

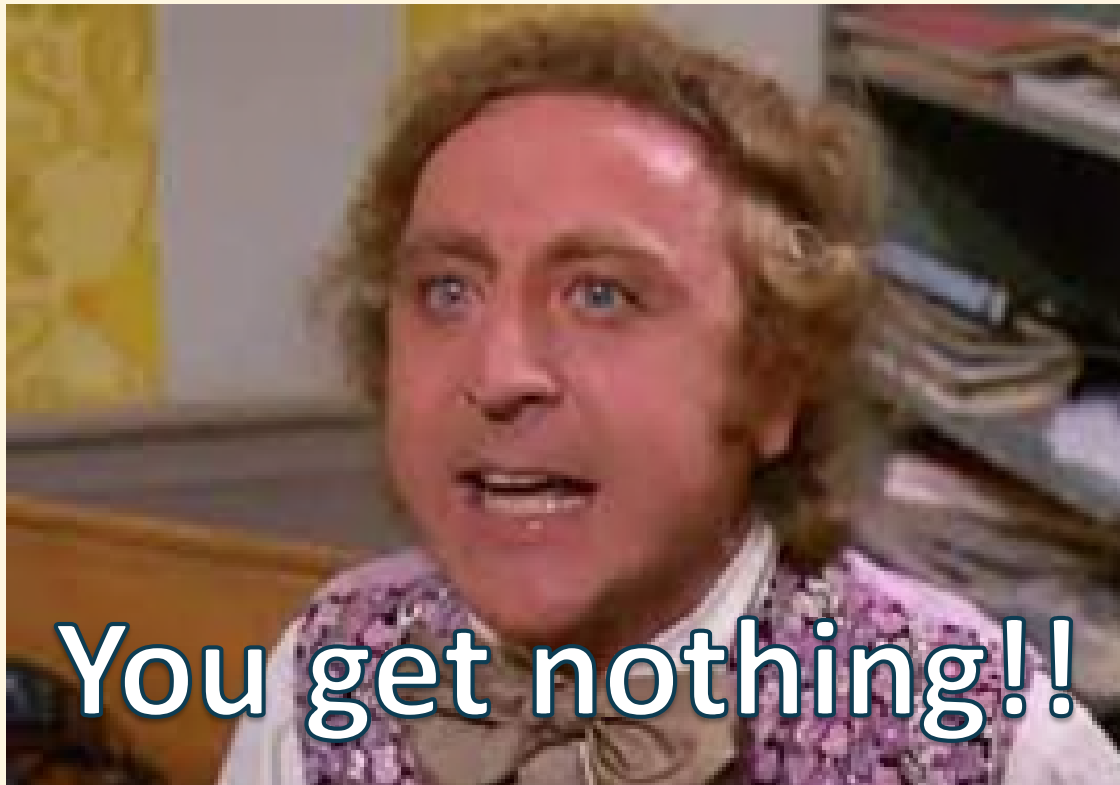
Benefits Preservation

Case considerations
for handling money
damages or
settlements:

Day Two

Time to Settle:

What's the Worst Thing That Could Happen?



Case Study One: Anessa

Anessa applied for our services for a no cause eviction case. She has a private tenancy at a monthly rent of \$1,000. She owes two months of rent due to having to pay for car repairs, but she can pay going forward. She tells you that she had a cockroach infestation last winter (December 2022 to February 2023). She complained to her landlord in writing in December 2022 but he didn't fully exterminate until the end of February 2023. She also states that she received the Notice to Quit for no cause in March 2023.

Anessa, Continued

You know that Anessa is considering whether to make a settlement offer to ask for \$5,000 in damages on her claims plus \$1,000 in attorneys fees, as well as keeping possession of the unit. She is also considering going to trial. Anessa is on SNAP, SSI, and MassHealth.

Case Study Two: Wanda

CLAVC client Wanda left P.R. after Hurricane Maria and moved to Springfield. In Springfield, Wanda rented an apartment from a landlord named Mr. Dos Santos. Wanda paid the rent regularly for several years, but eventually she fell behind.

Mr. Dos Santos came to Wanda's apartment to collect the past-due rent, but Wanda did not have the money. Mr. Dos Santos implied that Wanda could pay him with sex. Mr. Dos Santos exposed his genitals to Wanda and pressed his body up against hers. Wanda refused. Soon after, Mr. Dos Santos tried to evict Wanda for non-payment of rent. Wanda raised the sexual harassment/discrimination as a defense and counterclaims.

