MISSISSIPPI DIVISION OF
MEDICAID

Administrative Code

Title 23: Medicaid
Part 104 Income

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Title 23: Division of Medicaid, Office of the Governor

Part 104: Income

Part 104 Chapter 1: Introduction to Income – ABD Programs

Rule 1.1: Income Rules.

A. Chapters 1 – 10 discuss sources and treatment of income in the Aged, Blind and Disabled (ABD) programs. Eligibility for the ABD Medicaid programs is based on the rules used to decide eligibility for Supplemental Security Income (SSI). In accordance with 42 CFR 435.601, Medicaid is required to use SSI financial eligibility requirements unless a subsequently issued Medicaid statute or regulation supersedes SSI policy. In addition, 1902(r)(2) of the Social Security Act allows states to apply income rules to certain Medicaid categories that are more liberal than the SSI program.

B. The following income rules are based on SSI income policy:

    1. Income is counted on a monthly basis.

    2. An individual who has too much income in a particular month is not eligible for Medicaid for that month.

    3. Income may include more or less than is actually received. For example:

        a) Expenses of obtaining income (less);

        b) Garnishment (more); or

        c) Gross earnings before any deductions (more).

    4. Not all income counts in determining eligibility.

C. The following rules are based on liberalized income policy:

    1. Certain liberalized income policies apply to the following categories of eligibility:

        a) Qualified Medicare Beneficiaries (QMB);

        b) Specified Low-Income Medicare Beneficiaries (SLMB);

        c) Qualifying Individuals (QI);

        d) Working Disabled (WD); and

e) Healthier Mississippi Waiver (HMW).

2. The following income liberalizations are applicable to the five categories of eligibility listed above:

   a) The value of in-kind support and maintenance (ISM) is excluded.

   b) The $20 general exclusion is raised to a $50 general exclusion.

   c) The SSI budgeting practice that requires an individual who is married to an ineligible spouse to be eligible as both an individual and as a member of a couple is replaced with one test in which the couple's income is combined after allocating to the ineligible children from the ineligible spouse's income. The couple's countable income is then tested against the couple limit appropriate to the coverage group.

   d) Interest, dividend and royalty income that does not exceed $5 per month per individual is excluded.

   e) Couples living together are budgeted separately when one member is enrolled in a HCBS Waiver Program and evaluated for eligibility using institutional financial criteria and the other member of a couple is applying under an at-home category.

   f) Annual cost of living increases in federal benefits (such as VA, Railroad Retirement, Civil Service, etc.,) that are in addition to Title II benefits are disregarded in determining income through the month following the month in which the annual Federal Poverty Level (FPL) update is published.

   g) Annual cost of living increases in federal benefits (Title II benefits, VA, Civil Service, and Railroad Retirement) are disregarded when the Federal Poverty Level (FPL) update fails to increase at an equal or greater rate than the federal cost of Living (COL) increase during the same year. The disregard of the COL increase in federal benefits will apply to increase(s) received by the eligible individual, couple and/or ineligible spouse. The COL increase will be disregarded as income until such time as the FPL increase is greater than the previous COL increase.

   h) For the Working Disabled coverage group, unearned income between the SSI limit and 135% of the federal poverty limit is disregarded.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).).

Part 104 Chapter 2: What is Income

Rule 2.1: Definition of Income.

A. Income is defined as any item an individual receives in cash (or in some cases in-kind) that can be used to meet his/her needs for food or shelter.

1. Effective March 9, 2005, clothing is no longer considered a basic need for SSI purposes.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.2: Relationship of Income to Resources.

A. The following must be considered in determining the relationship of income to resources:

1. Anything received in a month, from any source is income to an individual, subject to the SSI definition of income.

2. Anything the individual owned prior to the month under consideration is subject to resource counting rules.

3. The same item cannot be counted as both a resource and income in the same month. An item received for the current month is income for the current month only. If held by the individual until the following month, that item is subject to resource counting rules. Any exceptions are noted in the discussion of the particular type of income involved.

   a) Example: Mr. Jones receives his Social Security check in March. It is directly deposited into his checking account. Count the Social Security check as income in March and subtract the deposit from the checking account to determine how much he has in resources for March. If Mr. Jones carries all or part of the check into April, the remaining amount is counted as a resource.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.3: Types of Income.

A. Income is either earned or unearned.

B. Different rules apply to each type of income.

C. Some examples of the types of income are listed below:

1. Earned income consists of the following types of payments:

   a) Wages;

   b) Net earnings from self-employment (NESE);

   c) Payments for services performed in a sheltered workshop or work activities center;

   d) Royalties earned by an individual in connection with any publication of his work and any honoraria received for services rendered.

2. Unearned income consists of the following types of payments:

a) Annuities, pensions, and other periodic payments;

b) Alimony and support payments;

c) Dividends, Interest and royalties (except for royalties mentioned above);

d) Rents;

e) Benefits received as the result of another's death to the extent that the total amount exceeds expenses of the deceased last illness and burial paid by the beneficiary;

f) Prizes and awards;

g) In-kind support and maintenance.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.4: Forms of Income.

A. Whether earned or unearned, income may be received in either of two forms:

1. Cash, which is currency, checks, money orders or Electronic Funds Transfers (EFTs), such as:

a) Social Security;

b) Unemployment Compensation;

c) Wages.

2. In-kind items, such as:

a) Shelter;

b) Food;

c) Clothing (Before March 9, 2005);

d) Non-cash wages (such as room and board as compensation for employment).

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.5: The Effect of Garnishment or Seizure.

A. A garnishment or seizure is a withholding of an amount from earned or unearned income in order to satisfy a debt or legal obligation. Amounts withheld from earned or unearned income to satisfy a debt or legal obligation are income for Medicaid purposes.

1. Example: Ms. Jones' wages are being garnished to repay a delinquent debt. The amount withheld for the garnishment is countable income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.6: When Income is Counted.

A. Generally, count income in the earliest month it is:

1. Received by the individual;

2. Credited to an individual's account; or

3. Set aside for an individual's use.

B. For Medicaid eligibility purposes, all income is determined monthly and counted in the month the income is received.

1. However, for institutional clients, income that varies in amount or frequency is averaged to determine Medicaid Income, provided the client is income-eligible for Medicaid in the month the payment is received without averaging.

C. There are exceptions to counting income in the month of receipt:

1. Occasionally, a periodic payment (like wages, Title II or VA benefits) is received in a month other than the month of normal receipt. As long as there is no intent to interrupt the regular payment schedule, the funds are considered to be income in the normal month of receipt.

a) The most common types of situations where this would apply are:

1) Advance Dated Checks. When the payer advance dates a check because the regular payment date falls on a weekend or holiday, there is no intent to change the normal delivery date. When this occurs, consider the check income in the normal month of receipt.

2) Electronic Funds Transfer. When an individual's money goes to a bank by direct deposit, the funds may be posted to an account before or after the month they are payable. When this occurs, treat the electronically transferred funds as income in the month of normal receipt.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.7: Income Determinations Involving Agents.

A. Monies received by an individual in his capacity as an agent on another's behalf (such as a representative payee) are not income to him. However, monies a person receives for his own use (not paid on behalf of another) must be evaluated under regular income rules.

1. Example: Mr. Jones is receiving a Social Security check as the payee for his disabled child. This check is counted as income for the child, not Mr. Jones.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.8: Income Derived from Joint Bank Accounts.

A. The following explains how to charge income in situations involving joint bank accounts held by Medicaid applicants/recipients with other individuals:

1. Eligible with Ineligible. When an applicant/recipient and an ineligible individual hold a joint bank account, the full amount of any deposit, regardless of the source of the deposit, is income to the applicant/recipient unless:

   a) The ineligible individual is a deemor (parent or spouse) for income and/or resource purposes. In which case the deposits are income to the person actually receiving them, but the ineligible's income or resources will be deemed to the eligible.

   b) The ineligible is a legal guardian, or conservator of the eligible, and legal documents allow deposits to be treated otherwise.

   c) The deposit can be excluded under some other provision.

   d) Spousal impoverishment rules apply.

2. Eligible with Other Eligibles. When Medicaid-eligibles are joint account holders, a deposit by one Medicaid-eligible is not income to the other eligible person. Deposits are counted as income to the eligible person actually receiving the benefit or entitled to the payment. Interest payments are allocated equally among the joint holders.

B. Rebuttal Situations.

1. If an eligible individual or deemor has successfully rebutted ownership of a portion of the funds in a joint bank account, deposits made by the other account holders will not be counted as income and interest will be charged in proportion to the amount funds in the account which are owned by the eligible individual or deemor.

2. If an eligible individual or deemor has successfully rebutted ownership of all of the funds

held in a joint bank account, no deposits by other account holders or interest credited to the account are counted as income to the eligible individual or deemor.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.9: Income from Trusts and Conservatorships.

A. Generally, if the client has a right to the income from the principal of a trust or conservatorship, it is income to him as it becomes available.

B. If the client has no right to the income from the trust/conserved funds, then only the payments actually paid from the trust would be income.

C. The income/resource rules that apply to a trust or conservatorship depend on when the trust or conservatorship was established. Refer to Part 103, Chapter 5, for a complete discussion of applicable income/resource rules.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 104 Chapter 3: What is Not Income

Rule 3.1: Items Not Considered Income for Medicaid Purposes.

A. Some items received by an individual are not income because they do not meet the definition of income. Other items are income by definition, but are excluded from an individual's income by federal statute. Only those items specifically listed in the law and regulations can be excluded from income. The items in this section are not considered income for Medicaid purposes, as follows:

1. Medical and Social Services. These services are not income for Medicaid purposes. Under the circumstances specified in this section, cash and in-kind items received in conjunction with medical and social services are also not income.

   a) Medical services are those services which are directed toward diagnostic, preventive, therapeutic or palliative treatment of a medical condition and which are performed, directed or supervised by a state licensed health professional.

      1) The term "medical services" includes any room and board (i.e., food or shelter) provided during a medical confinement, as well as in-kind medical items such as prescription drugs, eyeglasses, prosthetics and their maintenance, electric wheelchairs, modified scooters and specially trained animals, such as seeing eye dogs, and their maintenance. Transportation to and from medical treatment is also considered a medical service.

   b) A social service is any service (other than medical) which is intended to assist a handicapped or socially disadvantaged individual to function in society on a level

comparable to that of an individual who does not have such a handicap or disadvantage.

