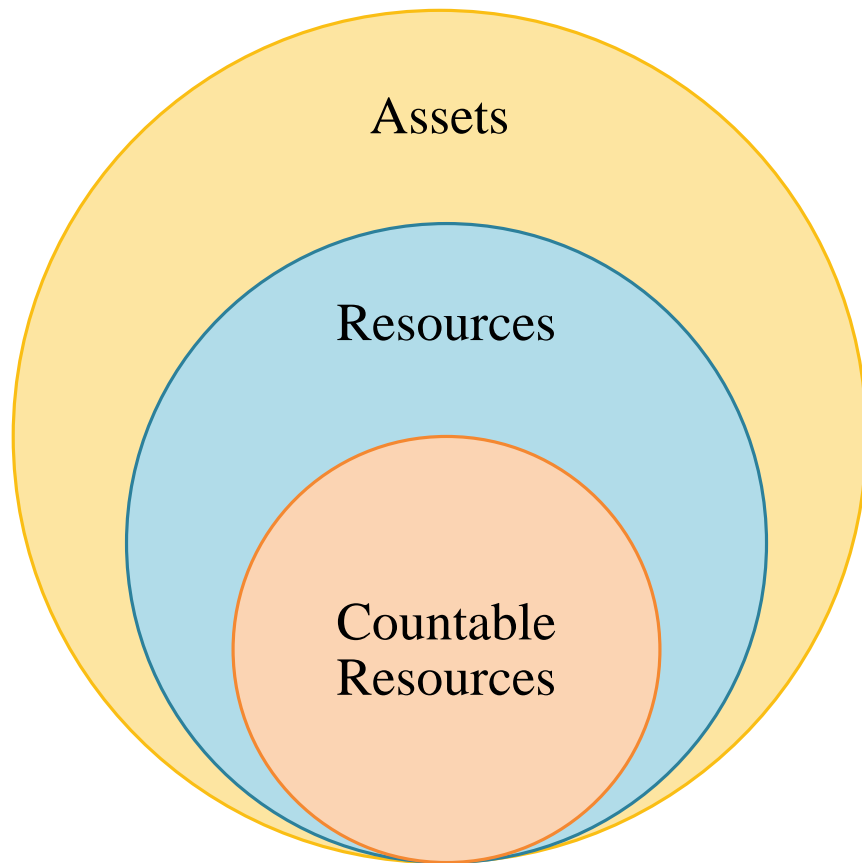
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- ❖ Social Security-related benefits
- ❖ Health insurance programs and liens
- ❖ Public and subsidized housing
- ❖ Transitional Cash Assistance Programs
- ❖ Emergency Assistance
- ❖ Supplemental Nutrition Assistance Program
- ❖ Taxes

# Key SSA Acronyms

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- ❖ **SSA:** Social Security Administration
- ❖ **RSDI:** Retirement, Survivors, and Disability Insurance
- ❖ **SSDI:** Social Security Disability Insurance
- ❖ **SSI:** Supplemental Security Income
- ❖ **SSP:** State Supplement Program
- ❖ **SSN:** Social Security Number



### Assets Include:

- Things in which you have an ownership interest;
- Things in which you have the legal right, authority, or power to liquidate; or,
- Things you can (legally) use for your support and maintenance

### (Noncountable) Resources Include:

- Life insurance policies with a combined face value of \$1500 or less
- Property you don't live on
- Burial plot
- Household goods and personal effects

### Countable Resources Include:

- Stocks & bonds
- Bank accounts
- Nonhome real property
- Convertible virtual currencies (such as bitcoin)

# RSDI and SSDI (Title II Benefits)

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❖ Benefits are “entitlement programs,” based on the Social Security tax on earnings

❖ Benefits can be paid to:

- Qualifying retirees
- Someone with a qualifying disability (SSDI)
- A spouse or child of a beneficiary
- A divorced spouse of an actual or eligible beneficiary
- A spouse or child of a deceased worker
- A divorced spouse of a deceased worker
- A dependent parent of a deceased worker



# SSI (Title XVI) and SSP

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- ❖ Must meet income and resource limits
- ❖ SSI benefits can be paid to:
  - ❖ Age 65 or older
  - ❖ Person who is blind
  - ❖ Person with a qualifying disability
- ❖ SSP is an additional payment from Massachusetts for those on SSI. Partial benefits may be available to those with low-incomes but who are over-income for SSI.