Wanda, Continued

Eventually, the eviction was dismissed, and the court transferred Wanda's counterclaims to the civil docket. After discovery (including depositions), Wanda received a settlement of \$80,000.

Wanda is on SSI, as is one of her children. Her second child receives Social Security survivors benefits and TAFDC. The entire household is on SNAP.

Session Objectives: Day Two



CLA/CWJC settlement protocols



Reasons for referring a client



Preparing your client



Drafting considerations



Helping your client spend down



Putting knowledge into action: case studies

Settlement Protocols

- ❖ Determine your client's goals and interests
 - Will a monetary award actually make a difference in your client's life?
 - Check back periodically to make sure those goals/interests haven't changed.
- ❖ Verify client's household composition
- ❖ Verify income sources and amounts for all household members
 - When possible, obtain documentation that verifies these sources and amounts. **Remember, clients may not always refer to their benefits by the right name!**
- ❖ Verify household members' health insurance
- ❖ Review with your SSA
 - SSA may reach out to other legal managers/resources for additional consultation

Referring a Client: ABLE Accounts

- ❖ Authorized by the Achieving a Better Life Experience Act (2014).
- ❖ Available to individuals with disabilities where the age of onset of disability was before that person turned 26.
 - ❖ If under 26 and receiving SSI or SSDI, automatically eligible to establish an ABLE account.
 - ❖ If under 26 and not receiving SSI or SSDI, can be eligible if you meet SSA's definition and criteria regarding functional limitations and receive a letter of disability certification from an approved medical professional.
 - ❖ Can be in SSI suspense due solely to excess income or resources, but otherwise eligible for SSI based on a disability that began before age 26.

ABLE Accounts, Continued

- ❖ Income earned by the account is not taxed.
- ❖ Can save \$17,000/year* without losing eligibility for means-tested programs.
 - ❖ The first \$100,000 does not count as a resource for SSI; the first \$400,000 does not count as a resource or MassHealth.
- ❖ If any funds left in the account after the beneficiary dies, the state is entitled to Medicaid reimbursement from those funds.
- ❖ Funds must be used for disability-related expenses (but not supplant those covered by other sources).
- ❖ Spending decisions are made by the beneficiary, guardian, or “authorized representative.”

Referring a Client: Special Needs Trusts

- ❖ Authorized by the Omnibus Budget and Reconciliation Act of 1993.
- ❖ Some, but not all, SNTs must be set up for an individual with a disability prior to turning 65.
- ❖ Must be irrevocable.
- ❖ Will not count as a resource, no matter the trust balance.
- ❖ Trustee must be given “sole and absolute discretion over the use of trust funds,” rather than the beneficiary.

Special Needs Trusts, Continued

- ❖ Income earned by the account **is** taxed.
- ❖ No limits to contributions or trust balance.
- ❖ Funds must be used for “appropriate expenses” as determined by the Trustee; individual benefit programs (like SSI) may impose restrictions on how the funds may be used.
- ❖ Spending decisions are made by the Trustee

Referring a Client: Tax Consequences

Taxable income includes most damages
except damages paid “on account of
personal physical injury or sickness.”
IRC Secs 61, 104.

Strategies that **WON'T** Work to Delay or Minimize a Client's Tax Liability

- ❖ Pain & Suffering: Characterizing damages as P&S usually won't work in our cases because emotional distress damages are income, even if somatic symptoms follow (e.g., insomnia, tachycardia).
- ❖ Timing: Holding check in lawyer's IOLTA trust account won't work because IRS views money as constructively received by client when check arrives at lawyer's office.
- ❖ Fees: Designating portion of lump sum as attorney's fees probably won't work because fees are gross income to client under a contingency agreement.

Strategies that **MIGHT** Work to Delay or Minimize a Client's Tax Liability

❖ Physical Harm: It may work to characterize damages as being “on account of physical injury or sickness” because IRC excludes such damages. So, if physical harm comes first (e.g., fractured skull in abuse case) then emotional distress that follows may be excluded from income.

→ **CAUTION!** Characterizing damages as personal injury may result in an unwanted Medicaid/MassHealth or health insurance lien.

❖ Timing: It may work to structure the timing of payments to client. Consider:

❖ Have some or all damages paid after the next January 1;

❖ Consider placing a large damages award (or portion) into a non-qualified structured settlement annuity, which can spread payments over many years to reduce a client's annual and cumulative tax liability.

