INCARCERATION AND PUBLIC BENEFITS

When first incarcerated: Report incarceration to Social Security and/or the Department of Social Services immediately to avoid an overpayment.

Public Benefits while in jail or prison:

Medical care
- Inmates have a constitutional right to health services while in jail or prison and can request it.
- Medicare and Medicaid* do not pay for any services while in jail or prison (*Inmate Medicaid Enrollment exception)

Food Stamps
- Individuals cannot receive food stamps while incarcerated.

Work First (WFFA/TANF)
- If inmate was the recipient of Work First funds, a member of their family should contact the Department of Social Services to have the funds sent to the person who will be the child’s caretaker.

Social Security
- Beneficiaries cannot receive Supplemental Security Income (SSI) payments for months they have been in jail or prison for the full calendar month (first day through last day of the month).
- Beneficiaries can receive Social Security Disability (SSD) benefits until they have been convicted of a criminal offense and spent 30 days in jail or prison. This means payments will stop on the 31st day after incarceration, no matter what day of the month.

Public Benefits for inmate’s family during incarceration: An individual’s family may be eligible for food stamps, Work First, and/or Medicaid while they are incarcerated and not earning income. The family should go to the Department of Social Services to review eligibility. The inmate’s individual disqualifications will not affect their family.

Getting benefits back after release: After release, individuals should be able to get their benefits back and/or apply for benefits they did not have prior to arrest.
- Food Stamps and Work First – Apply at the local Department of Social Services (DSS) as soon as possible after release. Individuals with very low income levels may be eligible for expedited processing for Food Stamps. Must meet other requirements as well.
- Medicaid – Benefits may have been suspended or terminated. Check with DSS after release.
- Social Security Disability (SSD) – Benefits are suspended during incarceration and restart when upon release. Notify Social Security of release date as soon as possible.
- Supplemental Security Income (SSI) – If incarcerated less than a year, benefits will be reinstated after Social Security is notified of release. If incarcerated for more than a year, must reapply for SSI benefits. Individuals should reapply 3 months before release date. Ask prison about prerelease agreement of have friend or family member make appointment with local Social Security office.
DISQUALIFICATIONS AND HOW TO AVOID THEM

Drug Felony Convictions for Work First and Food Stamps: An individual who both committed and was convicted under Federal or State law on or after August 23, 1996, of a controlled substance felony is permanently disqualified. **Exception** - No permanent disqualifications for Class H or I substance felonies committed in NC. May reestablish eligibility after 6 mos. if participate in approved substance abuse program.

Social Security Fleeing Felon Rules: Class Actions have changed SSA eligibility re: felony arrest warrants and probation violations.
- **Post-Martinez**, only felony warrants with offense codes 4901 (escape), 4902 (flight to avoid), and 4999 (flight escape) are still subject to termination of benefits.
- **Post-Clark**, an outstanding warrant is no longer sufficient evidence that an SSA beneficiary is in fact violating probation or parole. Must have additional proof of violation.
- If benefits terminated for one of above reasons, address underlying warrant or violation if possible and advise client to request reconsideration and a waiver from SSA. Refer to Legal Aid/ Legal Services.

MEDICAID

**Why it matters:** Medicaid can provide coverage for diagnosis, evaluations, testing (including IQ testing, psychol. tests, reading tests, etc) and treatment. Medicaid can also provide an institutional alternative to incarceration – If sentenced to treatment, Medicaid will pay for mental health, group homes, etc. Ask court to delay sentencing until Medicaid Services approved. Legal Aid/ Legal Services can help appeal denials.

**Who is eligible:**
- **Citizenship requirements:** USC or LPR (with 5 year wait if not under 21, pregnant, or refugees). If parent undocumented, citizen kids are eligible. DSS cannot require SSN or report to Immigration.
- **Eligibility categories:** Under age 19 and family income under 200% poverty (Health Choice for age 6-18 if income 100-200% of poverty); Age 19-20 with low family income (eg $544/mo for HH of 3); Pregnant women with family income under 185% of poverty; Adult with child in care with very low income (eg 544/mo HH 3); Over 65 or disabled with income under 100% poverty.
  - If age 21 to 64 and no child in care and not disabled under SSA rules, no Medicaid even if zero income and assets – Unless N.C. elects Medicaid Expansion under the ACA.

DEFENDING WELFARE FRAUD CHARGES

- For both TANF and Food Stamp Intentional Program Violations (IPVs), DSS must choose between criminal prosecution OR administrative disqualification.
- **Issues to watch for:** USDA has prohibited coercive tactics by DSS fraud investigators such as sending letters requiring in person meetings. Intellectual and educational limitations often are known to DSS but fraud investigators often do not consider this.
- Right to continued benefits while investigation proceeds.
- Defenses – ADA and Title VI apply. Did DSS consider disabilities, language barriers?
  - Was information available to DSS through another source but DSS failed to act?
  - Who was responsible for reporting information? Who filled out the form?

Additional questions? Contact local Legal Aid/Legal Services office or Doug Sea at 704-971-2593