# When Do Your Clients Get Paid?

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- ❖ SSI and SSP: paid on the 1<sup>st</sup>
  - ❖ If the 1<sup>st</sup> falls on a weekend, payments are issued the Friday before the 1<sup>st</sup>
- ❖ RSDI: Generally paid on Wednesdays or the 3<sup>rd</sup> of the month
  - ❖ If a regular payment day falls on a Federal legal holiday, benefits are paid the first preceding day that is not a Federal legal holiday

# Identifying Benefits from Clients' Payments

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## ❖ SSP Payments:

- ❖ Check: Commonwealth of Massachusetts
- ❖ Direct Deposit: COMM OF MASS SSP SUPP

## ❖ SSI and RSDI Payments:

- ❖ Direct Deposit: SSI TREAS SUPP SEC (SSI) or SSA TREAS SOC SEC (RSDI)
- ❖ Direct Express Debit Mastercard
- ❖ Very rarely by checks

# The Impact of Money Damages or Settlements on RSDI

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- ❖ Entitlement programs are rarely impacted by settlements
- ❖ SSDI can be impacted by:
  - ❖ Workers' Compensation or other payments based on a work relationship
  - ❖ Personal injury compensation for lost wages

# The Impact of Money Damages or Settlements on SSI and SSP

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- ❖ **Benefits can be reduced or terminated**
- ❖ Obligated to report to SSA within 10 days of receipt
- ❖ Both SSI and SSP have income and resource limits:
  - ❖ Resource limits: \$2,000/individual or \$3,000/couple
  - ❖ Income limits: Depend on household makeup and living arrangements
- ❖ Be wary of transfers for less than fair market value
- ❖ Settlements = income in the month received, resource for any month retained thereafter





# How is Your Client Insured?

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# Health Insurance Programs: Medicare



Part  
A

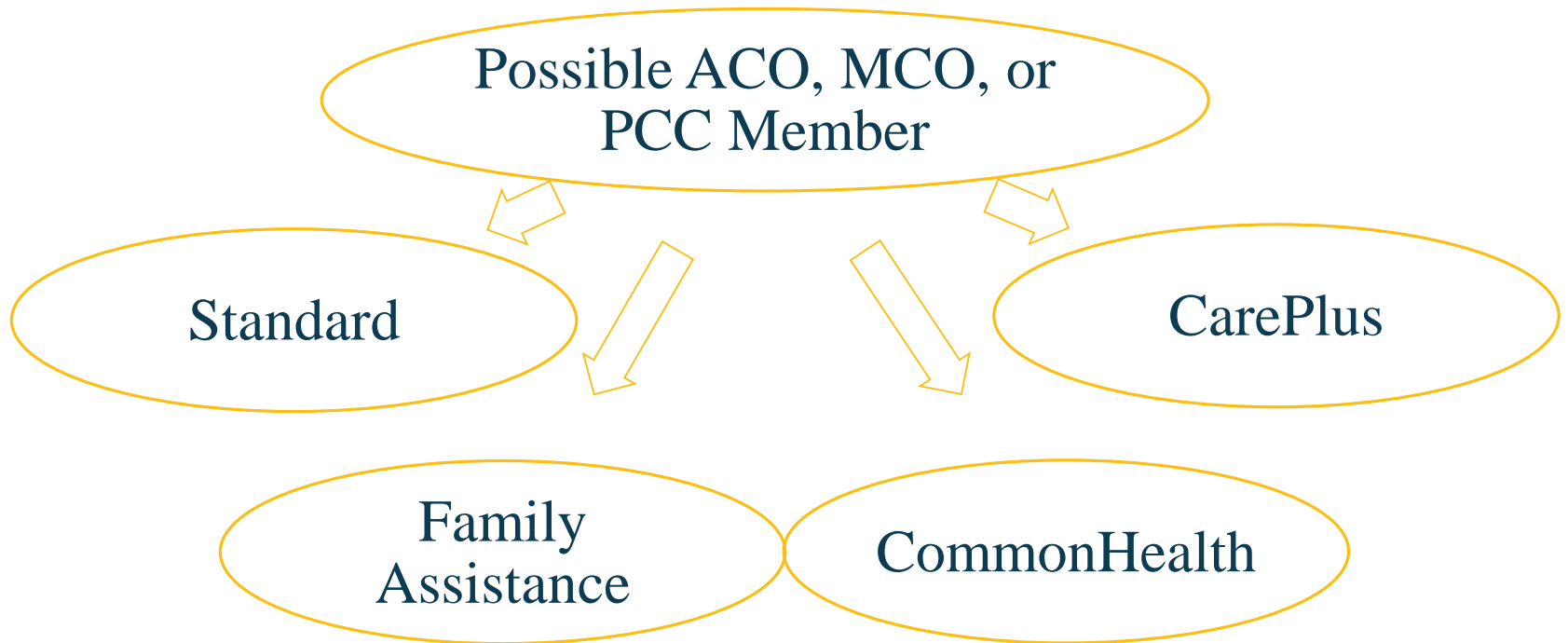
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# Health Insurance Programs: Public Coverage, Part One

