



Is income from "benefits" included in the Means Test?

The Means Test became a part of bankruptcy law in 2005. The purpose of it is to prevent people with primarily consumer debts from discharging their debts in Chapter 7 bankruptcy if they are deemed to have enough income to use some of it to pay creditors. If debtors fail the Means Test, they must use another chapter of the bankruptcy code (probably Chapter 13) if they are to do bankruptcy at all.

Income for purposes of the Means Test is gross income during the six months prior to the month in which the bankruptcy petition is filed. Income from all sources is included unless excluded by the bankruptcy code. Sometimes the issue of what types of income are included or excluded determines whether a debtor may use Chapter 7 in bankruptcy.

That brings us to the question of whether "benefits income" is to be included as income for the Means Test. Benefits income is income from sources such as Social Security payments, unemployment compensation payments, and disability payments.

The general rule is that all income is to be included unless it derives from the federal Social Security Act. So let's see how that plays out for a few different types of benefits income.

- Social Security payments – These are definitely not included as income on the Means Test.
- Disability income – The prevailing opinion is that both state disability income and private-plan disability income are included as income on the Means Test.
- Unemployment compensation payments – There is a split from jurisdiction to jurisdiction on this one. I can only recommend that you consult with your bankruptcy attorney about the best course for you to take on this if it matters in your case. My current opinion is, unless you're in a federal court district where there is a decided case saying that unemployment compensation payments may be excluded from income on the Means Test, that you should include it. That is, unless you are willing to risk having your Chapter 7 case not allowed or you and your attorney are willing to assume the possibility of a lengthy and expensive appeal process with an uncertain outcome.

<http://ca-bankruptcylaw.com/2010/04/the-bankruptcy-means-test-and-benefits-income-a-short-course>

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