

# MidPenn Matters



Mission Statement

MidPenn Legal Services is a non-profit, public-interest law firm dedicated to providing equal access to justice and high quality civil legal services to low-income residents and survivors of domestic violence in 18 counties in Central Pennsylvania.

## Bank Account Garnishment and Social Security

**Congress intended Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, and Railroad Retirement benefits to be used exclusively for the benefit of workers and the disabled recipients to ensure a minimum subsistence income.**

*By Patrick Cicero, Esq.  
MidPenn Staff Attorney*

If you are reading this, it is likely not news to you that many of our clients face economic hardship because they do not have access to adequate, fair sources of credit. Recent estimates by the FDIC suggest that as many as 10 million Americans are “unbanked” or “underbanked,” which means that these cash consumers pay high fees for financial services, are susceptible to predatory lenders, or have difficulties acquiring a home or otherwise accumulating assets.

While it is not surprising that cash consumers face high costs for financial services, you may be surprised to learn that many low-income consumers who do have bank accounts also face the perilous threat of having money that is supposed to be protected from creditors taken from their accounts by their very own banks.

Take a recent client, John, for example. John and his wife purchased a Ford automobile a few years ago and entered into a retail installment contract for the purchase. For a variety of reasons, he could no longer make payments and defaulted on the contract. The car was repossessed, sold, and a default judgment totaling \$12,370.64 was entered against the couple for the deficiency judgment, costs, and attorney fees.

John, sixty-seven years old, is disabled and has been unable to work since 1996. His sole source of income is Social Security payments of \$963.00 per month. John is a customer of a local bank where he has a checking account into which his monthly Social Security payments are electronically deposited. On each such electronic deposit a notation is prominently displayed identifying the source of the deposit: “SSA US TREASURY 303 SOC SEC.”

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Bank Account Garnishment & Social Security	1
Credit Cards: Friend or Foe?	4
Thank you	6
MPLS News	7
Office Directory	8

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*Continued From Page 1*

The creditor who received the judgment against John and his wife obtained from the court clerk a writ of execution, which was served on John's bank instructing it to attach all John's bank accounts that are subject to attachment.

Although the bank had actual knowledge that the funds in John's account were Social Security payments and therefore exempt from both execution and attachment, the bank nevertheless froze his account for more than a month.

**While an account is frozen, no money is available to the benefit recipient to cover any expenses for food, rent, or medical care.**

John's account was eventually unfrozen with the assistance of MidPenn Attorney Robin Floor, but not before the Bank deducted \$340.00 – over 1/3 of his monthly income – in legal fees directly from John's account on the basis that it incurred fees to clear up the matter. Only after a lawsuit and many attorney hours were spent on the case did the bank agree to refund the money and not engage in this practice again.

Congress intended Social Security benefits, Supplemental Security Income benefits, Veterans' benefits, and Railroad Retirement benefits to be used exclusively for the benefit of workers and the disabled recipients to ensure a minimum subsistence income. With few exceptions, recipients of these federal benefits are required to have benefits electronically deposited into their bank accounts rather than receiving paper checks. This saves money for the government as it no longer pays postage or check processing charges and ensures that benefits are received more quickly by the recipient. It also protects against loss or theft of the recipient's mail.

To preserve these benefits for recipients, Congress provided that the benefits cannot be seized to pay pre-existing debts, as such seizures would result in the loss of subsistence funds. Each of the statutes



governing the distribution of these funds specifically articulates that these funds are to be free from “attachment or garnishment or other legal process.”

Because of the confusing nature of Pennsylvania's judgment execution rules and despite the explicitness of the federal law and the purpose of these benefits, banks that received garnishment or attachment orders would, until recently, routinely freeze accounts holding these benefits. The old forms that local Prothonotaries sent to the banks told the banks simply to freeze all money that was in the debtor's account. This placed banks in the unenviable position of complying with a state court order to freeze the account in contravention of federal law which held that exempt funds should not be frozen at all. Invariably, the banks choose to resolve the conflict between the state court order and federal law by complying with the state directive. It was then up to the debtor to request that the exempt funds be released. While advocates were ordinarily successful in getting exempt monies released, the mere freezing of the account created innumerable additional hardships for the benefit recipient.

Advocates at MidPenn Legal Services realized that this presented an incredible hardship for low-income seniors and the disabled and spearheaded an effort with other legal service advocates to change the way Pennsylvania's garnishment procedures operate.

While an account is frozen, no money is available to the benefit recipient to cover any expenses for food, rent, or medical care. Checks and debits previously drawn on the account (before the recipient learns that the account is frozen) are returned unpaid, incurring fees. Subsequent monthly deposits into the account are also subject to the freeze and inaccessible to the recipient. In order to unfreeze the account, the recipient generally must find an attorney or go on their own to the local court house, fill out a form stating that the funds in the account are exempt, and then present to the creditor the form and accompanying proof in the form of letters from Social Security and bank statements. If the creditor voluntarily agrees to release the funds, the creditor sends a release of the attachment to the bank. At this point, it may still take several days or even weeks before the funds are actually released. However, if the creditor does not voluntarily agree to release the funds, the only way to have the bank account unfrozen is for the recipient to request a hearing.