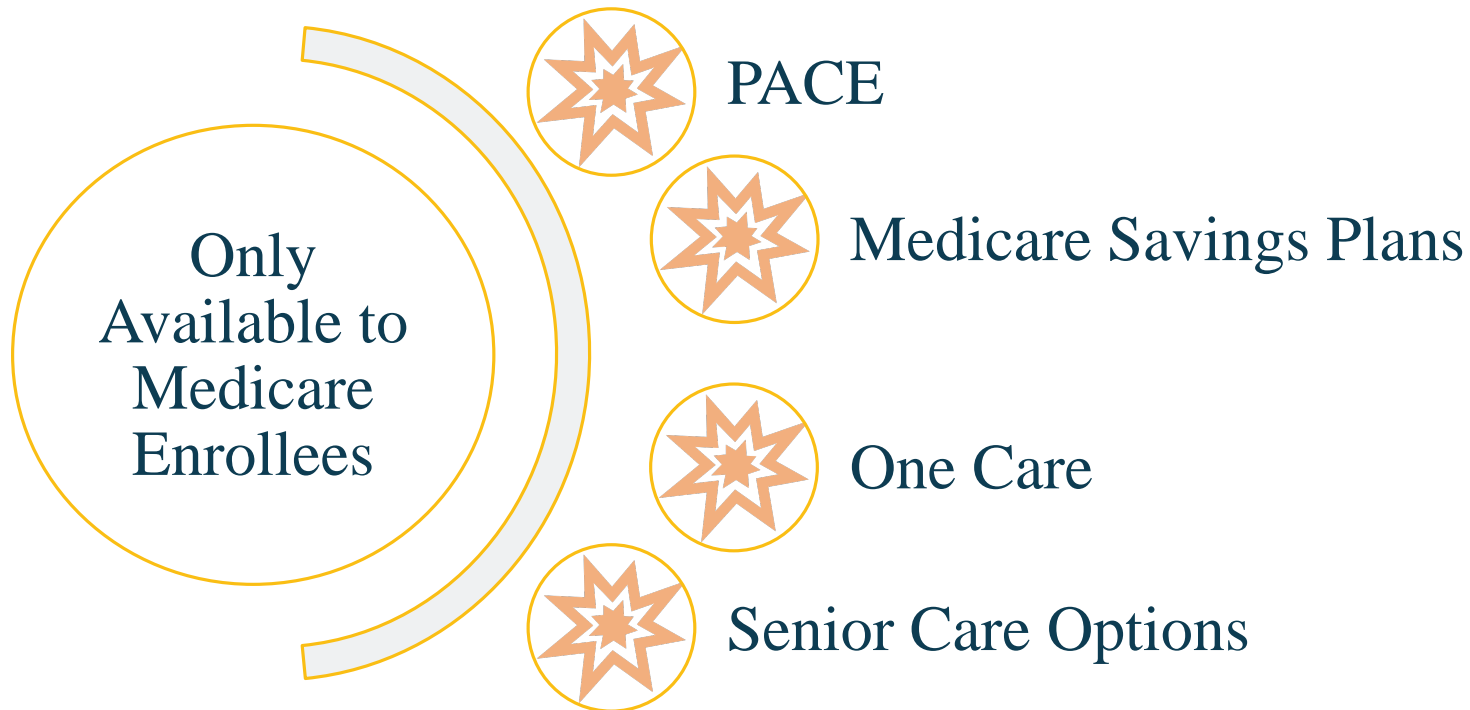
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# Health Insurance Programs: Public Coverage, Part Two

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# Health Insurance Programs: Public Coverage, Part Three

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- Children's Medical Security Plan (CMSP)
  - Health Safety Net (HSN)
  - Limited

# The Impact of Money Damages or Settlements: Medicare

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- ❖ None....**unless** the issue involves personal injury, no fault, or workers' compensation claims
- ❖ Will need to repay Medicare for any payments Medicare makes as a result of the injury

# The Impact of Money Damages or Settlements: Public Coverage

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Most programs have  
income limits

Some programs have  
resource limits

Some programs have a  
“look back period” for  
transfers for less than fair  
market value



# The Impact of Money Damages or Settlements: Health Insurance Liens

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An insurance company, including the government (MassHealth/Medicaid or Medicare), can seek reimbursement from a settlement of any costs expended which were the responsibility of a third-party (e.g., the party who caused the injury or problem).

