NYLAG
New York Legal Assistance Group

Evelyn Frank Legal Resources Program

Lump Sums & Supplemental Needs Trusts

Impact of Lump Sums on Medicaid, SSI and Other Public Benefits – With Rules about Using SNTs and Lump Sums for Various Benefits

http://nyhealthaccess.org is a joint venture of NYLAG, Empire Justice Center, the Legal Aid Society, and Western New York Law Center with extensive information. This outline is posted at https://nyhealthaccess.org/afile/5/9/.

By the **Evelyn Frank Legal Resources Program** (updated Sept. 2, 2026)

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See next page for changes made in each edition and for acknowledgements

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2026-09 – Asset limit for Public Housing/Section 8 postponed until Jan. 1, 2027, HUD guidance issued 4/2026 added to that chapter.

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2023 Update:

- Public Housing/Section 8 –new income and asset limits effective Jan. 1, 2024 (postponed until 1/1/26)
- 2023 increases in Medicaid and MSP income & asset limits

* How to enroll in a Pooled Trust & Submit to Local Medicaid agency– now see fact sheet at https://nyhealthaccess.org/afile/44/4/.

2020-2022 Updates:

- Powers of Attorney executed after Sept. 1, 2009 do not need a Statutory Gift Rider (SGR) to establish a pooled income trust (p. 12)
- Increases in deposit and asset limits for ABLE accounts
- Lookback & transfer penalty for community-based long term care – delayed until May 2024
- Temporary Assistance asset test increases Oct. 2022 (Thanks to Susan Antos, Empire Justice Center)
- SNAP changes (thanks to Abby Biberman, NYLAG)

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NOT INCLUDED - This manual does not cover drafting SNTs. It is meant to guide advocates for low income people to maximize eligibility for public benefits by using SNTs for resources and lump sums and for depositing "excess income" for community Medicaid and Medicare Savings Programs.

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Introduction

Supplemental Needs Trusts (SNTs) are a very useful tool for helping people with disabilities preserve their public benefits without having to completely impoverish themselves. However, they are complex and come in a variety of flavors. To get us off on the right foot, we'll start out with an overview of trusts in general, and then zoom in on SNTs.

In, 2017, Governor Andrew Cuomo signed into law the "**Pooled Trust Notification Bill**," requiring -- for the first time -- that Medicaid applicants and recipients who have a spend-down be given notice in plain language that explains the availability of SNTs to eliminate the spend-down for people with income above the Medicaid income limits.[1] Unfortunately, the notice issued by DOH in 2020 -- **Form OHIP-0119 Explanation of the Effect of Trusts on Medicaid Eligibility** –is poorly written and does not include information on how to enroll in a trust and how to request the local Dept. of Social Services to rebudget income.[2]

Trust Overview

A **trust** is a property interest held by an individual or entity (such as a bank), called the **trustee**, who or which is subject to a fiduciary duty to use the property for the benefit of another (the **beneficiary**). There are many different types of trusts with a myriad of different uses. They are often used for tax planning reasons which are beyond the scope of this memorandum. Some of the most common other reasons trusts are used in elder law are:

1. **Estate planning** – allow testator to make gifts to family members and others with strings attached, and allow more complex estate plans than possible with a will
2. **Avoidance of probate** – can substitute for a will, and avoid cost and public disclosure of probate
3. **Protection from creditors** –"spendthrift trusts" cannot be reached by creditor claims[3]
4. **Supplementing public benefits** – supplemental needs trusts, also known as special needs trusts or exception trusts

Trust Terminology

Grantor / Donor / Settlor/ Trustor – all of these terms refer to the person who owned the property prior to its being conveyed into the trust principal.

The revisions to the SSA POMS effective June 2018 add a more comprehensive glossary of trust terms. See SI 01120.200, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200.

Corpus – the property conveyed into the trust and accumulated earnings, also known as the principal.

Medicaid Trust – a type of inter vivos (living) trust established by an individual, or his/her spouse directly or by a court, guardian, or Power of Attorney, with assets of the individual. Trusts established before August 11, 1993 were "Medicaid Qualifying Trusts." Trusts established after that date are "Medicaid Trusts." The trust must be irrevocable in order to exclude the corpus as "resource" for Medicaid. The trust limits the trustee's discretion to make payments of principal and/ or income to the beneficiary, so as to exclude the principal and/or income from Medicaid. Drafting this type of trust is beyond the scope of this outline.[4]

Trust Agreement – the legal document establishing the trust and containing the instructions to be followed by the trustee in administering the trust. These instructions might include rules on how the trust corpus and income should be spent during the beneficiary's lifetime, under what circumstances the principal may be invaded, and who receives any corpus remaining at the death of the primary beneficiary.

Trustee – the individual or entity that holds and manages the trust property on behalf of the beneficiary, subject to the terms of the trust agreement.

Beneficiary – the individual(s) or entity(ies) on whose behalf the corpus (or income generated thereon) is to be spent.

Residual beneficiary (contingent beneficiary or remainderman) - is not a current beneficiary of a trust, but he or she will receive the residual benefit of the trust contingent upon the occurrence of a specific event, such as the death of the primary beneficiary.

Fiduciary Duty – the high standard of loyalty and due care to which the trustee is held. The trustee must administer the trust in the best interests of the beneficiar(ies) and must not engage in self-dealing.

Inter vivos trust (also called a living trust) is a trust established during the lifetime of the grantor.

Revocable – a trust is revocable if the grantor may change his/her mind and dissolve the trust and get his/her money/property back. "If the individual at issue (an applicant, recipient, or deemor) is the grantor of the trust, the trust is usually a resource to that individual if he or she can revoke the trust and reclaim the trust assets. A deemor is generally the ineligible parent or spouse of the individual who is eligible for (or receiving) SSI. Social Security considers the deemor's income and resources when determining the SSI recipient's

eligibility and payment amount. However, if a third party is the grantor of the trust, and the individual at issue (an applicant, or recipient,…) is the beneficiary of the trust, the trust is not a resource to the beneficiary merely because the trust is revocable by the grantor. In a third party trust situation, the focus should be on whether the individual at issue (applicant, recipient, or deemor) can terminate the trust and obtain the assets for himself or herself."[5]

Irrevocable – a trust is irrevocable if once the grantor establishes and funds the trust, it cannot be dissolved and the assets deposited into the trust may not be withdrawn. Although most grantors would prefer to have the option to change their mind if circumstances change, an irrevocable trust often makes sense for Medicaid planning, where the goal is to ensure that the corpus is not deemed an available asset.

Self-Settled, Self-Funded or Grantor Trust– (also First Party trust) this means that the settlor (aka grantor) of the trust is the same as the beneficiary.

Third-Party – the settlor or grantor and beneficiary are different parties. For example, Uncle Jerry has established a trust for the sole benefit of Nephew Nick.

Remainder Interest – this refers to any trust corpus remaining upon the death of the primary beneficiary.

What Makes a Trust a Supplemental Needs Trust?

An SNT enables a person with a disability to maintain eligibility for government benefits, primarily Medicaid and Supplemental Security Income ("SSI"). The purpose of an SNT is to enhance the quality of life for the person with a disability by permitting the trust to pay for expenses not paid for by public benefits. New York State law contains standards for a valid SNT in this state.[6] The Social Security Administration (SSA) has also provided guidance on Supplemental Needs Trusts and "Medicaid Trusts."[7] Medicaid rules for the aged, blind, and disabled population cannot be more strict than the SSI rules,

Although there are many different kinds of SNTs, they all have some things in common

1. **They are all irrevocable.** If the settlor/beneficiary could just ask the trustee to dissolve the trust and get all his/her money back, then it would be deemed an available asset. Thus, it must be irrevocable to work as an

SNT. In addition, the beneficiary must not have the right to direct the use of the corpus or to sell his/her beneficial interest.[8]

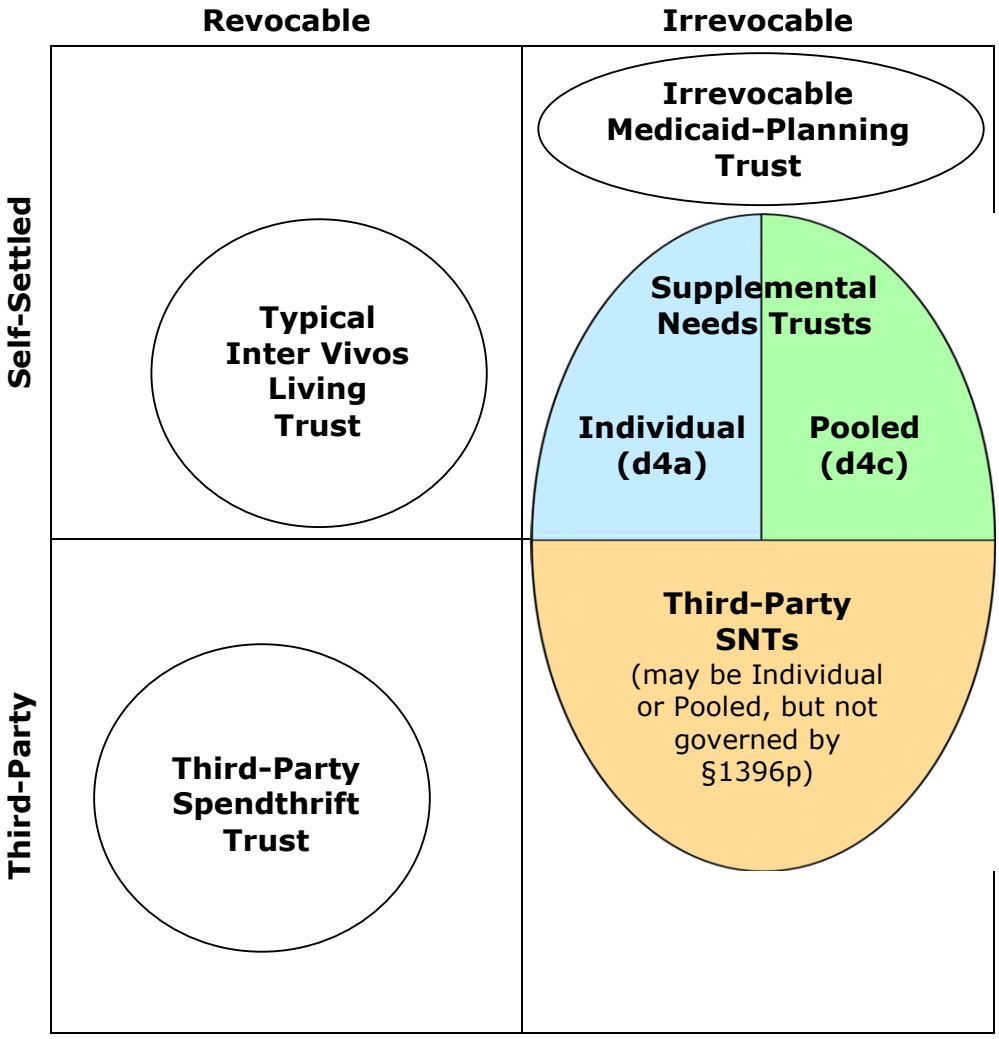
2. **Beneficiary must be disabled.** Not everyone may use an SNT! AN SNT may only be established for "individuals who are disabled" within the meaning of the Social Security disability laws, no matter how old they are.[9] People 65 or older usually have not been determined disabled previously since they receive Medicaid, SSI, or Social Security Retirement Insurance solely based on their age. Those who can show they received Social Security Disability benefits prior to turning age 65 may be deemed to be disabled. New York State has developed a procedure for the state Medicaid program to determine whether they are disabled. This is discussed more at pp. 78-82.
3. **Payback to the State upon death (Self-settled trusts only)-** Funds left ina self-settled trust after the beneficiary dies must be used to pay back Medicaid for the cost of Medicaid services provided; **t**he State Medicaid program must be made the primary remainderman.[10] For a pooled trust, funds remaining at death must be kept by a non-profit trustee to be used for the benefit of other beneficiaries with disabilities.[11] In an individual trust, funds remaining after paying back Medicaid may be distributed to contingent beneficiaries. Some pooled trusts also allow distribution of a portion of the funds to named remainderman after a portion is kept by the non-profit trustee in the amount of Medicaid's claim. Payback to the State Medicaid Program is not required in a third party trust.
4. **Must Preserve Public Benefits.** The trust agreement establishing an SNT always contains language stipulating that the trustee cannot do anything with the funds that would impair the beneficiary's eligibility for public benefits. This is why, for example, the trustee may not give cash to the beneficiary. This manual is not a guide for drafting these trusts.

The rules for SNTs are complicated. The rules depend on several factors:

1. **Age of disabled person** – whether under 65 or age 65 and over
2. **Whose money is used to establish trust** – funds of the disabled person in a "self-settled" trust or the funds of a third party, such as an uncle, in a "third-party" trust
3. **Type of benefit** – every public benefit program has different financial eligibility rules, which all treat SNTs somewhat differently. Thus, even the same SNT for the same client may have different effects on that client's various benefits. Although we will go over the impact of SNTs on various programs later in this outline, for now we will focus on Medicaid and SSI.

Trust Venn Diagram

SNTs are just one kind of trust. This diagram attempts to divide up the universe of possible trusts along two factors: whether they are revocable, and whether the settlor is also the primary beneficiary. You can see that although all SNTs are irrevocable, they can be both self-settled or third-party. Within the universe of SNTs, there are some that are **Individual** and some that are **Pooled**. We will discuss this distinction later.



Self-Settled SNTs

A self-settled SNT is established using the disabled person's own funds or the funds of a legally responsible relative such as the parents of a disabled *minor* child. In other words, the settlor (aka "grantor") and beneficiary are the same person. This is the kind of SNT most commonly used, because it allows a person with a disability to obtain public benefits in spite of having income or assets in excess of the applicable limits.

Having Your Cake and Eating It Too

Many of the restrictions governing self-settled SNTs can be better understood if you think about the public policy behind SNTs. The purpose of income and resource limits for public benefit programs is to conserve scarce tax-funded benefits for only those people who are deemed needy by some uniform standard. The government will only make Medicaid and SSI available to people who either have almost no assets, or who have spent down their assets on their own needs before applying for benefits.

In light of this policy, the government is loathe to allow someone to "have their cake and eat it too." With a self-settled SNT, a person with a disability is allowed to do just that. The person may transfer excess assets to the trust, and then receive public benefits. The assets held by the SNT are essentially invisible to Medicaid or SSI. However, the person is still able to benefit from the assets by having the trustee pay certain living expenses out of the trust.

Because this seems to go against the public policy of restricting eligibility only to those with no available means of support, there are several strings attached to this arrangement. For one thing, this privilege is only extended to those who are determined disabled – unable to work due to permanent, severe physical or mental impairments. The government essentially makes a deal with the person using an SNT: We will let you have your cake and eat it too, but only if you pay back to us any money left over after your death, and if you make any transfers of assets to a trust once you are age 65, you will suffer a transfer penalty for SSI and for Institutional Medicaid.

Payback & Disability Requirements – see infra, p. 8.

Early termination provisions. If the trust contains a provision that allows the trust to terminate before the death of the beneficiary, such as if the beneficiary is determined no longer disabled, then it must contain a provision for Medicaid pay-back at the time of termination; after Medicaid reimbursemen,t all funds (other than some administrative expenses) must be paid to the beneficiary, and the power to terminate must be held by someone other than the beneficiary.[12] These SSI rules apply to Medicaid because Medicaid eligibility rules cannot be more restrictive than the eligibility rules for SSI.[13]

Two Types of Self-Settled SNT's: Individual vs. Pooled Trusts

There are 2 kinds of self-settled supplemental needs trusts. The key factor for determining which trust to use is AGE – whether age 65+ or under 65.

1. An **Individual SNT** is a trust drafted particularly for one beneficiary, appointing a trustee to manage the trust and make disbursements. The trustee might be a family member, friend, an attorney, or a bank. These are often called "D4A" trusts after the section of the Federal Medicaid statute relating to them.[14] The harsh rule that only a parent, grandparent, guardian or court order may establish an Individual SNT has been modified to permit the individual contributing his or her money to also establish the trust.[15]
   - MUST BE UNDER AGE 65 – Only people under age 65 with a disability may place their own assets into an Individual SNT . If the trust is established and funded before they reach age 65, then assets in the trust remain exempt after the person reaches age 65. New funds *may not be deposited* into an indivual SNT after the person turns 65.
2. A **Pooled SNT** is established and managed by a non-profit association, that acts as the trustee; a trust company must act as co-trustee A separate account is maintained "for the sole benefit of" the disabled beneficiary.[16]

   MAY BE AGE 65 and OVER -- A person age 65 and up with a disability may establish and fund a pooled trust account.[17] This is the only option for people age 65 and over. (However, there may be transfer of asset penalties for people 65 or older– see below). These are sometimes called "D4C" trusts after the federal Medicaid statute. See n 17.

There are over 20 non-profit organizations in New York State that offer pooled trusts for individuals with disabilities. We compiled an unofficial list at https://nyhealthaccess.org/entry/4/. Some operate in only certain geographic areas, or serve certain populations. Their fees and minimum deposits also vary. The chart indicates whether they accept deposit of excess income to eliminate the spend-down, or solely deposits of assets.

Who May Establish the Trust?

Individual Trust for people under age 65

Thanks to the federal Special Needs Fairness Act enacted in 2016, implemented in New York for trusts established on or after Dec. 13, 2016, [18] adults with a disability may now establish their own individual SNT with their own funds for their own benefit. They no longer need a **parent**, **grandparent**, **legal guardian**, or a **court** to establish the trust. Trusts established before Dec. 13, 2016 are under the old rules, and may not be established directly by the individual.

- Even after Dec. 13, 2016, if the person with a disability lacks mental capacity, he or she may still need a legal guardian to establish the trust, unless they have appointed an agent through a validly executed Power of Attorney and Statutory Gift Rider.[19]

- A guardianship order may need to be amended to authorize establishment of a trust. In 17A guardianships, the order must specify that the guardian has power over person as well as property.

Pooled Trust (for people any age, including 65 and over)

The **joinder agreement** used to join the master trust may be signed by disabled individuals themselves, if they have mental capacity to sign the forms, or by a **parent**, **grandparent**, **legal guardian**, or a **court**. "A pooled trust account may be established under a Power of Attorney [POA] given by the individual, a parent, or a grandparent."[20]

Using a Power of Attorney to Enroll in a Pooled Trust

To enroll in a pooled SNT, the person must either have mental capacity to execute a joinder agreement, or an agent appointed by a valid Power of Attorney may execute this agreement on their behalf. Several issues have arisen regarding POA's and trusts in New York.

First, there is a difference of opinion on whether a standard New York Power of Attorney ("POA") form authorizes the attorney-in-fact to establish a trust.[21] To avoid problems, if authority to establish a trust is not specifically enumerated as an additional power in the POA, a new POA should be executed with this language, if possible.

Second, a 2020 amendment to the NYS law made it easier for an agent with a POA executed after June 13, 2021 to enroll an individual in a pooled trust. Since 2009, a POA had to include a separate Statutory Gift Rider (SGR) form that authorized the agent to make transfers or gifts. Claiming that establishment of a pooled trust was a transfer or a gift, HRA and other districts rejected trusts executed after Sept. 1, 2009 if the POA lacked an SGR.[22] In 2020, after advocacy by the NYS Bar Association, NYS DOH issued a directive that clarified that a Statutury Gift Rider was not required for a POA to establish a trust. See GIS 20 MA/03 – Clarification of GIS 19 MA/04, "Clarification of Policy for Treatment of Income Placed in Medicaid Exception Trusts" Finally, state law was changed in 2020 to eliminate SGRs altogether for all POAs. NYS GOL 15-501 et seq.[23]

Payback to State at Death – see page 8 above – and payment of expenses after death

A trust may pay only limited expenses after death. The trust may pay expenses of administering the state and state or federal taxes due from the trust because of the death of the beneficiary, but the trust may not pay after the death of the beneficiary other taxes due from the beneficiary's estate, inheritance taxes due for residual beneficiaries, payment of debts owed to third parties.[24] The trust *may not pay funeral expenses* after the beneficiary's

death, but may fund a pre-paid funeral arrangement during the beneficiary's lifetime. Id.

Third-Party Trust

A third-party SNT is one established with funds from someone other than the person with a disability. The third party may not be a legally responsible relative (a parent cannot establish a third party trust for a child under age 21).

No Payback Requirement

A trust established by a parent or other third party with his or her own funds has **no payback requirement**, unlike the self-settled trusts described above. For this to be true, the parent must no longer have a duty to support the child with a disability– so the child must be age 21 or older. EPTL 7-1.12 (c)(1), Soc. Serv. Law § 101.

No Right of Recovery or Lien

In these trusts, the State has no right of recovery and no right to place a lien against the trust property. Parents or other relatives or friends may use the SNT to provide for a child with a disability for life and are free to direct how any remaining trust property will be distributed upon the child's death. If a pooled trust is used, the non-profit might require that some or all of the balance left upon death of the beneficiary remain in the trust, and the rest, if any, may go to heirs.

Form of Trust

These trusts may be individual SNTs or pooled SNTs. They may be established during the grantor's life (living trust or inter vivos trust) or in the grantor's will.

Extra Benefit for Parent

A parent who transfers assets into an SNT for the benefit of a child of any age with a disability has no transfer of asset penalty that would otherwise be imposed upon the parent's OWN Medicaid eligibility for nursing home care. This type of transfer is one of the exceptions to the transfer penalty.[25] There is also no SSI transfer penalty for the transferor.[26]

NOTE: A parent in a nursing home may not shelter their income by placing it into a pooled or individual SNT for the benefit of their adult child with a disability; a transfer penalty will be imposed. Jennings v. Comm'r. Nassau DSS, 893 N.Y.S.2d 103 (2d Dept., 2010 relying on Wong v. Doar, infra). Before Jennings, some courts found that this did not create a transfer penalty.[27]

Is an ABLE Account an Alternative to an SNT?

What is an ABLE account?

"ABLE" stands for the Achieving a Better Life Experience Act of 2014, which allows qualified people with disabilities to save for qualified disability expenses without the risk of losing SSI, Medicaid, Section 8 and other federal benefits.[28] The funds in the account may be used for disability-related expenses that assist the beneficiary in increasing and/or maintaining his or her health, independence, or quality of life. The New York ABLE Program is administered by the Office of the New York State Comptroller.

Who may use an ABLE account – expanded Jan. 1, 2026!

Under the ABLE Age Adjustment Act, effective January 1, 2026, the age of eligibility expands to allow individuals who have a disability that began before age 46 (instead of before the age of 26) to be ABLE-eligible. One must either be entitled to SSI or Social Security Disability Insurance (SSDI) OR meet specified criteria for disability. (This seems to exclude people age 65+).

Proof of eligibility isn't required to open an account. However, eligible individuals should maintain a benefits verification letter, a record of diagnosis, or other relevant documents should they need to prove eligibility at a later time.

Who may open an ABLE account?

Eligible people may open the account for themselves, or a parent or legal guardian may open one on their behalf. An agent of the eligible individual may also open an account under a power of attorney. The eligible individual is the Account Owner and the Beneficiary.

How much may be deposited into an ABLE account?