1) Some frequently encountered social services programs are programs funded under Title IV-B of the Social Security Act, Child Welfare Services; Title V of the Social Security Act, Maternal and Child Health and Crippled Children's Services and the Rehabilitation Act of 1973.

2) Education is not generally considered to be a social service, nor is vocational training that is not part of a vocational rehabilitation program.

3) Government income maintenance programs such as TANF or Bureau of Indian Affairs General Assistance and Child Welfare Assistance are also not social services.

c) When cash is received in conjunction with medical or social services, handle as follows:

1) Any cash provided by a governmental medical or social services program is not income.

2) Any cash from a nongovernmental medical or social services organization is not income when:

(a) The cash is for medical or social services already received by the individual and approved by the organization; however, if the individual receives an amount in excess of the expense of the medical or social services, the excess cash is unearned income; or

(b) The cash is a payment restricted to the future purchase of a medical or social service, or related excludable in-kind items.

3) Cash from any insurance policy which pays "loss of time" benefits to the recipient and restricts payment to periods of hospital confinement is treated as a third party resource, not income. However, cash payments considered to be an income supplementation for lost income due to a disability are income. This includes weekly disability policies without regard to hospital confinement.

d) When in-kind items are is received in conjunction with medical or social services, handle as follows:

1) In-kind items which meet the definition of medical services are not income regardless of their source.

2) Room and board (food and shelter) provided during a medical confinement is not income. A medical confinement exists when an individual receives treatment in a

medical treatment facility.

3) Any in-kind items (including food and shelter) provided by a governmental medical or social services program are not income.

4) In-kind items (other than food or shelter) provided by a nongovernmental medical or social services organization for medical or social services purposes are not income.

e) Cash payments for medical or social services that are not income are also not a resource for one calendar month following the month of receipt.

2. Personal Services. A personal service performed for an individual is not income.

a) Examples of personal services for an individual which are not income are:

1) Mowing the lawn;

2) Doing housecleaning;

3) Going to the grocery store; and

4) Babysitting.

3. Conversion or Sale of a Resource. Receipts from the sale, exchange or replacement of a resource are not income, but are resources that have changed their form. This includes any cash or in-kind item that is provided to replace or repair a resource that has been lost, damaged or stolen.

a) Example: Jerry sells his 1999 Buick for $1000. The money he receives is not income, but a resource which has been converted from one form (a car) to another form (cash).

4. Rebates and Refunds. When an individual receives a rebate, refund or other return of money he has already paid, the money returned is not income.

a) The key idea in applying this policy is the return of an individual's own money.

1) Some rebates do not fit that category. If the rebate is a return on an investment, for example, the rebate would be treated as a dividend.

5. Income Tax Refunds. Any amount of income tax refunded to an individual is not income. Amounts withheld or paid as income tax during the course of a taxable year are included in the definition of income; therefore, any later refund of income taxes by a federal, state, or local taxing authority is not again treated as income, but it is treated as a resource. This is so even if the income from which the tax was withheld or paid was received in a period

prior to the Medicaid application.

a) The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 provides that federal tax refunds received from January 1, 2010, through December 31, 2012, are not counted income or as a resource to the recipient or any person to whom the funds are given for a period of 12 months following receipt.

1) Through December 31, 2012, any of these funds which are transferred are not subject to penalty.

2) If placed in a trust, the funds are not subject to Medicaid trust provisions.

6. Credit Life and Credit Disability Insurance Payments. These payments are issued to or on behalf of borrowers to cover payments on loan, mortgages, etc., in the event of the borrower's death or disability.

a) Both types of insurance may be administered under group or individual policies.

b) The insurance payments are made directly to loan or mortgage companies, and are not available to the individual, either directly or by sale or conversion, for purposes of meeting his basic needs.

c) These payments made on behalf of an individual under credit life or credit disability policies are not income.

7. Other Insurance Payments. Each insurance policy must be examined to determine the type of benefit it provides and the purposes for which is can be used. Cash payments should be treated as follows:

a) Cash payments from any insurance policy made directly to the provider are not income since the beneficiary does not receive the payment. Any amounts paid to a facility for purposes other than medical care may be considered income if the facility actually pays the amount to the individual.

b) Cash payments from any insurance policy which are restricted for purchase or reimbursement of medical services covered under the policy are a third party resource, not income.

c) Cash payments from policies that restrict payments to periods of hospital confinement are a third party resource, not income.

d) Cash payments from specialized policies, such as cancer or dismemberment polices, are reimbursements, not a third party resource.

e) Cash payments from any insurance policy intended for income supplementation for lost income due to a disability are considered income. This includes weekly disability

payments without regard to hospital confinement.

f) Long term care insurance policies may be paid directly to the individual or to the nursing facility.

1) If payments are made directly to the individual, consider them countable unearned income.

2) If paid directly to the nursing facility, consider them a third party resource.

8. Bills Paid by a Third Party. When someone other than the eligible individual or couple makes a payment directly to a vendor, the payment is not income to the Medicaid recipient because the individual does not receive the payment itself.

a) However, a third party vendor payment is a means by which an individual may receive unearned in-kind income if food or shelter is received.

9. Replacement of Income already Received. If an individual's income is lost, stolen or destroyed and the individual receives a replacement, the replacement is not income. This is because once a payment has been issued and treated as income in determining an individual's eligibility, the reissuance of that same payment is not counted as income

10. Return of Erroneous Payments. A payment is not income when the individual is aware the he is not due the money and returns the check uncashed or otherwise refunds all of the erroneously received money in the month of receipt or the following month.

a) When the return is timely, accept the client’s statement the money was returned and do not count it as income.

b) However, if there is a delay in return of the erroneous payment beyond the month following the month of receipt, verify return of the full payment and document the reason for the delay and any other relevant facts.

11. Weatherization Assistance. This type of assistance (insulation, storm doors, windows, etc.) is not income.

12. Receipt of Certain Non-Cash Items. The value of any noncash items (other than an item of food or shelter) is not income if the item would become a partially or totally excluded nonliquid resource if retained into the month after the month of receipt.

a) Such non-income items may include, but are not limited to, specially equipped vehicles, automobiles, household goods, and property essential to self-support.

b) Consider these non-income items solely under resource rules.

13. Wage-Related Payments. The following payments by an employer are not income unless

the funds for them are deducted from the employee's salary:

a) Funds the employer uses to purchase qualified benefits under a cafeteria plan;

b) Employer contributions to a health insurance or retirement fund;

c) The employer's share of FICA taxes or unemployment compensation taxes, in all cases;

d) The employee's share of FICA taxes or unemployment taxes paid by the employer on wages for domestic service in the private home of the employer or for agricultural labor only; to the extent the employee does not reimburse the employer.

14. Proceeds of a Loan. Refer to Part 103, Chapter 3, Rule 3.3, for a complete discussion of the definitions associated with loans. For income purposes, the proceeds of a loan are treated as follows:

a) The proceeds of a bona fide loan are not income to the borrower because of the borrower's obligation to repay. Money received as repayment of the principal of a bona fide loan is not income to the lender; however, the interest received on money loaned is income to the lender.

b) If the loan is not bona fide, the proceeds received in the transaction are unearned income to the borrower in the month received. If the loan is not bona fide, payments toward principal and interest are unearned income to the lender. As indicated above, the interest received by the lender on money loaned is unearned income whether the loan is bona fide or not.

15. Promissory Notes and Property Agreements. Refer to Part 103, Chapter 3, Rule 3.3, for a complete discussion of the definitions associated with promissory notes and property agreements. For income purposes, they are treated as follows:

a) Treatment for the borrower is as follows:

1) Under both SSI and liberalized policy, for the Medicaid client who is the borrower, cash paid by the lender to the borrower is not income if a promissory note or property agreement is bona fide. However, any reserve may be a resource the following month;

2) Under both policies, if the agreement is non-bona fide or non-negotiable, cash paid by the lender to the borrower is income in the month received by the borrower and any retained cash (or property received) may be a resource the following month.

b) Under SSI policy, treatment for the lender is as follows:

1) A bona fide, negotiable promissory note or property agreement is a resource.

(a) The goods or money represented in the agreement are not a resource because they are not accessible.

(b) The interest portion of the payment on a bona fide, negotiable agreement received by the Medicaid client who is the lender is unearned income.

2) If the agreement is non-bona fide or non-negotiable, both principal and interest paid to the lender are income.

c) For coverage groups subject to liberalized resource policy, treatment for the lender is as follows:

1) A bona fide, non-negotiable promissory note or agreement can be excluded as a resource if it produces at least a 6% net annual return of the principal balance.

(a) For this exclusion to apply to the non-institutionalized client, the income must be received by the client/spouse and counted as income.

(b) For all institutionalized individuals in either SSI or liberalized programs, the agreement may be excluded as a resource if it produces at least a 6% net annual return of the principal balance and meets all of the following criteria:

(i) The repayment terms of the note or agreement are actuarially sound;

(ii) The institutional client must reasonably expect to receive full payoff of the note or agreement during his lifetime. The average number of years of life expectancy remaining based on the Annuity Life Expectancy charts, compiled by the Office of Actuary of the Social Security Administration and applicable to the decision, must coincide with the payout of the note or agreement;

(iii) Principal and interest portions of payments are of uniform rate, with no deferred or balloon payments and

(iv) The agreement prohibits cancellation of the debt upon death of the lender.

16. Fund Raising Proceeds. Benefits received through fund raising are a potential third party liability source. The applicant/recipient must report all sources of income from fund raising to the regional office. The regional office will inform the Third Party Liability unit of the availability of any source of payment for medical services.

a) Donated funds for the purpose of payment of medical services are considered a third party source. In order for donated funds to be excluded as income, the following criteria must be met:

1) Prior to accepting donations, the applicant/recipient (or family of a child) must make arrangements to place donations in a trust fund or special account;

2) The trust fund or special account must be managed by an administrator (someone outside the family);

3) The funds must never be mixed with personal or family money;

4) The applicant/recipient should not have direct access to the trust funds or special account; and

5) The applicant/recipient or administrator must be able to produce documentation of how the funds were spent.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); Miss. Code Ann. §43-13-121.1 (Rev. 2005).