Strategies that **MIGHT** Work, Continued

❖ ABLE Account:

- ❖ Contributions up to the annual gift tax exemption limit are not taxed.
- ❖ ABLE account designated beneficiaries may be eligible to claim the saver's credit for a percentage of their contributions.
- ❖ Account earnings are not taxed.
- ❖ Distributions used for medical and disability-related costs are not taxed.

❖ Fee Shifting Awards to Pro Bono Counsel: Gross income does not include fees Defendant pays under a fee-shifting statute to legal aid for pro bono work.

→ **CAUTION!** It is unclear how IRS would view 25% paid to CLA under lump sum contingency agreement; safer to advise client to include as income.

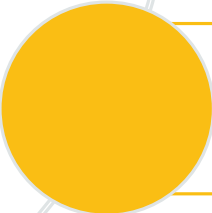
Preparing Your Client for the Monetary Award



Determine who in the household is going to be impacted.



What are the tax consequences of the monetary award?



Will the settlement involve healthcare liens (such as to Medicare or MassHealth)?

More on Healthcare Liens:

MassHealth

- As a condition of eligibility, MassHealth beneficiaries agree to notify MassHealth of pending claims for accidents or injuries & repay medical benefits received after the date of the injury from the proceeds of any claim.
- Medicaid can only recover the portion of the recipient's damages that are for medical expenses, however, Medicaid can seek reimbursement from the recipient's damages for past and future care.
- The telephone number for the MassHealth Benefit Coordination and Recovery Unit is 800-462-1120.

Medicare

- Members must notify Medicare's Benefits Coordination & Recovery Center (BCRC) whenever an accident, illness, or injury occurs that could be covered by Workers' Compensation or through a no-fault or liability insurance claim.
- If there is a delay (typically 120 days or longer) in the insurer making a determination for WC payment, Medicare may make a conditional payment. If the claim is subsequently settled, contact Medicare's BCRC at 1-855-798-2627 to be sure that Medicare's conditional payments are repaid as part of a settlement or judgment.
- If your workers' compensation claim is denied, proof of the denial should be provided to Medicare, and Medicare will pay Medicare-covered items and services.

Drafting Considerations: Waiver of Debt

- ❖ No impact on EAEDC, TAFDC, SNAP & MassHealth.
- ❖ No impact on any housing benefit.
- ❖ *Probably* does not impact SSI.

Drafting Considerations: Rent Credits

- ❖ No impact on TAFDC & EAEDC
- ❖ No impact on SNAP unless the household is in the recertification process
- ❖ No impact on any housing benefit
- ❖ Should not impact SSI if paid with the SSI beneficiary's own funds.

Drafting Considerations: Lump Sums – Impact on TAFDC & EAEDC

- ❖ No impact on TAFDC if the person who receives the lump sum receives SSI, SSP, or state or federal foster care maintenance payments
- ❖ Not countable for TAFDC & EAEDC if the lump sum is a refund from a landlord for funds that were originally paid for by cash assistance benefits, fuel assistance, or other non-countable income funds.
- ❖ Any portion of a Workers' Compensation, property damage, personal injury, Compensation to Victims of Violent Crimes Act, or death settlement or award that is spent for the purpose for which it was originally earmarked and is not compensation for lost wages is not countable for TAFDC & EAEDC.

BUT.....