The maximum deposit per year is a total of $20,000 (2026) from all sources – including the beneficiary, family, a trust or estate, or any third party. https://www.mynyable.org/home/contributions-limits.html. Beneficiaries who are working may deposit more --up to the Federal Poverty Line for a one-person household -- but only if they are ***not*** contributing to a retirement account. If the maximum has been reached in a year, the balance of a lump sum can be transferred into an SNT, which can then transfer funds to the ABLE account the following year. SSA POMS SI 01120.200(E)(1)(h); see also POMS SI 01130.740.

ABLE accounts may be used for an individual who was disabled prior to reaching age 46, starting Jan. 1, 2026.

See https://www.ablenrc.org/the-able-age-adjustment-act-fact-sheet/

https://www.mynyable.org (not yet updated with age 46)

https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740

What is the maximum account balance for a NY ABLE account?

For people not receiving SSI, the maximum account balance is $520,000. For **SSI recipients**, the maximum account balance is $100,000.

What may a disabled person spend ABLE account funds on?

A "Qualified Disability Expense" means any expenses eligible individuals incur that relate to their blindness or disability and are intended to maintain or improve their quality of life.

These qualified expenses include:

- Education
- Health and wellness
- Housing
- Transportation
- Legal fees
- Financial management
- Employment training and support
- Assistive technology
- Personal support services
- Oversight and monitoring
- Funeral/ burial expenses

The NYS Comptroller's Office recommends that a record of expenses and payment receipts be maintained should they be needed at a later time.

If NY ABLE savings are used for non-qualified expenses, the earnings portion of the withdrawal will be treated as income – subject to federal and applicable state taxes. In most cases, it will also be subject to a 10% federal tax penalty.

What about account maintenance fees?

There is a maintenance fee of $10 quarterly (for paper statements $12.50/ quarter). There is also an asset-based fee and checking fees. See https://www.mynyable.org/home/investments/fees.html

Is the beneficiary's income deposited into an ABLE Account exempt for SSI or Medicaid, SNAP or Temporary Assistance?

Income deposited into ABLE Account is NOT exempt for SSI or Medicaid. See Jim Sheldon article on ABLE Accounts, Sept. 2017.[29] Because of this, the best use of ABLE accounts for Medicaid is to shelter a beneficiary's assets, gifts, inheritances, etc., and not to shelter the beneficiary's monthly income. However, 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.[30]

ABLE accounts may be used to help an SSI beneficiary with rent or other shelter costs. If a parent or an SNT pays rent or other shelter expenses, a beneficiary's SSI is reduced by one-third of the monthly federal benefit amount. However, rent paid from an ABLE account does not reduce SSI. A parent of an adult child receiving SSI could either make direct deposits into an ABLE account to be used as rent, or contribute to an SNT, which in turn transfers funds into the ABLE account, which are then used for rent.[31] Funds transferred from one's SNT to one's ABLE account will not count as *income* to the individual. SSA POMS POMS SI 01120.200(E)(1)(h); see also POMS SI 01130.740.

What happens to the balance of ABLE Account at death?

Like self-settled supplemental needs trusts, at termination of an account there is required payback to Medicaid, but payback is limited to the costs paid since the date the account was established. In contrast, payback for an individual SNT is for all expenses paid by Medicaid in one's lifetime.

Want more information?

NYS ABLE website MyNYABLE.org

ABLE National Resource Center https://www.ablenrc.org/

National ABLE Initiative https://www.abletoday.org/ (has videos, links to Sociall Security POMS guidance, and many other resources)

How Does an SNT Affect Public Benefits?

There are different types of financial eligibility tests employed by the wide range of means-tested public benefit programs. This outline describes the interaction between SNTs and benefit programs by asking five questions for each program:

1. Does the trust property count as a resource to the beneficiary?
2. Is the lump sum countable as "income" when received that negatively impacts eligibility?
3. If the applicant transfers the lump sum or other money into an SNT, does it create a transfer penalty?
4. Do the trust's disbursements create countable income for the beneficiary?
5. If the beneficiary transfers money to the SNT each month, are those contributions deducted from countable income?

A Note on Transfer Penalties

The second question asks whether the transfer of funds into an SNT will create a transfer penalty. Imposing a transfer penalty is a practice used by government benefit programs to deter those with available means of support from giving those means away to artificially impoverish themselves, thereby becoming eligible for government assistance. An applicant for the benefit is asked about any transfers of assets made within a certain period of time before the date of application (a **look-back period**). The program adds up the value of all the assets transferred during that period, and then imposes a period of disqualification whose length is proportional to the amount transferred. During that "transfer penalty" period, the applicant is not eligible to receive the benefit.

Medicaid

Who gives it?	New York State Department of Health (DOH) and the Federal Centers for Medicare and Medicaid Services (CMS), administered by the Local Department of Social Services (HRA in New York City) and the NYS of Health Marketplace
Who gets it?	New Yorkers of limited means
Eligibility	• TWO CATEGORIES: 1. "MAGI" Category (Modified Adjusted Gross Income) – People not eligible for Medicare – Mostly under age 65 2. "Non-MAGI" - Disabled, Aged 65+, Blind • Income – Different rules for MAGI and non-MAGI • Resources – **No** resource limit for MAGI, only for non-MAGI • Immigration Status/Citizenship • Residency in New York State
What do you get?	Comprehensive health insurance coverage, including long-term care services (home care & nursing home)

Medicaid is a comprehensive health insurance program for low-income people. Medicaid pays for all medically necessary care, including: hospitalization, outpatient care, mental health care, physical therapy, diagnostic tests, durable medical equipment, and pharmacy. Most, but not all, New York State residents who receive Medicaid are now required to join managed care plans.

MAGI Medicaid. The Affordable Care Act created a new Medicaid category that encompasses a large population of New Yorkers, called the "MAGI" category. The MAGI category is primarily children, their parents and single adults under age 65. Anyone who has Medicare or is age 65+ is not eligible for MAGI Medicaid unless they are caretakers of a minor relative. People receiving Social Security Disability can be MAGI if they do not yet have Medicare, or even if they do have Medicare, if they are a caretaker for a minor child (under 18 or under 19 and in school).

Non-MAGI Medicaid. People age 65+ or who have Medicare based on disability are non-MAGI, but may choose MAGI Medicaid if they are parents or other relatives who live with a minor child/grandchild or other minor –age relative. People under 65 who receive Social Security Disability but do not yet have Medicaid have a choice of MAGI or non-MAGI.

This outline does not explain all of the eligibility rules for the two types of Medicaid. For MAGI Medicaid see articles at https://nyhealthaccess.org/55/. For non-MAGI Medicaid see https://nyhealthaccess.org/entry/144/, and other articles at https://nyhealthaccess.org/58/. Webinars on Medicaid are at https://nyhealthaccess.org/entry/214/.

1. Is the SNT a Resource?

A main difference between MAGI Medicaid and non-MAGI Medicaid is that ***MAGI Medicaid has no resource test***. 42 CFR 435.603(g). Non-MAGI Medicaid has strict resource limits, with exceptions (though big increase in 2023!) See https://nyhealthaccess.org/entry/113/ and other references above.

As long as the SNT is properly drafted to comply with the rules in 42 U.S.C. § 1396p(d),[32] and *if the beneficiary is a person with a disability*,[33] an SNT is not a countable resource for non-MAGI Medicaid.

Asset Limits for NON-MAGI Medicaid 2026

Singles $33,038

Couples $ 44,796

Updates posted at

https://nyhealthaccess.org/entry/15/

NYS Medicaid Asset limit is based on 150% of the annual income limit, which increased to 138% Federal Poverty Level under NYS Budget changes starting 2023.

2. Is Receipt of a Lump Sum "Income" or an Asset that counts toward eligibility?

Non-MAGI Medicaid

A lump sum is "income" in the month received, and if saved, becomes a "resource" in the next month. Some lump sums are exempt entirely (lawsuit award or settlement of negligence suit against a nursing home, Pub. Health L. 2801-d(5)), or are exempt for a certain period of time (retroactive Social Security award exempt for nine months). Others count as income in the month received. See list at https://nyhealthaccess.org/entry/113/

Some types of lump sums may not be fully countable. Only net lawsuit proceeds after attorney fees and other costs count. If the award could be considered earned income, such as claim for bonuses, severance pay, retroactive pay increases, then the earned income disregards apply (only half of the gross award is counted).

The lump sum must be actually "available." Inheritances are only considered available resources when actually received, not simply because the client is named in a will of someone who died. See *Matter of Little*, 684 NYS2d 124 (4th Dept. 1998).

Community Medicaid, including People in Assisted Living Programs or MLTC plans. While receipt of any income must be reported to the Medicaid agency (HRA or DSS) by the 10th of the month following the month of

receipt,[34] as a practical matter, Medicaid will not be affected if, by the time of the reporting, the assets are brought under the Medicaid limits. In other words – take this scenario:

> Money was received in April and was spent or transferred so that resources are within the Medicaid limit by April 30th. This brings assets under the limit as of May 1st. The lump sum income is reported in May. Medicaid cannot be discontinued because eligibility continues in May.[35]

This is for Community Medicaid only; transfer penalties apply for Institutional or nursing home Medicaid, discussed below. The individual may be liable to repay the State for the cost of Medicaid services received in the month of receipt of the lump sum, but as a practical matter, most Medicaid agencies will not pursue liability for one month since it requires bringing a lawsuit; there is no mechanism to administratively collect overpayments.

MAGI Medicaid (Most are under 65, with exceptions for "caretaker relatives" >65)

Whether a lump sum is considered income in the month received depends on the source. MAGI Medicaid uses Federal income tax rules for Adjusted Gross Income, with modifications dictated in the Affordable Care Act. Gifts or inheritances, Workers Compensation, and personal injury settlements, for example, are not counted as income. However, some other lawsuit settlements, such as for back pay, are counted as income. See *Attachment* to GIS 19 MA/11 - *List of Non-Taxable Income Sources Excluded from Gross Income for MAGI Budgeting*.[36]

LOTTERY - Federal changes in 2018 pro-rate lottery winnings over $80,000 as income over a period of time from two months to ten years, depending on the amount of the award. GIS 19 MA/11**,** Id. fn 36.

For MAGI Medicaid, a lump sum must be reported to the Medicaid agency and may affect eligibility. On July 1, 2026, the former 12-month continuous eligibility rule for MAGI Medicaid *ended*. This was because of H.R. 1 changes enacted in July 2025. Whether the lump sum affects eligibility will depend in part on the amount and on the source of payment. Personal injury or Workers Compensation settlements, or inheritances are exempt as income under MAGI rules, so will not affect eligibility. A settlement of back wages, however, may be counted as income in the month received. Even so, it arguably counts only for the month of receipt and would not affect ongoing eligibility. Even if saved, and if the lump sum becomes a resource in the following month, MAGI Medicaid has no asset test.

Structured Settlements and MAGI Medicaid. If a lump sum is not countable MAGI income because it is not taxable, then regular payments in a structured settlement are also not countable as income.[37] In a personal injury lawsuit, for example, a structured settlement in which monthly payments of even $10,000 month would be exempt as income. This may be preferable to receiving a large lump sum, since dividends and interest generated on investments are countable as income. If the individual is close to age 65 or to becoming eligible for Medicare, however, they will be required to switch to non-MAGI Medicaid, under which payments under a structured settlement would count as income.

BEWARE that some lawsuit settlements are taxable so DO count as MAGI income, e.g. claims for discrimination/employment, business, punitive damages. In such cases, it is likely better to receive a lump sum than a structured settlement because it would only be income in the month received and not ongoing.

NOTE: The Advanced Premium Tax Credits established by the Affordable Care Act and coinsurance subsidies offered by NY State, are based on **annual** income, so a lump sum that would be taxable is counted as income (lottery winnings, for example). This is in contrast to the MAGI Medicaid rules.

For more information on MAGI Medicaid, see the National Health Law Program's Advocates Guide to MAGI and other resources.[38]

3. Is there a Transfer Penalty if Lump Sum Transferred to an SNT or otherwise?

MAGI Medicaid (Most are under 65 unless caretaker relative of minor child)

Since MAGI Medicaid has NO RESOURCE TEST, savings that includes a lump sum received in the past do not impact current eligibility. A person may save, transfer, or put the lump sum in an SNT if they are disabled but otherwise eligible for MAGI Medicaid. (Putting the lump sum in an SNT is a good strategy if the disabled person is approaching age 65 or close to obtaining Medicare based on disability. Once on Medicare, she will be required to transition to non-MAGI Medicaid with a limit on her assets, unless she has a dependent child/relative living with her.)

MAGI MEDICAID FOR NURSING HOME CARE

MAGI Medicaid will pay for Nursing Home care if individual is "medically frail,"which is deemed if the individual is found to need nursing home care.[39] Even though there is no asset test for MAGI Medicaid, if a MAGI

recipient needs nursing home care for more than 29 days,she may receive it through MAGI Medicaid but must still document resources in the 5-year lookback. A transfer penalty will be imposed just like in non-MAGI Medicaid (discussed below). Id. n 42. There is no lien on the homestead in MAGI Medicaid. GIS 14 MA/16. However, the home equity limit applies to single individuals. 15 OHIP/INF-1 Q. #11.

Regarding income, if the individual's income is under the MAGI limit, there is no Net Available Monthly Income (NAMI) due to the nursing home. In 2025, that means the individual may keep $1800 in countable income per month without being required to make any contribution for the nursing home care. Spousal impoverishment may not be used in MAGI. However, an individual who is age 65+ or disabled has the choice of switching to non-MAGI budgeting and to use spousal impoverishment budgeting.

A MAGI recipient in a nursing home, who is under age 65 and disabled, might consider depositing assets into an SNT for two reasons. There is no transfer penalty, as is also true in non-MAGI Medicaid. Also, it is a good strategy to reduce countable assets to prepare to switch to non-MAGI Medicaid when she becomes eligible for Medicare, whether based on age or disability. If age 65 or over, there would be a transfer penalty for placing assets into an SNT.

Under Age 65 and Disabled (Non-MAGI)

For people under age 65 who have a disability, there is no transfer penalty for transfers of either income or assets into an SNT for their own benefit.[40] This includes Community Medicaid and Home and Community Based Services (HCBS) Medicaid Waiver programs. For Nursing Home Medicaid, income transferred into an SNT is not excluded from being counted as income.

Age 65 and Over (Non-MAGI)

Community Medicaid including MLTC and Home & Community Based Waiver Programs

In the NYS Budget enacted in April 2020, a lookback and transfer penalty was enacted that, once in effect, will apply solely for Community-Based Long-Term Care (CB-LTC) services, not for primary or acute medical care.[41] NOTE THAT THIS NEW lookback has not yet been implemented because of the federal COVID-era ARPA law that prohibited States from restricting Medicaid eligibility until the ARPA funds were spent. See https://nyhealthaccess.org/news/85/#lookback. As of spring 2025, the ARPA funds were spent. However, the State has not yet applied for or obtained a "State Plan Amendment" to the Medicaid state plan to impose the lookback, or approval from CMS to impose the lookback to limit enrollment in MLTC.

Without these approvals, there is still no lookback and transfer penalty for any CB-LTC services. See https://health.ny.gov/health_care/medicaid/redesign/mrt2/proposals/30-month_lookback-final.htm.

If and when the lookback and transfer penalty goes into effect, it will be 30 months rather than 60 months used for nursing home care. It will apply to Medicaid personal care and CDPAP services, Managed Long Term Care (MLTC) enrollment, private duty nursing services, and the Assisted Living Program. It will not restrict enrollment in the 1915(c) Home and Community Based OPWDD or Traumatic Brain Injury waiver. (Note enrollment has been paused for the Nursing Home Transition & Diversion waiver (NHTD) because of a new cap on enrollment. See https://health.ny.gov/facilities/long_term_care/nhtd/index.htm. These waivers have historically not had a transfer penalty.[42] The same exceptions to the transfer penalty that apply for nursing home care will apply (see below), though some don't make sense for community-based care.

All non-MAGI Medicaid applications must include Supplement A" along with the application. (DOH 5178A, available at https://www.health.ny.gov/forms/doh-5178a.pdf). This is true whether or not the applicant is seeking long term care.[43] Applicants who are only seeking primary and acute care may just list their assets on Supplement A and "attest" to their amount, without actually documenting them. Those seeking Community-Based Long-Term Care must document their assets listed on Supplement A. Note that even if only one spouse is applying, Supplement A must list all assets of each spouse and must be signed by each spouse. For more information about "attestation" see https://nyhealthaccess.org/entry/30/ and about Supplement A rules at https://nyhealthaccess.org/news/89/.

Nursing Home

There is a 5-year look back and transfer penalty for people applying for nursing home care. For people age 65 and over, a transfer of assets to their own SNT is considered a transfer, and will trigger a transfer penalty if the transfer occurred within the five-year look-back period.

There is no transfer penalty, however, for a transfer of a lump sum in the case of:

- A disabled person under age 65 who deposits assets into an SNT for her own benefit,
- A deposit by a person age 65+ into an SNT for the benefit of any person under age 65 who is disabled;

- Transfer to one's spouse;
- Transfer to one's disabled child of any age (including age 65+)(does not have to be in trust).

The transfer rules and their exceptions are beyond the scope of this guide. See https://nyhealthaccess.org/entry/38/.

Potential Penalty for Deposits into Pooled Trust After Age 65.

The nursing home transfer of asset rules penalize not only transfers of assets but also transfers of income. As long as a person remains in the community, transfers of monthly income into a trust do not adversely affect her Medicaid eligibility (see above). However, it was feared that the Deficit Reduction Act of 2005,[44] would be interpreted to impose a penalty on transfers of excess income into an SNT made on or after February 8, 2006 (the effective date of the Act). Thankfully, the New York State Department of Health clarified that as long as funds deposited into the SNT were spent on the beneficiary's expenses prior to applying for Nursing Home Medicaid, the prior deposits of income into the SNT will be considered a "compensated" transfer so no transfer penalty will be imposed.[45] For this reason, it is important that care be taken to avoid accumulation of funds in the SNT. See examples in GIS.

4. Alternative Strategies to Trusts for Maintaining Non-MAGI Medicaid After Receiving a Lump Sum

Medicare Savings Program income limits increased in 2023 to 186% FPL for QI-1 – for people who decline Medicaid and just want MSP.

QMB limit is 138% FPL if also want Medicaid.

https://nyhealthaccess.org/entry/15/ and

https://nyhealthaccess.org/entry/99/

An individual may prefer not to deposit a lump sum into an SNT or may not be able to do so (not disabled, age 65 or older). Other basic strategies to keep Medicaid are to Spend, Convert, or Transfer all or part of the resources are as follows.

1. Consider whether client needs Medicaid, or could instead meet needs with a Medicare Savings Program, which has no asset test and automatically qualifies client for Extra Help with Medicare Part D. See https://nyhealthaccess.org/entry/61/. Could buy a Medigap policy with lump sum. If client needs home care, this isn't likely an option.
    a. Is client eligible for MAGI Medicaid? Even if age 65+ or has Medicare, is she a parent, grandparent or other caretaker relative for a child under age 18 or under 19 in school? If so, there is no asset test and she can keep assets and Medicaid. Income and dividends will count toward eligibility.
2. Spend excess resources:
    a. Purchase items for oneself for fair market value – household goods, clothes, furniture, vacations, modifications for

apartment/home for accessibility, etc.

b. Pre-pay household expenses – keep receipts (mortgage, cable, utilities, cell phone, rent, property taxes, insurance)(must be paid irrevocably; may need written agreement with landlord)

c. Pay down credit card debt or other loans (may need proof of bona fide loan or could be viewed as a gift)

3. Convert excess resources into an exempt resource:

   a. Pre-pay funeral expenses for recipient and certain family members.[46]

   b. Buy a car (exempt if member of household is using it). 18 NYCRR 360-4.7(a)(2)(iv); MRG p. 348-349.

   c. Buy a home (equity must be under cap if no spouse, minor or disabled child reside in home)(2025 cap is $1,097,000).

   d. Open an IRA (must be working) – exempt as resource if in periodic payout status (GIS 98 MA/024) or if in Medicaid Buy-In Program for Working People with Disabilities < 65. See https://nyhealthaccess.org/entry/59/.

   e. Is client eligible for an ABLE account? See above and https://www.mynyable.org/. Or a PASS plan (SSI).

4. Transfer excess resources (for community Medicaid only – at least until the new lookback starts for community-based long term care (CB-LTC). See section on Transfers above. For community Medicaid there is no transfer penalty, so if a lump sum received on May 5th, and transferred on May 15th, client is eligible for full Community Medicaid on June 1st. *This will change if the lookback is implemented in 2026 or later for CB-LTC*. But be aware that if consumer applies for Nursing Home care in next 5 years, transfer penalty will be imposed. Therefore – look to see if an exempt transfer is possible (to a disabled child, to a spouse). See other exceptions above.

5. For all options, keep records so that can show money was actually spent or transferred. Just showing a withdrawal from client's bank account, without receipts or proof that it was spent or transferred, is not enough – the money could be under her mattress.

Take all of these steps as quickly as possible to minimize period of ineligibility and potential liability to repay Medicaid. Report receipt of lump sum to Medicaid within 10th day of month after month of receipt (if that is not possible, report as soon as possible, but preferably wait to report in a month in which the assets were under the limits as of the 1st of that month). See n. 75. This avoids Medicaid being discontinued for excess assets.

5. Are Disbursements from SNTs Treated as Income?

No Cash Disbursements Allowed - SSI and Medicaid

Cash is always considered income for Non-MAGI Medicaid and the trustee of the SNT should never give cash to the beneficiary. This would result in a dollar-for-dollar increase in the beneficiary's spend-down, and may also result in the SNT's being counted as an available resource. In a properly drafted SNT trust agreement, the trustee is prohibited from making cash disbursements that will impair the beneficiary's eligibility for benefits. Disbursement to the beneficiary's debit card or purchase of a gift card for the beneficiary is considered cash and is income.[47]

In-Kind Disbursements

The trustee may make direct payments to third parties that provide goods and services to the beneficiary. Such in-kind payments are not considered "income" for Non-MAGI Medicaid purposes, regardless of what the payments are for.[48] Payments may include rent, clothing, food, etc. (But beware SSI rules count payments for rent/shelter or food as income).

NOTE: Some pooled SNTs permit a person who paid for the beneficiary's expense, such as buying clothing, to be reimbursed if receipts are submitted. However, she should contact the pooled trustee to get approval BEFORE making the expenditure to assure reimbursement.

Here are some examples of types of expenses for which an SNT may make in-kind payments for Medicaid (Warning -- SSI rules are stricter – see below):

Rent

The easiest type of bill to pay via an SNT is rent (or maintenance for co-op/condo). NYSARC and many other pooled trustees prefer these bills for which they can set up automatic payments. This is also more convenient for the beneficiary, who generally does not need to send disbursement requests once the automatic payment system is set up. However, this might not be logistically feasible if the landlord requires inclusion of a payment coupon with the rent check, or if the landlord will not accept payment from a third party. Also, for rent payments, the pooled trustee will initially ask for a copy of the lease verifying that the beneficiary lives there. If they are not on the lease, or there is no lease, they need a letter signed both by the landlord and the beneficiary stating that the beneficiary lives there and the amount of rent. If the beneficiary is receiving SSI, in most cases the trust should pay expenses other than food and shelter. ***See, the discusstion below re SSI***.