Part 104 Chapter 4: Exclusions for Earned and Unearned Income

Rule 4.1: Exclusions that Apply to both Earned and Unearned Income.

A. An exclusion is an amount of income which does not count in determining eligibility and payment amount.

B. Exclusions never reduce income below zero.

C. There are three statutory exclusions that apply to both earned and unearned income, as follows:

1. General Exclusion;

2. Infrequent and Irregular Income Exclusion; and

3. Plan for Achieving Self-Support (PASS) Exclusion.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.2: General Income Exclusion.

A. A general income exclusion of either $50 or $20 per month is applied based on whether the program operates under liberalized or strict SSI income policy.

1. Under liberalized income policy, the general exclusion is $50 for the following programs:

a) Qualified Medicare Beneficiaries (QMB);

b) Specified Low-Income Medicare Beneficiaries (SLMB);

c) Qualifying Individuals (QI);

d) Working Disabled (WD); and

e) Healthier Mississippi Waiver.

2. Under SSI income policy, the general exclusion is $20 for the following programs:

a) SSI Retro;

b) Disabled Child Living at Home;

c) Qualified Working Disabled (QWDI);

3. Also under SSI policy, the following programs use the $20 general exclusion; however, in addition, these categories of eligibility are allowed other income disregards specific to the coverage group:

a) Disabled Adult Child (DAC);

b) Cost of Living (COL);

c) OBRA Widow/Widowers; and

d) HR-1.

B. The general exclusion is applied to unearned income first. Any remainder is then applied to any earned income. If there is no unearned income, apply the full general exclusion to earnings before excluding $65 plus one-half of the remaining earned income.

C. The following principles must be considered in regard to the $50/$20 per month general exclusion:

1. The general exclusion applies to the individual applicant's or recipient's own income, which includes income which has been deemed to them.

2. Only one general exclusion can be applied to the combined income of any couple. A spouse deemor is not allowed a separate deduction from his/her income.

3. In parent to child deeming situations, the $20 SSI disregard is applied to income of a single parent or combined parental income when a two-parent household is involved.

4. No other unused unearned income exclusion, except the general exclusion, may be

applied to earned income.

5. The general exclusion is not applied to Income Based on Need (IBON).

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.3: Infrequent and Irregular Income Exclusion.

A. For this exclusion to apply, the earned or unearned income must be received infrequently or irregularly, as defined below. This provision does not apply to unearned income that is subject to other exclusions, i.e., infrequent or irregular child support, subject to the one-third child support exclusion.

   1. Infrequent Income. Effective September 8, 2006, income is considered to be received infrequently if an individual receives it only once during a calendar quarter from a single source and the individual did not receive that type of income in the month immediately preceding that month or in the month immediately subsequent to that month, regardless of whether these payments occur in different calendar quarters.

   2. Irregular Income. Income is considered to be received irregularly if an individual cannot reasonably expect to receive it.

B. To apply the exclusion, exclude the following amount which is received either infrequently or irregularly:

   1. The first $30 per calendar quarter of earned income; and

   2. The first $60 per calendar quarter of unearned income.

      a) The exclusion can apply to both earned and unearned income in the same month, provided the total does not exceed the limits stated above. Thus, it is possible to exclude as much as $90 in a quarter under this provision when applicable.

C. The following considerations must also be taken when applying this exclusion:

   1. A single source of earned income is defined as an employer, trade or a business.

   2. A single source of unearned income is defined as an individual, a household, an organization or an investment.

   3. The exclusion is applicable to income received infrequently or irregularly by an eligible, individual, eligible or ineligible spouse, ineligible parent(s) and ineligible children.

   4. The dollar amount of the exclusion does not increase, even if both an eligible individual and spouse (eligible or ineligible) have infrequent or irregular income.

5. Effective September 8, 2006, if an individual begins receiving a recurring payment (like a Social Security check) in the third month of a quarter, the payment does not meet the definition of infrequent because it will be received in the following month, even though the following month is in another quarter. The same would be true if the recurring payment ended in the first month of a quarter, but had been received in the prior month in another quarter.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.4: Plan for Achieving Self-Support (PASS) Exclusion.

A. The Social Security Act permits the exclusion of income and resources of a person who is blind or disabled if the person needs such income to fulfill a Plan for Achieving Self-Support under an approved plan.

   1. This exclusion applies to a blind or disabled individual under age 65, or age 65 or older if the individual was receiving SSI, disability or blind payments, for the month before he became age 65.

B. The income of a blind or disabled recipient, whether earned or unearned, may be excluded under an approved PASS when the income is set aside for a planned expenditure determined necessary to achieve the individual's occupational objective.

   1. To be eligible for this income exclusion for Medicaid, the individual plan must be submitted to state office for approval. The plan submitted must:

      a) Include the objective and time period for achieving it;

      b) Include the amount of money involved; and

      c) Be currently in use by the individual.

C. With the implementation of the Working Disabled Program with higher income and resource limits, PASS income and resource exclusions are rare.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 104 Chapter 5: Earned Income Exclusions

Rule 5.1: Applying the Exclusions.

A. While the source and amount of all earned income must be determined, not all earned income counts when determining Medicaid eligibility.

   1. First, any earned income excluded by federal law must be disregarded.

2. Then the applicable income exclusions discussed in this section are applied in the following order to the rest of the earned income in the month:

   a) Earned income tax credit payments (EITC) and child tax credit (CTC) payments;

   b) Up to $30 of earned income in a calendar quarter if it is infrequent or irregular;

   c) Student Earned Income Exclusion (SEIE);

   d) Any portion of the $50/$20 general income exclusion which has not been excluded from unearned income in that same month

   e) $65 of earned income in a month (applied only once to a couple, even when both members, whether eligible or ineligible, have earned income);

   f) Earned income of disabled individuals used to pay impairment-related expenses (IRWE);

   g) One-half of the remaining earned income in a month;

   h) Earned income of blind individuals used to meet work needs (BWE);

   i) Any earned income used to fulfill an approved plan to achieve self-support (PASS);

   j) An unused earned income exclusion is never applied to unearned income and cannot be carried over for use in subsequent months.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 5.2: Exclusion of Earned Income Tax Credit (EITC) and Child Tax Credit (CTC) Payments.

A. The EITC is a special tax credit that reduces the federal tax liability and results in a payment to the low-income taxpayer, either as advance from the employer or a refund from IRS. Exclude the EITC received either as an advance or as a refund.

B. The CTC is a special refundable federal tax credit that is available to parents, step-parents, grandparents and foster parents and provides a refund to individuals even if they do not owe any tax. There is no advance payment with the CTC. Exclude CTC refund payments from income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 5.3: Student Earned Income Exclusion (SEIE).

A. Effective April 1, 2005, the Student Earned Income Exclusion was extended to all individuals who are working students under the age of 22, not just those who meet the SSI definition of a

child.

1. The SEIE will apply to earnings deemed from an ineligible spouse or parent(s) and it will apply to the joint earned income of eligible couples when both members are under age 22 and are working students.

B. The SEIE allows an individual under age 22 and regularly attending school to have earnings up to the monthly maximum, but not more than the annual maximum, both of which are adjusted annually based on increases in the cost of living index.

1. Under this calculation, these amounts will never be lower than the previous year's amounts. However, there may be years when no increases result from the calculation.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 5.4: $65 Plus One-Half of Remainder Earned Income Exclusion.

A. $65 per month of earned income plus one-half of the remaining earned income in the month is excluded in the order listed in Rule 5.1.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 5.5: Impairment-Related Work Expenses (IRWE) Exclusion.

A. IRWE expenses are for items or services which are directly related to enabling a person with a disability (other than blindness) to work and which are necessarily incurred by that individual because of a physical or mental impairment.

B. Any earned income of a person who is disabled (but not blind) that is used to meet any reasonable, non-reimbursable impairment-related work expenses is not counted.

C. The IRWE exclusion may be applied to the earnings of a disabled person who is under age 65, or is age 65 or older and received SSI and Medicaid or a disability payment for the month prior to attaining age 65.

D. The IRWE exclusion applies only to earned income and is applied in the order discussed in Rule 5.1.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 5.6: Blind Work Expenses (BWE) Exclusion.

A. BWE represents any earned income of a blind person which is used to meet any expenses reasonably attributable to earning the income.

B. Exclude BWE from earned income if the blind person is under age 65, or is age 65 or older

and received SSI and Medicaid or disability payments for the month before attaining age 65.

C. The BWE exclusion applies to earned income only and in the order discussed in Rule 5.1.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 104 Chapter 6: Unearned Income – General Provisions

Rule 6.1: Definition of Unearned Income.

A. Unearned income is all income that is not earned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.2: When to Count Unearned Income.

A. Unearned income is counted as income in the earliest month it is:

1. Received by the individual;

2. Credited to the individual's account; or

3. Set aside for the individual's use.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.3: Unearned Income Exclusions.

A. An exclusion is an amount of income that does not count in determining eligibility and payment amount.

1. Except for the $50/$20 general exclusion, no other unused unearned income exclusion may be applied to earned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.4: Expenses Incurred to Obtain Unearned Income.

A. The amount of unearned income which must be counted in determining eligibility for Medicaid is the gross amount due the client; however, the gross amount of unearned income may be reduced by certain expenses that are an essential factor in obtaining a particular payment(s).

B. Unearned income does not include that part of a payment that is for an essential expense incurred in getting the payment. For example:

1. From a payment received for damages in connection with an accident, subtract legal, medical and other expenses connected with the accident; or

2. From a retroactive check from a benefit program other than SSI, subtract legal fees connected with that claim.

C. The following fees are considered essential to obtaining income and are allowed as deductions:

1. Document fees to acquire documentation to establish that an individual has a right to certain income are an essential expense and reduce the amount of unearned income which is countable.

   a) Examples include fees for obtaining birth or death certificates, legal papers, medical examinations, filing fees, etc.

