

P.I. Settlements and Welfare

Your client has been in a car accident, and you are representing her on a personal injury claim. If she is also receiving Temporary Assistance to Needy Families (TANF) (formerly Aid to Families with Dependent Children [AFDC]) or medical assistance (i.e., Medicaid or Oregon Health Plan), you need to consider two important issues before you enter into a settlement. First, the State will attach a lien on the settlement to the extent of all assistance (cash and medical) it has provided since the date of the injury. Second, the client's net settlement may affect eligibility for TANF and medical assistance.

State Lien on Settlement

ORS 416.540(1) provides: “[T]he Department of Human Services and the Oregon Health Authority shall have a lien upon the amount of any judgment in favor of a recipient or amount payable to the recipient under a settlement or compromise for all assistance received by such recipient from the date of the injury of the recipient to the date of satisfaction of such judgment or payment under such settlement or compromise.”

This provision grants the Department of Human Services (DHS) and the Oregon Health Authority (OHA) a lien against any judgment on or settlement of a claim for damages for personal injuries. ORS 416.510(5), 416.540(1). This provision does not include SAIF (State Accident Insurance Fund) or workers' compensation claims. It also excludes claims that are not for personal injuries, such as claims for violations of the Fair Housing Act (without emotional distress damages).

TANF and medical assistance applicants and recipients are required to report to DHS,¹ the OHA, and their coordinated care organization (CCO) that they have made a claim for damages for personal injuries or they have begun an action to enforce a claim. They must do so within 10 days of initiating the claim or beginning the action to enforce the claim. This notification must include the names and addresses of all parties against whom the action or claim is brought, a copy of each claim or demand, and, if an action has been brought, the case number and county where the action is filed. ORS 416.530; OAR 461-195-0310. If the TANF or medical assistance recipient fails to report the claim for personal injuries and the claim is settled before DHS, the OHA, or the CCO has the opportunity to satisfy its lien, the State will have a claim against your client to the extent of the lien. OAR 461-195-0310; ORS 416.610.²

Although a lien could exceed the amount of the personal injury claim, DHS rules permit the recipient to keep enough of the net settlement to pay for attorney fees, medical costs, and other costs and expenses. OAR 461-195-0305. A presumption exists that the proceeds are for payment of medical expenses, unless otherwise identified. OAR 461-195-0305. A certain amount also may be set aside for future medical expenses, especially if the injured party is a minor. ORS 416.590, 416.600; OAR 461-195-0320.

If a child in a TANF family is injured, the State will assert a lien only to the extent of medical assistance provided for that child. The State will not assert a lien for the cash assistance received. However, if an adult in the family is injured, the State will attempt to attach a lien for the amount of

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both cash and medical assistance that can be attributed to the personal injury. For medical assistance, it will be the amount paid for the injured individual. For TANF, depending on the circumstances, it may include assistance that has been provided to the entire family. If the family has medical coverage through a CCO, the OHA may assign its lien to the CCO for recovery. ORS 416.540(3); OAR 461-195-0321.

Effect of Settlement on Eligibility for Assistance

Once the matter of the lien has been settled, it is essential to consider the effect of the final settlement on your client's eligibility for public assistance programs.

When the family receives a personal injury settlement, the net proceeds after payment of the lien, costs, attorney fees, etc., will be compared with the TANF resource limit. The family will be ineligible for TANF only for so long as they retain proceeds in excess of that limit. Once the family spends the money down to the resource limit, the family will again be eligible for TANF benefits. If the client has other resources, those resources, along with the personal injury settlement proceeds, will count toward the resource limit for all public assistance programs.

TANF families participating in Oregon's Job Opportunities and Basic Skills (JOBS) program have a resource limit of \$10,000. For all others, the resource limit is \$2,500.³ Thus, those families participating in the JOBS program can receive net personal injury settlement proceeds of up to \$10,000 before it affects their TANF benefits.⁴ OAR 461-160-0015. As long as they receive TANF, they will continue to qualify for medical assistance.

For Supplemental Nutrition Assistance Program (SNAP) benefits (formerly food stamps), the personal injury settlement proceeds are not counted at all if the family is "categorically eligible." A family is categorically eligible if the family is also receiving TANF or Supplemental Security Income (SSI),⁵ has a household member working under a JOBS Plus agreement, or has income less than 185 percent of the federal poverty level and does not have liquid assets (assets that are easily accessible and do not need to be sold to access their value) in excess of \$25,000 and has received a pamphlet about Information and Referral Services. OAR 461-135-0505.