Utilities

Utility bills, including electric, gas, phone, cable, and internet, are also convenient to pay from an SNT. However, a trust may require that consumer enters a budget plan so that bills are in the same amount each month. The pooled trustee will usually require that the beneficiary send or fax the utility bill to the trustee every month. ***NOTE that SSI rules are different than Medicaid – see below***.

Credit and Debit Cards (Medicaid and SSI)

A pooled or individual trust may pay a credit card bill in the beneficiary's name, though it will scrutinize the items and may inquire to ensure that expenditures are for the sole benefit of the beneficiary, that no cash withdrawals are made, and to ensure there are no past due charges being carried forward. [49] Debit cards may NOT be used in this manner.[50] A payment of a debit card account is treated the same as a payment of cash to the beneficiary, i.e., as unearned income. (For SSI, if the card is used for shelter or food expenses it will be counted as income). Gift cards or gift certificates purchased by the trust count as income.

"Administrator-managed prepaid cards, such as True Link cards, are a type of restricted debit card that can be customized to block the cardholder's access to cash, specific merchants, or entire categories of spending."[51] The POMS as amended in 2018 allows use of these if the trustee is the account owner and administrator, and the trust beneficiary is the cardholder, not the owner. Id. The type of expenses allowed is stricter for SSI than Medicaid.

Sole Benefit Rule (applies to Medicaid and SSI)

Although trust expenditures must be for the "sole benefit" of the beneficiary, 2018 changes in the POMS clarify that this is not read so narrowly to preclude certain expenditures for which others receive a collateral benefit.[52] The Medicaid rules for trusts for the non-MAGI population may be no more restrictive than the SSI rules set forth in the POMS. *See* note 54. Payment to a third party for goods or service must be for the primary benefit of the beneficiary, but others may receive a collateral benefit. For example, if housing or a car is purchased for a beneficiary, this does not mean that he or she must live there alone.[53] The deed or title must show the individual or trust as the owner of the item in the percentage that the funds represent the value of the item, or the trust must hold a lien on the car; otherwise it may be considered a transfer of resources. If a television is purchased for a beneficiary, others may also watch it.[54] On the other hand, purchase of an automobile which is used twice a month to take the beneficiary to the doctor and is used every day by the trustee to commute to work is not permissible.[55]

The trust may pay a third party for companion services for a disabled beneficiary or a minor disabled child, and for incidental expenses of the companion.[56] For example, supervising an individual with dementia or driving a beneficiary to a store may be compensated. Even if a family member would sometimes do these activities without compensation, the trust may pay them and for the incidental expenses of a companion. For example, if an aide or a family member as a companion is paid to take the beneficiary to a museum, the trust may pay for museum admission for the aide for a family member.

Changes in the POMS in 2018 prohibit asking for proof of medical necessity for a companion or proof of medical training or certification of the companion. "Absent evidence to the contrary, accept a statement from the trustee that the service or assistance provided is necessary to permit the trust beneficiary to travel. Id. Nor may the companion be asked for "income tax information or similar evidence from a service provider to establish a business relationship." Id. "A third party service provider can be a family member, a non-family member, or a professional services company. The policy is the same for all." Id.

Payment to a third party for travel expenses to visit the beneficiary is allowed, if necessary to ensure the safety or medical well-being of the beneficiary. A third party may be a family member, non-family person, or a professional entity. This may be payment to a service provider to oversee living arrangements in a facility, or to a trustee for travel expenses when they are exercising their fiduciary responsibilities. For example, reimbursement of travel to a trustee enabling the trustee to supervise treatment in a facility is permissible.[57]

The POMS instruct SSA staff to use a reasonableness test to evaluate the number of people who accompany the beneficiary and have their expenses paid. For example, if parents take a disabled child on vacation, the trust may pay for the parents' expenses. However, the trust may not pay for other family members, even if it is not feasible to leave other children at home.[58]

The trust may also provide for reasonable compensation for a trustee to manage the trust and reasonable costs associated with investment, legal, or other services rendered on behalf of the individual with regard to the trust.[59]

Transfers to ABLE Account

Funds transferred to an ABLE account are not counted as income. SSA POMS SI 01120.200(E)(1)(h); see also SI 01130.740.

May Income be Placed in the Trust to Reduce Countable Income?

Community Medicaid (Non-MAGI)

Yes. When individuals with a disability place their excess monthly income (also called a spend-down) into an SNT, the local Medicaid program must adjust their Medicaid budget to eliminate their spend-down for Community Medicaid. This has been true since a 2004 fair hearing decision allowed use of the NYSARC trust to eliminate the spend-down of income.[60]

The decision relies on an old amended directive of the State Department of Health – a letter dated September 23, 1997 that amends directive 96-ADM-8, titled "OBRA '93 Provisions on Transfers and Trusts." The 1997 letter states:

> While most exception trusts are created using the individual's resources, some may be created using the individual's income, either solely or in conjunction with resources. Income diverted directly to a trust or income received by an individual and then placed into a trust is not counted as income to the individual for Medicaid eligibility purposes. Verification that the income was placed into the trust is required. In order to eliminate the need to verify this on a monthly basis, it is recommended that you advise the recipient to divert the income directly to the exception trust.[61]

Medicaid Managed Care

Generally, people with an income spend-down are excluded from Medicaid Managed Care, which is a type of managed care program for people without Medicare or other third party insurance. S.S.L. §364-j. Thus, a Medicaid recipient who has used an SNT to eliminate their spend-down should not be excluded from managed care. This was the holding of a fair hearing decision in which Nassau County attempted to disenroll a Medicaid recipient from Medicaid Managed Care even though she deposited her spend-down into an SNT.[62] The decision held that if income is deposited into an SNT, there is no spend-down, so the appellant continued to be eligible for Medicaid Managed Care. Individuals who do not have Medicare, but who would have a spend-down because of excess income, may want to reduce the amount of their deposit into an SNT so that they have a minimal spend-down, if they wish to avoid being required to enroll in a Medicaid managed care plan. They would then use Medicaid on a fee for service basis.

Nursing Home Medicaid

No. Excess income transferred monthly into an SNT does NOT eliminate the Medicaid recipient's obligation to contribute towards the cost of their nursing home care.

The spend-down for Medicaid recipients in nursing homes is called a NAMI (Net Available Monthly Income). Chronic care institutional budgeting uses "post-eligibility" budgeting, which does not allow the same deductions from income that are allowed in the community. All income is to be applied to the cost of care, "including income disregarded or considered unavailable for the purpose of determining MA eligibility."[63] This includes income placed into an SNT. The cost of health insurance premiums is still excluded.

In Wong v. Doar, the court held that the plaintiff, who was a disabled 54-year-old nursing home resident, could not place his "excess income" from Social Security Disability benefits into an SNT to reduce his NAMI.[64] In Jennings v. Comm'r. Nassau DSS, the Appellate Division Second Department held that Wong also precludes an institutionalized parent from transferring their own income into an SNT for the benefit of a child with a disability.[65]

Managed Long Term Care (MLTC)

Medicaid recipients who enroll in MLTC plans may use an SNT to shelter their income and eliminate their spend-down. Since MLTC is a community-based long-term care program, community Medicaid budgeting applies, which allows use of SNTs to eliminate the spend-down.

The rules have been in flux for married couples. A spouse enrolling in an MLTC plan, whose spouse is not on Medicaid, may request "spousal impoverishment" budgeting. Since 2014 under Section 2404 of the Affordable Care Act called the PPACA, states have been required to provide spousal impoverishment protections to married people in home and community based waiver programs just as in nursing homes.[66]

However, sometimes the spousal impoverishment rules are less favorable than using a pooled trust. Spousal protections can be *unfavorable* if the individual seeking home care still has a high spend-down even after the spousal impoverishment allowances are allocated. Such an individual would normally want to use an SNT in order to reduce his or her spend-down. Under former state policy, a married individual couild not use a pooled trust instead of spousal impoverishment protections. The state reasoned that since spousal impoverishment rules come from nursing homes, a pooled trust cannot be allowed, since it is not allowed in "post-eligibility budgeting" used in nursing homes.

Fortunately, in 2015, NYS DOH clarified that a married individual may use a pooled trust to reduce the spend-down. See GIS 14 MA/025 - Spousal Impoverishment Budgeting with Post-Eligibility Rules Under the Affordable Care Act (PDF). In issuing this directive, DOH rescinded its August 2014 policy directive GIS 14/MA-015,[67] which in effect prohibited use of SNTs to shelter income for married couples. Now, GIS 14 MA/025 states, "Spousal impoverishment budgeting with post-eligibility rules is not mandated for married individuals receiving home and community-based services (HCBS) pursuant to a waiver under Section 1915(c) of the Social Security Act or through enrollment in a managed long term care (MLTC) plan..." See more at https://nyhealthaccess.org/entry/165/. https://nyhealthaccess.org/entry/165/ .

Other HCBS Medicaid Waiver Programs

Maybe.

Managed Long Term Care is one type of Medicaid Waiver Program, granted under Section 1115 of the Medicaid Act. There are also "1915" waivers that establish Home and Community Based Services (HCBS) Waiver programs. See notes 42-43. Transfers of income to eliminate a spend-down is a gray area in the context of waiver programs. This is because waiver programs are a hybrid of rules for Community Medicaid, which clearly permit transfers of excess income into an SNT to reduce or eliminate the spend-down for Community Medicaid, and Nursing Home Medicaid, which, under Wong does not permit use of an SNT to eliminate the NAMI.[68] The same section of the Affordable Care Act (PPACA) that requires spousal impoverishment budgeting for the MLTC program also requires it for 1915 waiver programs . The authors of this manual believe that the same rules set forth above for MLTC apply for other waiver programs – that single recipients may use SNTs to shelter income, and that under the current State directives, married couples may as well if they elect not to use spousal impoverishment budgeting.

While the State has not issued guidance on whether the post-Wong analysis applies only to Nursing Home Medicaid, or also HCBS Medicaid waiver programs, informal information from State employees as of November 2010 is that State policy PERMITS single waiver participants to place their excess income into SNTs, but prohibits this practice for married participants. The rationale is that married participants have the benefit of spousal impoverishment protections.

We have also heard informally that a participant in the OPWDD waiver is permitted to transfer monthly excess income into an SNT to eliminate the spend-down.

Our interpretation of the available guidance at this time is that all waiver participants should be entitled to shelter excess income using an SNT. The basis for this conclusion is that post-eligibility budgeting for waiver programs allows deduction of all SSI-related income disregards (unlike Nursing Home Medicaid budgeting, which does not).[69] We hope the State Department of Health will clarify its policy so that counties have clear direction.

MAGI Medicaid

NO. MAGI Medicaid uses Federal income tax rules to define and calculate adjusted gross income, with a few modifications under the Affordable Care Act. Neither the Act's modifications nor IRS rules allow for income to be sheltered in an SNT. The income used to fund the SNT would be counted towards MAGI Medicaid eligibility if the Act and the IRS require that type/source of income to be counted.

Supplemental Security Income

Who gives it?	Federal Government – Social Security Administration (SSA), with NYS OTDA administering the State Supplemental Payment (SSP) portion of the benefit. http://otda.ny.gov/programs/ssp/#benefits
Who gets it?	Aged 65+, blind, or disabled people with limited income and resources
Eligibility	• **Category** – must be 65 or over, or blind, or disabled • **Citizenship** – must be a U.S. citizen (with certain complex exceptions - such as five years as a Legal Permanent Resident, aka "green card" holder, but the rules are more restrictive for individuals who did not lawfully reside in the United States on August 22, 1996. • **Residency** – not eligible for SSI if residing outside of United States • **Income** – countable income < $1,081/mo. (single, living alone) or $1,595/mo. (couple, living alone)(2026) • **Resources** – countable resources under $2,000 (single) or $3,000 (couple)
What do you get?	Monthly cash income, usually direct-deposited into bank account. Most get two deposits – one from the federal SSA and one from state OTDA for the State Supplemental Payment (SSP) portion of the benefit. In New York, SSI recipients automatically get Medicaid. In New York, SSI recipients who live alone automatically get SNAP through NYSNIP.

Find current SSI limits in NYS at https://otda.ny.gov/programs/ssp/

Scroll down to BENEFITS and view SSI/SSP chart for the current year.

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 income limit and amount of monthly benefit depend upon the applicant's other income and living arrangement. See table above. Those who are approved for SSI receive Medicaid automatically in New York State.

The rules governing the SSI program, including the treatment of trusts and SNTs in particular, can be found in the **Program Operations Manual System (POMS)** on the Social Security Administration website at http://policy.ssa.gov/poms.nsf. The key POMS sections on SNTs were revised effective April 30, 2018. These are POMS SI 01120.200, 01120.201, 01120.202, 01120.203, available starting at http://policy.ssa.gov/poms.nsf/lnx/0501120200. Section 01120.203 was further amended effective 7/6/18, available at http://policy.ssa.gov/poms.nsf/lnx/0501120203.

1. Is the SNT a Resource?

Short Answer

No, as long as drafted properly to comply with rules in 42 U.S.C. § 1396p(d)(4) (the Federal Medicaid statute).[70]

Long Answer

The SSI statute very simply states, "This subsection [providing that 'the corpus of the trust shall be considered a resource available to the individual'] shall not apply to a trust described in subparagraph (A) or (C) of section 1917(d)(4) [42 USCS § 1396p(d)(4)]."[71] The citation referred to is the Federal Medicaid statute establishing individual and pooled SNTs.

However, the POMS provides that even if a trust is an SNT that complies with § 1396p(d), it still needs to be evaluated to determine if it is an available resource.[72] SSI considers a trust to be a countable resource if it is revocable (or if the beneficiary may direct the use of the trust assets for their own support and maintenance).[73] Under New York law, a trust where the grantor is the sole beneficiary is deemed to be revocable, notwithstanding any language in the trust agreement to the contrary.[74] This would seem to make an SNT an available resource for SSI purposes, because it is for the sole benefit of the grantor.

But, a POMS section applicable only to New York and New Jersey clarifies that a trust will not be deemed revocable (and therefore an available resource) if its residual beneficiaries include a named living person, the term "issue" (if living and the grantor's issue), and/or the State of New York (or similar language).[75] Because all "D4A" individual SNTs must include the State of New York as the residuary beneficiary in the first position, this clause means that they should be deemed irrevocable and therefore unavailable resources for SSI purposes. Similarly, all "D4C" pooled SNTs that name the pooled trustee organization as the residuary beneficiary should also be deemed irrevocable, because they have a named residual beneficiary.[76]

2. Is the lump sum "income" that would negatively impact SSI benefits?

The SSI rules on what counts as income are complex and not addressed in detail in this outline. See SSI POMS SI 00810.005, SI 00830.050 *Overview of Unearned Income Exclusions*; SI 00815: *What Is Not Income*. Examples of exempt lump sums are some disaster relief and Japanese or Holocaust restitution. Some lump sums are exempt for a limited period, such as

retroactive SSI/SSD benefits, State crime victims compensation, or state and local relocation assistance – exempt for nine months.

Unless specifically exempted, receipt of a lump sum is generally considered income in the month received, and a resource if saved into the next month(s). Assuming that the lump sum is countable income in the month received, the individual is not eligible for SSI in that month and could be liable for an overpayment for that month. However, the individual is not required to report the lump sum in the month of receipt. They must report receipt of income (and any other change) "within 10 calendar days after the month in which the change occurred."[77] If a lump sum is received at the beginning of April, for example, it must be reported to the SSA by the 10th of May. A report by mail must be postmarked by that deadline. *Id.*

TIP for settling lawsuits or for drafting court ordered settlements – provide that payment be assigned directly to SNT.

EXCEPTION - INCOME or ASSETS IRREVOCABLE TRANSFERRED into a trust are exempt for SSI. "A legally assignable payment that is assigned to a trust …is income for SSI purposes … unless the assignment is irrevocable. We consider assignment of payment by court orders to be irrevocable. For example, child support or alimony payments paid directly to a trust … because of a court order are considered irrevocably assigned and thus not income. Also, U.S. Military Survivor Benefit Plan (SBP) payments assigned to a special needs trust are not income because the assignment of an SPB annuity is irrevocable."[78] Some payments are not assignable by law, and should not be paid directly into the trust (Social Security, federal or private pensions, Veterans benefits).

With advance planning and quick action, the individual can either quickly spend the money down on permitted expenses, establish an SNT if allowed (see below), or make an exempt transfer (spouse, disabled child, etc.). The same options exist as apply to Community Medicaid, see supra at pp. 25-26, except that transfers will trigger an SSI transfer penalty unless they are specifically exempt. Documentation of how the lump sum was spent or transferred to an SNT may be included in the report to the SSA. Ideally, at the time of the report, the recipient would be then eligible for SSI she had excess income in the month of receipt, but her resources are within the allowed limits in the month of reporting). Therefore, SSI cannot be discontinued. The sole adverse consequence is an "Overpayment" for one or two months. With this planning and quck action, the individual's overpayment liability is limited and she has been able to benefit from the lump sum (whether by spending it or preserving it in an SNT). Request of a waiver is also possible to reverse an overpayment if the recipient is "without fault" in incurring it. 20 CFR 416.550-556.

3. Is there a Transfer or "Lump Sum" Penalty?

Transfers of income or assets generally incur a transfer penalty for SSI, with exceptions. This SSI penalty disqualifies the applicant or recipient from SSI for up to three years, depending on the amount transferred.[79] (The penalty is calculated by dividing the amount transferred by the person's SSI monthly payment rate, including the State supplement).[80]

EXAMPLE: Person living alone transfers $10,010– she is disqualified from receiving SSI for 10 months [$10,010 ÷ $1001 = 10].

The penalty may be worth incurring depending on the amount transferred. If the funds are substantially higher than the value of SSI for 36 months ($36,000 in 2025), it could be worth the penalty to shelter the funds in an SNT. Note, the impact of Medicaid Nursing Home penalty periods should also be considered. Unlike the SSI disqualification period, there is no maximum Medicaid transfer period. For example, if an individual 65 or older transferred $1 Million into an SNT and entered a nursing home in New York City within the next five years, the SSI disqualification period would be 36 months but the nursing home penalty period would be approximately 70 months ($1,000,000 /$14,587 in 2025) or almost 6 years.

No Penalty for Transfer into SNT for Disabled Individual < 65 or to a Disabled Child of any age

There is no transfer penalty if an individual transfers a resource into an SNT for the sole benefit of an individual who is under age 65 and disabled – who may be themselves or any other person who is under 65 and disabled.[81] This may be a family member or friend. If an SSI recipient or a disabled or blind person who in the next three years may apply for SSI receives a lump sum and is under age 65, an SNT is the perfect solution.

Also, there is no transfer penalty for for transfer to the individual's child of any age who is blind or disabled, directly or to an SNT established for that child's benefit. POMS SI 01150.120.A.2; 01150.123.

No Penalty if Irrevocably Transferred to a Trust.

See fn 80 and surrounding text above.

There are some other exceptions to the SSI transfer penalty not discussed here, which vary depending on whether the asset is a home or another type of asset. See POMS SI 01150.120, et seq.; POMS SI 01150.122 (transfers of the home).

Age 65 or over

Transfers by a person over age 65 into a pooled SNT for their own benefit WILL incur a transfer penalty for purposes of SSI. (A person over age 65 may not transfer assets into an individual trust at all, only a pooled trust). A person over age 65 may, however, transfer to a trust for the benefit of their child or of any another person under age 65 and disabled, without any SSI transfer penalty. A person over age 65 may also transfer assets to their child of any age who is disabled or blind directly, not through an SNT, without any penalty. POMS SI 01150.123. There are some other exceptions to the transfer penalty. See POMS SI 01150 et seq. Special rules apply to transfers of the home not discussed here. POMS SI 01150.122.

4. Are Disbursements from SNTs Treated as Income?

The rules barring an SNT from giving give cash disbursements to the beneficiary applies to SSI as described above for Medicaid. Cash paid directly from a trust to the beneficiary is unearned income and would reduce SSI benefits dollar-for-dollar as a result.

Like Medicaid, the SNT may pay various bills directly on behalf of the beneficiary. This type of income is known as **in-kind income**.

Unfortunately, some types of in-kind income are deemed countable for purposes of SSI even though they are not counted by Medicaid. Payments made by the SNT to third parties for **shelter** are considered **In-kind Support and Maintenance (ISM)** and will reduce SSI payments by the lower of (1) the actual value or (2) a maximum of one-third of the monthly Federal benefit amount.[82] In-kind provision of food and clothing[83] is NO LONGER counted as income. See side bar re food.

The Federal benefit rate in 2026 is $994/month, so after the one-third reduction the individual would get $749 (includes the $87 NY State supplement). This reduction may be worth accepting if, for example, the rent or maintenance amount is very high, say $1,000 – it's worth the SNT's paying that and accepting a one-third reduction in the monthly SSI amount.

Shelter expenses include rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewer, or garbage removal.[84]

NOTE: Condominium fees in themselves are not shelter costs. However, condominium fees may include charges which are shelter costs (e.g., garbage removal). To the extent that such charges are identifiable, use them in the computation of inside and outside ISM.

Starting Sept. 30, 2024, food provided by family, friends, or organizations is no longer counted as "in-kind support and maintenance" (ISM). https://www.ssa.gov/ssi/text-income-ussi.htm.

TIP: If the SSI recipient needs the trust to pay rent or other **shelter expenses**, explore whether client eligible to establish an ABLE Account, payments from which do not reduce SSI when used for shelter expenses. See, *supra,* at pp. 14-16. Funds in an SNT can be transferred to an ABLE account with no penalty.

Homeowner's Insurance – "Only property insurance required by the mortgage holder in order to receive the mortgage is considered a shelter cost. Insurance (property, fire, theft, etc.) held at the owner's or renter's option is not a household cost."[85]

Direct payments to third parties for goods and services other than food and shelter will not reduce SSI benefits. A trust will scrutinize acredit card bill to ensure it is not paying for food or shelter or gifts. Allowed expenses include:

- Cable, telephone, cell phone, and internet service are not shelter costs.
- Payment for travel, local transportation, entertainment expenses, educational expenses, and (since 2005) clothing, are all permitted. An account could be set up with a local car service that would bill the SNT monthly.
- Pre-payment of burial expenses through a funeral agreement.
- See Medicaid section above pp. 28-29 regarding 2018 POMS changes expanding the expenses that can be considered to be for "sole benefit" of the beneficiary, such as paying a third party, such as paying a companion or aide and their incidental expenses, or buying a home or television that also benefits someone else.

5. Can Income be Placed in the Trust to Reduce Countable Income?

Generally No. A transfer of excess monthly income will not result in eligibility for or an increase in SSI benefits. Applicants for SSI may not become eligible by transferring excess income over the SSI limit into an SNT.