2. Guardianship fees are essential expense only if the presence of a guardian is a requirement for receiving the income.

D. The following criteria must be used when deducting expenses essential to obtaining the unearned income:

1. Expenses are deducted from the first and any subsequent amount(s) of related income until the expense is completely offset.

2. Excludable expenses can be offset against the income when it is actually or constructively received.

3. Allow any verified expenses which were paid by the recipient prior to the receipt of the income (e.g., a partial payment to an attorney made from an individual's savings account) as long as they are essential to obtaining the income.

4. Proof of having incurred the expense (bills, canceled checks, money orders, etc.) is required. If an expense has been incurred, but not paid, assume the individual will pay the expense.

5. The remainder is unearned income subject to the general rules pertaining to income and income exclusions.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.5: Overpayment Recovery from Unearned Income.

A. Unearned income includes that part of a benefit that has been withheld to recover a previous overpayment.

B. However, the amount withheld to reduce a prior overpayment is not included as income if double counting would result.

1. Double counting (counting the unearned income twice) would result if:

   a) The individual received both SSI and the other benefit (or deemed income using the other benefit) at the time the overpayment of the other benefit occurred; and

   b) The overpaid amount was included in figuring the SSI payment (and resulting Medicaid eligibility) at the time.

C. This policy applies to the following types of benefits:

1. Annuities and pensions;

2. Retirement or disability benefits (including veteran's pensions and compensation);

3. Workers' Compensation;

4. Social Security benefits;

5. Railroad Retirement benefits;

6. Unemployment benefits; and

7. Black Lung benefits.

D. Overpayment means "overpayment as defined by the entity paying the benefit" and may include overpayments made to someone other than the person whose benefits are withheld.

1. Example: Joe Jones started receiving RSDI benefits and SSI in January 2010. His SSI terminated in December 2010. In January 2011, he received a notice explaining that he was overpaid $150 in RSDI benefits from April 2010 through August 2010 and $30 will be withheld from his RSDI benefit from March 2011 through July 2011 to recover the overpayment. Since the overpaid amount was used to determine his SSI payment from April 2010 through August 2010, the $30 a month overpayment recovery is not included in the determination of his countable unearned income for March through July 2011.

E. This exception does not apply if the individual was determined ineligible for SSI based on countable income that included the overpayment and no SSI payment was received for the months the overpayment occurred.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.6: Garnishment or Other Withholdings.

A. Unearned income includes amounts withheld because of a garnishment or to make certain other payments (such as Medicare premiums).

B. Unearned income includes amounts withheld whether the withholding is:

1. Purely voluntary;

2. To repay a debt; or

3. To meet a legal obligation.

C. This policy does not apply to amounts withheld to pay the expenses of obtaining the income since such amounts are not income.

D. The following are types of items for which amounts may be withheld, but withheld amounts are considered income received:

1. Federal, state or local income taxes;

2. Supplementary Medical Insurance (SMI), Medicare Part B;

3. Loan payments;

4. Child support;

5. Life or health insurance premiums;

6. Union dues;

7. Bank charges; or

8. Garnishments.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.7: Return of Previously Deducted Money.

A. If any of the types of deductions listed in Rule 6.6 above are later returned to the individual by the original source, agency or organization which received the deduction (e.g., refund of Medicare premiums), the refunded amounts cannot again be income.

B. Refunded amounts can be available resources when received and would be counted if retained into the following month.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.8: Payments in Foreign Currency.

A. Occasionally, an individual receives income tendered in a monetary unit other than US dollars, usually in the form of a check or a direct deposit to a bank.

B. The US dollar value of a payment made in foreign currency, less expenses, is income.

1. Foreign currency payments are counted as income when received unless the individual can establish that the payment was received too late in the month for conversion prior to the following month.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.9: Deemed Income.

A. Deemed income is unearned income attributed to an applicant or recipient for Medicaid eligibility from an ineligible spouse or parent.

1. Deeming only applies in household situations.

2. There is no deeming of income in any month of institutionalization and deemed income is not used in determining Medicaid Income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.602(a) (Rev 1994).

Rule 6.10: Income Based on Need (IBON).

A. Income based on need is assistance which is:

1. Provided under a program which uses income as a factor eligibility; and

2. Funded wholly or partially by the federal government or a nongovernmental agency (e.g., Catholic Charities or Salvation Army) for the purpose of meeting basic needs.

B. IBON is unearned income that is not subject to the $50/$20 general exclusion.

1. If received by a client, IBON is counted in its entirety.

2. However, if IBON is received by an ineligible spouse, parent or child, it is not deemed to a client.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 6.11: Assistance Based on Need (ABON).

A. Assistance based on need is assistance which is:

1. Provided under a program which uses income as a factor of eligibility; and

2. Funded wholly by a state, a political subdivision of a state or a combination of such jurisdictions.

B. Assistance based on need is excluded from income.

1. If a program uses income to determine payment amount, but not eligibility, it is not ABON, e.g., some crime victim compensation programs.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 104 Chapter 7: Sources and Treatment of Unearned Income

Rule 7.1: Annuities, Pensions, Retirement and Disability Payments.

A. These types of income are defined as follows:

1. An annuity is a sum paid yearly or at other specific times in return for the payment of a fixed sum. Annuities may be purchased by an individual or by an employer.

2. Pensions and retirement benefits are payments to a worker following retirement from employment. These payments may be paid directly by a former employer, by a trust fund, an insurance company or other entity.

3. Disability benefits are payments made because of injury or disability.

B. These types of income are treated as follows:

1. Annuities, pensions, retirement benefits and disability benefits are counted as unearned income.

   a) An exception is certain accident disability benefits paid within the first 6 months after the month an employee last worked are treated as earned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.2: Title II, Retirement, Survivors and Disability Insurance (RSDI) Payments.

A. This type of income is defined as follows:

1. Retirement, Survivors and Disability Insurance are monthly Social Security benefits which are counted as unearned income.

a) Special age 72 benefits, also known as Prouty benefits, are also counted as unearned income.

B. This type of income is treated as follows:

1. Title II benefits are counted as unearned income, considering the following:

a) The amount of premiums deducted from RSDI for the optional Supplemental Medical Insurance (SMI) premium under Medicare are counted as unearned income.

b) The amounts deducted for Medicare Part D are countable unearned income.

c) SMI/Medicare Part D premiums that are refunded to the individual are not counted.

d) A Title II benefit is reduced dollar for dollar in the amount of any monthly Workers' Compensation paid.

1) If a monthly benefit payment has been reduced because of a Workers' Compensation offset, the net amount of the benefit received (plus any SMI, Medicare Part D premium withheld) is unearned income.

e) Overpayments recovered from SSA benefits are included unless the overpayment occurred when the person was receiving SSI and the overpaid amount was included in at that time. In this instance, the amount deducted for an overpayment is not included in calculating countable Title II income.

f) Refund of recovered monies based on a waiver approval is not income if the money was previously withheld to recover a Title II overpayment, both SSI and Title II benefits were received at the time of the overpayment and the overpaid amount was included in figuring the SSI payment at that time.

g) If a monthly Title II benefit payment has been reduced because of a garnishment, the gross amount of the benefit received (plus any SMI premium withheld) is counted as unearned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.3: Treatment of Retroactive Benefits.

A. Retroactive RSDI benefits, whether paid in a lump sum or by installment, are treated as unearned income in the month received, with the following exceptions:

1. Retroactive RSDI benefits must be paid in installments when paid to representative payees of persons who are eligible because of Drug Addiction or Alcoholism (DAA).

a) The total of retroactive RSDI benefits paid in installments is treated as if paid in a

lump sum in the usual manner.

b) The total of such benefits paid in installments is considered unearned income in the month in which the first installment is made.

2. Retroactive RSDI benefits paid for a month for which a person also received an SSI payment (i.e., an offset month) have been reduced by an amount equal to the amount of SSI that would not have been paid had the RSDI benefits been paid when due.

a) The balance of these retroactive RSDI benefits is considered income not when received, but rather in the month regularly due.

1) The award letter issued to the recipient will specify the offset amount.

2) Any payment over and above this amount is income in the month received.

b) Retroactive RSDI benefits paid for periods outside of an offset period are not subject to reduction and are considered income when received.

3. In certain situations, SSA will agree at the recipient's request to pay by installment retroactive RSDI benefits that would otherwise be paid in one lump sum.

a) In such cases, the total of retroactive RSDI benefits (except for amounts considered paid in a windfall offset as discussed above) is counted as unearned income in the month the benefits were set aside for the person's use.

B. Retroactive SSI and RSDI benefits are defined as follows:

1. Retroactive SSI benefits are SSI benefits issued in any month after the calendar month for which they are paid.

a) SSI benefits for January that are issued in February are retroactive.

2. Retroactive RSDI benefits are those issued in any month that is more than a month after the calendar month for which they are paid.

a) RSDI benefits for January that are issued in February are not retroactive; however, RSDI benefits for January that are issued in March are retroactive.

C. The unspent portion of retroactive SSI and RSDI benefits is excluded from resources for 9 calendar months following the month the individual receives the benefits.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.4: Mandatory State Supplement (MSS) Benefits.

A. This type of income is defined as follows:

1. Aged, blind and disabled individuals converted from state welfare rolls are deemed to have filed for SSI beginning January 1, 1974. These converted recipients receive SSI and a Mandatory State Supplement to maintain the 12/73 income levels of former assistance recipients and protect them from suffering a loss of income under the SSI Program. In addition, certain recipients may receive MSS without an SSI payment.

2. The Social Security Administration (SSA) administers MSS payments in Mississippi. MSS payments are included with SSI benefits each month or paid separately if the individual does not receive SSI.

B. This type of income is treated as follows:

1. MSS payments are treated as Income Based on Need (IBON) for income purposes. Note: Currently, there are no remaining state supplement cases in the state.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.5: Black Lung (BL) Benefits.

A. This type of income is defined as follows:

1. Black Lung benefits are paid to miners and their survivors under the provisions of the Federal Mine Safety and Health Act (FMSHA).

2. Under the Black Lung Consolidation of Administrative Responsibilities Act, benefits under Part B and Part C of the FMSHA are paid by the Department of Labor (DOL).

