

OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

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 | INFORMATIONAL LETTER |
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TRANSMITTAL: 01 INF-8

TO: Commissioners of
 Social Services

DIVISION: Temporary
 Assistance

DATE: March 8, 2001

SUBJECT: Temporary Assistance (TA) and Food Stamps (FS) Policy:
 The Treatment of Supplemental Needs Trusts (SNTs) and
 Reverse Annuity Mortgage (RAM) Loans

 SUGGESTED

DISTRIBUTION: Temporary Assistance Directors
 Food Stamp Directors
 CAP Coordinators
 Staff Development Coordinators
 Fair Hearing Officers
 HEAP Liaisons

CONTACT Temporary Assistance Policy - Central Region (518)
 PERSON: 474-9344; Food Stamps Policy - Eastern Region (518)
 473-1469; HEAP Policy - Western Region (518) 473-
 0332

ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
97 ADM-21		352.16(a)	EPTL 7-1.12	FSSB-XII-G	
97 ADM-8		352.22(c)	SSL 104	FSSB XVI-C	
92 ADM-43		387.9(b)	7 CFR	PASB XVI-G	
		387.11(g)	273.9(c)(4)		
		387.11(h)	SSL 131-x		

OTDA-329EL (REV. 11/98)

I. Purpose

The purpose of this letter is to clarify to social service districts the treatment of Supplemental Needs Trusts and Reverse Annuity Mortgage loans for Temporary Assistance, Food Stamps and the Home Energy Assistance Program.

II. Supplemental Needs Trusts

A. Introduction

Chapter 433 of the Laws of 1993 enacted Section 7-1.12 of the Estates, Powers and Trusts Law (EPTL) which allows for the establishment of Supplemental Needs Trusts (SNTs) for individuals with severe and chronic or persistent disabilities.

The intent of this Law was to provide a statutory framework for the use of trusts to meet the supplemental needs of persons with disabilities whose basic needs are met through government benefits. The purpose is to encourage future care planning by instilling greater confidence in families of persons with disabilities that the trusts they establish for recipients of government assistance will be used for the purposes they intend.

SNTs are frequently encountered more when determining eligibility for Medicaid than TA or FS. This occurs since individuals that qualify for SNTs are normally in receipt of some form of federal disability benefits (i.e. SSI, RSDI etc.) which may reduce the likelihood of qualifying for TA or FS benefits. However, in recent months, this Office has received several questions from districts regarding the treatment of SNTs for TA and FS eligibility.

B. SNT Definition

A SNT is 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:

- o the beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from the trust; and
- o 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.

The courts cannot mandate the invasion of the principal of a SNT if this would reduce the beneficiary's eligibility for government benefits. However, actual disbursements from the trust may be considered to be income or resources of the beneficiary under the rules of the specific government program.

If the trust instrument provides for the release of disbursements for food, clothing or shelter it must also contain a provision stating that if such clause would result in the loss of government benefits, then the provision would be voided and the trustee's authority to make disbursements for these purposes terminated. Trusts providing for food, clothing or shelter disbursements that do not contain this provision do not qualify as a SNT.

C. Treatment of SNTs for Temporary Assistance

Very few TA a/r's are likely to possess a SNT. Nonetheless, the treatment of SNTs for TA is outlined below.

1. Resources

A SNT is not considered an available resource for the purpose of determining TA eligibility. In addition, a district must not require a TA applicant/recipient (a/r) as a condition of eligibility to petition the court to release an SNT for basic maintenance, since the statute specifically precludes the court from releasing funds under these conditions.

2. Lump Sums

Under Office regulation 352.29(h) any lump sum income received by a TA recipient must be budgeted to calculate a period of ineligibility for TA. The source of income used to establish an SNT can vary greatly including lawsuit settlements, inheritances, etc. If a TA recipient receives a lump sum, the district must determine a period of ineligibility, in accordance with Office regulations, even if it is the recipients intent to later establish an SNT with the lump sum funds.

However, if 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.

3. Income

The EPTL specifically provides that disbursements from an SNT must be considered under the rules of the government program from which a person is receiving benefits.

Office regulation 352.16(a) governs the treatment of trust income for Temporary Assistance programs. This rule requires that income earmarked for a specific purpose must be exempted for TA unless it supplements benefits provided for in the TA standard of need. Since the TA standard of need is inclusive, including basic maintenance items required for day-to-day living such as shelter, energy, food etc., disbursements from a SNT must be considered income and budgeted to determine eligibility and benefit unless the disbursement is clearly for an item not provided for in the standard of need.