There is an exception to this rule for payments that are irrevocably assigned to a trust. Assignment of payment by court orders are irrevocable. For example, child support or alimony payments paid directly to a trust or trustee because of a court order are considered irrevocably assigned and thus are not treated as income. Similarly, U.S. Military Survivor Benefit Plan (SBP) payments assigned to an SNT do not count as income because they are not revocable. This is a narrow exception because many types of benefits are treated as non-assignable including many pension benefits, Social Security Retirement and Disability benefits and SSI.[86]

Temporary Assistance (including HASA)

Who gives it?	State Government – the Office of Temporary and Disability Assistance (OTDA), administered by local DSS	
Who gets it?	People with very low income and resources	
Eligibility	• **Work requirements** – all recipients of temporary assistance may be required to work unless they are exempt from the work rules. • **Citizenship** – must be a U.S. citizen, Legal Permanent Resident (aka "green card") or PRUCOL (permanently residing under the color of law). • **Residency** – must live in New York State to receive TA from NYS. • **Income** – The 185% of the standard of need test is repealed effective 10/1/22. Ch. 56 Laws 2022, Part U § 4. • **Resources –**Effective 10/1/22, resource levels for applicants increased from $2000 to $2500 and from $3000 to $3750 for households where any member is age 60+ or disabled. Soc. Serv. L. § 131-n, subd. 1 amended Ch. 56 L. 2022, Part U, sec. 5.	May 2023 - Many new categories of non-citizens became classified as PRUCOL and eligible for cash benefits. See *Non-citizens Recognized as PRUCOL for Safety Net Assistance (SNA) Eligibility,* https://otda.ny.gov/policy/gis/2023/23DC039.pdf.
What do you get?	Monthly cash income for basic needs. Some expenses are paid by voucher to the vendor, others by EBT (debit) card. TA may be a stopgap while applying for SSI.	

FOR MORE INFO RE TA ELIGIBILITY and LUMP SUMS

This outline focuses on SNT's. A more thorough discussion of the resource rules generally and impact of lump sums on Public Assistance can be found in Paula Arboleda, Maryanne Joyce, Susan Antos, Saima Akhtar, *Public Benefits Resource Rules and the Impact of Lump Sum Receipt on Benefits Eligibility,* prepared for the NYSBA Partnership Conference, 2018, available at https://nyhealthaccess.org/download/676/. [referred to as "2018 Lump Sum Partnership Outline"]. **This outline is updated with 2022 changes on issues related to lump sums and trusts and asset eligibility.**

What is Temporary Assistance (TA?) and HASA?

Temporary Assistance ("TA") is temporary financial assistance for needy people. It is administered through the New York State Office of Temporary and Disability Assistance ("OTDA") and locally through the departments of social services.[87] There are two major types of Temporary Assistance programs: 1) Family Assistance ("FA")[88] and 2) Safety Net Assistance ("SNA").[89]

FA provides cash assistance to families containing a minor child in the household, provided that the household has not been in receipt of FA five years.. FA operates under the guidelines established under the federally funded Temporary Assistance for Needy Families ("TANF") block grant. Eligible adults are limited to a lifetime maximum of sixty months of FA benefits. Unless exempt, all recipients of public assistance can be required to participate in work activities..[90]

SNA benefits are for people who meet the eligibility requirements and are ineligible for other types of assistance. This includes adults without children and households with children who have reached their five year time limit. Eligible people are limited to a lifetime maximum of two years of SNA cash assistance. After the two year maximum is met, shelter and utilities must be paid by two party check or voucher. Persons who are exempt from work requirements, (or who are HIV positive, and are not determined unable to work due to the abuse of drugs/alcohol), are exempt from the twenty-four month lifetime limit on cash SNA.

What are HASA *Benefits? (HIV/AIDS Services Admin.)*

NYC HRA administers case management and financial benefits for people living with HIV/AIDS through the HIV/AIDS Services Administration. NYC Administrative Code § 21-128 and https://www1.nyc.gov/site/hra/help/hiv-aids-services.page. A key benefit is rental assistance. "Eligible clients who reside in private market apartments and who have income other than Cash Assistance, will not be required to pay more than 30% of their income towards rent. The client's rent level must also be approved by HASA." https://www1.nyc.gov/site/hra/help/hasa-faqs.page. The rental assistance is available to people whose countable income is SSI, Social Security, work, or other sources, if the difference between their income and their rent is less than than $376/month, which is the state-set level of need, and other criteria. See the website for eligibility rules (i.e earned income disregard rules, rent limits).

HASA benefits are subject to the same resource limits and lump sum rules as applicable to Temporary Assistance, described below.

HASA is unique to New York City, but people living with HIV/AIDS in the rest of the state are also entitled to rental assistance and other benefits. See 18 NYCRR 352.3 (k) (1).

Is the SNT a Resource?

OTDA addressed some of the issues of SNTs with regard to TA, FS, and HEAP in a 2001 directive, which states, "A[n] SNT is not considered an available resource for the purpose of determining TA eligibility." [91] Consistent with Chapter 433 of the Laws of 1993 Section 7-1.12 of the Estates, Powers and Trusts Law, the OTDA Letter at page 2 defines an SNT as:

> … a discretionary trust established for the benefit of an individual of any age with a severe and chronic or persistent disability, designed to supplement, not supplant, government benefits or assistance for which the individual is otherwise eligible. Under the terms of such a trust:
>
> - the beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from the trust; and
>
> - the trust document generally prohibits the trustee from expending the trust assets in any way that would diminish the beneficiary's eligibility for or receipt of any type of government benefit.[92]

The resource limits for TA benefits include the following (NY Soc. Serv. L. § 131-n, 18 NYCRR 352.23):

- **Resource Limits** - Effective 10/1/22, the resource levels for ***applicants*** increased from $2000 to $2500, and from $3000 to $3750 for households where any member is age 60 or older or disabled. Soc. Serv. L. § 131-n, subd. 1, amended by Ch. 56 L. 2022, Part U, sec. 5. Additionally, the resource level for ***recipients*****,** as opposed to applicants, increased to $10,000 effective 10/1/22.[93]
- **Home -**The home applicant lives in is exempt. SSL 106, which authorized the LDSS to take mortgages to recover public assistance properly paid, was repealed effective 4/7/22.

  Cars - One automobile per household with a fair market value of $12,000 or such other higher value as the local district may elect to adopt (effective 4/1/18)[94]. The fair market value of one automobile in excess of $12,000 may be applied to the general resource limit

(which increased 10/1/22 as noted above).[95] In addition, if the applicant has a car with a fair market value over $12,000, but has an outstanding loan that reduces the owner's equity in the vehicle, the amount of that loan can be applied to reduce the value of that vehicle.[96]

- $4,650 may be in separate bank account to purchase first or replacement vehicle to seek or maintain employment;
- $1,400 in a separate bank account to pay tuition at a 2- or 4-year post-secondary educational institution;
- **Burial** -- one plot per household member, and one bona fide funeral agreement up to $1,500 in equity per household member;
- **Individual Development account** – funds from earned income, per Soc. Ser. L. 358(5), 18 NYCRR 532.21;
- **Real property** while household making good faith effot to sell for up to 6 months;
- **529 educational plans** are exempt; 15 OTDA LCM-15, Q. 6.1, and other sources of funds with restricted use, such as an award, trust fund or agreed upon intent of a friend, non-legally responsible relative, organization. 18 NYCRR 352.16.
- **Grants or loans to undergraduate students** for educational purposes are excluded; or to undergrad or grad students if they preclude use for living expenses. TASB Ch. 18 § S pp 568-69.
- Exclude resources of someone not required to be in the public assistance household. See FH 7597285K (2/23/18 NYC)(agency should have counseled household that 20 year old with a resource did not have to be part of a household).

For a more detailed discussion of what are countable resources for this program, see the *2018 Lump Sum Partnership Outline, available at* https://nyhealthaccess.org/download/676/.

Is there a Transfer or "Lump Sum" Penalty?

One-Year Lookback

"A person shall not be eligible for safety net assistance who has made a voluntary assignment or transfer of property for the purpose of qualifying for such aid. A transfer of property made within one year of the date of application shall be presumed to have been made for the purpose of qualifying for such assistance." NY Soc. Serv. Law. § 158, subd. 3.

The Harsh "Lump Sum" Rule

Lump sum income is treated harshly in the TA programs. A lump sum, even if transferred or spent, is deemed to be available to the TA recipient for a period of time based on the amount of the lump sum. One is disqualified from receiving TA for the period that the lump sum would have lasted if spent gradually at the same rate of the monthly TA benefit.[97]

Example of Lump Sum Rule – Sam's monthly TA benefit is $350 and the lump sum is $3500. The TA disqualification period is ten months. With limited exceptions described below, it does not matter if Sam spends all $3500 on the day it is received. They will be disqualified from TA for ten months.

Which Lump Sum Income is and is not Subject to Lump Sum Rule

Most lump sums are subject to the lump sum penalty – settlements, inheritances, retroactive Social Security checks, workers compensation awards, etc. An exception exists for a lump sum that is earmarked and used for a specific purpose, i.e. reimbursement for incurred medical bills from an accident or injury, funeral and burial costs, gift for a particular purpose such as car repair (FH No. 2151432P Onondoga Co. 1994) , and replacement or repair of resources.

PERSONAL INJURY settlements are subject to the lump sum rule. An attorney in a personal injury action is required to give notice to LDSS when filing the action on behalf of a Medicaid or PA recipient. CPLR § 306-c. The LDSS must serve notice of the lien and file it with the county clerk. See also NYS DOH 02 ADM-03 - Medicaid Liens and Recoveries.

The LDSS has a lien on a personal injury claim for Medicaid and PA benefits provided from the time of the injury. Soc. Serv. L. § 104-b. The LDSS may sue to recover PA paid during the preceding 10 years. Soc. Serv. L. § 104.

Strategies for Handling Lump Sums for Client Receiving TA

Exception for SNTs or ABLE Accounts

The OTDA letter notes an exception to the harsh lump sum penalty if, at the time the lump sum is received, it is deposited directly into an SNT.

> [I]f the lump sum monies are not available to the TA recipient because the receipt of the lump sum monies simultaneously coincides with the creation of an SNT, then no period of ineligibility must be determined. For example, a disabled TA recipient will receive a lawsuit settlement that has been set up to be placed directly into an SNT. In this instance, no lump sum period of ineligibility must be calculated.[98]

Timing is important. The period of ineligibility begins on the date of receipt of the lump sum. Soc. Serv. L. § 131-a(12)(a). The penalty will still apply if the TA recipient intends to later establish an SNT with the lump sum funds.

The SNT must be created before or at the same time that the lump sum is received for the exception to apply.[99] There is no further detail about what constitutes "simultaneous" creation of an SNT, but to be safe the SNT should be established before the lump sum is received so that the funds can immediately be placed into the SNT.

While not stated in the 2001 OTDA letter, funds deposited into ABLE accounts are also exempt as income or assets. See pp. 17-18 above. Remember the individual must have been disabled before age 26.

Other Strategies

A TA recipient who expects to receive a lump sum is advised to close their TA case before receiving it. A lump sum penalty does not apply to closed cases. The case must be closed in the calendar month before the month any benefits are received. They can reapply for benefits when they drop below the resource limit again, but may need to document how the lump sum was spent. See cautionary notes in *2018 Lump Sum Partnership Outline,* p. 7, available at https://nyhealthaccess.org/download/676/.

The TA resource limits increased 10/1/22, which should allow the recipient to save more of a lump sum. The resource level for ***recipients***, as opposed to applicants, increased to $10,000 effective 10/1/22. See fn. 95 for state guidance. See above for the increased resource limits for ***applicants***.

If the lump sum is less than the resource limit, the TA recipient may set aside the portion of the lump sum which, when combined with the recipient's countable resources, is less than the TA resource limit.[100] For example, if a single SNA recipient under age 60 with needs of $300 has countable resources of $600 and then wins $1200 in lotto, her eligibility is not affected because even with the winnings, her countable resources are less than the resource limit of $2500. However, lump sums for insubstantial amounts are deemed ***income*** in the month received.[101] If the lotto winning is $250 – an amount below this recipient's $300 standard of need – the winnings count as income, and her SNA eligibility is affected – her grant will be reduced for that month.

When lump sums are greater than the TA resource limit, the penalty period can be shortened by:

- for ***applicants,*** excluding up to $2500 (after 10/1/22) or $3750 (after 10/1/22) for households where any member is age 60 or older or disabled. Ch. 56 L. 2022, Part U, sec. 5. For ***recipients,*** after 10/1/22, excluding up to $10,000.
- spending the remainder on "big ticket" set-asides of funds within 90 days on exempt resources listed above under 18 NYCRR 352.23(b) 17-OTDA INF-09, and 03 ADM-10 p. 3, ie. car purchase, burial plot, funeral agreement, dedicated bank account for car or educational accounts for any family member.
- If lump sum spent on emergency expenses, excess housing or utility costs, medical expenses, or circumstances beyond household's

control, penalty period might be reduced. 18 NYCRR 352.29(h); FH 7397705Y (NYC 12/30/1). In addition, the lump sum penalty can be recalculated if the household standard of need increases. [102] See other cites and more on TA rules for lump sums in *2018 Lump Sum Partnership Outline,* https://nyhealthaccess.org/download/676/.

Other Defenses:

- **Did the client receive notice of the lump sum penalty so that she had warning about the consequences of receiving the lump sum?** In NYC, a 2016 lawsuit settlement requires HRA to provide an informational insert in its letter to personal injury attorneys and their clients, after being given notice of the pendency or the lawsuit.[103]
- Technical procedural challenges may be possible to challenge the content or timing of the notice of discontinuance. See *2018 Lump Sum Partnership Outline,* https://nyhealthaccess.org/download/676/.
- If possible, settle for **relief in lieu of cash settlement**, e.g. in landlord/ tenant claim, give rent abatement or agreement to repair or renovate.

Is client disabled? Consider use of SNT or, if disabled before age 26, an ABLE account.

Are Disbursements from SNTs Treated as Income?

Disbursements from an SNT must be considered under the rules of the government program from which a person is receiving benefits.[104] TA rules require, according to the OTDA Letter, that income earmarked for a specific purpose must be exempted for TA unless it supplements benefits provided for in the TA standard of need. Certain earmarked expenses are not counted as income for TA, such as education expenses, the cost of private health insurance or other medical expenses not covered by Medicaid or health insurance, child care costs, expenses related to the special needs of the beneficiary with a disability such as housekeeping, aides, social workers, therapists, and vocational rehabilitation aides, and legal expenses.[105] In contrast, certain disbursements are not exempt and must be counted as income for TA, including expenditures for day-to-day living expenses, hobbies, vacations, recreation and entertainment.[106]

Drafting TIP: Draft SNT to ensure that expenditures by the SNT are earmarked for the permitted purposes that would not count as income.

Can Income be Placed in the Trust to Reduce Countable Income?

No. Medicaid and Medicare Savings Programs are the only benefits that allow income to be reduced by the amount that is put into SNTs.

SNAP (Food Stamps)

Who gives it?	Federal Government – administered in NYC by the Human Resources Administration (HRA)
Who gets it?	People with limited income and resources (no resource test if over 60 or with a disability and income below 200% FPL). People who have a disability or are over 60 can deduct several expenses from their net income to help them qualify.
Eligibility	• **Citizenship** – U.S. citizen, Legal Permanent Resident (aka "green card") with work history. • **Residency** – must live in NYC to apply in NYC; eligibility is the same for all of NYS. • **Income** – countable income below the Thrifty Food Plan amount, after deductions for shelter, utilities, and medical costs • **Resources** – Many households in NYS have no resource test (including those with a household member age 60+ or disabled if income is < 200% FPL). See more rules below. • **Work Requirements** – started March 1, 2026. See https://otda.ny.gov/programs/snap/work-requirements.asp. Not discussed here.
What do you get?	Monthly allowance for food, given on an EBT card. Amount depends on household size, income, and disregards. Can be used at any participating store.

H.R. 1 cut eligibility for SNAP for many legal immigrants starting 4/2026/ See https://www.legalservicesnyc.org/resources/i-am-a-noncitizen-am-i-still-eligible-for-snap-benefits/; and https://www.nilc.org/articles/what-new-federal-snap-restrictions-and-guidance-mean-for-immigrant-communities/

The Supplemental Nutrition Assistance Program ("SNAP"), or still commonly called "Food Stamps," enables people with limited income to increase their ability to purchase food. Through the use of a debit card, it works as a cash substitute redeemable for food in participating grocery stores. Recipients receive a monthly allotment which varies based on household size and income.[107]

Is the SNT a Resource?

Resource Test in General for SNAP/Food Stamps

There is NO RESOURCE TEST for Food Stamps as long as the household contains a person with a disability or a person over age 60, or if the household pays dependent care costs, and the household's gross monthly

income is below 200% of the Federal Poverty Level.[108] Also, if a household member has earned income and household gross income is under 150% FPL, there is no resource test (i.e., categorically eligible)

If the household contains an elderly person (60+) or a person with a disability, but the household income is over 200% FPL (or if any household member is disqualified due to an Intentional Program Violation or sanction), then the resource limit is $3,250.

If there is no elderly person or a person with a disability, then the resource limit is $2,000.[109]

Trust as a Resource for Households With a Resource Test

If the household does not have an elderly person or a person with a disability, or if it does have an elderly person or a person with a disability, and the household income exceeds 200% FPL, then one must examine whether an SNT held by a household member counts as a resource.

Irrevocable trusts are among several "inaccessible resources" that are excluded as a resource under federal regulations.[110] The regulations set forth the following requirements for excluding a trust:

> (e) (8) Resources having a cash value which is not accessible to the household, such as but not limited to, irrevocable trust funds. . . . Any funds in a trust or transferred to a trust, and the income produced by that trust to the extent it is not available to the household, shall be considered inaccessible to the household if:
>
> (i) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;
>
> (ii) The trustee administering the funds is either:
>
> (A) A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member, or
>
> (B) an individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of this paragraph;
>
> (iii) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation

under the control, direction, or influence of a household member; and

(iv) The funds held in irrevocable trust are either:

(A) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust, or

(B) established from non-household funds by a nonhousehold member.[111]

Potential SNT Issues Raised by the Federal Regulations Include:

Who is the Trustee?

Since the trustee may be an organization, all pooled SNTs should be allowed. If the trust is an individual SNT established for a person under age 65, an issue might arise if the SNT is established by a parent, guardian, or other third party without a court order. The above regulation suggests that to ensure SNAP eligibility, a court order should be obtained.[112] NOTE that the 2001 OTDA Letter does not differentiate between types of trustees, simply stating that irrevocable trust funds are excluded. To be safe, third party irrevocable trusts should be court-ordered to ensure exclusion as a resource.

Source of Funds

Under 7 CFR 273.8(e)(8)(iv), a third-party trust established with funds from a "non-household" member is considered "inaccessible" to the household and will not be counted as a resource.

Self-settled trusts are considered inaccessible to a household *only* "if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust…"[113] Since these rules are very different than those for Medicaid, they must be heeded carefully.

Is there a Transfer or "Lump Sum" Penalty?

Because there is no resource test for most SNAP recipients, receipt of a lump sum is not disqualifying. The lump sum will count as a resource in the month received, unless exempt.[114]

A small number of households are subject to a resource test – those with no member age 60+ or disabled, or with an age 60+/disabled member but gross income is over 200% FPL. Receipt of a lump sum could make them ineligible for SNAP, but there is no penalty period as there is for Temporary Assistance. There is a disqualification from SNAP eligibility for up to one year for certain intentional transfers, with the length of time depending on the amount transferred. "This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits."[115] However, transfer of a resource that would be exempt would not affect eligibility.

For a household that is not subject to a resource test, or one that deposits the lump sum into an SNT, since SNTs are exempt resources, and there is no disqualification penalty for transfers of resources "which would not otherwise affect eligibility," there should be no transfer of resources disqualification on this basis.[116] However, a risk-free strategy would be to wait until 3 months after the transfer into an SNT to apply for SNAP, since there is only a 3-month look back period – or go off SNAP during the month of the transfer then re-apply 3 months later.

Are Disbursements from the SNT Treated as Income?

The rules for SNAP are similar to those for SSI, in that certain disbursements are counted as income. Like Medicaid, however, and unlike SSI, a payment made as a third party vendor payment, rather than paid directly to the SNAP recipient, may prevent the payment from being counted as income. Disbursements from an SNT paid directly to third-party vendors for household expenses will not be counted as income.[117] However, "disbursements made directly to Food Stamp households for normal household living expenses, such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are counted as income."[118]

These principles are set forth in the SNAP Source Book section on Income Exclusions, with a paragraph dedicated to SUPPLEMENTAL NEEDS TRUSTS (SNTs) –

1. Interest accruing to the trust would be excluded as income for Food Stamps.

2. Any cash disbursements, however, must be evaluated under normal FS budgeting rules.

3. Disbursements from an SNT may be excludable from household income if they are reimbursements for past or future expenses that do not exceed actual expenses and are not a gain or benefit to the household.

4. To be excluded, reimbursements must be for an identified expense other than normal living expenses.

5. Disbursements made directly to Food Stamp households for normal household living expenses, such as rent or mortgage, personal clothing, or food eaten at home are a gain or benefit and, therefore, are counted as income.

6. An SNT disbursement that is not payable to the household, but is instead directed to a third party would be excluded from countable income as a vendor payment. To the extent that the vendor payment meets expenses that would otherwise be allowed as deductions such as shelter, medical costs or childcare, however, the expense would not be allowed as a deduction.[119]

7. Income that is legally obligated to a household and countable as FS income, but is diverted by the household into an SNT account is NOT excluded from FS income.[120]

Can Income be Placed in the Trust to Reduce Countable Income?

NO. "Income that is legally obligated to a household and countable as FS income, but is diverted by the household into an SNT account is NOT excluded from FS income. For example, Social Security benefits that are diverted by the recipient into a Supplemental Needs Trust account remain countable as income to the household."[121] Medicaid is the only benefit that allows income to be reduced by the amount that is put into an SNT.

Home Energy Assistance Program

Who gives it?	Federally funded administered by LDSS under supervisionof N.Y. State Office of Temporary and Disability Assistance (OTDA)[122]
Who gets it?	Low-income New Yorkers who pay to heat their dwelling or who have heat included in their rent
Eligibility	• Must be U.S. citizen or qualified alien; AND • Gross monthly income under $3,473/mo. (one) or $4,542 (two) (2026)[123]; OR In receipt of **SNAP**, **Public Assistance**; OR **SSI** (Living Alone living arrangement) • **No asset test**
What do you get?	One-time payment made directly to the vendor supplying heating fuel or cash benefit to renters available through EBT card.

The Home Energy Assistance Program ("HEAP") is an annual grant for low income homeowners or renters to help pay for fuel and utilities. 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.[124]

HEAP also offers an emergency benefit. Payments to households pursuant to the HEAP Emergency benefit may be disbursed when a household experiences a non-utility fuel emergency or must repair or replace heating equipment or seek emergency shelter because of a heating failure. HEAP Emergency funds are issued on a case-by-case basis and are not issued if a household has available resources to ameliorate the problem.[125]

Is the SNT a Resource?

There is no asset limit for HEAP eligibility. Therefore, an SNT does not affect HEAP eligibility. Eligibility for Emergency HEAP does not have an asset limit per se, but Emergency HEAP eligibility is based on whether the household has resources to ameliorate the emergency itself. Money that is in an SNT is not considered a resource that is available for amelioration.[126] Thus, an Emergency HEAP applicant who has an SNT is not expected to raid their SNT to ameliorate the emergency. See HEAP manual Ch. 9, infra n 133, for countable and non-countabe resources.

Is there a Transfer or "Lump Sum" Penalty?

Because there is no asset limit for HEAP eligibility, there is no penalty associated with transferring a lump sum into an SNT. The law, regulations, and directives are silent with regard to transfer penalties associated with Emergency HEAP. It is possible that money transferred into an SNT AFTER the emergency condition arises will render an Emergency HEAP applicant ineligible for the benefit.