B. This type of income is treated as follows:

1. BL benefit payments are counted as unearned income.

   a) Both Part B and Part C BL benefits are subject to offsets (like Workers' Compensation) and can be reduced due to the recovery of an overpayment

      1) The amount of the BL benefit to charge as income is the amount paid after application of an offset (like Workers' Compensation), but before the collection of any obligations of the recipient.

   b) In addition, Part C benefits may be reduced because of liens imposed by other federal agencies such as the Internal Revenue Service (IRS).

      1) The amount deducted from a Part C BL benefit because of garnishment (such as liens imposed by other federal agencies) is counted as unearned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.6: Civil Service and Federal Employee Retirement Payments.

A. This type of income is defined as follows:

1. The Office of Personnel Management (OPM) makes US Civil Service and Federal Employee Retirement System (FERS) payments because of disability, retirement or death.

B. This type of income is treated as follows:

1. US Civil Service payments and FERS payments are counted as unearned income to the entitled retiree or individual survivor even when additional monies for other family members are included in the payment.

2. However, certain disability benefits paid within the first six (6) months after an employee last worked are treated as earned income.

3. OPM provides annuitants under the Retired Health Benefits (RHB) program free coverage under Part B of Medicare. All annuitants covered by the RHB program retired before 7/1/1960.

   a) At the employee's option, the Part B premium may instead be paid to another health insurance plan or paid directly to the annuitant for use in purchasing health insurance coverage privately.

   b) The RHB payment is shown as a positive amount (addition) on the health benefits line of the OPM notice. RHB payments to annuitants are not income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.7: Other Government Pensions and Retirement Plans.

A. This type of income is defined as follows:

1. Payments made to former employees, their dependent(s) or survivor(s) by state, local (or foreign) governments.

   a) Examples include State and Municipal retirement.

B. This type of income is treated as follows:

1. The full amount of benefits the recipient is entitled to receive is counted as unearned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.8: MS State Retirement 13th Check.

A. This income is defined as follows:

1. Certain state retirees (including those drawing benefits from a deceased spouse's record) are eligible to receive a 13th check each year in addition to their regular monthly check.

2. The 13th check is sometimes referred to as a bonus check. The bonus check, which is usually issued each December 15th, is computed on a percentage basis multiplied by the number of years retired and annual income received.

B. This income is treated as follows:

1. Institutionalized clients, who receive a 13th check and are subject to Income Trust provisions, are required to have the bonus check averaged over the 12-month period as a condition of eligibility.

   a) Institutional clients who are eligible for December based on receipt of the bonus check will have the bonus payment averaged in the Medicaid Income computation.

2. For all other recipients, the 13th check is counted as income each December to determine eligibility for the month of December.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); Miss. Code Ann. §43-13-121.1 (Rev. 1995).

Rule 7.9: Railroad Retirement Benefits.

A. There are three basic categories of payments made by the Railroad Retirement Board (RRB):

1. Life and Survivor annuities.

2. Title II benefits certified by RRB.

3. Unemployment, sickness and strike benefits.

B. These types of payments are treated as follows:

1. RRB payments are counted as unearned income.

   a) The amount deducted from a RRB benefit for Medicare is counted as income.

   b) The amount of the RRB annuity to charge as income is the amount before collection of any obligations of the annuitant.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.10: Military Pensions.

A. The Air Force, Army, Marine Corps, Navy and Coast Guard pay military pensions to military retirees and survivors normally on the first day of the month.

B. There are three categories of beneficiaries who may be entitled to military payments:

1. Retiree. A person with 20 years of service who meet the requirements for entitlement.

2. Annuitant. A Survivor who is designated by the retiree to receive benefits upon the death of the retiree under the Retired Serviceman's Family Protection Plan (RSFPP), Survivor's Benefit Plan (SBP) or both;

3. Allottee. Anyone other than an annuitant of the RSFPP or SBP who is designated to receive money out of the service member's or retiree's check.

   a) Entitlement as an allottee terminates upon the death of the retiree. However, an allottee can become an annuitant when the retiree dies.

C. The RSFPP and SBP annuitant programs pay money to surviving spouse(s) and children. The SBP program also pays:

1. "Insurable interest" persons, i.e., someone other than a surviving spouse or child that a service member designates to receive survivor benefits based on monies withheld from his/her retirement payment under the provisions of the SBP program; and

2. Minimum income level widows (MIW) who are certified by the VA as having low income and are referred by the Department of Defense (DOD).

D. This type of income is treated as follows:

1. Military pensions are counted as unearned income.

2. Payments to Minimum Income Widows are counted as income based on need (IBON) not subject to the $50/$20 general income exclusion.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.11: Department of Veterans Affairs (VA) Benefits.

A. This type of income is defined as follows:

1. The Department of Veterans Affairs (VA) has numerous programs that make payments to recipients and their families. The most common types of VA payments discussed in this

section are:

a) Pensions;

b) Compensation;

c) Educational Assistance;

d) Aid and Attendance Allowance;

e) Housebound Allowance;

f) Clothing Allowance;

g) Payment Adjustment for Unusual Medical Expenses;

h) Payments to Vietnam Veterans' children with Spina Bifida; and

i) Insurance Payments.

B. The Utilization of Benefits provision applies to most VA income.

1. VA Aid and Attendance (A&A) is not a required benefit under the Utilization of Benefits Provision. The potentially-eligible client must be advised to apply for A&A, but there is no penalty for failing to apply when it is the only benefit involved.

C. Treatment of VA payments for SSI/Medicaid purposes depends on the nature of the payments and is included in the discussion of each type of VA income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.12: VA Pension Payments.

A. The following is information about VA pensions:

1. Pension payments are based on a combination of service, an age of 65 or over and a nonservice-connected disability or death.

2 All VA pension payments are based on need, except those noted later under this rule.

3. VA may consider dependents' needs in determining a pension; however, normally VA will not make a pension payment directly to a dependent during the lifetime of the veteran. Instead, the amount of the veteran's basic pension is increased if the veteran has dependents.

4. When computing some needs-based pension payments, VA deducts unusual medical

expenses from any countable income.

a) This computation may result in an increase in a pension payment or in an extra payment.

1) An increase or extra payment resulting from this computation is not income.

5. Assume that a VA pension is partially or entirely needs-based unless there is evidence to the contrary. As such, these payments are unearned income and the $50/$20 general income exclusion is not applied.

a) The exceptions to IBON designation are:

1) VA Aid and Attendance and Housebound Allowances are not income. All or part of a VA pension may be subject to this rule.

2) VA payments resulting from unusual medical expenses are not income. All or part of a VA pension payment may be subject to this rule.

3) Pensions paid to veterans and their dependents on the basis of a Medal of Honor or special act of Congress, are not needs-based. These pensions are unearned income and the $50/$20 general exclusion does apply.

6. The Veterans and Survivors Pension Improvement Act (VA Improved Pension), signed into law October 1978 and effective January 1979, changed the method of determining the pension payable. The new rates of payment are not automatic; therefore, the veteran or survivor must file an application with VA to establish entitlement under the improved pension. Recipients who receive benefits under the old VA law must file for the improved pension as a factor of eligibility under the Utilization of Other Benefits provision.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.13: VA Compensation Payments.

A. Compensation payments are based on service-connected disability or death and may be based on need.

B. The following are types of compensation payments and their treatment:

1. Death Compensation and Dependency and Indemnity Compensation (DIC) payments to a surviving parent of a veteran are counted an unearned income. Since these payments are determined by the parent's income, they are income based on need and the general income exclusion does not apply.

2. Compensation payments resulting from unusual medical expenses, aid and attendance

allowances and housebound allowances are not counted as income.

3. Compensation payments to a veteran, spouse, child or widow(er) are counted as unearned income subject to the $50/$20 general exclusion.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.14: VA Educational Benefits.

A. VA provides educational assistance under a number of different programs, including vocational rehabilitation. Veterans, dependents and survivors of veterans may be eligible for educational benefits. Depending on the nature of the program, different SSI/Medicaid income and resource policies apply.

B. The following are not considered in determining VA income:

1. Vocational Rehabilitation. Payments made as part of a VA program of vocational rehabilitation are not income, including any augmentation for dependents.

2. Withdrawal of Contributions. Any portion of a VA educational benefit that is a withdrawal of the veteran's own contributions is conversion of a resource and is not income.

C. VA educational income is treated as follows:

1. Any VA educational benefit payment or portion of such a payment funded by the government that is not part of a program of vocational rehabilitation is unearned income.

2. Any portion of the VA educational benefit used to pay for tuition, books, fees, tutorial services, or other necessary educational expenses is excluded from income.

   a) For SSI/Medicaid purposes, only the portion of an educational payment that is income to the veteran obtaining the education is subject to the educational expenses exclusion.

   b) The augmented portion is not subject to the educational expenses exclusion.

3. The $50/$20 general income exclusion applies to countable VA educational assistance and these payments are subject to deeming.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.15: VA Benefits for Dependents.

A. VA often considers the existence of dependents when determining a veteran's or veteran's

surviving spouse's eligibility for pension, compensation and educational benefits by the following:

1. Apportionment. This is direct payment of the dependent's portion of VA benefits to a dependent spouse or child.

    a) The portion of a VA benefit paid by apportionment to a dependent spouse or child is VA income to the dependent spouse or child. It is not a support payment from the designated VA beneficiary.

2. Augmentation. An augmented payment includes a designated VA beneficiary's portion and one or more dependent portions.

    a) The designated beneficiary's portion is that part of an augmented benefit that is attributable to the veteran or the veteran's surviving spouse and it VA income to the designated beneficiary, i.e., veteran or veteran's surviving spouse.

    b) The dependent's portion is VA income to the dependent, provided the dependent resides with the designated beneficiary. The dependent's portion is not a support payment from the designated beneficiary.

    c) An absent dependent's portion of an augmented VA benefit is not VA income to either the dependent or the designated beneficiary.

        1) This is true even if the designated beneficiary continues to receive the absent dependent's portion.

        2) The dependent's portion of a VA benefit is not VA income to an absent dependent unless he receives it directly as an apportioned payment.

        3) Any portion of the absent dependent's augmented benefit that is retained by the designated beneficiary is a countable resource.

