

# **I have fallen behind in paying my bills and am receiving phone calls, letters and/or court papers from debt collectors. What are my options?**

After falling behind in debt, a person must choose between using limited income to pay rent, mortgage, utility bills, cable/phone bills or credit card bills. If you cannot afford to pay all of your monthly bills, the first task is to prioritize your debt. The *lowest* on the priority list should be the payment of unsecured credit card debt.

## **Do not pay your credit card bills before making sure you have enough money to pay rent or mortgage, food and utility bills.**

If you have unpaid credit card debt, you will be contacted by either the credit card company directly or a collection agency. When credit card companies have difficulty collecting payments, they sell the debt to collection agencies that stay in business by dedicating their time solely to debt collection efforts. As a result, collection agents are extremely persistent in contacting a person who is in debt. The reason you will receive countless phone calls and letters from debt collectors is because they may have no other way to collect the debt.

When a person applies for a credit card, there is usually nothing offered up as collateral; in other words, there was no piece of property given up to guarantee that the credit card company will get paid if the person's income is insufficient to cover the debt. Therefore, the credit card company cannot repossess a car, put a lien on a person's real estate property or put a person in prison to collect the debt. The only way the credit card company can collect on the debt is by receiving payment from the income of a credit card holder. Moreover, if a person's income consists only of public assistance, then that income is protected by law from being collected to satisfy credit card debt. Below, the topic of protected income is discussed in more detail.

Unlike credit card debt, if you fall behind in paying your rent, mortgage or utility bills, basic living necessities are at risk. Those types of creditors have options beyond merely attempting to collect your income for repayment. If you fall behind on your rent or mortgage payments, you are at risk for losing your home. The landlord or mortgage company will not waste their time chasing you for a payment because they have another way of collecting debt; namely, they can begin eviction or foreclosure proceedings. Similarly, utility companies can shut off the gas, electricity, oil, phone and so on. If you are unable to pay your utility bill, please refer to the AAC Legal Services FAQ entitled, "Can utilities companies turn off or leave off my utilities service even if I am seriously ill and cannot pay the bill?" In summary, despite the persistent calls and letters from debt collectors, it is important to pay rent, mortgage and utility bills before credit card bills.

## **What will happen if I cannot pay my credit card bills?**

The following is a summary of what to expect in various circumstances. If you do not pay your credit card bills, two things may happen:

- 1) you may receive phone calls and letters from the creditor, and/or
- 2) the creditor may file a claim in small claims court or district court seeking a judgment and then attempt to gain permission to garnish your income.

### **1. The debt collection agents and/or creditors began collection efforts.**

It is important to know that some tactics used by collection agents are deemed illegal; namely, calling your workplace without your approval, calling before 8am or after 9pm, using insulting language, threatening arrest and contacting you after receiving a written request from you to stop contact. It is very important to write down the details about these collection efforts. In a journal, keep track of the date, time and any offensive language used in the conversation. This information will be useful if you need evidence of the illegal collection tactics.

If your creditors begin to utilize methods that seem like harassment, send a ‘*cease letter*’ to inform them of your situation; for a sample of a cease letter, please contact AAC Legal Services. A cease letter will require a debt collector to stop all contact related to debt collection. However, contact regarding a pending lawsuit is legal and the company is required to mail you information regarding a lawsuit. Although cease letters are only binding on debt collection agencies, most credit card companies will stop contact.

Before sending the cease contact letter, make a copy for your records. Send the cease letter via certified mail, in order to have proof that the debt collector received the letter. If the creditor continues to contact you, send a second letter via certified mail after making a copy. Continue keeping a journal of the dates and times of contact and the content of the conversation.

### **2. I received court papers about a claim the debt collector filed in court.**

If you are unable to pay your credit card bills, the credit card company or collection agency has the right to file a claim in court to collect the debt. It is important to read, understand and answer any mail regarding a court hearing. If you have received court papers and would like assistance understanding your responsibilities, please contact AAC Legal Services.

To determine what to expect upon receipt of court papers, there are two main factors to consider:

- A. the type of court notice you received and
- B. the type of income you collect.

**A. What type of court notice did you receive?**

**1. I received notice that a hearing is scheduled in court on a debt that I owe. What do I do to prepare?**

When you receive notice of a scheduled hearing, it is called a “summons.” Before attending the hearing, you may need to file a written answer to the court and to the opposing attorney within a certain amount of time. If you would like help understanding your responsibilities and how to file an answer to the summons, please contact AAC Legal Services Department.

In court, the judge will most likely ask you to speak with the attorney for the creditor or debt collector prior to hearing your case. The judges often give parties the opportunity to try to reach an agreement on the matter. Before going into court, it is important to figure out what you can afford. It is very important to do a complete budget to factor in all of your other monthly expenses, in order to make sure you have enough money to pay for your rent/mortgage, food and utilities.

As mentioned below in B(1), if you are receiving public assistance benefits it is especially important not to allow the opposing attorney or any creditors to pressure you into an agreement or payment plan. If you do not agree to a payment plan, the creditor will be unable to enforce a judgment against you as long as your only source of income is public benefits. Even though your income is protected by law, these payment plan agreements will be admissible and enforceable in court. Therefore, it is very important to go in front of the judge with your proof of income; that is the only way to be sure the judge is aware that your income is protected by law.