Are Disbursements from the SNT Treated as Income?

There is no law, directive or regulation that specifically addresses this issue. However, 18 NYCRR 393.4(c)(2) states that income is determined by "total household income. Total income cannot include any income required by State or Federal law to be excluded or disregarded."

Can Income be Placed in the Trust to Reduce Countable Income?

No. Income placed in the SNT will not reduce countable income for purposes of HEAP. Medicaid is the only benefit that allows income to be reduced by the amount that is put into an SNT.

SCRIE/DRIE Senior/Disability Rent Increase Exemptions

Who gives it? Where is Information online?	New York City Department Of Finance (DOF) [for rental housing] Department of Housing Preservation and Development (HPD) [for Mitchell-Lama housing] https://www1.nyc.gov/site/rentfreeze/index.page
Who gets it?	Low-income tenants of rent-regulated housing over age 62 or based on disability
Eligibility	• **Type of Housing** – Must be one of the following: Rent controlled apartment Rent stabilized apartment Rent stabilized hotel unit Mitchell-Lama co-op, Redevelopment Company development, Article XI co-op established under the Private Financing Housing Law, or Federally-assisted co-op • **Head of household or spouse must be 62+ or receive disability benefits** from SSA, VA or US govt. or receive Medicaid based on disability. • **Income** – Annual income must be under $50,000 or less. (See definition income – fn 131) • **Proportion of Rent to Income** – Rent must exceed one-third of monthly income or PA shelter allowance. • **No asset test**
What do you get?	Eligible seniors & people with disabilities have their rent frozen at the current level in effect at the time they apply, with almost all future increases paid by the city through tax abatements to the landlord

The Senior Citizen Rent Increase Exemption ("SCRIE") and Disabled Rent Increase Exemption ("DRIE") exempts people age 62 or over or people who are determined to be "disabled" living in rent controlled, rent stabilized, and certain limited income/ limited equity apartments from rent increases, provided they satisfy a number of specified criteria.[127] The criteria regarding income mandates that aggregate disposable income of all members of the household residing in the housing accommodation may not exceed $50,000.[128] Eligibility is based on income in the prior calendar year.

Is the SNT a Resource?

There is no resource test applicable to SCRIE/DRIE. Therefore, an SNT does not affect SCRIE/DRIE eligibility with respect to resources.

Does Lump Sum Count as Income and Is there a Transfer or "Lump Sum" Penalty?

Gifts, inheritances and Nazi restitution are excluded as income.[129] However, income generated by assets such as distributions from an IRA, interest and dividends (taxable and non-taxable), net rental income, rent from boarders, income from estates or trusts, or capital gains does count as income. Other income includes net business income, alimony, child support, non-personal injury settlements, miscellaneous income for which a 1099 form is generated. Social Security, pensions, annuities, and retirement income, including retroactive benefits, count as income.

The NYC SCRIE application packet FAQs specifically exclude "cash gifts, inheritance, damages award from personal injury lawsuit, energy assistance payments, income tax refunds, IRA Rollovers, SNAP, and reparation payments for victims of Nazi persecution."[130] These FAQs specifically include as income cancellation of debt, and gambling or lottery winnings.

Special Remedial Rule for Lump Sums. If a lump sum is countable as income, what is the impact on SCRIE eligibility, since SCRIE eligibility is based on annual income? A SCRIE/DRIE application or renewal is based on income in the previous calendar year. If someone has not yet applied for SCRIE/DRIE and receives a countable lump sum so that income exceeds $50,000, they should wait to apply in the second calendar year following the year of receipt. If a SCRIE/DRIE *recipient* receives a lump sum, and this is reported in a renewal the following year, as it must be, fortunately, state law has a remedial provision. Though SCRIE/DRIE can be terminated the year after receipt of the lump sum, if it results in income that exceeds $50,000, or because the legal rent does not exceed one-third of the household income, they may reapply the next year. If then eligible, the tax abatement amount will revert to the old level, as if the rent exemption had not expired. In other words, the SCRIE/DRIE is essentially suspended for one year – in which the tenant must pay the full rent – but as long as the tenant reapplies, it will be reinstated the next year.[131]

Because there is no resource test associated with SCRIE, resources that are transferred into an SNT presumably do not impact SCRIE eligibility.

Are Disbursements from an SNT Treated as Income?

It remains unclear whether disbursements from an SNT are treated as income for purposes of SCRIE eligibility. The SCRIE definition of "aggregate disposable income" does not specifically include or exclude SNT disbursements.[132] There are several arguments why disbursements from an SNT should not be counted as income. First, the regulation does not list in-kind vendor payments to a landlord or other third party as countable; hence, such payments by an SNT should not be counted. Second, in the absence of any specific requirement to include disbursements from a trust, none should be implied. Third, a payment from an irrevocable trust might be considered akin to "…gifts and voluntary assistance payments from relatives and friends of members of the household not required to provide maintenance or support…" which are specifically excluded as income.

Can Income be Placed in the Trust to Reduce Countable Income?

No. Income placed in the SNT will not reduce countable income for purposes of SCRIE. Medicaid is the only benefit that allows income to be reduced by the amount that is put into an SNT.

Section 8 & Subsidized Housing Programs

Background

There are three main HUD-subsidized housing programs:

1. Public Housing – administered by local Public Housing Authorities (PHA);
2. 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);
3. Privately-owned, multi-family housing developments with "Project-Based" subsidies linked to a particular housing site, not to the tenant.

ALERT 2024 CHANGES -- *New asset limits and income rules described in this section were enacted under HOTMA in 2016, and regulations published in Feb. 2023 required compliance in Jan. 1, 2024. This was postponed in Dec. 2025 and then again* ***until Jan. 1, 2027, but allowing local programs to implement the changes earlier.***[133] *WARNING: The information in this chapter is based on a preliminary review of the new regulations. Regulations and some additional guidance has been issued by U.S. HUD, cited below. Local housing authorities have some discretion in how to implement them. See https://www.hud.gov/program_offices/public_indian_housing/hotmaresources; https://www.hud.gov/program_offices/housing/mfh/hotma.*

ALERT! New asset limits and income rules are postponed until Jan. 1, 2027, though some local programs opted to implement them in Jan. 1, 2024 or after. The federal regulations published in 2023 give local Pubic Housing Authorities (PHA) and Section 8 developments discretion to establish exemptions from these limits.

NYCHA in NYC has not yet implemented them as of 7/31/2026.

In all these programs, the participating family generally pays rent of thirty percent of the household's income after adjustments allowed by HUD – and HUD or the local public housing agency ("PHA") pays the remainder. 24 C.F.R. 5.611.

Special rules apply to households who receive Temporary Assistance, whose rent may be the portion of the public assistance payment designated for shelter if that amount is greater than 30% of their adjusted income. Also, the rent will be set at 10% of the household's "gross" income if that amount is greater than either 30% of the "adjusted" income or the Temporary Assistance shelter allowance.

HOUSING OPPORTUNITY THROUGH MODERNIZATION ACT (HOTMA), amending 42 USC 1337n(e).

Required compliance with Sections 102 (Income & Recertification changes) and 104 (Family Asset changes) of HOTMA – and the implementing regulations -- was postponed until Jan. 1, 2027. HUD Notice H 2023-10 (issued 2023, updated 2024 and 4/2026).

Regulations and agency guidance:

1. Federal regulations, 24 C.F.R. Subpart F, § 5.601 et seq., especially §§ 5.609, 5.611, as amended Feb. 14, 2023 eff. 1/1/2024, at https://www.federalregister.gov/d/2023-01617 - compliance date postponed until 1/1/2026.
2. U.S. HUD Public Housing Occupancy Guidebook ("PHOG") chapter on *Income Determinations,* updated June 2020. [134]
3. NYC - NYC Housing Authority [NYCHA} Admissions & Continued Occupancy Policy, updated Jan. 1, 2024.[135] Some Section 8 in NYC is administered by NYC HPD. See eligibility rules and policies in https://www.nyc.gov/assets/hpd/downloads/pdfs/services/HPD-Administrative-Plan-April-2025.pdf.
4. See HUD HOTMA resources at https://www.hud.gov/hud-partners/multifamily-hotma including guidance at HUD Notice H 2023-10 (issued 2023, updated 4/2026), at https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-10hsgn.pdf.
5. National Housing Law Project resources - https://www.nhlp.org/resources/hotma/.

Is the Lump Sum Income that would Increase Rent or Affect Eligibility?

HUD Notice H 2023-10 (, updated 4/2026 gives examples of non-recurring income that is not counted including lottery winnings & Go-Fund me donations. At pp. 78-79. But if there's a pattern of Go-Fund-Me donations, etc. then the income would count for the rent calculation, but the lump sum is exempt from being counted as an asset. See more below.

New rule effective Jan. 1, 2024 (postponed to Jan. 1, 2027, see HUD Notice H 2023-10 (issued 2023, updated 2024 and 4/2026), at https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-10hsgn.pdf.

(current rule until that date discussed below)

WHICH LUMP SUMS ARE EXEMPT AS INCOME? The former "temporary, nonrecurring, or sporadic income (including gifts)" exclusion is replaced with an **exclusion for "nonrecurring income**, which is income that will not be repeated in the coming year based on information provided by the family." 5.609(b)(24).

This regulation as amended effective Jan. 1, 2024 specifies **examples of nonrecurring income that are exempt as income**, such as:

- State or federal tax refunds or tax credits and economic stimulus payments at the time they are received (and are exempt as assets for 12 months after receipt)
- Income from US Census employment less than 180 days
- Gifts for holidays or birthdays, weddings, baby showers, other significant life or milestone events
- Non-monetary in-kind donations from food pantry or charity
- "**Lump-sum additions to net family assets, including but not limited to lottery** or other contest winnings."(Emphasis added).

Federal tax refunds are exempt as income under 26 USC § 6409 for all federal programs. The regulation now clarifies that all state tax refunds or credits are also

WARNING: Lump sum additions to assets are exempt as INCOME used to calculate rent, but DO count toward the $100,000 asset limit unless specifically exempted.

Other **exclusions from income** under the amended regulation include the following, all in 5.609(b)(emphasis added):

- (b)(1) while actual income from assets is countable, no income is imputed from assets if the assets are less than $50,000. See more below about imputed income from assets and transferred assets.
- (b)(2) The **following types of trust distributions are EXCLUDED** from income:

  (i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under 5.603(b):

  (A) **Distributions of the principal** or corpus of the trust; and

  (B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.(ii) For a revocable trust under the control of the family or household, **any distributions from the trust**; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust. 5.609(b)(2). See also 42 U.S.C. §1437n(e)(2)(C).

Preamble to regulations confirms irrevocable trusts here include SNTs. If a lump sum is deposited into an SNT, payments from the trust principal should not count as income. 88 CFR 9638.

- (b)(3) earned income of children under age 18
- (b)(4) foster care payments for foster child or adults, State or tribal kinship or guardianship payments.

- (b)(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.
- (b)(6) Reimbursement of the cost of health and medical care expenses for any family member.
- (b)(7) Any amounts recovered in any **civil action or settlement based on a claim of malpractice, negligence**, or other breach of duty owed to a family member arising out of law, **that resulted a member of the family being disabled**.
- (b)(8) Income of a live-in aide, foster child or foster adult.
- (b)(9) –(10) certain educational assistance – see regulation for details.
- (b)(12)(i) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income (SSI) eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
- (b)(13) Reparation payments paid by a foreign government for persecution by the Nazis.
- (b)(14) earned income of dependent full time students exceeding the dependent deduction
- (b)(15) adoption assistance payments exceeding the dependent deduction
- (b)(16) **Deferred periodic amounts from Supplemental Security Income or Social Security or Veteran's disability benefits that are received in a lump sum** amount or in prospective monthly amounts (retroactive payments)
- (b)(17) Veterans aid and attendance benefits under 38 U.S.C. 1521
- (b)(18) State or local property tax refunds or rebates
- (b)(19) Exempts salary received by a resident working as a Consumer-Directed Personal Assistance Program (CDPAP) aide or in other caregiver role, enabling another family member with a disability to live in the unit, where salary paid by the State or managed care plan whether through Medicaid or another program, such as OPWDD. Aide must live with and be assisting a family member living in same unit.

Some personal injury settlements are exempt both as ***income*** and as ***assets***. In contrast, Civil rights settlements and many other exempt types of income are exempt as income but not as assets. See next page. They are countable toward the $100,000 ***asset*** limit if saved. 88 FR. 9605-06.

Also, it remains to be seen whether proof that the family member became "disabled" as a result of the personal injury will be required. The regulation does not define "disabled" as used here.

SSI disregards the following for 9 months in 42 C.F.R.:

- Some tax credits §416.1235
- Replacement of lost, stolen, damaged excluded resources §416.1232
- Crime victims compensation §416.1229
- Retro Social Security or SSI §416.1233

Caution: Must a tenant be receiving SSI to use these time-limited disregards? Must a tenant age 65+ prove disability to use these disregards?

NEW: Income of CDPAP personal assistant exempt if living with and caring for another member of the

- (b)(20) Loan proceeds to attend school or buy a car

- (b)(22) Income that other federal statutes requires be excluded. In the preamble to the regulations, HUD specifically states that **distributions from ABLE accounts** are exempt under this paragraph. 88 F.R. 9604. HUD will publish a list of such types of income in the Federal register. 42 C.F.R. 416.1236 lists many such exemptions as applied to SSI. The same should apply here.

- (b)(24) "nonrecurring income" – discussed above
- (b)(25) "**Civil rights settlements or judgments**, including settlements or judgments for back pay."
- (b)(26) Income received from a retirement account, except that periodic distributions are countable as income when received. COMMENT: This seems to say withdrawing principal from a retirement account does not count as income, since retirement accounts are exempt asseets, but Required Monthly Distributions and other periodic distributions count as income.
- (b)(28) – Business or self-employment income – see regulation for details of rule counting net income, not gross income.
- "Any workers' compensation is always excluded from annual income, regardless of the frequency or length of the payments." Notice H 2023-10 (updated April 2026) p. 79.

Income received as a day laborer, independent contractor, or seasonal worker is specifically not excluded as "nonrecurring income" even if the source, date, or amount of the income varies." Id.

Current rule until Jan. 1, 2024 (extended until Jan. 1, 2027 - HUD Notice H 2023-10 (issued 2023, updated 2024 and 4/2026), at https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-10hsgn.pdf.

The "income" regulations for all three of these programs are set out in two regulations: 24 C.F.R. § 5.609 which defines "income," and 24 C.F.R. § 5.611 which describes "adjustments" to income. "**Annual income" DOES NOT include** (5.609(c)):

1. Lump sum additions to family assets (5.609(c)(3)), such as:
   - inheritances,
   - insurance payments, including payments under health & accident insurance and worker's compensation,
   - capital gains

HUD's preamble to the published regulations clarifies that the civil rights exemption includes both administrative and judicial settlements or judgments "regardless of how the settlement or judgment is structured…" whether as lump-sum payments or having a payment schedule." 88 F.R. 9606.

The preamble also clarifies that interest earned on the award when saved counts as income. And - the award once received counts toward the asset limit of $100,000.

HUD Notice H 2023-10 (updated April 2026) clarifies that while a civil rights settlement is excluded as income, it is counted toward the asset limit unless held in an excluded asset. At p. 67-68.

Comment: This and other exempt lump sums could be transferred to an SNT for a disabled member of the tenant household. It would then not count as an asset.

- settlements for personal or property losses (including reimbursement of medical expenses
- Section 5.609(c)(3) says "Except as provided in paragraph (b)(5) of 5.609) – see below re retroactive benefits awards

2. Temporary, nonrecurring or sporadic income. (5.609(c)(9). **See above for 2024 changes in this regulation.**
    - Lump sum receipts that are temporary or nonrecurring are included in the family's assets only if they retain them in savings. If spent, the lump sum is not classified as an asset so cannot be considered disposed of for less than fair market value. NYCHA Management Manual, Ch. III (rev. 11/28/2017), supra, n. 145.
    - HUD PHOG defines income as "temporary or sporadic" if family does not expect to receive income from the source again in the coming year. PHOG Income chapter, supra, n 144, p. 12.
    - HUD PHOG lists examples of temporary or non-recurring income:
        - lottery winnings paid in a lump sum,
        - "one time contributions from friends or family"
        - Gifts for holidays or birthdays
        - Income from a one-time odd job or from US Census employment less than 180 days[136]

3. Retroactive Social Security and SSI – the regulations had been inconsistent on this, and the amended regulations effective Jan. 2024 hopefully clarify that these payments are exempt. See above.

This is not an exhaustive list of all income rules for public housing and Section 8, focusing on income that is received as a lump sum. See entire regulations cited above. 24 CFR 5.611 lists mandatory and additional permissible deductions. The local PHA may adopt additional deductions from income through a written policy.

Are there Resource limits – and is an SNT a resource?

The Housing Opportunity & Modernization Act of 2016 ("HOTMA") established limits on assets for the first time in public housing or Section 8. The asset limit applies to Section 8 tenant-based and Project-Based Rental Assistance (PBRA) and Public Housing programs.[137]

HUD delayed compliance deadline until Jan. 1, 2027. See Notice H 2025-07 (Dec. 2025). HUD issued additional guidance clarifying the 2023 regulation. See HUD Notice H 2023-10 (issued 2023, updated 2024 and 4/2026).

First, there is a new $100,000 limit on "net family assets," increased annually based on an inflation index.[138] **The 2027 limit will be $109,797.**[139] All assets are counted toward the limit unless specifically exempt, as discussed below.

Second, **H**OTMA also disqualifies a family from eligibility that "has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell, real property that is suitable for occupancy by the family as a residence, except that the prohibition under this subparagraph shall not apply to-

(i) property [purchased under a subsidized first-time home ownership program or manufactured home program],
(ii) any person that is a victim of domestic violence; or
(iii) any family that is offering such property for sale."

42 USC § 1337n(e)(1). Ownership of real property, then, is complicated because even if the value of the property does not bring the family's assets over the asset limit, the mere fact of ownership can be disqualifying. See HUD Notice H 2023-10 at p. 16 and more below.

Assets that count toward the $109,797 asset limit include, for example:

- "net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment." 24 C.F.R. 5.603(b)(Definition "net family assets").
- cash value of life insurance (as confirmed in the preamble to the final regulations at 88 F.R. 9642 and p. 68 of HUD Notice H 2023-10).
- Business and family assets transferred for less than fair market value in the preceding 2 years. See discussion of Transfer Penalty below.
- Real property -- The value of real property that the family has the effective legal authority to sell in the jurisdiction in which the property is located. 24 C.F.R. 5.603. This value counts toward the

NOTE: The federal HOTMA regulations are new, and this is a preliminary analysis. Readers should consult the regulation and the local housing authority for more on local implementation. See ***https://www.hud.gov/program_offices/housing/mfh/hotma.*** HUD has issued additional guidance. See HUD Notice H 2023-10 (issued 2023, updated 2024 and 4/2026), at https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-10hsgn.pdf.

asset limit, with some exceptions, even if ownership of the property does not in itself disqualify the family from eligibility. See more below.

EXEMPTIONS FROM "NET FAMILY ASSETS" UNDER HOTMA

42 U.S.C. 1437n(e)(2)(B); 24 C.F.R. 5.603 definition of "Net Family Assets" (par. 3) Exemptions in reg as amended 2023 include – but are not limited to:

1. "necessary" personal property (unlimited value) and up to $50,000 in "non-necessary items of personal property;"
2. **retirement accounts** (IRA, employer or self-employed retirement plans) (but periodic payments count as income); 5.5603 definition "Net Family Assets" (3)(iii); 5.609(b)(26);
3. real property which the family does not have the effective legal authority necessary to sell in the jurisdiction where property located;
4. civil judgment or settlement for malpractice, negligence, or other breach of duty owed to a member of the family and arising out of law, that resulted in a member of the family being a person with a disability;
5. Coverdell education savings account under section 530 of title 26 or any qualified tuition program under section 529 of such title, ABLE accounts, "baby bond" accounts created or funded by any government;
6. Federal tax refunds and tax credits – exempt as assets for 12 months after receipt
7. **Irrevocable and Revocable Trusts NOT Counted as Assets** if a family member is a beneficiary, so long as the trust is not within the control of a household member. 42 U.S.C. 1437n(e)(2)(C). This includes SNTs. A household member may not be the trustee. For a revocable trust, the donor or grantor as well as the trustee may not be a member of the tenant family. The amended Feb. 2023 regulation states:

   (4) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the trust fund is not a family asset and the value of the

As promised in the preamble to the final regulation, HUD guidance updated in April 2026 has a non-exhaustive list of examples of necessary and non-necessary personal property. HUD Notice H 2023-10 (Table F1 at pp. 61-63). Examples of necessary personal property include durable medical equipment and supplies, vehicles used for work, "equipment to accommodate persons with disabilities," exercise equipment, personal computers, wedding and engagement rings and jewelry used in religious/cultural celebrations. See more in list.

Since irrevocable trusts are not a countable asset, no income should be imputed from assets in an irrevocable trust.

Warning: if using an individual SNT rather than a pooled trust, trustee should not be a household member – to ensure that the principal is not countable.

A revocable trust in which the grantor is a member of the tenant family would be countable.

trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household." 24 CFR § 5.603(b)(Definitions -- under "Net Family Assets" (4).

The HUD guidance amended in 2026 lists as excluded, "The full amount **of assets held in a revocable trust** where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household." HUD Notice H 2023-10 (issued 2023, updated 2024 and 4/2026) p. 60.

See HUD Notice H 2023-10 for more on identifying which trusts are countable and which are exempt, and when income from the trust is countable to the household. At pp. 64-65,

Verification of assets *– Attestation permitted if < $50,000*

The 2016 statutory amendments and its regulations allow a public housing authority or subsidizing building owner to allow a tenant to self-certify (attest) that:

1. The family has less than $50,000 in assets (as adjusted for inflation) (if assets are above $50,000 must provide verification); and
2. The family does not have any current ownership interest in any real property the tenant owns no real property is also permitted. 42 U.S.C. §1437n(e)(3); 24 C.F.R. 5.618(b); 982.516(a)(3)(Section 8). However, third party verification of all family assets is required every three years. § 982.516(a)(3).

The inflation adjusted figure for 2027 is $54,898. Annual tables posted at https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html. 2027 table is https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html#year2027.

When will the Asset Limit Be Applied?

In Dec. 2025, HUD extended the deadline for compliance until **Jan. 1, 2027,** but permits local projects to impose the new rules after Jan. 1, 2024. See Notice H 2025-07 (Dec, 17, 2025). HOTMA gives local public housing agencies or owner of a subsidized building discretion to establish a formal "non-enforcement" or limited enforcement policy not to enforce the asset limitation or establish formal exceptions to such limitation. 42 U.S.C. 1437n(e)(4)(PHA must enact the policy in public housing agency plan under 42 USC section 1437c–1); 24 C.F.R. 5.618(c)-(d). Eligibility criteria for establishing exceptions may provide for separate treatment based on family type and may be based on different factors, such as age, disability, income, the ability of the family to find suitable alternative housing, and whether supportive services are being provided. 42 U.S.C. 1437n(e)(5).