        4) Any payment made from the designated beneficiary directly to an absent dependent is unearned income in the form of a gift, a support payment, or other income, not VA income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.16: VA Clothing Allowance.

A. A VA clothing allowance is not income for eligibility or Medicaid Income purposes.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.17: Payments to Veterans' Children with Certain Birth Defects.

A. These VA payments are made to, or on behalf of, the natural children of veterans, regardless of age or marital status, who are in the following categories:

1. Vietnam veterans' children for any disability resulting from spina bifida;

2. Korea service veterans' children for any disability resulting from spina bifida;

3. Women Vietnam veterans' children for certain birth defects.

B. The payments are treated as follows:

1. They are excluded from income and resources.

2. The interest earned on unspent funds is excluded effective July 2004.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.18: VA Aid and Attendance and Housebound Allowances.

A. VA Aid and Attendance and Housebound Allowances are not counted as income for eligibility purposes and must be excluded from the total VA payment when determining eligibility.

1. In addition, these payments are not considered third party payments.

B. Anyone in a nursing home who receives VA is potentially eligible for VA Aid and Attendance, except:

1. Individuals drawing a "child's" benefit, i.e., those who became disabled prior to age 18 and draw a child's benefit into adult years, are not eligible for Aid and Attendance.

2. Someone drawing only VA Insurance benefits is not eligible for Aid and Attendance.

a) Individuals who draw a VA Insurance benefit usually also receive a DIC benefit and are potentially eligible for Aid and Attendance.

b) However, it is possible for someone to draw only the VA Insurance payment. If the person draws only VA Insurance benefits, that person is not eligible for Aid and Attendance.

C. A nursing home applicant potentially eligible for VA Aid and Attendance must be advised in writing to apply for the payment. However, the penalty for failure to apply for the benefit is not applicable when the only benefit involved is VA Aid and Attendance.

D. The income of an ineligible spouse or parent who receives income based on need is not

deemed to an eligible in an at-home case. Needs-based pension and compensation payments are not deemable along with any other income of the ineligible.

1. However, if an ineligible spouse or child receives a VA payment that is attributed solely to A&A, the receipt of the payment will result in deeming of the remaining income of the ineligible to the eligible.

    a) Example: If an ineligible spouse receives Social Security and VA that is attributed solely to A&A, the ineligible's Social Security would be deemable to the eligible. However, if the ineligible receives a VA needs-based pension or needs-based compensation payment in addition to payment for A&A, all income of the ineligible is non-deemable to the eligible person

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.19: VA Payment Adjustments for Unusual Medical Expenses (UME).

A. VA considers unusual medical expenses when determining some needs-based pension and compensation payments.

B. These VA payments resulting from unusual medical expenses are treated as follows:

1. They are not income for eligibility or Medicaid Income purposes.

2. These payments are considered as reimbursements for medical expenses or services that are excluded in the definition of income.

3. Any unspent VA payments resulting from unusual medical expenses are resources if retained into the calendar month following the month of receipt.

4. Prior to July 1, 1994, any VA increase or extra payment resulting from unusual medical expenses was income. The client was required to claim UME as part of the VA Improved Pension application process if UME would result in a higher benefit whether the client lived at home or in a nursing facility as part of the Utilization of Other Benefits provision.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.20: Deeming VA Income.

A. Under the deeming provision, the income of an ineligible spouse or parent who receives income based on need is not deemed to an eligible spouse or child in at-home cases.

B. The needs-based pension and needs-based compensation payments are non-deemable along with any other income of the ineligible.

C. However, if an ineligible spouse or parent receives a VA payment that is solely attributed to UME or A & A, the receipt of such payment will result in deeming the remaining income of the ineligible to the eligible.

D. Example: If an ineligible spouse receives Social Security and VA that is attributed solely to UME, the ineligible's Social Security would be deemable to the eligible. However, if the ineligible receives a VA needs-based pension or needs-based compensation payment in addition to payment for UME, all income of the ineligible, including the Social Security payment, is non-deemable to the eligible person.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.21: Treatment of Institutional Cases involving UME or A & A.

A. If the institutional client (IS) with a community spouse (CS) receives non-countable income from UME or A&A, the CS will be allowed to receive the IS' payment attributable to UME or A&A in addition to the CS allocation amount computed in the Medicaid Income computation.

   1. If the CS is not entitled to Medicaid, the extra income will have no impact.

   2. However, if the CS is Medicaid-eligible at home, the income that represents the UME (or A&A) payable to the IS is income to the CS.

      a) UME (and A&A) is disregarded as income only to the one entitled to the payment.

      b) When it becomes income available to the CS, it is income to the CS.

         1) If the income is given to anyone else, the possibility of a transfer of resources exists.

B. If the CS does not receive the income attributed to UME (or A&A), the possibility of excess resources building up for the IS exists. In this case, resources must be monitored closely.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.22: Treatment of VA Income in Income Trust Cases.

A. Only basic VA benefits (as verified by VA) are counted as an Income Trust client's total income available to fund the Income Trust.

   1. Any UME (or A&A), which is not counted as income, can be retained by the client and/or spouse, as discussed in the above rule.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.23: Treatment of VA Contract Patients in Nursing Facilities.

A. Certain veterans qualify for VA contract payments which cover nursing home care for one to six months; however, veterans with a service-connected disability may not be subject to the six-month limit.

B. Treatment of these individuals is as follows:

1. Eligibility for Medicaid benefits other than nursing home reimbursement can begin prior to the date a VA contract expires, depending on the date the application is filed and provided the individual is eligible on all other factors.

2. Reimbursement cannot begin until the date the VA contract expires.

3. The VA money paid to the nursing home is not counted as income to the Medicaid applicant.

   a) Although a VA contract payment is a third party medical payment, it is not a payment subject to recovery by Medicaid.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.24: Reduced VA Pension for Veterans and Surviving Spouses in Nursing Homes.

A. Federal law limits the maximum pension that can be paid to or for veterans, who have neither a spouse nor a child, or surviving spouses (widows or widowers) without children who are covered by Medicaid for services furnished by a nursing facility to a maximum of $90.

1. The reduced pension of $90 or less is VA Aid and Attendance in all cases, and is not income for eligibility purposes.

2. Federal law also prohibits counting the reduced pension toward the veteran's cost of care (Medicaid Income); therefore, the Personal Needs Allowance (PNA) for all clients receiving a reduced pension is equal to the pension payment received to ensure that no part of the reduced pension is counted as income.

3. When a client who is eligible for long term care nursing home coverage under an Income Trust becomes entitled to the $90 reduced pension and the client continues to need the Income Trust to remain eligible, the $90 reduced pension is not counted as income to the Income Trust client.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); Miss. Code Ann. §43-13-121.1 (Rev. 2005).

Rule 7.25: Treatment of VA Benefits Allocated to Spouse Receiving IBON.

A. When the spouse of an applicant or recipient receives Income Based on Need (IBON), the source of the IBON may count a portion of the VA benefit as income to the spouse receiving the IBON. This amount counted by the IBON source will be deducted from the countable VA benefit verified by VA for Medicaid eligibility.

1. Example: An applicant receives a VA pension and his spouse receives SSI. SSI verifies $50 of the VA pension is the spouse's income in the SSI computation; therefore, $50 is deducted from the client's verified VA pension in determining countable income for Medicaid.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.26: Determining the Amount of VA Payments.

A. The following must be considered in determining the amount of VA payments:

1. The type of VA payment being made and the policy in effect in the month of payment.

2. Overpayments recovered from VA benefits are included as income in determining eligibility and Medicaid Income.

3. In cases where VA "suspends" VA Improved Pension benefits for failure to verify medical expenses, the benefit in effect prior to the suspension date continues to count as income because the recipient remains entitled to the VA benefit.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.27: Unemployment Insurance Benefits.

A. This type of income is defined as follows:

1. Unemployment insurance benefits, also known as unemployment compensation, means payments received under a state or federal unemployment law and additional amounts paid by unions or employers as unemployment benefits.

B. This type of income is treated as follows:

1. Unemployment compensation is unearned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.28: Workers' Compensation Payments.

A. This type of income is defined as follows:

1. Workers' Compensation (WC) payments are awarded to an injured employee and his/her survivor(s) under federal and state WC laws, such as the Longshoremen and Harbor Workers' Compensation Act and may be made by a federal or state agency, an insurance company or an employer.

B. This type of income is treated as follows:

1. The WC payment less any expenses incurred in obtaining the payment is counted as unearned income.

   a) Any portion of a WC payment or award that the authorizing or paying agency designates for medical, legal or other expenses attributable to obtaining the WC award is not income.

   b) If an individual alleges having incurred expenses that exceed the amounts designated for expenses, or to which no amount was designated, the normal rules pertaining to the expenses of obtaining income apply.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.29: Temporary Assistance for Needy Families (TANF).

A. This type of income is defined as follows:

1. TANF provides a monetary grant to families under a program that uses income as a factor of eligibility and is partially funded by federal block grants.

B. This type of income is treated as follows:

1. TANF payments are considered income based on need (IBON).

2. If a Medicaid client is included in the TANF family unit, the client's share of the TANF grant is counted dollar for dollar as income and the $50/$20 general income exclusion does not apply.

3. TANF incentive payments, additional payments made as a reward for compliance with program requirements, are also IBON and the $50/$20 general income exclusion does not apply.

4 Participation allowances for the TANF program, such as those for transportation, are reimbursements.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.30: Bureau of Indian General Assistance (BIA GA).

A. This type of income is defined as follows:

1. Bureau of Indian Affairs General Assistance (BIA GA) is a federally funded program administered by the Bureau of Indian Affairs (BIA) through its local agency or a tribe. The program makes periodic payments to needy Indians.

B. This type of income is treated as follows:

1. BIA GA payments are federally funded income based on need and, therefore, count as income on a dollar-for-dollar basis regardless of whether they are paid in cash or in kind. The $50/$20 per month general income exclusion does not apply.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.31: Foster Care and Adoption Assistance.

A. These types of income are defined as follows:

1. Foster Care. An individual (adult or child) is considered to be in foster care when:

   a) A public or private nonprofit agency places the individual under a specific placement program; and

   b) The placement is in a home or facility which is licensed or otherwise approved by the state to provide care; and

   c) The placing agency retains responsibility for continuing supervision of the need for such placement and the care provided.