This usually happens in **personal injury** settlements.

# What do we mean when we say “subsidized housing”?

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- Generally, we are talking about housing where the government subsidizes the rent so that it is “affordable” for the tenant
  - In most cases, that means that the household will pay around 30% of its income towards rent, and the government will subsidize the balance
- Tenants’ rents are adjusted as their income fluctuates
- Can be a state or federal program



# Federal Housing Programs\*

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- Public housing (operated by local housing authorities)
- Multifamily subsidized programs (operated by private companies with government contracts)
- Tenant-based housing choice voucher program (Section 8)
- Supportive housing programs for the chronically homeless
- HOPWA (for people living with HIV/AIDS)
- Low Income Housing Tax Credit

\* Not an exhaustive list

# State Housing Programs\*

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- Public housing
  - Elderly/Disabled – Chapter 667
  - Family – Chapter 200 and Chapter 705
- Project-based Massachusetts Rental Voucher Program (MRVP)
- Tenant-based MRVP voucher
- Tenant-based Alternative Housing Voucher Program (AHVP)
- Department of Mental Health (DMH) housing

\* Not an exhaustive list



# How to Determine the Type of Subsidy

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- ❖ Review tenant's lease and tenancy file
- ❖ National Housing Preservation Database:

<https://preservationdatabase.org>



# The Impact of Money Damages or Settlements: Public and Subsidized Housing

- ❖ For most housing programs, the main concern is **income**. Most housing programs don't have strict asset tests.
- ❖ “Income” is often defined in the regulations for each housing program.
- ❖ For most programs, a one-time lump-sum settlement will **NOT** be defined as income.



# The Impact of Money Damages or Settlements: Special Concerns for Housing

## Be careful if the lump sum:

- ❖ ...is broken into multiple payments (starts to look like income).
- ❖ ...represents reimbursement of income (retroactive benefits payments, lost wage claims, etc.).
- ❖ ...is so large it generates meaningful interest (the interest is income).



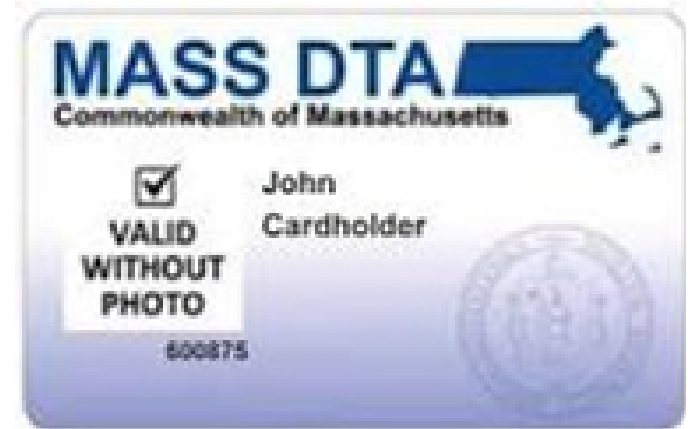
# Key DTA Acronyms

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- ❖ **DTA:** Department of Transitional Assistance
- ❖ **EBT:** Electronic Benefits Transfer
- ❖ **TAFDC:** Transitional Aid to Families with Dependent Children
- ❖ **EAEDC:** Emergency Aid to the Elderly, Disabled and Children
- ❖ **SNAP:** Supplemental Nutrition Assistance Program

# Transitional Cash Assistance Programs: TAFDC & EAEDC

- ❖ Administered by DTA
- ❖ Cash grant paid twice a month prospectively (dates based on last digit of SSN)
- ❖ Benefits will be deposited directly to the head of household's bank account
- ❖ If they don't have an account, benefits will be paid through EBT



# TAFDC

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❖ Cash assistance (welfare) program for low-income families with dependent children and pregnant people

❖ Families with children:

- ❖ Child:
  - ❖ Under 18, and/or
  - ❖ Age 18 and expected to graduate from high school by age 19
- ❖ Parent or other relative caretaker

❖ Pregnant person:

- ❖ Teens: any time in pregnancy
- ❖ Age 20 & up: within 120 days of due date

❖ No asset test

❖ Must meet income test

# EAEDC

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- ❖ Cash assistance program for low income:
  - ❖ Disabled adults
    - ❖ Impairment(s) last at least 60 days; and,
    - ❖ Substantially reduces capacity to work
  - ❖ Persons caring for someone who is disabled
  - ❖ Elders aged 65 or older
  - ❖ Persons participating in a Massachusetts Rehabilitation Commission program
  - ❖ Certain children and their caretakers who are not eligible for TAFDC because they do not meet the TAFDC relationship requirement
- ❖ No asset test
- ❖ Must meet income test

# The Impact of Money Damages or Settlements on TAFDC & EAEDC

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- ❖ **Benefits can be terminated** and/or client may be **disqualified** for a lengthy period of time.
- ❖ Obligated to report to DTA within 10 days of receipt. (Best done in writing).
- ❖ Both TAFDC & EAEDC have income limits which depend on household makeup and living arrangement.
- ❖ No effect on cash assistance if income received by or for household member who receives SSI, SSP, federal or state foster care payments, or federal or state adoption assistance.





# Receiving Money Damages or Settlement while Receiving TAFDC or EAEDC

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- ❖ TAFDC & EAEDC treat non-recurring payments received while on benefits as **lump sum income**.
- ❖ Date of receipt of payment by the client's attorney on behalf of the client = date of receipt by the client.
- ❖ **Lump sum rule:** damage awards or settlements in excess of amounts subject to assignment are subject to **lump sum disqualification** if received while on cash assistance:
  - ❖ Household ineligible for the number of months calculated by subtracting exclusions and deductions from the lump sum and dividing the balance by the EAEDC or TAFDC grant amount.

# Exclusions from Lump Sum

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1. \$600
2. Damages intended and used to replace property or reimburse for expenses
3. Limited expenditures to pay back bills incurred while waiting for the lump sum
  - Out-of-pocket medical care or health insurance
  - Transportation (up to \$150/month)
  - Purchase or repair household furniture or refrigerator, home heater, stove, oven, washer/dryer (up to \$2,500)
  - Basic repairs for home up to \$2,500
  - Court-ordered judgments
  - Taxes and other government debts
4. Personal injury award placed in irrevocable trust to meet needs of injured person who is legally incompetent
  - Up to \$150,000 placed immediately after award
  - Distributions for special needs not countable as income
5. Up to \$7,500 in relocation payments received when moving out of a foreclosed property

# Deductions

(applicable to earned lump sum income only)

1. Work-related expenses
2. Dependent care
3. Earned income disregards

# Case Example: Meet Olivia

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- Olivia is disabled and receives \$364.50/per month in EAEDC benefits because she can no longer work.
- Before getting on EAEDC, Olivia was fired from her job at a large retailer.
- In March 2022, while on EAEDC, Olivia receives a wrongful termination settlement check from her former employer in the amount of \$8,250.00.
- She reports the money and submits receipts for tax payments totaling \$2,290.75 to DTA.

# What Happens to Olivia?

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- DTA:
  - Subtracts the tax expenses and \$600 and determines Olivia received \$5,359.25 in countable earned lump sum income.
  - Applies the work-related expense deduction and earned income disregard which further reduces the countable lump sum income to \$3,419.50.
  - Divides \$3,419.50 by \$364.50 (= Olivia's monthly EAEDC grant) = 9.38 or 9 month and \$139.00.
- Olivia is **disqualified from EAEDC for 9 months** from March 2022 through November 2022.
- Olivia can reapply for EAEDC in December 2022 at which time her December EAEDC grant is reduced by the remaining \$139.00.

# Receiving Money Damages or Settlements within 12 Months before Applying for TAFDC or EAEDC



- ❖ TAFDC & EAEDC treat non-recurring payments received while **not** on benefits as an asset.
  - ❖ There is no longer an asset test...**BUT**
  - ❖ Subject to a 12-month look-back period when client (re)applies for cash assistance.
  - ❖ Must account for how the money damages or settlement were spent within the past 12 months.
  
- ❖ Transfer of income rules result in a **disqualification** if the income was transferred:
  - ❖ For less than fair market value; or,
  - ❖ For fair market value and for an extraordinary expense or vacation.

