

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, ADC), there are two important issues for you to consider before you enter into that settlement. First, the State will attach a lien to the settlement to the extent of all assistance (cash and medical) that they have provided since the date of the injury. Second, the client's net settlement may affect her eligibility for TANF.

ORS 416.540 provides:

...The Department of Human Services 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 settlement or compromise.

This provision grants Department of Human Services (DHS) a lien against any judgment on or settlement of a claim for damages for personal injuries. ORS 416.510(4). This does not include SAIF or workers' compensation claims. It also excludes claims that are not for personal injuries, such as claims for violations of the Fair Housing Act.

TANF applicants and recipients are required to report to DHS¹ and to their managed care organization (MCO) that they have made a claim for damages for

personal injuries. They must do so within ten days of initiating that claim. This notification must include the names and addresses of all parties against whom the action or claim is brought. ORS 416.530; OAR 461-195-0310. If the TANF recipient fails to report the claim for personal injuries, and the claim is settled before DHS or the MCO has the opportunity to satisfy its lien, the State will have a claim against the client to the extent of the lien. OAR 461-195-0310; ORS 416.610.

Although a lien could exceed the amount of the personal injury claim, DHS rules permit the recipient to keep 25% of the net settlement, after payment of attorney fees, medical costs, other costs and expenses. OAR 461-195-0305 and 461-195-0325. A certain amount may also be set aside for future medical expenses, especially if the injured party is a minor. ORS 416.590; 416.600, OAR 461-195-0320. These provisions do not apply if DHS has assigned its lien to an MCO.

If the 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 entire amount of both cash and medical assistance that has been provided to the entire family. If the family has medical coverage through an MCO, DHS may assign its lien to the MCO for recovery. OAR 461-195-0321.

Once the matter of the lien has been settled, it is essential to consider the effect of the final settlement on your client's TANF benefits.

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IN BRIEF INCLUDES CLAIM PREVENTION INFORMATION THAT HELPS YOU TO MINIMIZE THE LIKELIHOOD OF BEING SUED FOR LEGAL MALPRACTICE. THE MATERIAL PRESENTED DOES NOT ESTABLISH, REPORT, OR CREATE THE STANDARD OF CARE FOR ATTORNEYS. THE ARTICLES DO NOT REPRESENT A COMPLETE ANALYSIS OF THE TOPICS PRESENTED, AND READERS SHOULD CONDUCT THEIR OWN APPROPRIATE LEGAL RESEARCH.

When most families receive a personal injury settlement, the net proceeds after payment of the lien, costs, attorneys fees, etc., will be compared to the TANF resource limit. The family will be ineligible for TANF only for so long as they retain proceeds in excess of that limit. There is no disqualification period.

TANF Families participating in the JOBS program have a resource limit of \$10,000. For all others, the resource limit is \$2500.² Thus, those families participating in the JOBS program can receive net personal injury claim proceeds of up to \$10,000 before it affects their TANF benefits.³ OAR 461-160-0015. As long as they receive TANF, they will continue to qualify for medical assistance.

Personal injury settlements may affect a client's eligibility for other public assistance programs, as well.

For Food Stamps, the personal injury settlement proceeds are not counted at all if the family is receiving TANF or Supplemental Security Income (SSI),⁴ or has a household member working under a JOBS Plus contract. For individuals who receive Food Stamps but no cash assistance, the settlement proceeds are compared to the Food Stamp resource limits.⁵ If they exceed those limits, the individual will be disqualified for one month or until the proceeds are spent to below the Food Stamp resource limits. OAR 461-140-0120(4).

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); 20 CFR §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 so long as the remaining funds exceed the resource limit which is \$2000 for an individual and \$3000 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. There will likely be an overpayment for the month the money was received but that overpayment should be waived so long as the client promptly reports to the Social Security Administration that he or she received the settlement. As with TANF, as long as the client receives SII, she will continue to qualify for medical assistance (i.e., Medicaid).

Each of these programs (TANF, Food Stamps, and SSI) have limits on the value of non-cash resources that the individual can retain. Therefore, the client should be cautious about how money is spent in order to reduce it below the resource limits. There are some items, such as motor vehicles, for which there are separate value limits. Other resources are excluded regardless of value, such as the home. See OAR Chapter 461, Division 145. Also, the individual must receive some value in return, the money cannot be given away, in most cases.

There is no resource limit for Social Security Disability benefits. Thus a personal injury settlement will not affect those benefits.

If you are representing a client who receives public benefits, it is advisable to call your local Legal Aid or Legal Services office for advice before finalizing the terms of that settlement. In the new climate of "welfare reform," the rules are likely to change.

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¹They must report to the Personal Injury Lien Unit OAR 461-195-310.

²OAR 461-160-0015.

³Receipt 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.

⁴Supplemental Security Income: a federally funded disability program for low-income individuals who do not qualify for Social Security Disability (SSD) or whose monthly SSD payment is less than \$532.

⁵\$3,000 for households with at least one member who is age 60 or over; \$10,000 for groups with one member working under a JOBS Plus agreement; and \$2,000 for all other households. OAR 461-160-0015.