You may speak with the opposing attorney about your financial situation; however, it is very important not to agree to a payment plan that you cannot afford. Although it may be tempting to have a settled plan before going in front of the judge, you will be bound by the terms of any agreement you sign. If you sign an agreement that was unaffordable in the first place, you won’t be able to comply with the terms. In that case, the creditor will have the right to request another hearing to collect the debt based on your failure to comply with the agreement.

**2. I did not go to the scheduled hearing. I received a notice that a default judgment was entered.**

If you don’t appear at a hearing, the court will find that you owe the money because you did not oppose the court action. A “judgment”

means that you are liable for that debt. A “default judgment” is the same; however, “default” means that your liability was established without examining any defenses because you didn’t appear at the hearing.

Like a judgment, a default judgment is enforceable over a twenty (20) year period. If you already received a default judgment, there are limited options. A default judgment may only be set aside in a limited number of circumstances, under extraordinary circumstances. The more time that has passed after the default judgment was entered, the less likely the judge will set it aside.

After a default judgment is entered, the creditor may seek another hearing, called “Supplementary Process,” to enforce the judgment so that it can take your income to repay the debt. If the court finds that the judgment should be enforced, it will issue what is called an “execution.” With a court-ordered execution, the creditor has the right to ask the bank to freeze your account to prevent you from accessing funds. The creditor can access your collectable income to satisfy the debt.

Even if you already have a default judgment against you, it is very important that you attend the Supplementary Process hearing to make the judge aware of your financial situation. If you have income that is protected by law, the judgment will be unenforceable. Or, if you are experiencing financial hardship, you can claim financial inability to repay the outstanding debt. As evidence, bring proof of income.

**3. I appeared at the hearing, but I received a notice that a judgment was entered against me.**

If a judgment is entered, the court has decided that you owe the debt. As mentioned in the last two paragraphs of Number 2 above, the next step for the creditor will be to ask for “Supplementary Process.” At this time, the court will determine if the judgment is enforceable. If the law protects your income, the judgment will be unenforceable. If you have collectable income, the court will use a formula to determine a payment plan to satisfy the debt in a manner that will allow you to meet your basic living expenses. In the process of determining a payment plan, you will have the opportunity to raise any reasons that make it difficult to repay the debt at that time.

Please read the following section to determine how the court will treat the type of income you collect.

## **B. What is your source of income?**

### **1. Public assistance is my only source of income.**

Public assistance is protected by state and federal law; namely, Massachusetts General Laws Ch. 235 §34 and 42 U.S.C. 401. In other words, if you receive public assistance as your only source of income, the creditor will not be able to take any of that money to satisfy the debt. The term used to describe this status is “judgment-proof.” The word choice is not completely accurate because the creditor may obtain a judgment against you for owing the money. The judgment will be valid for twenty (20) years; however, the judgment is not enforceable as long as your only source of income is public assistance. Therefore, within that time, the judgment will be enforceable if you begin to receive other forms of income.

It is extremely important to answer court papers and attend court hearings with proof of your public assistance income. If you fail to do so, the court will remain unaware that you are judgment-proof and will not treat your case accordingly.

### **2. I receive other forms of income in addition to public assistance benefits.**

If a creditor obtains a judgment in court that the debt is owed, the creditor has the right to collect income that is not protected by law. Please refer to the following section, number 3, for information on how the court treats collectable income.

It is very important to keep your public assistance benefits in a separate bank account from your other forms of income. The laws mentioned in section A only apply to your public assistance benefits; other forms of income are not protected by law from being garnished by creditors.

If you do not respond to court papers and you have collectable income, a creditor may file an action in court to freeze your bank account. With this action, the creditor can make sure that your collectable income remains accessible to pay back the debt. If you have combined your public benefits with the other income, they may be subject to the freeze on your account. To release your public benefits, you will need to go to court. If you do not combine your income, it will be less likely that a creditor can freeze a bank account that contains public benefits.

**3. I do not receive public benefits; I receive other forms of income.**

If a creditor obtains a judgment in court that the debt is owed, the creditor has the right to collect income that is not protected by law. However, the creditor may not be able to take all of it to repay the debt. On a monthly basis, a person is entitled to a certain amount of money to meet necessary living expenses. According to 15 USCA §1673, the maximum amount of money that the federal government is allowed to garnish is either 25% of weekly disposable earnings or the amount which the weekly earnings exceeded 30 times the federal minimum wage (\$5.15). The court will examine your particular financial situation and use a formula to determine how much of the collectable income will be used to make monthly payments in the interest of satisfying the debt.

**Conclusion**

In summary, despite the persistent calls and letters from debt collectors, it is important to pay rent, mortgage and utility bills before credit card bills. If you cannot afford to pay credit card bills, you may receive court papers that require a quick response. For that reason, it is important to open all of your mail to make sure you have time to ask for assistance in understanding your responsibilities under court procedure.

If you have questions about debt collection practices, notices you receive in the mail, or court procedures, please contact the AAC Legal Services Intake Line at (617) 450-1317 or send an email to [legalservices@aac.org](mailto:legalservices@aac.org).



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