After much debate, our legal aid consortium proposed a simple solution: change Pennsylvania's form to bring it into compliance with federal law. The rules now require banks to conduct an examination and explicitly prohibit them from freezing funds that are "deposited electronically on a recurring basis and are identified as being funds that upon deposit are exempt from execution, levy or attachment under Pennsylvania or federal law . . ." Pa.R.C.P. 3252. This protection now means that banks are prohibited from freezing Social Security and other benefits designed to alleviate the burdens of poverty.

Although one would think that the rule change would also put an end to the practice of a bank charging fees when it receives a garnishment order, advocates throughout our program have found that many banks are still routinely charging fees as high as \$200 despite knowing that all of the funds in the account are exempt. Although a creditor who has a judgment cannot access the money in the account because of the protections

afforded by federal law and Pennsylvania's new procedures, banks help themselves to the funds based on their interpretation that they have a contractual right to do so because of language contained in a pre-printed deposit contract that the customer only receives after they open an account. In the author's opinion, this practice violates section 407(a) of the Social Security Act which broadly states that these accounts shall not be subject "to execution, levy, attachment, garnishment, or other legal process." 42 U.S.C. 407(a)(*emphasis added*). While there is some disagreement by the courts on whether a bank's self-help set off constitutes "other legal process," the better approach is to find that it does. It is illogical for federal law to protect Social Security and other federal benefits from judgment execution with all of the checks afforded by the legal system while at the same time permitting banks to simply dip into the depositor's account and take the same exempt funds without providing *any* due process or judicial intervention.

Unfortunately, without further clarification through the courts or the legislature, this issue will remain pervasive for many of our clients and will continue to require negotiation and litigation to protect the public benefits of Pennsylvania's low-income consumers. Our clients and friends should ask their banks whether it is the bank's practice to impose fees on an account containing solely Social Security money or other exempt funds when the bank receives an order attempting to garnish the account. If this is the bank's practice and they will not change it, then I encourage you to vote with your wallet and take your banking services elsewhere. Many credit unions and, somewhat ironically, the larger national banks do not impose these fees.

In the meantime, MidPenn continues to do advocacy and litigation in this and other areas affecting the lives of low-income consumers with the goal of protecting the few assets that our clients have from the seemingly endless tricks and traps put in place by mainstream, and not so mainstream, financial service providers.

# Credit Cards: Friend or Foe?

By Brenda Zimmerman, Esq.  
MidPenn Staff Attorney

Credit cards have become one of the most common forms of lending in the United States. Almost everyone, including members of low and middle income households, has access to credit cards today.

To demonstrate the widespread use of credit cards, the website for Americans for Fairness in Lending (<http://www.affil.org>) offers the following statistics:



Credit cards represent one of the most common forms of lending: U.S. consumers charged more than \$1.8 trillion to over 691 million credit cards in 2005.



The credit card industry is grossly profitable, and highly costly to many consumers. In 2004, the revenue generated from all fees alone was \$24 billion.

## What are the problems?

While credit cards offer a convenient form of payment and can be useful when an emergency arises, there are many reasons why your credit card may not be your friend.

Some credit card issuers use unsavory marketing practices when soliciting customers. For example, some credit card issuers do not fully disclose all of the terms and conditions of the cards or fully explain your obligations.



Credit cards typically come with very high costs. Interest rates are usually very high and rates can go even higher if a card holder misses a payment or sends a payment late.

Some credit card companies will raise the interest rate on your account if you are late with a payment on a different account or if they check your credit report and your credit score has fallen.

Also, credit card companies charge significant fees such as over limit fees, late fees, or cash advance fees. Late fees or over limit fees can be about \$35 and can pile up month after month if you're having problems making your payments.

Consumers making low minimum monthly payments will have difficulty paying off their debt. If you make minimum monthly payments, it will take you longer to pay off the debt and the credit card company will earn more profits!

Credit card companies have become more aggressive with collections. When a credit card holder is late with payments or misses payments, collection departments or outside collection firms can be very difficult to deal with. Often, debt collector representatives are very forceful, threatening and causing anxiety in consumers. Sometimes, the debt collectors are very rude and insensitive. Also, many credit card companies and debt collectors are suing consumers in court, hoping that they can easily obtain judgments against consumers so they can try to sell the consumer's property to satisfy the debt.

**Tips to Consider:**

- Consumers should shop around for the best terms when opening an account.
- Don't accept multiple offers. You are more likely to get in trouble if you have a number of credit cards.
- Credit cards should be used wisely. Always try to pay off your balance each month. Don't make minimum payments only.
- Make your payments on time.
- Avoid purchasing special goods offered by your credit card such as life insurance or credit protection. Most of these products are not good deals.
- Don't "max out" your card.