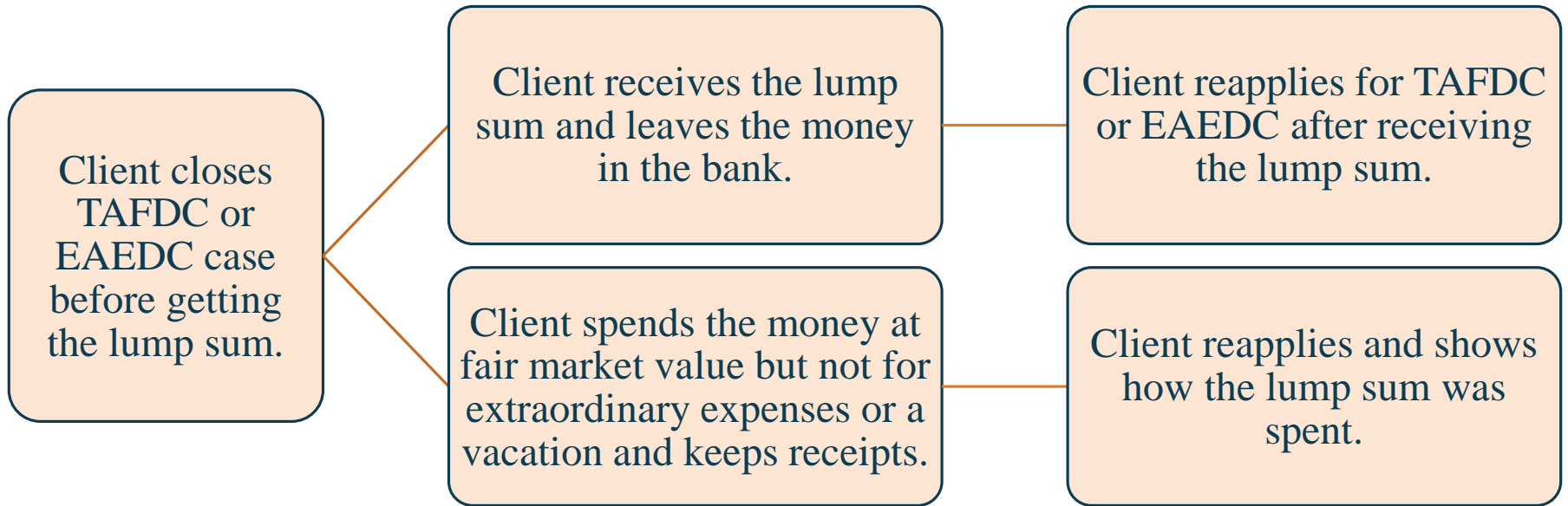
Lump Sums: Impact on TAFDC & EAEDC, Continued



Generally, lump sums have a **BIG** impact on TAFDC & EAEDC!

Depending on your client's goals and the size of the lump sum, it may be best for your client to close their cash assistance case prior to receipt of the lump sum.

Closing a Cash Assistance Case Prior to Receipt of a Lump Sum



Getting the timing of the case closure right is essential for both options!

What if You Receive a Lump Sum While on TAFDC or EAEDC?

- A. \$600 not countable **BUT** unless further exclusions apply, the household is ineligible for number of months calculated by subtracting \$600 and dividing the balance by the TAFDC or EAEDC payment standard.
- B. Additional exclusions:
 - 1. Damages intended and used to replace property or reimburse for expenses,
 - 2. Can spend the funds on certain expenditures to pay back bills incurred while waiting for the lump sum:
 - a. medical care or health insurance;
 - b. transportation (up to \$150/month);
 - c. purchase or repair of household furniture or refrigerator, home heater, stove, oven, washer/dryer (up to \$2,500);
 - d. basic repairs up to \$2,500 for repair of home;
 - e. court ordered judgments;
 - f. taxes and other government debts; and,
 - g. money received for injuries to child or other legally incompetent person, placed in trust, and restricted for specific purposes.
 - 3. Personal injury award placed in irrevocable trust to meet needs of injured person who is legally incompetent, if placed by court order, or up to \$150,000 placed immediately after award.

Drafting Considerations: Lump Sums – Impact on SNAP

In general, there is no impact on SNAP **UNLESS** the SNAP household includes a household member who:

- ❖ Has been disqualified from SNAP due to an Intentional Program Violation; or,
- ❖ Is age 60+ or receives a disability-based benefit and has gross income above 200% of the FPL.

→ These households may be ineligible until they spend down below the applicable SNAP asset limit.

- ❖ Damage awards are generally treated as a countable asset in the month of receipt unless received as reimbursement for specified items (other than lost wages) and used to pay for those.

→ Check MLRI SNAP calculator resources for most up-to-date asset limit.

Drafting Considerations: Lump Sums – Impact on Housing Benefits

In general, no impact on housing subsidies

- ❖ Not considered income - any interest earned from the lump sum can be counted as income, but this is negligible.

→ **Exception:** Settlements that include relief for lost earnings or income may be counted as income.

- ❖ No asset test as an existing tenant; however,
 - ❖ Applicants for admission into federal housing program cannot have net family assets over \$100,000.
 - ❖ Applicants for admission to the state MRVP (voucher) program cannot have assets of \$25,000 or 1.5 times annual income, whichever is higher.