For families who receive SNAP benefits but do not fit into one of the categories listed above, the personal injury settlement proceeds are considered a resource and will be compared with the SNAP resource limits.⁶ OAR 461-140-0120. If the proceeds exceed those limits, the family will be ineligible until the proceeds are spent to below the SNAP re-

source limit. Categorical eligibility lasts only as long as the family is eligible for the other assistance program that makes the family categorically eligible. Alternatively, if the eligibility is based on income less than 185 percent of the federal poverty level, having liquid assets not in excess of \$25,000, and receipt of the Information and Referral Services pamphlet, then categorical eligibility lasts only for the duration of the SNAP certification period of one year. Once the client is no longer categorically eligible, the client will have to spend down to be below the SNAP resource limit before reapplying for SNAP benefits.

For SSI, the personal injury settlement proceeds are considered income in the month received and resources in the following months. 20 CFR §§416.1121(f), 416.1207(d). The individual will be ineligible for SSI in the month the settlement is received if it exceeds the income limits. In the following months, the individual will be ineligible as long as the remaining funds, along with the individual's other countable assets, exceed the resource limit of \$2,000 for an individual and \$3,000 for a couple. 20 CFR §416.1205. Once the money is spent down to below the resource limits, the individual or couple will re-qualify. An overpayment for the month in which the money was received is likely, but that overpayment should be waived as long as the client promptly reports to the Social Security Administration (SSA) that he or she received the settlement. As with TANF, as long as the client receives SSI, the client will continue to qualify for medical assistance (i.e., Medicaid).

Each of these programs (TANF, SNAP, and SSI) has limits on the value of noncash resources that the individual can retain. Therefore, the client should be cautious about how money is spent to reduce it below the resource limits. Some items, such as motor vehicles, have separate value limits; and some or all of the equity value may be excluded. The rules are different for each program. Other resources are excluded regardless of value, such as the client's home, furniture, household goods, and personal belongings. See OAR Chapter 461, Division 145; 20 CFR §416.1216.

The client cannot give away the proceeds of the settlement in most cases. The client must receive some value in return. Most programs have a transfer-of-assets disqualification period, which may be lengthy depending on the benefit and the amount transferred.

There is no resource limit for Social Security Disability Insurance (SSDI) benefits. Thus, a personal injury settlement will not affect those benefits. However, some clients may receive a combination of SSDI and SSI benefits. The settlement could affect the SSI portion of the benefits.

Many people confuse SSDI and SSI benefits. A client may know that he or she is on “disability” but may not know which program is involved. Since the income and resource rules are very different, it is important to verify whether the client receives SSDI, SSI, or both.⁷

If you are representing a client on a personal injury claim who receives public assistance benefits, it is advisable to call your local Legal Aid or Oregon Law Center office for advice before finalizing the terms of the settlement.

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Thanks to Lorey H. Freeman and Karen Berkowitz for their assistance with a previous version of this article.

¹ They must report to the Personal Injury Liens Unit, PO Box 14512, Salem, OR 97309, 503.378.4514, FAX: 503.378.2577. OAR 461.195.0310.

² ORS 416.610 only gives the OHA, not DHS, the right to file a claim against an individual who fails to give notice and settles a claim before the OHA can satisfy its lien for medical assistance. DHS, by rule, grants itself and CCOs this authority with respect to TANF benefits and recipients of Medicaid benefits through a CCO. OAR 461-195-0310(6).

³ OAR 461-160-0015.

⁴ Includes receipt by the attorney representing the client, so long as the attorney has settled all claims and can disburse the money to the client.

⁵ Supplemental Security Income (SSI): a federally funded disability program for low-income individuals who do not qualify for Social Security Disability Insurance (SSDI) or whose monthly SSDI benefit payment, and other income, is \$733 or less.

⁶ \$3,250 for households with at least one member who is age 60 or over and \$2,250 for all other households. OAR 461-160-0015.

⁷ You can get this information directly from the Social Security Administration (SSA) with a written release, or you can call SSA’s toll-free number (1.800.772.1213) with the client present. SSA will verify the client’s identification and will give the client the necessary information.