# Key EA Acronyms

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- ❖ **EA:** Emergency Assistance (family shelter or HomeBASE)
- ❖ **EOHLC:** Executive Office of Housing and Livable Communities (f/k/a DHCD)
- ❖ **DHCD:** Department of Housing and Community Development

# Emergency Assistance

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- ❖ Administered by EOHLC
  - ❖ Emergency Assistance family shelter; or,
  - ❖ HomeBASE (financial benefit of up to \$20,000 over a 24-month period to assist families experiencing homelessness rapidly rehouse)



# Qualifying for EA

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- ❖ Families with children
  - ❖ Child (under age 21)
  - ❖ Parent or other relative caretaker
- ❖ Pregnant Person
  - ❖ Any time in pregnancy
  - ❖ Spouse included. (A spouse is “an individual with whom the pregnant woman is involved as a couple in an inter-dependent relationship that is intended to be long-term.”)
- ❖ Must have qualifying reason for homelessness and not be disqualified
- ❖ Asset limit = \$5,000
- ❖ Must meet income test

# The Impact of Money Damages or Settlements: EA

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- ❖ Non-recurring payments do not count as income but are considered an asset.
  - ❖ Cash assistance exclusions from lump sum income apply.
- ❖ No effect if damages and other household assets are below \$5000.
- ❖ If all members of the EA household receive TAFDC, no asset test.
- ❖ Otherwise, ineligible if above the asset limit → **denial of application or termination if in shelter.**



# The Impact of Money Damages or Settlements: EA and Asset Transfers

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- ❖ Can't transfer asset exceeding \$5000 during 12 months before application to become eligible for EA unless the transfer was reasonable at the time or for good cause reasons.
- ❖ **Good cause reasons** include, but are not limited to, necessary or reasonable costs of living such as rent, utilities, food, health-related needs, education-related expenses, or transportation.



# SNAP

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- ❖ Administered by DTA
- ❖ Paid once a month (date based on last digit of SSN)
- ❖ Benefits are paid through EBT
- ❖ Can be used to purchase food, vegetable/fruit plants & seeds
  - ❖ Disabled persons, older adults aged 60 and up, and individuals experiencing homelessness can use their benefits at select participating restaurants and food trucks that offer reduced-price meal options
- ❖ Unless aged 60 or older or disabled, household gross income must be under 200% FPL.

# There's No Asset Test for SNAP Unless...

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1. Households with a member who has been disqualified due to an Intentional Program Violation have an asset limit of \$2,750
2. Household members aged 60+ or receiving a disability-based benefit with gross income above 200% FPL have an asset limit of \$4,250

# The Impact of Money Damages or Settlements on SNAP

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- ❖ Non-recurring payments do not count as income but are considered an asset
- ❖ Most SNAP households do **not** have an asset test



# The Impact on SNAP Applicants or Recipients Subject to the SNAP Asset Test, Part One

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- ❖ Damage awards are countable assets in the month of receipt
- ❖ Damage awards are **not** countable if received as reimbursement for specified items (other than lost wages) & used to pay for those
- ❖ If countable, the applicants/recipients are **ineligible** until they are below the asset limit



# The Impact on SNAP Applicants or Recipients Subject to the SNAP Asset Test, Part Two

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## Potential transfer of asset penalty:

- ❖ If countable assets are “**knowingly transferred**”
- ❖ Within three months prior to SNAP application or recertification
- ❖ In order to qualify for SNAP
- ❖ The **potential disqualification period** is up to 12 months
- ❖ DTA would need to show intent







# Federal Income Taxes: WHAT IS THE SETTLEMENT or MONEY DAMAGES INTENDED TO REPLACE?

❖ **IRC §61**: Gross income **includes** income from any source unless excluded elsewhere.

❖ **Examples**: “Compensation for services, including fees, commissions, fringe benefits”; “Rents”

❖ **IRC §104**: **Excludes** from gross income “compensation for injuries or sickness”

❖ **Examples**: “Damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or periodic payments) on account of personal physical injuries or physical sickness”; “workmen's compensation”; “amounts received through accident or health insurance”

<https://www.irs.gov/government-entities/tax-implications-of-settlements-and-judgments>

# Day One Takeaways

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Check and recheck what benefits your client(s) receive



Consult early when your client receives benefits and their case may result in monetary compensation



Money damages and settlements also impact other benefits programs not covered here (e.g., state veterans benefits)



Any  
questions?