Drafting Considerations: Lump Sums – Impact on SSI and SSDI

- ❖ For SSI, a settlement (less attorneys' fees) is counted as unearned income in the month of receipt and as an asset if retained in the months that follow.
 - ❖ Awards to replace lost, stolen, or damaged resources are not counted in the month of receipt but may count as an asset if retained in the months that follow.
 - ❖ Cash to replace a lost, stolen, or damaged noncountable resource is not treated as a resource for 9 months from the date of receipt.
 - ❖ Awards can be spent down (for fair market value) on items for beneficiary, including pre-paid rent or excluded resources.
- ❖ Neither lump sums nor long-term disability sums should impact SSDI.
 - ❖ SSDI can be impacted by workers' compensation benefits, and the impact differs depending on the structure of the WC payments.

Drafting Considerations: Multiple Payments

- ✓ Considered income when received for purposes of SSI, TAFDC, EAEDC, & SNAP.
- ✓ May result in loss of benefits.
- ✓ Regular, periodic (even just two) payments may be considered income for housing programs.

Drafting Considerations: Payments to Third Parties

- Likely going to impact SSI in the month paid as if it were income.
- Payments towards food or shelter count as in-kind income for SSI recipients.
- This means the SSI could be reduced by the lesser of the actual amount or 1/3 of the SSI Federal Benefit rate, plus \$20.

Drafting Considerations: Timing of the Monetary Award



Money in escrow at CLA/CWJC could count as received by the client – we can't just hold it for a few months until it's more convenient for the client to receive it.

If benefits case is to be closed, it must be done before CLA/CWJC or the client receives their next benefits disbursement.

Helping Your Client Spend Down

Burial account

Repaying debts and loans

Gifts

Burial plots

Prepaid rent

Vehicles

Reasonable and irrevocable prepaid funeral account

Life insurance

Helping your TAFDC or EAEDC Client Spend Down:

LARGE SETTLEMENT

If the household member who receives the large lump sum receives TAFDC or EAEDC, discuss closing the case with the client prior to receipt of the lump sum. (For more see lump sum section above).

SMALL SETTLEMENT

If the household member who receives the small lump sum receives TAFDC or EAEDC, discuss the client's goals and explore if any of the lump sum exclusions apply. If the exclusions do not apply, discuss closing the case with the client prior to receipt of the lump sum.

Case Study One: Anessa, Revisited

Anessa applied for our services for a no cause eviction case. She has a private tenancy at a monthly rent of \$1,000. She owes two months of rent due to having to pay for car repairs, but she can pay going forward. She tells you that she had a cockroach infestation last winter (December 2022 to February 2023). She complained to her landlord in writing in December 2022 but he didn't fully exterminate until the end of February 2023. She also states that she received the Notice to Quit for no cause in March 2023.

Anessa, Continued

You know that Anessa is considering whether to make a settlement offer to ask for \$5,000 in damages on her claims plus \$1,000 in attorneys fees, as well as keeping possession of the unit. She is also considering going to trial. Anessa is on SNAP, SSI, and MassHealth.

→ What would you advise Anessa regarding the benefits consequences of a settlement and/or trial?

→ What might you think about in terms of structuring the settlement?

Case Study Two: Wanda, Revisited

CLAVC client Wanda left P.R. after Hurricane Maria and moved to Springfield. In Springfield, Wanda rented an apartment from a landlord named Mr. Dos Santos. Wanda paid the rent regularly for several years, but eventually she fell behind.

Mr. Dos Santos came to Wanda's apartment to collect the past-due rent, but Wanda did not have the money. Mr. Dos Santos implied that Wanda could pay him with sex. Mr. Dos Santos exposed his genitals to Wanda and pressed his body up against hers. Wanda refused. Soon after, Mr. Dos Santos tried to evict Wanda for non-payment of rent. Wanda raised the sexual harassment/discrimination as a defense and counterclaims.

Wanda, Continued

Eventually, the eviction was dismissed, and the court transferred Wanda's counterclaims to the civil docket. After discovery (including depositions), Wanda received a settlement of \$80,000.

Wanda is on SSI, as is one of her children. Her second child receives Social Security survivors benefits and TAFDC. The entire household is on SNAP.

→ What steps should be taken so that Wanda can benefit from this settlement as much as possible?