Assuming the NYC Housing Authority and other local PHAs in NYS do not enact a policy not to enforce the asset limit, or establish formal exceptions, families will be evaluated for compliance with the asset limit in their first redetermination after 1/1/2027. (postponed by HUD from 1/1/2024 - HUD Notice H 2023-10 (revised 4/2026)

See HUD, HOTMA Talking Points and Q&A for Multifamily Programs, at https://www.hud.gov/sites/dfiles/Housing/documents/HOTMA_Talking_Points_Multifamily_Programs.pdf. [hereafter "HUD HOTMA Talking Points"].

See HUD Notice H 2023-10 at pp. 17-21 about owner discretion on enforcement.

No one is "grandfathered in." Id.

Owners may delay initiation of termination of assistance/eviction for no more than 6 months for families who exceed the asset limit or own disqualifying real property. 24 C.F.R. 5.618(d).

Owners may establish nonenforcement and/or exception policies to allow families to cure their asset ineligibility, not to exceed a six-month timeframe. 24 C.F.R. 5.618(c)-(d).

Imputing Income from Assets

For Section 8 and other public housing programs, income may be imputed from assets. HUD extended the deadline for local housing agencies to comply until Jan. 1, 2027, or as early as Jan. 1, 2024 at local project's option).

OLD RULE. The longstanding rule in effect until no later than Jan. 1, 2027 (could be as early as Jan. 1, 2024 at local project's option) counts the actual income generated, if any, and imputes income from assets exceeding $5,000 if there is no actual income. 24 C.F.R. 5.609(b)(3). In 2015, HUD instructed housing agencies to use a fixed interest rate of 0.06%,[140] which is the rate used by the NYC Housing Authority policy (2024) effective 1/12/2022.[141]

Beginning no later than Jan. 1, 2027 (or as early as Jan. 1, 2024 at the local project's option), *actual* income from all countable assets – which in 2027 will be limited to $109,797 -- will be counted when determining rent. 5.609(a)(2). *Imputed* income will only be counted for net family assets that exceed $50,000 (adjusted for inflation – see p. 70 above), and only to the extent that actual income cannot be determined.[142]

As stated in the Feb. 2023 regulations, HUD has established a passbook savings rate for imputing income for each year starting in 2024. 5.609(a)(2). This will relieve local PHAs of the burden of establishing these rates and avoid inconsistent policies nationwide. PHAs may use their own rates until 2027.

The 2027 rate for imputing income will be **0.38%,** reduced from 0.4% in 2026[143]

To illustrate the impact of imputed income, if a family has $100,000 in countable assets, which are in a non-interest bearing checking account, income is imputed only to $50,000 ($54,898 in 2027). At a hypothetical 1.0 percent interest rate, the imputed income would be $500/year or $42/month. If the entire $100,000 generates income, the actual income would be counted rather than using imputed income.

Lump Sum May Trigger Rent Increase after Jan. 1, 2027 (or after Jan. 1, 2024 if local project implemented asset limit earlier) – because of Imputed and/or Actual Income from Assets

Families must report changes in income to the management. Rent can be increased based on such reports if annual adjusted income increases by ten percent or more. Sec. 5.657 (Section 8 Project-based assistance); 882.515 (Section 8 Moderate Rehab). Income includes actual income from all assets and income imputed from assets above $50,000 (($54,898 in 2027), if those assets have no actual income. This income from assets is considered in determining whether the tenant's adjusted income increased by 10% or more**.**

Income would be increased prospectively after 30-day notice. However, if tenant failed to report the change, increase may be retroactive. (Rent can also be decreased if income falls by 10% or more, with the management option to decrease rent if income falls by smaller percentages). Id.

Ownership of Real Property can Disqualify Family and result in eviction – regardless of value of property

As said above, HOTMA disqualifies a family that "has a present ownership interest in, a legal right to reside in, and the effective legal authority to sell, real property that is *suitable for occupancy* by the family as a residence." The prohibition shall not apply to -

> (i) property purchased under a subsidized first-time home ownership program or manufactured home program,
>
> (ii) any person that is a victim of domestic violence, which includes dating violence, sexual assault, or stalking, as defined in this part 5 (subpart L); or
>
> (iii) any family that is offering such property for sale;
>
> (iv) a property that is jointly owned with at least one non-household member who does not live with the family and who resides at the jointly owned property;

42 USC § 1337n(e)(1); 24 C.F.R. 5.618(a)(1)(ii)).

A property is considered "suitable for occupancy by the family as a residence" unless the family can demonstrate that it:

(i) **Does not meet the disability-related needs** for all members of the family (*e.g.,* physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);

(ii) Is **not sufficient for the size** of the family;

(iii) Is **geographically located so as to be a hardship** for the family (*e.g.,* the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the PHA or owner);

(iv) Is **not safe** to reside in because of the physical condition of the property (*e.g.,* physical condition poses a risk to the family's health and safety and cannot be easily remedied); or

(v) Is **not a property that a family may legally reside in** under the State or local laws where the property is located. HUD Guidance gives as an example commercial property that is not zoned for living.

(vi) **No legal authority to sell property** – If family shows they lack that authority, real property restriction doesn't apply. Ie. Ownership is contested in pending divorce proceeding. (HUD Notice H 2023-10 pp. 22-23.

24 C.F.R. 5.618(a)(2). The HUD Notice H 2023-10 guidance allows the local PHA to define these terms, such as define "hardship" or sufficiency of size of apt. See pp. 21-23.

WARNING: Even if the real property meets one of these exceptions, its value still counts toward the asset limit. The only exception seems to be if the family does not have the the effective legal authority to sell in the local jurisdiction.

See HUD Notice H 2023-10 pp. 15-16.

Consequence of Having Excess Assets or Real Property that is not Exempt

The consequences vary depending on the type of housing. "In the Section 8 Project-Based Rental Assistance program, including the Section 202/8 program, participants who are not compliant with the asset limitation must either pay the contract rent for the unit or vacate the unit after termination of assistance." HUD Notice H 2023-10 at p. 24. However, in other types of Section 8 and in public housing, the subsidy can be terminated, which in some cases results in eviction. See below for consequences for transferring excess assets.

The owner or manager may delay termination of the tenancy or subsidy for up to six months if there are excess assets. See HUD Notice H 2023-10 at p. 23-24.

"Over-Income" Rules for Tenants with Income above the Limits

The so-called "over-income" provisions in Section 103 of HOTMA became effective March 16, 2023. The polices and procedures for tenants who have excess income for more than two years – from whatever source including income imputed from assets – have changed. Public Housing Authorities are required to update their over-income policies and procedures by June 16, 2023. See 24 CFR. §§ 960.507, 960.509 (as amended 2023). The NYC Housing

Authority updated its over-income rules in 2019 under HOTMA, prior to the 2023 regulations. NYCHA policy states: "…Housing authorities have the option under HOTMA to either evict house-holds with incomes over a certain limit or allow them to remain in public housing and pay higher rent. NYCHA will allow these households to remain in public housing, paying higher rent according to a HUD formula described below." NYCHA, *Statement for Significant Amendment Regarding Over-Income Households*, available at https://www.nyc.gov/assets/nycha/downloads/pdf/Over-Income-HOTMA.pdf (last accessed 9/2/2026). The changes in these rules are outside of the scope of this manual.

Is there a Transfer or "Lump Sum" Penalty?

General Rule on Transfer of Assets

In determining "net family assets," personal and business assets are counted that were transferred or disposed of for less than fair market value in **the two years** before the application or renewal. Transfers include "a disposition in trust, but not in a foreclosure or bankruptcy sale." 24 CFR 5.603(b)(definition "Net Family Assets"). Some exceptions are made for divorce settlements – see the regulation.

- OLD RULE - Before Jan. 1, 2026 (or at local project option before Jan. 1, 2024), for two years after assets that exceed Five Thousand Dollars ($5,000) are transferred, income is imputed from the transferred assets, as described above. This was the sole transfer penalty.

- Eff. Jan. 1, 2027 (or as early as Jan. 1, 2024 at local project option), assets transferred within the prior two years have TWO potential consequences. First, as before, income will be imputed on the transferred assets for two years. The rules on imputing income have changed. Now, since *actual* income on all assets is counted, actual income on the transferred assets would be counted as income for two years. This may increase rent. If assets generate no actual income, income is imputed on assets exceeding $54,898 (2027), including the transferred assets.

  Second, the transferred assets are counted toward the $100,000 ($109,797 in 2027) limit on net family assets for two years. A transfer in the prior two years might disqualify the applicant from eligibility for two years following the transfer.[144] 24 CFR 5.603(b)(definition "Net Family Assets").

HUD guidance updated in 2026 should be consulted for policy on transfers of property owned by a business entity in which the family has a stake, and

transfers of property jointly held with one or more individuals outside of the tenant family. HUD Notice H 2023-10 at pp. 58-59.

The 2026 HUD guidance also makes clear that a **transfer into an SNT or other irrevocable trust, where the beneficiary is part of the tenant family, is not subject to a penalty**. It states, "A family with more than $100,000 … in net family assets may bring their assets below the threshold in several ways… [T]he family may be able to move funds into an irrevocable trust for the benefit of someone in the assisted family." HUD Notice H 2023-10 (issued 2023, updated 4/2026), at p. 19. However, if an applicant/tenant transfers into an SNT income or assets that are not specifically exempt, income based on the principal transferred may be imputed for two years following the transfer, and the value of the transferred asset will be counted as part of the "net family assets."

Otherwise, neither the amended regulations nor the HUD guidance specify any exemptions from the 2-year transfer penalty. Generally, transfer of a lump-sum into a trust should not incur any penalty, where the income/asset transferred was not countable in the first place. In *DeCambre v. Brookline Hous. Authority*, the First Circuit, affirming the district court, held, in part, that no transfer penalty applied to transfer of a personal injury settlement into an SNT, since the settlement or judgment would have been exempt as income under 5.609(c)(3).[145] In other examples**:**

- A "civil judgment or settlement for malpractice, negligence, or other breach of duty owed to a member of the family and arising out of law, that resulted in a member of the family being a person with a disability" is exempt as income when received and is exempt when saved as a resource. 24 C.F.R. §§ 5.603 definition of "Net Family Assets" (par. 3); 5.609(b)(7). While the regulation does not so state, transfer of such an asset should not trigger the 2-year penalty.
- Transfers into ABLE accounts are exempt. 26 U.S.C 529A; 26 C.F.R. Parts 1, 25-26, 301, 602. A maximum of the annual gift tax exclusion may be transferred into an ABLE account per year ($19,000 in 2026), including all transfers from the consumer, and others.

Starting Jan. 1, 2026, the age at which the individual became disabled to open an ABLE account increases from age 26 to age 46. This is under the ABLE Age Adjustment Act, See https://www.ablenrc.org/the-able-age-adjustment-act-fact-sheet/

Are Disbursements from the SNT Treated as Income?

The HOTMA law and its 2023 regulation clarify that irrevocable trusts including SNTs are exempt assets, and that distributions from *principal* of SNTs and other irrevocable trusts are exempt, but that distribution of *income* from the trust is limited. The regulation states:

> (b) Annual income does not include…
>
> … (2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, **any distributions from the trust**; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

24 CFR 5.609(b)(2). See also 42 U.S.C. §1437n(e)(2)(C).

The regulation appears to codify part of the holding in *De Cambre vs. Boston Housing Authority, supra* n. 141, that disbursements of principal from a self-settled first party SNT established with a personal injury settlement are not countable as income. The *DeCambre* decision illustrated the need for HUD to clarify that trust disbursements are not income.

Can Income be Placed into the Trust to Reduce Countable Income?

No. Countable income cannot be diverted into an SNT or an ABLE account in order to reduce countable income for public housing programs. Arguably, the payments to the SNT would not be income to the household if neither the person with a disability nor any household member had any control over placing this income into the trust, but this would be a rare scenario. Plus the trust distributions would be subject to the regular income rules (i.e. random vs. regular payments; medical reimbursement exception, etc.).

Veteran's Pension Benefits

On Oct. 18, 2018, new regulations became effective that establish an asset limit, a look-back period, and asset transfer penalties for claimants applying for VA pension benefits that require a showing of financial need. Pension benefits based on financial need include the Veterans Pension and Aid and Attendance allowance.

To receive the Veterans Pension, the veteran must be either age 65+ or disabled, must have served for the requisite time period, have the proper discharge status (honorable discharge or other permitted discharge), and meet the financial eligibility criteria. This outline focuses only on the new asset rules and transfer penalties. For other criteria and how to apply see https://www.benefits.va.gov/pension/vetpen.asp

The annual income limits effective Dec. 1, 2025 to 11/30/2026 are, for a single veteran, $17,441 per year or $22,839 per year if the veteran has one dependent.[146] The benefit can increase further if the veteran qualifies for housebound benefits, or in need of the *aid and attendance* of another person. See figures at https://www.va.gov/pension/veterans-pension-rates/.

Asset Limit

The "net worth" limit is equal to the maximum community spouse resource allowance for Medicaid. The net worth limit effective December 1, 2025 – Nov. 30, 2026 is $63,699. See https://www.va.gov/pension/veterans-pension-rates/. Unlike Medicaid, VA net worth is the *sum* of the claimant's and spouse's assets and annual income. 38 C.F.R. § 3.274(a)-(b). Rules for income/assets of children of the veteran and not covered here.

Income deductions include unreimbursed medical expenses, which the new regulation defines in more detail than before. 38 C.F.R. § 3.278(c). Income exclusions include relocation, crime victim compensation, Japanese and Nazi persecution compensation, Payments to Native Americans, income tax refunds, Food stamps, HEAP, and others. 38 C.F.R. § 3.279.

Excluded from assets are the primary residence (which can be sold if proceeds are used to purchase another residence within same calendar year). 38 C.F.R. § 3.275(b). Personal mortgage does not reduce value of countable assets. If the lot exceeds 2 acres, the value of additional land above 2 acres is included in asset calculation. Id. Also excluded is a car and personal effects "suitable and consistent with a reasonable mode of life." 38 C.F.R. § 3.275(b)(2). However the VA website says the value of furniture is included as an asset. See https://www.va.gov/pension/veterans-pension-rates/.

If net worth exceeds the limit, net worth may be reduced if income and/or assets decrease, but assets must be spent on purchases for fair market value unless the items purchased are part of their net worth. 38 C.F.R. § 3.274(f)(1).

Eligibility is effective on the date net worth ceases to exceed the limit, provided a certified statement that net worth has decreased is received before the claim has been finally adjudicated. Otherwise a new pension claim must be filed.

When an increase in net worth results in a reduction or discontinuance of benefits, the reduction or discontinuance is effective the last day of the calendar year in which net worth exceeds the limit. If net worth is brought below the limit before the end of the same calendar year, no reduction or discontinuance will occur. 38 C.F.R. § 3.274(h)(2).

Transfers of Assets and Penalty Periods

Like Medicaid, only transfer of amounts exceeding the net worth limits (called "covered assets") are subject to a penalty.

The lookback period for all transfers on and after October 18, 2018 is 36 months preceding filing of an original pension claim or a new pension claim after a period of non-entitlement. 38 C.F.R. § 3.276(a)(7). Transfers before Oct. 18, 2018 have no penalty.

Exceptions to the transfer penalty include:

1. **Transferred as the result of fraud or unfair business practice** related to marketing or sale of annuity/financial products for purposes of establishing entitlement to VA pension. Must file complaint with authorities. 38.F.R. § 3.276(a)(8)(c).
2. Veteran, spouse, or surviving spouse, may transfer assets to **a trust established for a child incapable of self-support**, if there is no circumstance the trust could benefit the veteran, spouse or surviving spouse. 38 C.F.R. §3.276(a)(8)(d). Note there is no exception for a supplemental needs trust for the veteran.

The maximum length of the penalty period is 5 years. The length of the penalty period is determined by dividing the total amount of the transferred assets by the "monthly penalty rate," rounded downto the nearest whole number. The result is the number of months of the penalty.

The "monthly penalty rate" is the maximum annual pension rate (MAPR) under 38 U.S.C. 1521(d)(2) for a veteran in need of aid and attendance with one dependent that is in effect as of the date of the pension claim, divided by 12, and rounded down to the nearest whole dollar. The monthly penalty rate

is located on VA's website at https://www.va.gov/pension/veterans-pension-rates/. Effective Dec. 1, 2025, the "monthly penalty rate" is $**2,874.**

The penalty period begins the first day of the momth following the transfer (periods run consecutively, not simultaneously, if there is more than one transfer). Penalty period is reduced or removed if assets are returned within 60 days of the claimant being notified of the penalty period.

Penalty period example (from regulation – Dollar figures not updated).

VA receives a pension claim in November 2018. The claimant's net worth is equal to the net worth limit. The claimant transferred covered assets totaling $10,000 on August 20, 2018, and September 23, 2018. Therefore, the total covered asset amount is $10,000, and the penalty period begins on October 1, 2018. Assume the MAPR for a veteran in need of aid and attendance with one dependent in effect in November 2018 is $24,000. The monthly penalty rate is $2,000. The penalty period is $10,000/$2,000 per month = 5 months. The fifth month of the penalty period is February 2019. The claimant may be entitled to pension effective February 28, 2019, with a payment date of March 1, 2019, if other entitlement requirements are met.

38 C.F.R. § 3.276(e)(4)(Eff. 12/1/22, the penalty period would be $10,000/ $2,431 per month = 4 months).

Pooled Income Trusts – Practical Tips

Special Rules about Assigning Income into a Trust

The Social Security Act prohibits assignment of Social Security income.[147] Therefore, a person cannot simply direct Social Security to deposit their check directly into their SNT account. However, once the Social Security check is received each month, an automatic transfer can be set up with one's bank to transmit all or part of the funds into one's SNT each month.

This provision might appear to preclude the assignment of Social Security benefits to an SNT entirely,[148] but the courts have made clear that the sole purpose of Section 407 is to prevent creditors from attaching or garnishing Social Security payments.

Some types of income other than Social Security and pensions, however, MAY be legally assigned to an SNT. For example, income from a lawsuit settlement or an annuity may be assigned.[149]

How Much Income to Contribute to an SNT, How to Enroll in a Pooled Trust and Submit it to the Medicaid Agency to Reduuce/Eliminate Your Spend-down

Please see **NYLAG's FACT SHEET with the nuts and buts for enrolling in a Pooled Trust** (or using an individual SNT). Download at https://nyhealthaccess.org/afile/44/4/. Also see this article https://nyhealthaccess.org/entry/44/.

The Fact Sheet gives actual examples of how the spend-down is calculated and how much to deposit into a trust. There are examples for SINGLES and MARRIED COUPLES.

The Fact Sheet explains exactly what documents to submit to the local Medicaid agency and when in order to get the Pooled Trust approved and your Medicaid case re-budgeted. NOTE that at least in NYC, the procedures changed in 2022. Many of the documents to prove disability are NOT submitted with the trust to HRA – they are submitted later to the State Office of Disability Determinations. See https://nyhealthaccess.org/entry/44/.

WARNING: MLTC plans MAY disenroll a member for failure to pay the spend-down, though this ground for involuntary disenrollment continues to

TIP: Beware of annual COLA increases in income! A $20 increase in income from cost of living increase may increase the spend-down by $20 or near that amount.

Be sure to INCREASE THE AMOUNT deposited into the trust when that happens, to ensure a -0- spend-down.

be suspended since 2020. See People enrolled in MLTC plans or receiving services from a home care agency through their local Medicaid agency should let the plan or home care agency know that they are establishing an SNT to eliminate their spend-down, and that they will advocate to make sure the trust is approved and budget retroactively, so that the plan or home care agency can bill the State for the unpaid spenddown. The MLTC plans' contract with the State only allows the plans to involuntarily disenroll members for non-payment of a spend-down when they fail to pay "or make arrangements satisfactory to [the plan] to pay" the spend-down.[150] Arguably establishing an SNT to eliminate the spend-down is such an arrangement. If receiving services from a home care agency, assure the agency that it will be able to back-bill Medicaid for this money once the SNT is approved, because the approval should be retroactive to the date the SNT was established.[151]

Standards Used to Determine Disability

NY State and NYC have issued procedures for determining disability, and ones particularly for people over age 65. These are all posted at https://nyhealthaccess.org/entry/128/ and https://nyhealthaccess.org/entry/134/,

Helpful resources:

- Social Security Bluebook – Listings of Impairments[152]
- Medicaid Disability Manual[153]
- N.Y. Dep't of Health, Inf. Letter: Pooled Trusts & Disability Determinations for Individuals 65 Years of Age & Older, 05 OMM/INF-1[154]
    1. Physician's request for personal care services) is NOT sufficient to establish disability. Instead, the above forms must be submitted.
    2. Uses special rules for determining disability for people over age 65 from Social Security Ruling No. SSR 03-03p.[155]

A five-step sequential evaluation process is used for everyone. Our experience has been that the NYS disability reviewers apply this method in a more streamlined fashion than SSA reviewers, particularly for elderly applicants who are only seeking a disability determination to enable them to use an SNT. However, it is helpful to know how the sequential evaluation works so that you can ensure the person with a disability meets the standard. Note that SSA and the NY State Department of Health directives create special medical-vocational profiles for certain condition, which allow you to circumvent some portions of the five-step sequential evaluation process used by Social Security in disability determinations.[156] See below.

Sequential Evaluation in a Nutshell

1. **Is the individual working?**
   If the individual is performing substantial gainful activity ("SGA"), then they cannot be determined disabled. Work is generally considered not to be SGA if the individual earns less than $1,180/month (2018).[157]
2. **Does the individual have a medically-determinable, permanent, severe impairment?**
   3. **Medically-determinable**: the impairment must be proven by adequate medical evidence (this is why the 486 must be completed by a physician)
   4. **Permanent**: the impairment must be likely to last for at least 12 months or result in death
   5. **Severe**: the impairment must significantly limit the individual's physical or mental abilities to do basic work activities. This prong is deemed met for individuals age 72 or older.
3. **Does the individual have an impairment that meets or equals a listed impairment?**
   This step is where you check the Bluebook to see if the individual meets a listing.[158] If the impairment perfectly fits the diagnostic and severity criteria of a listing, then the individual should be determined disabled at step three and is not required to advance through further steps. However, you should never assume that someone will be determined disabled on step three. Conversely, just because a person's impairment is not found in the listings does not mean they cannot be determined disabled on a subsequent step.
4. **Does the individual have the residual functional capacity ("RFC") in spite of their impairment to return to past relevant work ("PRW")?**
   This is where you land if you fail to meet a listing. PRW is defined as SGA-level work done in the last 15 years. If the individual has no PRW, then proceed to step five. If the individual did have PRW, then the question is whether the impairments prevent them from returning to that work, in light of the individual's age, education, and experience.
5. **Does the individual have the residual functional capacity ("RFC") in spite of their impairment to transition to any other work available in the national economy?**
   Here, the individual's fate depends upon whether their impairments are solely exertional, non-exertional, or a combination.
   6. **Solely Exertional**: the individual's RFC is evaluated to determine the exertional level to which they are limited in light of their impairments (e.g., sedentary, light, medium, heavy). Then the medical-vocational guidelines ("The Grids")[159] are used to determine disability in light of the individual's age, education, and experience.[160]

7. **Solely Non-Exertional**: The Grids cannot be used for non-exertional impairments, such as mental impairments.[161] Instead, the agency must consider whether the potential occupational base is limited by a substantial loss of the ability to meet any basic work-related activities. Such activities include the abilities (on a sustained basis) to understand, carry out, and remember simple instructions; to respond appropriately to supervision, coworkers, and usual work situations; and to deal with changes in a routine work setting.[162]
8. **Combination of Exertional and Non-Exertional**: In this case, the Grids will not determine the outcome unless the exertional impairments alone are sufficient to direct a finding of disability based upon the Grids. Otherwise, the non-exertional impairments are considered as above, and the Grids merely provide a framework for decision.[163]

When preparing the packet to send to Medicaid with the SNT paperwork, it is a good idea to review the Listings to see if your client with a disability meets a listed impairment. You can even provide a printout of the relevant Listing to the person's physician to make sure they address the relevant factors.