The following are some (but not all) disbursements that would be exempt and not counted as income for TA:

- o education expenses (for example: tuition, cost of school supplies, etc.)
- o medical expenses, including the cost of private health insurance, or medical expenses not covered by Medicaid or health insurance
- o childcare costs
- o expenses related to special needs of the disabled beneficiary (housekeepers, aids, social workers, therapists, vocational rehabilitation aides, etc.)
- o legal expenses
- o any other expense not provided for in the TA standard of need.

The following are some (but not all) disbursements that would not be exempt and must be counted as income for TA:

- o cash expenditures or reimbursement for day-to-day living expenses
- o cash expenditures or reimbursement for hobbies, vacations, recreation or entertainment
- o cash expenditures or reimbursement for any other expenses which are provided for in the TA standard of need.

4. SSI Interim Assistance/Liens

The statute specifically provides that in the event a SNT is established from the proceeds of a retroactive SSI payment, the district may recover Safety Net Assistance (SNA) benefits provided as SSI interim assistance.

The Law also provides that a SNT is not considered an asset of the beneficiary for purposes of recovery under section 104 of the Social Services Law. Accordingly, no action can be brought against the trust or the trustee to recover the cost of assistance.

D. Treatment of SNTs for Food Stamps

Resources/Income

Resources having a cash value which is not accessible to the household, such as irrevocable trust funds, must be excluded as a resource. Accordingly, neither the trust principle, nor interest accruing to the trust, would be countable as income or resources for Food Stamps. Any cash disbursements, however, must be evaluated under normal FS budgeting rules.

Disbursements from a 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. To be excluded, reimbursements must be for an identified expense other than normal living expenses. Disbursements made directly to Food Stamp household 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.

A 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.

E. Treatment of SNTs for HEAP

1. Resources

A SNT is not considered an available resource when determining eligibility for emergency HEAP. Also, a district must not require a HEAP applicant as a condition of eligibility to petition the court to release an SNT to ameliorate the emergency. All resources are not considered when determining eligibility for regular HEAP.

2. Income

Disbursements from an SNT are treated in the same manner for HEAP as they are under TA programs. Specifically, income earmarked for a specific purpose must be exempted for HEAP unless it is being used to provide for everyday living expenses. In the event disbursements are used for everyday living expenses the funds must be considered available income and budgeted in determining HEAP eligibility. The exemptions specified above in C.3 apply to HEAP as well as TA.

III. Reverse Annuity Mortgages

A. Introduction

Under reverse mortgages, qualifying individuals can borrow against the equity in their home. Usually the household receives monthly payments, less interest and fees, for a set period. The mortgage holder will hold a lien on the property until repayment is completed.

B. Treatment of RAM Loans for Temporary Assistance

The treatment of RAM loans for temporary assistance depends on the case category of the individual who has entered into RAM loan arrangement.

1. Federal Categories

For Family Assistance (FA - case type 11) and federally participating Safety Net Assistance (SNA-FP - case type 12) applicant/recipients (a/r's), the proceeds received from a reverse mortgage loan are exempt and disregarded as income and resources in determining eligibility and degree of need.

2. Non-Federal Category

For Safety Net Assistance Federally Not Participating (SNA - case types 16 and 17) a/r's, the proceeds received from a RAM loan are not exempt and must be counted as unearned income. For these individuals, RAM loan proceeds must be budgeted as unearned income source code "08" (upstate WMS) or income source code "04" (NYC WMS) if they are received as monthly payments, or budgeted as lump sum if they are received on a onetime only basis.

Accumulated proceeds from RAM loans must be treated as a resource for federally not participating SNA a/r's.

C. Treatment of RAM Loans for Food Stamps

For Food Stamps, money received in recurring amounts or in a lump sum as part of a reverse annuity mortgage which can be determined to be a loan is excluded as income. If repayment on the reverse annuity mortgage is made, either by the client repaying the loan directly or by the property reverting to the bank, it meets the acceptable definition of a loan. Documentation that the income from the reverse mortgage is a loan, such as a copy of the loan document signed by both parties, should be retained in the case record. Accumulated proceeds from a RAM loan, however, must be counted as a resource for Food Stamps.

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D. Treatment of RAM Loans for HEAP

For the Home Energy Assistance Program (HEAP), proceeds from a reverse annuity mortgage loan continue to be exempt for both regular and emergency HEAP.

IV. Effective Date

Since this INF simply clarifies existing policy, there is no effective date.

Patricia A. Stevens
Deputy Commissioner
Division of Temporary Assistance