Wanda:

Plan for Use of Settlement Proceeds

- Deposit \$80,000 into a new, separate bank account – in your name only.
- Report to SSA and DTA.
 - This will suspend your SSI payments until your assets are back down to \$2000.
 - This will also suspend child's SSI payments until your assets are back to \$2000.
 - You will receive a Notice of Overpayment for SSI you received already that month. You can simply use some of the \$80,000 to pay that back.
 - Survivor's benefits, TAFDC, and SNAP should continue. If you receive any termination/reduction notices, call us right away.

Plan for Use of Settlement Proceeds, Continued

- Spend money as you've planned. (See chart.)
 - Keep all receipts in a folder. If you don't get a receipt, write down details about expense: date, amount, and what you paid for.
 - Do not give any money away.
- When the balance of the account is \$2000, report to SSA.
 - Be prepared to show your bank account statement and your chart of the purchases and receipts. Make copies of all receipts and statements.
 - Then, your SSI payments and your child's SSI payments should resume.
 - If SSA does not re-start your payments, appeal and call us right away.

Wanda: Documenting the Spend-Down

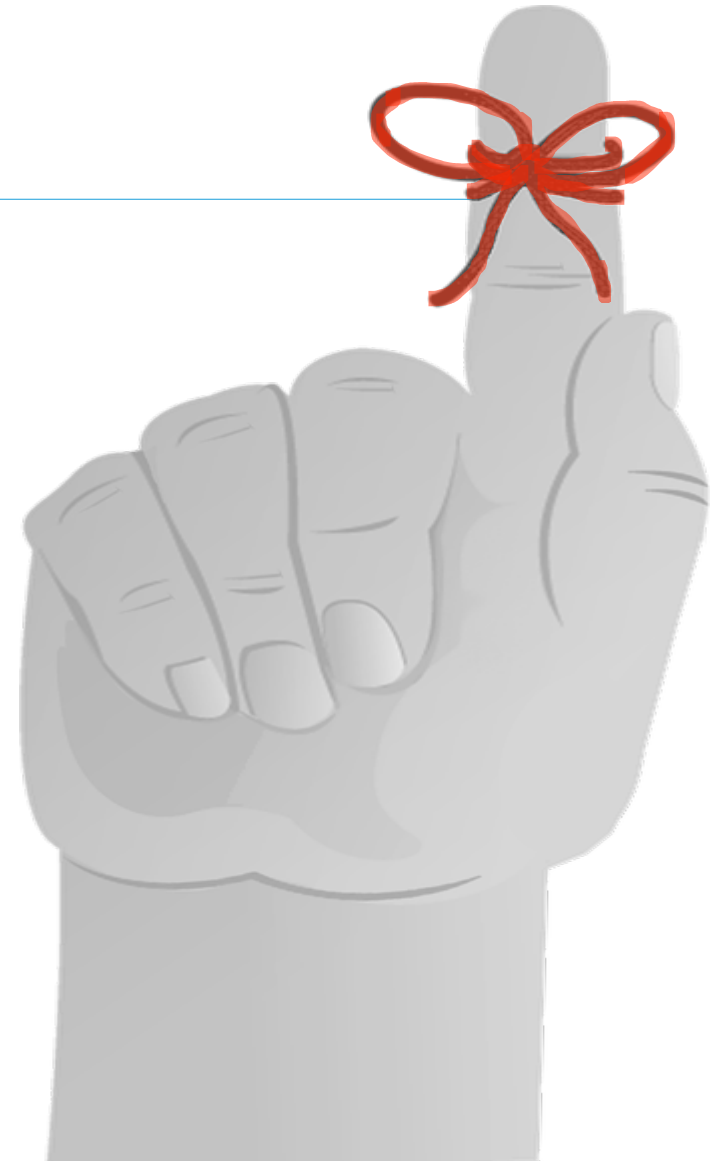
Income taxes		Pay estimated tax by 9/15/23
Repay SSI for 1 month (yours and child's)		Arrange with SSA when you report the income.
Car		
Household items		
ABLE account	\$17,000	Ask SSA how to set this up when you report the income.

Wanda: Documenting the Spend-Down

<u>DATE</u>	<u>AMOUNT</u>	<u>WHAT FOR?</u>	<u>OTHER</u>

The Takeaway:

- ❖ Check and re-check the rules
- ❖ Verify and re-verify your client's goals, household composition, benefits, income, and insurances
- ❖ Timing is the key





Any
questions?