EXAMPLE: Alzheimer's disease is listing 12.02 Organic mental disorders. Note that this listing includes many functional impairments, such as "Marked restriction of activities of daily living;" or "Marked difficulties in maintaining social functioning." Be sure to ask Medicaid to consider not only the Form 486 and 1151 but also the assessments done for the home care application that may help. The M11q, the nurse's assessment and/or the Affiliation Physician may document the client's lack of short term memory, restricted activities of daily living, and reduced social functioning.

Impairment is assumed to be "severe" for persons age 72 or over.[164] This does not mean DISABILITY is assumed, only that they automatically pass step two of the sequential evaluation once they have established a medically-determinable impairment.

Special Medical-Vocational Profiles

There are three special profiles that allow a person to short-circuit the sequential evaluation. These profiles apply if a person does not meet or equal a Listing and allows them to skip steps four and five of the sequence. These profiles are:

- **History of Arduous Unskilled Work[165]**
  1. Not working at SGA level, and

2. No more than a marginal education (6th grade level or less), and
3. Work experience of 35 years or more during which they did only arduous unskilled physical labor, and
4. No longer able to do this kind of work because of a severe impairment(s).

- **No Work Experience**[166]
  1. Has a severe, medically determinable impairment(s), and
  2. Is of advanced age (age 55 or older), and
  3. Has a limited education or less (i.e., advancement not beyond 11th grade), and
  4. Has no Past Relevant Work experience (i.e., no SGA-level work in the last 15 years).
- **Lifetime Commitment**[167]
  1. Not working at SGA level, and
  2. Have a lifetime commitment (30 years or more) to a field of work that is unskilled, or is skilled or semi-skilled but with no transferable skills, and
  3. Can no longer perform this past work because of a severe impairment(s), and
  4. Are closely approaching retirement age (age 60 or older), and
  5. Have no more than a limited education (i.e., advancement not beyond 11th grade).

In addition to submitting the required forms, we recommend that you write a cover letter that briefly discusses how you believe your client should be determined disabled. Mention in this letter which Listing you believe they meet (if any), and whether any special medical-vocational profile applies. We created a Microsoft Word template that you can use as a starting point for your cover letter: https://nyhealthaccess.org/file/64/?f=1.

After Submitting the Documents to Medicaid

Wait and Advocate

Even though this policy has been in effect for over a decade, there are still many Medicaid workers who are unfamiliar with it. Therefore, it may help to enclose copies of the pertinent directives to remind them of the process. You should also call to confirm receipt and check in every month or so to make sure the package hasn't gotten lost in the shuffle. It is not unusual for SNT approvals to take 6 months (or longer!), so it behooves you to push the

To locate contacts dealing with pooled SNT submissions in NYC, see https://nyhealthaccess.org/entry/216/ and

https://nyhealthaccess.org/entry/44/

process along. If you fail to get responses from the worker you are in contact with, move up the chain of command.

Once disability is approved and the trust is approved by legal affairs, the Medicaid office must re-budget the spend-down. Make sure the effective date is the month that your client first sent their spend-down to the trust.

Ongoing Trust Maintenance

Even though the pooled trustee takes care of the tax returns and accountings, there is still some ongoing administration for the person with a disability or their representative.

Ensure the proper contribution is paid into the SNT each month. If they miss a month, they can't make up for it by doubling their contribution in the next month. This is because Medicaid budgets income in the month of receipt; by the next month, it's too late to take any action to reduce countable income in the previous month.

Monthly contributions

Submit enough disbursement requests to consume most of the available funds in the trust account. It is bad to allow too much of a balance to accumulate in the trust account, because (a) if there's any left upon the client's death, it is forfeited to the trust, and (b) this amount could create a transfer penalty for purposes of Nursing Home Medicaid coverage. It is not a problem to allow a relatively small balance to accumulate (for example, if the client is saving up for a major purchase, or for annual trustee fees).

Monthly disbursements

Adjustments to contribution amount

Since the client's income may increase with cost of living increases, the spend-down amount may increase. At the end of each year, it is a good idea to re-do the calculations discussed above and increase the monthly contribution to avoid a new spend-down.

Finally, remember that Medicaid recipients must recertify annually. In order to avoid having the client's spend-down become resurrected upon recertification, make sure to enclose with the recertification packet proof of the last twelve months' contributions to the SNT. These are called "VOD's" or Verifications of Deposit. HRA's renewal forms now specifically ask for these documents.

Watch out for recerts! For tips on Medicaid renewals see https://nyhealthaccess.org/entry/227/.

Summary of SNT Rules for Various Benefits

Benefit	SNT considered a resource?	Is Transfer of a Lump sum or Asset into an SNT Penalized?	SNT disbursements that ARE counted as income	SNT disbursements that ARE NOT counted as income
Temporary Assistance	No.	No, but only IF SNT created before or simultaneously with receipt of lump sum. Otherwise, harsh "lump sum" rule deems lump sum available as income for penalty period.	Expenses related to: • Day-to-day living • Hobbies • Vacations • Recreation • Entertainment	Expenses related to "supplemental" needs: • Education • Medical (including health insurance) • Childcare • Special needs of disabled (housekeeping, social workers, therapists, aides, legal expenses)
SNAP	Most SNAP recipients have no resource test. For those who do, the SNT should not be considered a resource, but may require a court order for individual (d)(4)(A) trust.	Disqualification up to 12 months based on "knowing" transfers within 3 months pre-application or after eligibility determination, made with intent to obtain or maintain eligibility.	Disbursements directly to the household for normal living expenses (e.g. rent or mortgage, clothing, food eaten at home)	• Reimbursements or past or future expenses that are 1) not a gain or benefit to the household AND 2) are not a normal living expense • Vendor payments directly to third party
HEAP	No resource test.	No transfer penalty.	Unclear.	Unclear.
SCRIE	No resource test.	No transfer penalty.	Unclear.	Unclear.

Benefit	SNT considered a resource?	Is Transfer of a Lump sum or Asset into an SNT Penalized?	SNT disbursements that ARE counted as income	SNT disbursements that ARE NOT counted as income
Section 8 / Public Housing	No because SNT's are always irrevocable trusts, which are exempt.	No as long as the beneficiary is a member of the tenant household. If beneficiary is not in the tenant household, transferred amount is deemed to be part of "net available assets" for 2 years, so if amount transferred plus remaining assets exceeds $100,000 (adjusted for inflation), assets are over limit and tenant is ineligible. Law & 2023 Regs give local housing authorities/owner discretion to establish a formal policy not to enforce the asset limitation or establish formal exceptions based on family type, age, disability, income, ability to find suitable alternative housing. 42 U.S.C. 1437n(e)(4)–(5); 24 C.F.R. 5.618(c)-(d). No info available yet for NYC or other county authorities. If lump sum was exempt as income, does transfer of that lump sum into an SNT count toward the $100,000 limit? This is unclear. Income is imputed from assets that exceed $50,000, including transfers in the previous 2 years.	• Interest or dividend income earned by trust counted as income when received by trust	Irrevocable trust trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets – • Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor. • any payment from trust principal Revocable trust within family's control– • All distributions of income and principal are not counted (but principal counts toward the asset imit)

Benefit	SNT considered a resource?	Is Transfer of a Lump sum or Asset into an SNT Penalized?	SNT disbursements that ARE counted as income	SNT disbursements that ARE NOT counted as income
SSI	No.	• Under age 65: No transfer penalty for assets placed in trust; may use individual SNT or pooled trust. • Age 65+: YES- Transfer penalty for assets placed in trust for up to 36-month disqualification, with 36-month look-back. EXCEPTION for assets or income placed directly into SNT by court order. Age 65+ may only use pooled trust, though assets placed in individual SNT prior to age 65 remain exempt.	• Payments for shelter items will reduce SSI benefit by lower of actual value of benefit or one-third of the Federal Benefit Rate. NOTE – since 9/2024, food is no longer deemed "in-kind support." Shelter items include rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewer, garbage removal, property insurance required by a mortgage Think about ABLE Acct? • Cash • Payments not for sole benefit of beneficiary, though incidental benefit ok for others (purchase of home, TV)	• Food or clothing purchase • Insurance (property, fire, theft, etc.) held at the owner's or renter's option • Cable, telephone, cell phone, and internet service • Travel, local transportation, entertainment, educational expenses • Pre-payment of burial expenses is permitted through a funeral agreement – but only before death of beneficiary • Payment for companion services for a disabled beneficiary or a minor disabled child, and for incidental expenses of the companion, can be a valid expense
Non-MAGI Medicaid – Institutional (nursing home)	No – if individual (d)(4)(A) trust established before age 65, or funds deposited into pooled trust account before age 65.	• NO if individual under age 65. • YES if individual age 65+.	• Cash • Trust may not pay for services that could be covered by Medicaid or that are not solely for benefit of beneficiary	In-kind 3rd party vendor payments for expenses not covered by Medicaid are OK • Since nursing home rate includes food, etc. must be items or services to supplement Medicaid, e.g. private aide, clothing, entertainment

Benefit	SNT considered a resource?	Is Transfer of a Lump sum or Asset into an SNT Penalized?	SNT disbursements that ARE counted as income	SNT disbursements that ARE NOT counted as income
Non-MAGI Medicaid – Community (includes most home care, assisted living, and waivers)	No	• NO if individual under age 65. • NO if individual age 65+, but if later needs Institutional Medicaid within 5 years of transfer, there will be a transfer penalty	• Cash • Payment for items that could be covered by Medicaid • Payments not solely for benefit of beneficiary (but incidental benefit to others OK – purchase of home, TV, etc.)	In-kind 3rd party vendor payments for any expenses – rent, food, clothing, travel, entertainment, education, household items, etc. Payment for companion services for a disabled beneficiary or a minor disabled child, and for incidental expenses of the companion, can be a valid expense.
MAGI Medicaid	No (but no asset limit)	• No. MAGI Medicaid has transfer penalties for institutional care but transfer to SNT presumably exempt.		
Veteran's Pension	Yes	• Yes. Transfer to SNT for child determined incapable of self-support allowed. But not to one's own SNT.	NA	NA

Endnotes

Guide to Online Citations

All of the sources of law cited in this manual are available for free online. Alternate internet citations are provided in some cases, but to avoid lengthy URLs they have been omitted for most recurring sources. This guide will lead you to the general website for each source, from which you can obtain any particular section or page by using the citation provided in the endnote. The Social Services Law and NYCRR are also available on Lexis and WestLaw.

United States Code

http://www.law.cornell.edu/uscode/

Code of Federal Regulations

https://www.govinfo.gov/app/collection/cfr

Social Security Administration Program Operations Manual System (POMS)

http://policy.ssa.gov/poms.nsf

N.Y. Social Services Law

https://codes.findlaw.com/ny/social-services-law/

N.Y. Codes, Rules and Regulations, Title 18

https://www.law.cornell.edu/regulations/new-york/title-18 or https://regs.health.ny.gov/

Medicaid Reference Guide (MRG)

http://www.health.ny.gov/health_care/medicaid/reference/mrg/

State Procedures manual for local Medicaid agencies. Each section has citations to the Social Services Law, NYCRR, and administrative directives, so it is a good idea to start with the MRG section and work backward to the other sources.

NYS Medicaid Administrative Directives, General Information System messages and Informational Letters (1995-present)

https://www.health.ny.gov/health_care/medicaid/publications/

[1] Social Services Law § 366, subd. 5(f) and (g), as amended by L. 2017, ch. 475, effective June 16, 2018.

[2] Form OHIP-0119 is Attachment I to GIS 20 MA/03 – *Clarification of GIS 19 MA/04, "Clarification of Policy for Treatment of Income Placed in Medicaid Exception Trusts,"* https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/20ma03.pdf; Attachment 1 is https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/19ma04_attachment%20I.pdf.

[3] According to the Social Security Administration, "A spendthrift clause or spendthrift trust generally prohibits both involuntary and voluntary transfers of the trust beneficiary's interest in the trust income or principal. This means that the trust beneficiary's creditors must wait until the trust pays out money to the trust beneficiary before they can attempt to claim it to satisfy debts.

It also means that, for example, if the trust beneficiary is entitled to $100 a month from the trust, the beneficiary cannot sell his or her right to receive the monthly payments to a third party for a lump sum. In other words, a valid spendthrift clause would make the value of the trust beneficiary's right to receive payments not countable as a resource.

However, not all States recognize spendthrift trusts, and States that do recognize spendthrift trusts often do not allow a grantor to establish a spendthrift trust for the grantor's own benefit. In those States that do not recognize spendthrift trusts (whether at all or because the trust is a grantor trust), we would count the value of the trust beneficiary's right to receive monthly payments as a resource because it may be sold for a lump sum.

We do not require trusts to include a spendthrift clause. If the trust provides for mandatory periodic payments to the beneficiary, then the trust may need a spendthrift clause for the trust not to count as a resource."

POMS SI 01120.200(B)(13), available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200 (rev. May 2024). New York does recognize spendthrift trusts.

[4] POMS SI 01730.048(C)(2) ; SI 01120.200(H), supra.

[5] POMS SI 01120.200(B)(11), supra.

[6] N.Y. Estates, Powers and Trusts Law § 7-1.12.

[7] Social Security Administration, Program Operations Manual System POMS The key POMS sections on SNTs were revised effective April 30, 2018. These are POMS SI 01120.200, 01120.201, 01120.202, 01120.203, available starting at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200. https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120202. Section 01120.203 was further amended effective 5/2024, available https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203.

[8] POMS SI 01120.200(D)(1)(a) (April 2018), available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200.

[9] 42 U.S.C. § 1396p(d)(4)(A) and (C).

[10] POMS SI 01120.203.B.10 and D.8, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203.

[11] POMS SI 01120.203.C, see previous note. Rules re the payback provision for pooled trusts are in SI 01120.203.D(8); rules re payback for individual trusts established after 12/13/16 are in SI 01120.203.C(1)

[12] POMS SI 01120.199 (revised 8/13/2024), available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120199

[13] 42 U.S.C §§ 1396a(a)(10)(C)(i)(III); 42 C.F.R. §§ 435.831(b), 435.845, 436.601.

[14] 42 U.S.C. § 1396p(d)(4)(A).

[15] POMS SI 01120.203.C.2, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203.

[16] 42 U.S.C. § 1396p(d)(4)(C). See also, POMS SI 01120.203, see previous fn (discussed at pp. 28-29).

[17] 42 U.S.C. § 1396p(d)(4)(C).

[18] The Federal Special Needs Trust Fairness Act, part of the 20th Century Cures Act, was signed into law by President Barack Obama on December 13, 2016, amending Section 1917(d)(4)(A) of the Social Security Act (42 U.S.C. 1396p(d)(4)(A)). See https://www.congress.gov/bill/114th-congress/house-bill/34/. The POMS implementing this law distinguishes trusts created before or after Dec. 13, 2018. Before the POMS were amended effective April 2018, New York Social Services Law §366(2)(b)(2)(iii) was amended by S4779/A6743, to apply to all trusts established in NYS on or after August 21, 2017. Before the state law was amended, NYS DOH issued GIS 17 MA/008: Policy Change for Trusts Established for Disabled Individuals Under Age 65 -- PDF, stating that trusts could be established by a disabled individual "effective immediately," which was May 22, 2017, provided the trust otherwise complies with the "exception trust" provisions set forth in Administrative Directive 96 ADM-8, "OBRA '93 Provisions on Transfers and Trusts." Amendment of POMS SI 01120.203.C(2) sets Dec. 13, 2016 as the effective date of the change in who may establish a trust, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203. (rev. 5/2024)

[19] SSA POMS SI 01120.203(C)(2)(a) (rev. 5/2024, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203.

[20] SSA POMS SI 01120.203(B)(2)(f), see previous fn.

[21] N.Y. General Obligations Law § 5-1513. But see N.Y. Gen. Oblig. L. § 5-1502N, construing the language conveying authority over "all other matters," which arguably includes establishment and funding of a trust, including a Supplemental Needs Trust.

[22] NYC HRA MICSA Alert, *Powers of Attorney and Statutory Gifts Rider*, dated July 26, 2017, repealed and replaced in 2020, https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/20ma03.pdf.

[23] N.Y. Gen. Oblig. L. § 5-1514.

[24] POMS SI 01120.203.E.2 available at SI 01120.203, https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203

[25] 42 U.S.C. § 1396p(c)(2)(B)(iv); N.Y. Soc. Serv. L. § 366 subd. 5(d)(3)(ii)(C); 18 N.Y.C.R.R. § 360-4.4 (c)(2)(iii)(c)(1)(iv).

[26] SSA POMS SI 01150.121 (Dec. 5, 2024, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501150121).

[27] Correri v. N.Y. Dep't of Health, Index No. 017372/04 (N.Y. Sup. Ct. Nassau County 2005), available at https://nyhealthaccess.org/file/55/; see also Kaiser v. N.Y. Dep't of Health, 824 N.Y.S.2d 755 (N.Y. Sup. Ct. Nassau County, July 24, 2006).

[28] See cites in article posted in n 30, also see CMS Dear State Medicaid Director Letter, Implications of the ABLE Act for State Medicaid Programs, available at https://www.medicaid.gov/federal-policy-guidance/downloads/smd17002.pdf (9/7/17); NYS GIS 17 TA/DC-033: "Supplementary Nature of New York Achieving a Better Life Experience (NY ABLE) Savings Accounts," available at http://otda.ny.gov/policy/gis/2017/17DC033.pdf .

[29] NLS Fact Sheet on ABLE Accounts. https://nls.org/app/uploads/2025/03/ABLE-Accounts-2025-Final2-4-7-25.pdf.

[30] See also OTDA GIS 17 TA/DC 033 ("Care must be taken to ensure that TA and/or SNAP benefits of ABLE participants are not inappropriately reduced or discontinued." See also 7 U.S.C. § 2014(d)(10),(g)(8)(B); 7 C.F.R. § 273.9(c)(1), 273.8(e)(20)(iii); Memorandum re ABLE accounts and SNAP eligibility, Food and Nutrition Service, USDA (Apr. 4, 2016), available at https://www.fns.usda.gov/snap/treatment-able-accounts-determining-snap-eligibility. See also 18 DOH GIS 18-GIS-02 (Medicaid – MAGI & Non-MAGI)

[31] See Robert Mascali, *NY NAELA Niche: Are We Now Able to Forget About Special Needs Trusts*? NYSBA Trusts and Estates Law Section Newsletter, Vol. 50, No. 2 (Summer 2017).

[32] 42 U.S.C. § 1396p(d)(4)(A) and (d)(4)(c); N.Y. Social Services Law § 366.2(b)(2)(iii); N.Y. Dep't of Health, Administrative Directive: OBRA '93 Provisions on Transfers and Trusts, 96 ADM-8 (March 29, 1996), available at https://www.health.ny.gov/health_care/medicaid/publications/docs/adm/96adm8.pdf; N.Y. Dep't of Health, Medicaid Reference Guide at 358 ("MRG" June 2010), available at http://www.health.ny.gov/health_care/medicaid/reference/mrg/.

[33] POMS SI 01120.203.B.4, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120203

[34] This reporting requirement is imported from the SSI rules. SSA POMS SI 02301.005 *SSI Posteligibility - Recipient Reporting*, at https://secure.ssa.gov/apps10/poms.nsf/lnx/0502301005. The methodologies for assessing the income and resources of medically needy groups must be comparable to and no more restrictive than those used in the most closely-related cash assistance program, which here is SSI. 42 U.S.C. § 1396a(a)(10)(C)(i)(III); 42 C.F.R. §§ 435.831(b), 435.845, 436.601; CMS, State Medicaid Manual § 3625.

[35] Both Medicaid and SSI count resources as of the 1st moment of the month, the snapshot date. Transfers or payments made close to the end of the month should be made by cashier's check, so that the check clears before that snapshot date. See FH No. 76600482M (Monroe County 2017)(check deposit hand delivered to an SNT trustee on Nov. 30th, but not cashed until Dec. 5, 2017, was out of the client's control on Nov. 30th, so client's resources considered under Medicaid limit as of Dec. 1st; reverses discontinuance of Medicaid for excess resources).

[36] NYS DOH, GIS 19 MA/11 – Changes to Countable Income for Modified Adjusted Gross Income (MAGI) Based Eligibility Determinations; NHELP, Advocates Guide to MAGI, available at https://healthlaw.org/resource/advocates-guide-to-magi-updated-guide-for-2018/ (lottery p. 35). Attachment - *List of Non-Taxable Income Sources Excluded from Gross Income for MAGI Budgeting* ,https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/19ma11_attachment.pdf)

[37] IRC 104(a)(2); IRS Revenue Ruling 85-97 confirms structured settlement not taxable, https://www.irs.gov/government-entities/tax-implications-of-settlements-and-judgments; IRS Publication 525.

[38] See listings at https://nyhealthaccess.org/entry/195/.

[39] NYS DOH GIS 14 MA/16, "Long Term Care Eligibility Rules and Estate Recovery Provisions for MAGI Individuals" and DOH Q & A 15 OHIP/INF-01 - 15 OHIP/INF-1 (10/29/2015)

[40] N.Y. Dep't of Health, Administrative Directive: Deficit Reduction Act of 2005 – Long-Term Care Medicaid Eligibility Changes, 06 OMM/ADM-5 at 3 (July 20, 2006), available with attachments at http://www.health.state.ny.us/health_care/medicaid/publications/pub2006adm.htm; MRG Resources at 441 (June 2010).

[41] See more about the enacted HCBS 30-month lookback, updates, and comments filed to proposed policies by NYLAG at https://nyhealthaccess.org/news/85/#lookback. When implemented, it will include personal care/home attendant (PCA/PCS), Consumer-Directed Personal Assistance (CDPAP), home health aide (CHHA), Managed Long-Term Care (MLTC), and Assisted Living Program (ALP) services. The lookback will NOT apply to Home and Community Based Services ("HCBS") Medicaid Waiver programs that require a waiver of the Federal Medicaid rules, and are authorized under subsection (C) or (D) of Section 1915 of the Social Security Act.. See article about waivers in NYS at https://nyhealthaccess.org/entry/129/ and N.Y. Soc. Serv. L. § 366.5(e)(1)(vii). Waivers include the **Traumatic Brain Injury (TBI) Waiver Program:** N.Y. Pub. Health L. § 2740 et seq.; 95 LCM-70, 96 INF-21 at https://www.health.ny.gov/health_care/medicaid/publications/pub1996inf.htm; **Nursing Home Transition and Diversion Waiver:** N.Y. Soc. Serv. L. § 366(6-a); 08 LTC ADM-01 - Nursing Home Transition and Diversion Home and Community-Based Services Waiver; GIS 08OLTC003 - Nursing Home Transition and Diversion (NHTD) Waiver; **Office of People With Developmental Disabilities (OPWDD) Waiver (**formerly Office of Mental Retardation and Developmental Disabilities "OMRDD")**:** N.Y. Soc. Serv. L. § 366(7); **AIDS Home Care Program:** N.Y. Soc. Serv. L. § 367-e; 18 N.Y.C.R.R. § 505.21(a)(2).