**What to do if you have a problem.**

Call the credit card company and try to resolve the issue.

Report mistakes or disputes immediately and in writing.

Talk to a lawyer. MidPenn Legal Services may be able to answer some of your questions about credit cards.

**MidPenn Advocacy:****The Case of the Predatory Lender**

Tara, a young mother of four with a degree in finance, was working and making ends meet when domestic violence caused her world to blow up. Her husband went to jail for assaulting her and she fell behind on bills. To save her home, she filed a Chapter 13 bankruptcy. Tara got a better job and was able to get caught up with her payments, but just after getting out of bankruptcy, the mortgage company again tried to foreclose, alleging unpaid fees. Tara made every attempt to reinstate her mortgage. The company told her she had to come up with \$3000 in fees, so she went to every relative and friend she knew and got the money. But the mortgage company then insisted she owed an additional \$2000.

Tara met with MidPenn Attorney Patrick Cicero. Attorney Cicero couldn't understand where the mortgage company was getting their numbers. When he attempted to negotiate the case and the mortgage company stonewalled him, Attorney Cicero filed papers to stop the sale, alleging that the fees were both arbitrary and excessive. The mortgage company settled the case and rewrote the mortgage. Tara's interest rate was reduced from an adjustable 10.2% to a fixed rate of 7.5%. All monies paid toward fees were applied to her principle balance. The mortgage company lawyers even waived their attorney's fees.

# Thank You!

MidPenn is pleased to acknowledge donations & grant awards from July 1 to November 30, 2007.

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M.S. Grumbacher Foundation  
Robert C. Hoffman Charitable Trust  
United Way of Franklin County  
United Way of York County  
WellSpan Health  
White Rose Foundation  
York Foundation



# MPLS News

## Human Services Grant Increases Legal Services to Centre County

Help is on the Line in Centre County. The Centre County Council for Human Services recently awarded MidPenn Legal Services a grant in support of MidPenn's new telephone advice project in Centre County. Help is on the Line is a pilot project that currently serves Bedford, Blair, Centre, Clearfield, Franklin, Fulton, Huntingdon, Juniata and Mifflin Counties. Eligible residents of these counties can call for advice on **housing** issues and **consumer** issues. A major goal of this project is to provide advice and information to individuals and families so they can make informed decisions about problems they are facing and avoid crisis situations.

How to access the hotline:

Bedford, Blair, Centre, Clearfield, Huntingdon, Juniata and Mifflin Counties: **1-800-326-9177**  
Franklin and Fulton Counties: **717-264-5354** or **1-800-372-4737**.

## HCBS For Seniors Project

MidPenn and the Pennsylvania Health Law Project have received an Interest on Lawyer's Trust Account grant to educate, counsel and represent clients who are 60 years of age and older, who need supportive services to remain at home and to prevent the deterioration of their health status so they can avoid unnecessary and unwanted institutionalization.

The Home and Community Based Services for Seniors (HCBS) Project began on December 3, 2007. If you feel you may qualify for this project, contact your local MidPenn office to speak to a member of the HCBA team.

## Robert C. Hoffman Charitable Endowment funds Predatory Lending Seminar

On March 5, 2008, MidPenn Legal Services will be conducting a half day seminar titled "*Educating Health & Human Services Personnel about Predatory Lending.*"

This seminar, funded by a grant from the Robert C. Hoffman Charitable Endowment, is intended to provide information and educate Health and Human Services staff about predatory lending and payday loans, as well as debt collection practices. This will help staff identify clients who have these issues and problems.

The seminar will be held at Adams County Agricultural & Natural Resources Center – 670 Old Harrisburg Road, Gettysburg. March 5, 2008 from 9:00 am to 12:00 p.m. For more information contact Crystal Golden at 717/334-7624 or [cgolden@midpenn.org](mailto:cgolden@midpenn.org).

## Help With Heating Bills

You may be eligible for the Low Income Home Energy Assistance Program (LIHEAP). LIHEAP helps low-income homeowners and renters pay their heating bills.

Crisis grants are also available if your furnace is broken or your utility service is being shut-off.

To apply for LIHEAP contact your local county assistance office. You do not have to be receiving cash assistance to get help from LIHEAP.



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*"True peace is not merely the  
absence of tension; it is the  
presence of justice."  
Martin Luther King, Jr.*

**We're on the web!**  
**[www.Midpenn.org](http://www.Midpenn.org)**

**Community Legal Education  
Programs**

MidPenn offers free legal education programs to community groups and human services agencies throughout our 18 county service area. Topics including, but limited to:

Family Law  
Consumer Law  
Employment Law  
Public Benefits  
Housing Law

For more information on our education programs or to schedule a speaker, contact your local legal services office.

**MidPenn Legal Services Office Directory**

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