B. Adoption Assistance.

1. Adoption assistance programs provide payments and/or services for children for whom unassisted adoption is unlikely because of age, ethnic background, disability, etc. The income of the adoptive parent, the adopted child or both may be considered in determining the payment.

C. These types of income are treated as follows:

1. Treatment of both types of payments depends on the funding source of the payment, the purpose of the payment and whether the Medicaid recipient is the provider or beneficiary of the care as follows:

   a) Funded by Title IV-E.

      1) Title IV-E foster care payments are income based on need (IBON) to the

individual in care. This income is not subject to the $50/$20 general income exclusion. Amounts paid to the provider in excess of the foster care payment, e.g., incentive or service payments, which are not intended to support the child, and are in addition to the foster care payment are counted as income to the provider.

(a) Foster care payments made under Section 477 of Title IV-E, Independent Living Initiatives, are cash assistance from a governmental social services program and do not count as income.

2) Adoption assistance cash payments made to adoptive parents under Title IV-E are federally-funded income based on need (IBON) to the adopted child. This income is not subject to the $50/$20 general income exclusion. The total payment is considered cash income to the adopted child and is counted dollar for dollar. Social services may be provided to the adoptive parents under Title IV-E, but they are not counted as income.

b) Funded by Titles IV-B or Title XX.

1) Foster care payments and adoption assistance through Title IV-B or Title XX are not income. Payments are considered social services.

c) Funded by Other Sources.

1) Other payments for foster care and adoption assistance are unearned income subject to general policy pertaining to income and income exclusions. The adoption assistance may be income to the parent of the child depending on the type of assistance received.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.32: Support Payments – Spousal Support, Alimony.

A. These types of income are defined as follows:

1. Alimony and support payments are both cash contributions intended to meet some and all of a person's needs for food and shelter.

a) Support payments may be made voluntarily or because of a court order.

b) Alimony, sometimes called "maintenance" is an allowance made by a court from the funds of one spouse to the other spouse in connection with a suit for separation or divorce.

B. These types of income are treated as follows:

1. Alimony and spousal support payments are counted as unearned income to the recipient.

2. The income used to make court-ordered alimony or spousal support payments by an ineligible spouse, ineligible parent or ineligible child is excluded from the deemor's income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.33: Support Payments – Child Support.

A. Child support is defined as follows:

1. A child support payment is payment from an absent parent to or for a child to meet the child's needs for food and shelter.

2. Child support can be voluntary or court-ordered.

B. Child support payments from an absent parent are treated as follows:

1. Treat child support payments (including arrearage payments) as unearned income to the child.

   a) An arrearage payment is one that was due, but not paid timely and is being paid to comply with an unfulfilled past obligation.

2. One-third of the amount of the child support payment made to or for an eligible child by an absent parent is excluded.

   a) The one-third exclusion of a child support payment applies to the eligible child only.

   b) The disregard is not applied when an ineligible child receives child support payments which are considered in a deeming computation.

   c) The income used to make court-ordered or Title IV-D support payments by an ineligible spouse, ineligible parent or ineligible child is excluded when deeming.

3. Child support payments being made for adult children are treated as follows:

   a) Child support payments (excluding arrearages) received by a parent after an adult child stops meeting the definition of a "child" are income to the adult child, whether or not the adult child lives with the parent or receives any of the child support from the parent.

      1) These payments are not subject to the one-third reduction.

   b) When a parent receives child support arrearage payments on behalf of an adult child:

1) Any portion of the arrearage payment that the parent receives and does not give to the adult child is income to the parent.

2) Any amount of the arrearage payment that the parent gives to the adult child is income to the adult child in the month given, not income to the parent.

(a) The one-third reduction does not apply.

3) When an adult child receives an arrearage payment directly from the absent parent, the arrearage payment is income to the adult child.

(a) The one-third reduction does not apply.

c) Child support payments and arrearages received by a parent on behalf of a deceased child or adult child are income to the parent who receives them.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.34: Rental Income.

A. Rental income is defined as follows:

1. Rent is payment that a person receives for the use of real or personal property, such as land, housing or machinery.

B. Rental income is treated as follows:

1. In determining Medicaid eligibility for at-home and institutional categories, consider net rental income.

2. Net rental income is gross less the ordinary and necessary expenses paid in the same taxable year.

a) Net rental income is counted as unearned income unless it is earned income from self-employment (such as someone in the business of renting properties).

b) Ordinary and necessary expenses are those necessary for the production or collection of rental income and generally include:

1) Interest on debts;

2) State and local taxes on real and personal property and on motor fuel;

3) General sales tax;

4) Expenses of managing or maintaining the property.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.35: Dividends and Interest.

A. This type of income is defined as follows:

1. Dividends and interest are returns on capital investments such as stocks, bond or savings accounts.

   a) Account service fees or penalties for early withdrawal do not reduce the amount of interest or dividend income.

B. This type of income is treated as follows:

1. Count dividends or interest as income or excluded income based on the following criteria:

   a) When the source of the dividends or interest is a countable resource, the dividends or interest generated is excluded income for programs with an asset test.

      1) The Medicare Cost Sharing programs (QMB, SLMB, and QI) do not have an asset test so the exclusion does not apply to them.

   b) When the source of the dividends or interest is a resource which is excluded under federal statute, the dividends or interest generated is excluded income.

      1) Examples are: Agent Orange payments, Austrian Social Insurance payments, Japanese-American and Aleutian Restitution payments, Radiation Exposure Compensation Trust Fund payments, Ricky Ray Hemophilia Relief funds, payments to Veterans' Children with Certain Birth Defects, etc.

   c) When the source of the dividends or interest is a resource excluded by the Social Security Act, dividends or interest generated on the excluded resource may or may not be excluded. Treatment is specific to the excluded resource.

      1) Examples are: burial funds and burial spaces, relocation assistance, PASS funds, gifts to children with life-threatening diseases, victim's compensation, grants, scholarships, fellowships and gifts, etc.

   d) Under liberalized income policy, interest, dividend and royalty income or any combination that does not exceed $5 per month per individual is excluded.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.36: Royalties.

A. This type of income is defined as follows:

1. Royalties include compensation paid to the owner for the use of property, usually copyrighted material, e.g., books, music or art, or natural resources, e.g., minerals, oil, gravel or timber.

    a) Royalty compensation may be expressed as a percentage of receipts from using the property or as an amount per unit produced. To be considered royalties, payments for the use of natural resources also must be received:

        1) Under a formal or informal agreement whereby the owner authorizes another individual to manage and extract a product (like timber or oil) and

        2) In an amount that is dependent on the amount of the product actually extracted.

B. This type of income is treated as follows:

1. Royalties are counted as unearned income unless they are:

    a) Received as part of a trade or business; or

    b) Received by an individual in connection with any publication of his work.

        1) Royalties earned by an individual in connection with any publication of his work are earned income (for example, publication of a manuscript, magazine article or artwork).

2. Under liberalized income policy, interest, dividend and royalty income that does not exceed $5 per month per individual is excluded. The exclusion applies to either income type or a combination of the three types up to the $5 maximum.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.37: Awards.

A. This type of income is defined as follows:

1. An award is something received as the result of a decision by a court, board of arbitration or the like.

B. This type of income is treated as follows:

1. An award is counted as unearned income subject to the general rules pertaining to income and income exclusions.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.38: Gifts.

A. This type of income is defined as follows:

1. A gift is something a person receives which is not repayment for goods or services the person provided and is not given because of a legal obligation on the giver's part.

2. A gift is something that is given irrevocably, i.e., the giver relinquishes all control.

B. This type of income is treated as follows:

1. A gift is unearned income subject to general rules pertaining to income and income exclusions. Determine the nature of the gift and apply appropriate policy.

C. Gifts used to pay tuition, fees or other necessary educational expenses are treated as follows:

1. Effective June 1, 2004, gifts (or a portion of a gift) used to pay for tuition, fees or other necessary educational expenses at any educational institution, including vocational and technical education, are excluded from income.

2. They are also excluded from resources for the 9-month period beginning the month after the month the gift was received.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.39: Gifts of Travel Tickets.

A. Domestic travel is defined as follows:

1. Domestic travel is travel in or between the 50 states, the District of Columbia, Puerto Rico, the US Virgin Islands, Guam, American Samoa and the Northern Mariana Islands.

B. A gift of a domestic travel ticket is treated as follows:

1. A domestic ticket received as a gift is treated an unearned income in the month the ticket was converted to cash.

2. The value of a ticket for domestic travel received by an individual, his spouse or parent whose income is subject to deeming is excluded from income if the ticket is received as a gift and was used for transportation or retained and has not been converted to cash (e.g., cashed in or sold, etc.).

C. A gift of a non-domestic travel ticket is treated as follows:

1. The gift of a non-domestic travel ticket that cannot be converted to cash (non-refundable) or used to obtain food or shelter is not considered income even if the ticket was used for

transportation.

2. Travel tickets that can be converted are income and counted as unearned income at the current market value in the month of receipt whether or not the ticket was used for transportation.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.40: Prizes.

A. This type of income is defined as follows:

1. A prize is generally something won in a contest, lottery or game of chance.

B. This type of income is treated as follows:

1. A prize is counted as unearned income subject to the general rules pertaining to income and income exclusions.

   a) Gambling losses are not subtracted from gambling winnings in determining an individual's countable income.

   b) If a person is offered a choice between an in-kind prize and cash, the cash offered is counted as unearned income even if the individual chooses the in-kind item, regardless of the value, if any, of the in-kind item.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.41: Gift Cards and Gift Certificates.

A. This type of income is treated as follows:

1. The value of a gift card or gift certificate is unearned income in the month it is received if the gift card or certificate can be used to purchase food or shelter or can be resold.

   a) Absent evidence to the contrary, presume a gift card or certificate can be resold.

      1) Evidence to the contrary could include a legally enforceable prohibition on resale or transfer of the card/certificate imposed by the card issuer/merchant printed on the card or certificate.

2. The value of the gift card/certificate is subject to general rules pertaining to income and income exclusion, e.g., infrequent or irregular income exclusion policy.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.42: Work-Related Unearned Income.