[42] N.Y. Dep't of Health, General Information System Message: Transfer of Assets and Medicaid Waiver Applicants/Recipients, GIS 07 MA/018 (September 24, 2007),available at https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/07ma018.pdf.

[43] See HRA Medicaid Alert Dec. 28, 2021 available at https://nyhealthaccess.org/afile/140/802/. See more info about this change, including a new Supplement A form used in NYC, at https://nyhealthaccess.org/news/89/.

[44] For more information on the Deficit Reduction Act, see https://nyhealthaccess.org/entry/38/.

[45] N.Y. Dep't of Health, General Information System Message: Transfers to Pooled Trusts for Disabled Individuals Age 65 and Over, GIS 08 MA/020 (July 24, 2008), available at https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/08ma020.pdf

[46] NY SSL §141(6); NY Gen. Business L. §453, 11 OHIP/ADM-4; see Fact Sheet on funeral agreements at https://nyhealthaccess.org/afile/36/34/.

[47] POMS SI 01120.201I.1.a and .2011I1.f available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201 (May 2024)

[48] 18 N.Y.C.R.R. § 360-4.3(e).

[49] POMS SI 01120.201I.1.d, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201 .

[50] POMS SI 01120.201I.1.a, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201

[51] POMS SI 01120.201I.1.e, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201

[52] POMS SI 01120.201F, available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201 (May 2024). The methodologies for assessing the income and resources of medically needy groups (which includes the Aged, Blind, Disabled whose income or assets exceed the SSI levels) must be comparable to and no more restrictive than those used in the most closely-related cash assistance program. Hence the SSI regulations and POMS set a floor for Medicaid eligibility rules. See 42 U.S.C. § 1396a(a)(10)(C)(i)(III); 42 C.F.R. §§ 435.831(b), 435.845, 436.601; CMS, State Medicaid Manual § 3625.

[53] POMS SI 01120.201I.F.3.a available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201

[54] Id.

[55] POMS SI 01120.201I.F.3.a available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201

[56] Id.

[57] POMS SI 01120.201F.3.c available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201

[58] POMS SI 01120.201F.3.b available https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201

[59] POMS SI 01120.201I.F.3.c.4 available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201

[60] In the Matter of Mary O., Fair Hearing No. 3945750N (February 25, 2004), on file with NYLAG.

[61] N.Y. Dep't of Health, Department Release – Transmittal No. 96 ADM-8 Attachment 2, Sept. 23, 1997, =https://www.health.ny.gov/health_care/medicaid/publications/docs/adm/departmentrelease9-97.pdf

[62] In the Matter of D.C., Fair Hearing Decision No. 4080991J (May 17, 2004), on file with NYLAG.

[63] 42 C.F.R. § 435.832(c); 18 N.Y.C.R.R. § 360.9.

[64] Wong v. Doar, 571 F.3d 247 (2d Cir. 2009).

[65] Jennings v. Comm'r. Nassau DSS, 893 N.Y.S.2d 103 (2nd Dept. Jan. 5, 2010).

[66] Under that law, spousal impoverishment with "post-eligibility rules" must be used when determining income and resource eligibility for married couples with a spouse receiving Managed Long Term Care (MLTC) or other Home-and-Community-Based Services under a waiver (Traumatic Brain Injury (TBI), Nursing Home Transition and Diversion (NHTD), OPWDD waivers. This provision originally had a sunset clause but has been extended several times, most recently in the Section 5115 of the Consolidated Appropriations Act, 2023 through Sept. 30, 2027. See CMS Bulletin 8/15/23 at https://www.medicaid.gov/media/161736.

[67] NYS DOH GIS 14 MA/015, issued August 5, 2014, available at http://www.health.ny.gov/health_care/medicaid/publications/index.htm,

[68] See 42 C.F.R. § 435.733 regarding post-eligibility budgeting; Reames v. Oklahoma, 411 F.3d 1164 (10th Cir. 2005), Wong v. Doar, 571 F.3d 247 (2d Cir. N.Y. 2009).

[69] MRG Income at 283 (January 2011).

[70] 42 U.S.C. § 1382b(e)(5); SSA POMS SI 01120.203 (Exceptions to Counting Trusts Established on or after January 1, 2000) https://secure.ssa.gov/poms.nsf/lnx/0501120203

[71] 42 U.S.C. § 1382b(e)(5).

[72] SSA POMS SI 01120.203(B)(1)(a) (June 2022), available at https://secure.ssa.gov/poms.nsf/lnx/0501120203 ("A trust which meets the exception to counting the trust under the SSI statutory trust provisions of Section 1613(e) must still be evaluated under the instructions in SI 01120.200 to determine if it is a countable resource.")

[73] SSA POMS SI 01120.200(D)(1)(a) (May 23, 2022), available at https://secure.ssa.gov/poms.nsf/lnx/0501120200

[74] N.Y. Estates, Powers and Trusts Law § 7-1.9 (providing that a trust can be revoked upon written consent of all persons with beneficial interest in trust property, and that a disposition in favor of a class of persons, such as heirs, next of kin, or distributees, does not create a beneficial interest in such persons such that their consent is required for revocation. The upshot: the grantor of such a trust may not unilaterally revoke it.)

[75] SSA POMS SI NY01120.200(B)(1) (May 2024), available at https://secure.ssa.gov/poms.nsf/lnx/0501120200NY

[76] See also SSA POMS SI 01120.201(F)(2) (2022), available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201

[77] POMS SI 02301.005.B.3. *SSI Posteligibility - Recipient Reporting*, available at https://secure.ssa.gov/poms.nsf/lnx/0502301005.

[78] SSA POMS SI 01120.200G.1.d. (2022); see also Williams v. Colvin, 2014 U.S. Dist. LEXIS 44115 (N.D. Ill. 2014).

[79] 42 U.S.C. § 1382b(c)(1)(A).

[80] 42 U.S.C. § 1382b(c)(1)(A)(iv).

[81] 42 U.S.C. § 1382b(c)(1)(C)(ii)(IV); POMS SI 01150.121.A.3

[82] 42 U.S.C. § 1382(a)(2)(A); 20 C.F.R. § 416.1130(b); Ruppert v. Bowen, 871 F.2d 1172 (2d Cir. 1989). The Federal benefit rate and N.Y. state supplement amounts are updated every year, and are announced by the N.Y. State Office of Temporary and Disability Assistance (OTDA) on their website. Find current SSI limits in NYS at https://otda.ny.gov/programs/ssp/. Scroll down to BENEFITS and view SSI/SSP chart for the current year.

[83] Fed. Reg., February 7, 2005 [Volume 70, Number 24], pp. 6340-6345, amending 20 C.F.R. §§ 416.1102, 1003, and other sections.

[84] SSA POMS SI 00835.465 (eff. 5/17/2024), available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0500835465

[85] Id.

[86] POMS SI 01120.200G.1.c available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200

[87] N.Y. Soc. Serv. L. § 131; 18 N.Y.C.R.R. § 352.23; N.Y. Office of Temporary and Disability Assistance ("OTDA"), Temporary Assistance Source Book ("TA Source Book"), available at https://otda.ny.gov/programs/temporary-assistance/TASB.pdf (last accessed 7/31/2025).

[88] 18 NYCRR Part 359

[89] N.Y. Soc. Serv. L. § 157, et. seq.

[90] N.Y. Soc. Serv. L. §336; 18 N.Y.C.R.R. Part385.

[91] N.Y. Office of Temp. and Disability Assistance, Informational Letter 01-INF-08 ("2001 OTDA Letter," March 8, 2001), available at http://www.otda.state.ny.us/main/directives/2001/INF/01_INF-08.pdf.

[92] Id.

[93] TA Source Book, p. 369; N.Y. Soc. Serv. L. § 131-n (resource rules), 131-a (only "available" resources count); 18 N.Y.C.R.R. § 352.23; 23TA/DC012 — Clarification of Public Assistance Resource Limit Policy Changes Included in the SFY 2022-23 New York State Budget; 22TA/DC085 — Public Assistance Policy Changes Included in the Enacted 2022-23 New York State Budget.

[94] Soc. Serv. L. § 131-n(1)(3); In *Stewart v. Roberts*, ____ AD3d ____, 2018 NY Slip Op 04609 (3d Dept. 2018)(available at https://law.justia.com/cases/new-york/appellate-division-third-department/2018/525064.html), held that equity value – not fair market value- was counted as a resource, relying on NY Soc. Serv. L. § 131-a(1) language stating that only "available" resources can be considered. See also TA Source Book, Ch. 19B.1. pp. 19-3 – 19-4.

[95] TA Source Book, Ch. 19, sec. B. pp. 19-3 – 19-4.

[96] TA Source Book, Ch. 19B.1. pp. 19-3 – 19-4.

[97] N.Y. Soc. Serv. L. § 131-a(12); 18 N.Y.C.R.R. § 352.29(h); 2001 OTDA letter p. 3.

[98] 2001 OTDA letter p. 3.

[99] NY OTDA Informational Letter, 01 INF-08 (3/8/01), Temporary Assistance (TA) and Food Stamps (FS) Policy: The Treatment of Supplemental Needs Trusts (SNTs) and Reverse Annuity Mortgage (RAM) Loans, available at https://otda.ny.gov/policy/directives/2001/INF/01_INF-08.pdf; NYS OTDA TASB, ch. 18, sec. T, Lump Sum Payments, p. 18-49.

[100] OTDA, Administrative Directive 03 ADM-10 (November 19, 2003).

[101] Id. at 3.

[102] NY OTDA TASB, Ch. 18, sec.T, Lump Sum Payments, p.18-54.

[103] *Garcia v. Roberts*, Index No. 101465/2015 (Sup. Ct. N. Y. Co., Stipulation and Order of Settlement, Oct. 6, 2016)(HRA Memo to Lien and Recovery Staff Mar. 16, 2017 and Fact Sheet are attached as Appendix D to *2018 Lump Sum Partnership Outline, available at* https://nyhealthaccess.org/download/676/.

[104] Id. at 3-4.

[105] 2001 OTDA Letter at p. 4.

[106] 2001 OTDA Letter at p. 4; N.Y. E.P.T.L. § 7-1.12; 18 N.Y.C.R.R. § 352.16(a).

[107] See N.Y. OTDA Food Stamp Source Book, available at https://otda.ny.gov/programs/snap/SNAPSB.pdf and http://www.nyc.gov/html/hra/html/directory/food.shtml.

[108] N.Y. OTDA, Informational Letter: Categorical Eligibility for Food Stamps Q & As, 08 INF-03, available at http://otda.ny.gov/main/policy/directives/2008/INF/08-INF-03.pdf. See also 10-INF-07, LDSS-4943 (11/09): "Food Stamp Benefits Categorical Eligibility Desk-Aid" (11/09) available at http://otda.ny.gov/main/policy/directives/2010/INF/10-INF-07-Attachment-1.pdf; 10-INF-06 Attachment 1 - LDSS-4314 "FS Benefits Household Composition Desk Guide, available at http://otda.ny.gov/main/policy/directives/2010/INF/10-INF-06-Attachment-1.pdf.

[109] NY OTDA General Information System Message GIS 14 TA/DC038 available at https://otda.ny.gov/policy/gis/2014/14DC038.pdf.

[110] 7 C.F.R. § 273.8(e)(8)(i) through (iv).

[111] 7 C.F.R. § 273.8(e)(8)(i) through (iv); OTDA Food Stamp Source Book at pp. 363 -364; 2001 OTDA Letter at p. 5.

[112] 7 C.F.R. § 273.8(e)(8)(ii).

[113] 7 C.F.R. § 273.8(e)(8)(iv)(A)

[114] OTDA SNAP Source Book, supra, Section 13.

[115] 7 C.F.R. § 273.8

[116] OTDA SNAP Source Book, supra, 17-16 to 17-17.

[117] 2001 OTDA Letter at p. 5.

[118] 2001 OTDA Letter at p. 5.

[119] Food stamp households may deduct certain rent and other shelter costs from their income, thereby increasing their Food Stamp allotment. In households with an elderly person (age 60+), the shelter expense deduction is not limited – the actual rent or other expense may be deducted. In other households, the shelter deduction is limited. Elderly households may also deduct unreimbursed medical expenses exceeding $35/month from their income. See Food Stamp Source Book at 245, 252 et seq. This SNT rule precludes a recipient from claiming an income deduction for a rent expense where that expense has been paid by the SNT.

[120] OTDA Food Stamp Source Book, supra, p. 278 (formatting changes are added for emphasis); see also 2001 OTDA Letter at p. 5.

[121] OTDA Food Stamp Source Book, supra, pp. 266, 278.

[122] 42 USC § 8621-8630; 42 C.F.R Part 96, et. seq.; OTDA HEAP manual, available at https://otda.ny.gov/programs/heap.heap-manual.pdf; HEAP desk guide, 2021-22 available at https://otda.ny.gov/policy/gis/2022/22DC010-Attachment-1.pdf

[123] Check website of NYS Office of Temporary & Disability Assistance for updates. https://otda.ny.gov/programs/heap/#income

[124] N.Y. Soc. Serv. L. § 97; 18 N.Y.C.R.R. § 393.1;

[125] 18 N.Y.C.R.R. § 393.4(d).

[126] 2001 OTDA Letter p. 5.;

[127] 9 N.Y.C.R.R. § 2202.20

[128] https://www1.nyc.gov/site/rentfreeze/qualifications/qualifications.page

[129] NY RPTL §467-b(1)(c); 467-c(1)(d), (f); NYC Admin. Code §26-601(d), (f).

[130] FAQ at https://www1.nyc.gov/assets/rentfreeze/downloads/pdf/rent-freeze-faq.pdf, last accessed 6/16/23

[131] RPTL § 467-b(2)(3).

[132] 9 N.Y.C.R.R. § 2202.20(d).

[133] Federal Register (89 FR 106998), dated Dec. 31, 2024 at https://www.federalregister.gov/documents/2024/12/31/2024-31401/housing-opportunity-through-modernization-act-implementation-of-sections-102-103-and-104-extension.

[134] U.S. HUD Public Housing Occupancy Guidebook ("PHOG") chapter on *Income Determinations,* updated June 2020, ["PHOG Income chapter"], is no longer online as of 7/31/25. See also https://www.hudexchange.info/programs/public-housing/admissions-and-continued-occupancy-policy-toolkit/

[135] Available at https://www.nyc.gov/site/nycha/residents/acop.page. Chapter 7, Sec. E covers ASSETS, but does not yet state the HOTMA asset limit. In various places, such as Chapter 8, the ACOP states, the "effective date of HOTMA provisions: December 1, 2024." However, HUD has extended the deadline for compliance until Jan. 1, 2026. See note 133.

[136] PHOG Income chapter, supra n. 134, at Sec. 3.3 (pp. 12-13)(not online as of 7/31/25)

[137] "Asset limits do not apply to the Section 202/8, Section 202/162 Project Assistance Contract (PAC), 202/811 Project Rental Assistance Contract (PRAC), Senior Rental Preservation Assistance Contract (SPRAC), or the Section 811 Project Rental Assistance (PRA) programs."

https://www.hud.gov/program_offices/housing/mfh/hotma; 24 C.F.R § 5.517(e)(as amended Feb. 2023).

[138] 42 U.S.C. 1437n(e)(Section 104 of HOTMA), 24 CFR §§ 5.603, 5.618(a), as amended Feb. 14, 2023. 24 C.F.R. Parts 5 et seq., available at https://www.federalregister.gov/d/2023-01617.

[139] The annual inflation increases are posted at https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html. The limit effective 1/1/27 is $109,797.

[140] 24 C.F.R. § 5.609(b)(3). Eff. Feb. 1, 2015, the Passbook Savings Rate was finally reduced from 2 percent to 0.06%, in light of falling interest rates. It remains at 0.06% for 2016. See 24 C.F.R. §5.603(b)(3) and U.S. HUD, Notice 16-01, *Passbook Savings Rate Effective Feb. 1, 2016*, dated Jan. 19, 2016, available at <https://www.hud.gov/sites/documents/16-01hsgn.pdf> (last accessed 7/31/2025). However, the HUD Public Housing Occupancy Guidebook ("PHOG") chapter on *Income Determinations, supra, n. 134* (which cannot be found online on 7/31/25) instructs local Public Housing Authorities (PHA's) to establish a passbook rate within 0.75 percentage points of the national savings rate then in effect. PHOG Income chapter at sec. 5.2 (p. 24-25), supra, n 135, The PHA is directed to use the FDIC webpage to obtain the average national savings rates. https://www.fdic.gov/resources/bankers/national-rates/.

[141] NYCHA Admissions & Continued Occupancy Policy, updated Jan. 1, 2024, available at https://www.nyc.gov/site/nycha/residents/acop/chapter-7and8-current-state.page

[142] Section 102(c), amending section 3(b)(4) of the U.S.H.A.) 42 U.S.C. §1437a(b)(4)(B), as amended by Section 102(c) of P.L. 114-201; July 29, 2016, 130 Stat 782; 24 CFR 5.609(a)(2)(as amended Feb. 2023)

[143] See HUD Calendar Year 2027 Revised Amounts and Passbook Rate. See other years at https://www.huduser.gov/portal/datasets/inflationary-adjustments-notifications.html#year2026.

[144] 24 C.F.R. § 5.603(b) under definition of "Net Family Assets."

[145] *DeCambre v. Brookline Hous. Authority*, 95 F.Supp.3d 35 (D. Mass. 2015), *aff'd in part, vacated in part and remanded*, 826 F. 3d 1 (1st Circ. 2016), *cert. den'd*. 137 S.Ct. 813, 196 L.Ed.2d 599 (2017). The district court decision, at 95 F.Supp.3d at 45-46, relied on HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, U.S. Department of Housing and Urban Development ("HUD Handbook") 5–39 (Nov. 3, 2014), https://www.hud.gov/sites/documents/43503hsgh.pdf. This part of the decision was affirmed by the First Circuit Court of Appeals.

[146] Income limits and transfer penalty rates posted at https://www.benefits.va.gov/PENSION/current_rates_veteran_pen.asp.

[147] 42 U.S.C. § 407.

[148] In Reames v. Oklahoma a nursing home resident was barred from placing her Social Security into an SNT to eliminate her monthly spend-down because of the anti-assignment provisions. This decision, which does not directly affect New York and the 2nd Circuit, should be limited to chronic care or Nursing Home Medicaid budgeting, not Community Medicaid. Reames v. Oklahoma, 411 F.3d 1164 (10th Cir. 2005).

[149] Mason v. Sybinski, 280 F.3d 788 (7th Cir. 2002); Kriegbaum v. Katz, 909 F.2d 70, 73 (2d Cir. 1990); Birdwell v. Concannon, 2 F.3d 1156 (9th Cir. 1993). Thus, Section 407 does not bar the voluntary assignment of funds (e.g., for the purpose of paying for institutional care), Fetterusso v. State of New York, 898 F.2d 322 (2d Cir. 1990). Accord, Johnson v. Wing, 178 F.3d 611 (2d Cir. 1999) (Section 407 does not bar voluntary agreement to pay costs of homeless shelter); Lopez v. Bowman, 302 F.3d 900

(9th Cir. 2002) (Section 407 does not bar voluntary arrangement with bank to apply otherwise exempt funds to overdraft charges). Research is excerpt of letter by Ed Josephson, South Brooklyn Legal Services, to ALJ in fair hearing.

150 N.Y. Dep't of Health, MANAGED LONG TERM CARE PARTIAL CAPITATION CONTRACT, Art. V, §(D)(5)(b) at 16 [p.23 of PDF], available at https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/hlth_plans_prov_prof.htm (CLICK ON most recent Partial Capitation Model Contract("Model Contract").

151 Home care agencies reportedly cannot back-bill farther than two years. Even if the SNT approval doesn't take that long, it can still be difficult to get the correct effective date of the rebudgeting to zero spend-down, and to get the agency to correct their billing records. If the effective date is wrong, then request a fair hearing to challenge this.

152 20 C.F.R. Part 404, Subpart P, Appendix 1 ("Blue Book"), available at http://ssa.gov/disability/professionals/bluebook/.

153 N.Y. Dep't of Health, Medicaid Disability Manual, available at https://www.health.ny.gov/health_care/medicaid/reference/mdm/index.htm

154 See also NYC Human Resources Administration, Medicaid Alert: Disability Determinations for Individuals with a Pooled Trust (July 7, 2005), available at https://nyhealthaccess.org/afile/140/58/.

155 Social Security Administration, Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older, SSR 03-3p (November 10, 2003), available at http://tinyurl.com/OVOCX.

156 SSA, Medical-Vocational Profiles Showing An Inability To Make An Adjustment To Other Work, SSR 82-63 (August 20, 1980), available at http://tinyurl.com/6JCVUMH; N.Y. Dep't of Health, Medicaid Disability Manual at II.D.2.f [page 13], supra n. 150, N.Y. Dep't of Health, General Information System Message: Additional Special Medical -Vocational Profile for the Medicaid Disability Manual, GIS 06 MA/020 (July 28, 2006), available at http://tinyurl.com/SXVBL.

157 This figure changes annually. See http://www.ssa.gov/oact/cola/sga.html.

158 See note 116 - 117.

159 20 C.F.R. Part 404, Subpart P, Appendix 2, available at http://tinyurl.com/2FQTSGW.

160 20 C.F.R. § 404.1569a(b).

161 20 C.F.R. § 404.1569a(c)(2).

162 20 C.F.R. § 404.1569a(c)(1); SSA, Titles II And XVI: Capability To Do Other Work — The Medical-Vocational Rules As A Framework For Evaluating Solely Nonexertional Impairments, SSR 85-15 (August 20, 1980), available at http://tinyurl.com/6CB83ZF.

163 20 C.F.R. § 404.1569a(d).

164 Social Security Administration, Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older, SSR 03-3p (November 10, 2003), available at http://tinyurl.com/OVOCX.

165 SSA, Medical-Vocational Profiles Showing An Inability To Make An Adjustment To Other Work, SSR 82-63 (August 20, 1980), available at http://tinyurl.com/6JCVUMH; N.Y. Dep't of Health, Medicaid Disability Manual at II.D.2.f.1 [page 13], supra. n. 150.

[166] SSA, Medical-Vocational Profiles Showing An Inability To Make An Adjustment To Other Work, SSR 82-63 (August 20, 1980), available at http://tinyurl.com/6JCVUMH; N.Y. Dep't of Health, Medicaid Disability Manual at II.D.2.f.2 [page 13] (2022), supra n. 150.

[167] N.Y. Dep't of Health, General Information System Message: Additional Special Medical -Vocational Profile for the Medicaid Disability Manual, GIS 06 MA/020 (July 28, 2006), available at http://tinyurl.com/SXVBL; N.Y. Dep't of Health, Medicaid Disability Manual at II.D.2.f(3) [page 13] (2022), see n. 150.