A. The following work-related payments are counted as unearned income:

1. Certain in-kind items provided as remuneration for employment, e.g., in-kind payments of food or shelter to domestic employees;

2. Money paid to a resident of a public institution when no employer/employee relationship exists;

3. Tips under $20 per month;

4. Jury fees, i.e., fees for services, not expense money;

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.43: Treatment of Sick Pay as Unearned Income.

A. Any payments on account of sickness and accident disability paid more than six full months after work stopped because of that sickness or disability are unearned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.44: Death Benefits.

A. This type of income is defined as follows:

1. A death benefit is something received as the result of another's death.

a) Examples include:

1) Proceeds of life insurance policies received due to death of the insured;

2) Lump sum death benefits from SSA;

3) RR burial benefits;

4) VA burial benefits;

5) Inheritances in cash or in kind;

6) Cash or in-kind gifts given by relatives, friends, or a community group to "help out" with expenses related to death.

B. This type of income is treated as follows:

1. Death benefits are counted as income to the extent the total amount exceeds the expenses of the deceased person's last illness and burial paid by the recipient of the benefit.
2. Death benefits that are not income are also not a resource for one calendar month following the month of receipt. If retained into the second month following receipt, they are countable resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.45: Inheritances.

A. This type of income is defined as follows:

1. An inheritance is cash, a right or a noncash item(s) received as the result of someone's death. An inheritance is a death benefit.

B. This type of income is treated as follows:

1. Until an item or right has a value (i.e., can be used to meet the heir's need for food or shelter), it is neither income nor a resource.

2. The inheritance is income in the first month it has a value and can be used.

3. An inheritance is not income to a person if the inheritance is something that was considered that person's resource (either as a member of an eligible couple or through deeming of resources) immediately before the death.

   a) The proceeds of a life insurance policy were not a resource before the death.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.46: Choctaw Tribal Bonus.

A. The Choctaw Tribal Bonus is issued as the result of gaming revenues which are distributed to individuals on a per capita basis.

B. For Medicaid eligibility purposes, the bonus is a recurring lump sum payment and is counted as income in the month of receipt.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.47: Educational Assistance.

A. Educational assistance is provided in many forms. Treatment will vary depending on the nature and sometimes the use of the assistance.

B. Educational assistance may be earned or unearned and may be counted or excluded.

1. The following are specific types of educational assistance:

   a) VA Educational Benefits, which are discussed in Rule 7.10);

   b) Assistance under Title IV of the Higher Education Act (HEA) of 1965 or Bureau of Indian Affairs;

      1) All student financial assistance received under HEA or BIA assistance programs is excluded from income and resources, regardless of use.
      2) The resource exclusion does not have a time limit, i.e., regardless of how long held, the assistance is excluded from resources.

      3) Interest and dividends earned on unspent educational assistance under Title IV HEA and BIA are excluded from income.

   c) Grants, Scholarships, Fellowships and Gifts;

      1) Grants, scholarships and fellowships are defined as follows:

         (a) These are amounts paid by private nonprofit agencies, the US government, instrumentalities or agencies of the US, state and local governments, foreign governments and private concerns, e.g., a private citizen, to enable qualified individuals to further their education and training by scholastic or research work, etc.

      2) Gifts are defined as follows:

         (a) A gift is something a person receives which is not repayment for goods or services provided and not given by legal obligation on the giver's part. To be a gift, something must be irrevocably given.

      3) Any portion of a grant, scholarship, fellowship or gift used for paying tuition, fees, or other necessary educational expenses at any educational institution, including vocational or technical education, is excluded from income.

      4) Any portion of such educational assistance that is not used for paying current tuition, fees or other necessary educational expenses but will be used for paying this type of educational expense at a future date is excluded from income in the month of receipt.

         (a) This exclusion does not apply to that portion set aside or actually used for food, clothing or shelter.

      5) Any portion of grants, scholarships, fellowships, or gifts that is not used or set aside for paying tuition, fees, or other necessary educational expenses is income

in the month received and a resource the month after the month of receipt, if retained.

6) If any portion of grants, scholarships, fellowships or gifts that is excluded from resource because it is set aside to pay for necessary educational expenses is used for some other purpose, the funds are income at the earliest of the following points:

(a) In the month that it is spent; or

(b) The month the individual no longer intends to use the funds to pay necessary educational expense.

7) If the funds set aside for pay for necessary educational expenses are not spent after the 9th month, they are countable resources as of the 10th month following the month of receipt.

(a) Interest and dividends earned on grants, scholarships, fellowships or gifts which are excluded as a resource count as income. Interest and dividends earned on educational assistance which is a countable resource are excluded as income.

d) Educational Payments under AmeriCorps and the National Civilian Community Corps.

1) The National and Community Service Trust Act established the Corporation for National and Community Services (CNCS). Through CNCS, the federal government administers a number of national and community service programs. It is also the federal agency that administers VISTA and the Service Corps, programs formerly administered by the ACTION agency.

2) Effective September 1, 2008, cash or in-kind payments provided by AmeriCorps State and National and AmeriCorps NCCC are excluded from income, even if they meet the definition of wages. Such payments include, but are not limited to:

(a) Living allowance payments;

(b) Stipends;

(c) Food and shelter;

(d) Clothing allowances;

(e) Educational awards and payments in lieu of educational awards.

Source: Social Security Act §1902 (r)(2); 42 CFR §435.601(b) (Rev 1994); P.L. 110-245 §203.

Rule 7.48: Presidentially-Declared Disaster Assistance.

A. This type of assistance is defined as follows:

1. At the request of the state governor, the President may declare a major disaster when the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and local governments, and federal assistance is needed.

B. This type of assistance is treated as follows:

1. The value of support and maintenance in cash or in-kind is not counted as countable income if:

   a) The individual lived in a household which he or she (or he and another person) maintained as his or their home at the time a catastrophe occurred in the area; and

   b) The President declared the catastrophe a major disaster for purposes of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (formerly the Disaster Relief Act of 1974); and

   c) The individual stopped living in his home because of the catastrophe and began to receive support and maintenance within 30 days after the catastrophe; and

   d) The individual receives support and maintenance while living in a residential facility maintained by another person. A residential facility is to be interpreted broadly, including a private household, a shelter, or any other temporary housing arrangement resorted to because of the disaster.

2. Assistance (other than support and maintenance) received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or any other Federal statute because of a catastrophe which the President declares to be a major disaster is excluded from countable income.

   a) This includes assistance to repair or replace the individual's own home or other property and disaster unemployment assistance.

   b) Interest earned on the assistance is excluded from income and resources.

   c) If excluded from income, any unspent assistance is permanently excluded from resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.49: Federal Emergency Management Agency (FEMA) Emergency Assistance.

A. This type of assistance is defined as follows:

1. Through a national board chaired by the Federal Emergency Management Agency (FEMA) and local boards, funds are provided to private nonprofit organizations and state and local governmental entities for providing emergency food and shelter to needy individuals. The federal funds are not provided to meet ongoing basic needs.

B. This type of assistance is treated as follows:

1. Assistance involving FEMA is subject to general rules pertaining to income and income exclusions.

   a) Assistance involving FEMA is most often provided in-kind by private nonprofit organizations and with state certification will qualify for exclusion as Home Energy Assistance and Support and Maintenance Assistance (HEA/SMA).

2. It is neither IBON nor ABON.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.50: Federal Housing Assistance.

A. This type of assistance is defined as follows:

1. The Federal Government through the Office of Housing and Urban Development (HUD) and the US Department of Agriculture's Rural Housing Service (RHS), formerly the Farmers Home Administration, provides many forms of housing assistance.

2. This assistance may be provided directly by the federal government or through other entities such as local housing authorities or nonprofit organizations.

B. This type of assistance is treated as follows:

1. The value of any assistance paid with respect to a dwelling unit is not counted as income or resources if paid under a program or project in which HUD, i.e., "Section 8", or RHS is involved.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.51: Low Income Energy Assistance.

A. This type of assistance is defined as follows:

1. Through a block grant, the federal government provides funds to states for energy assistance (including weatherization) to low income households. This assistance may be provided by a variety of agencies (such as state or local welfare offices, community

action agencies, special energy offices) and known by a variety of names (for example, HEAP, Project Safe). It is most often provided in a medium other than cash (such as, voucher, two-party check, direct payment to vendor) but may be in cash.

B. This type of assistance is treated as follows:

1. Home energy assistance payments or allowances provided under the Federal Low-Income Home Energy Assistance Program (LIHEAP) are not counted as income or resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.52: Home Energy Assistance and Support and Maintenance Assistance (HEA/SMA).

A. This type of assistance is defined as follows:

1. Low income energy assistance discussed in Rule 7.51 is governmental assistance. HEA/SMA is assistance which is the result of charitable efforts by the community to help recipients.

2. Home energy assistance is any assistance related to meeting the costs of heating or cooling a home.

3. Support and maintenance assistance is in-kind support and maintenance or cash provided for the purpose of meeting food, clothing and shelter needs. It includes energy assistance.

B. This type of assistance is treated as follows:

1. Home energy or support and maintenance assistance is not counted as income if it is certified in writing by the appropriate state agency to be both based on need and:

   a) Provided in-kind by a private nonprofit agency (501(c) organization); or

   b) Provided in cash or in-kind by a supplier of home heating oil or gas, a rate-of-return entity (e.g., a utility company) providing home energy, or a municipal utility providing home energy.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.53: Relocation Assistance.

A. This type of assistance is defined as follows:

1. Relocation assistance provided to persons displaced by governmental projects that acquire real property is not income.

B. This type of assistance is treated as follows:

1. Relocation assistance provided under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act is not counted as income.

   a) Federal relocation assistance is permanently excluded from resources.

   b) Interest earned on unspent payments is not excluded from income or resources.

2. Relocation assistance provided to persons displaced by any state, local or state-assisted/locally-assisted project is not counted as income.

   a) Unspent payments are excluded from resources for 9 months.

   b) Interest earned on unspent payments is not excluded from income or resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.54: Refugee Cash Assistance (RCA), Cuban and Haitian Entrant Cash Assistance (CHECA).

A. This type of assistance is defined as follows:

1. Refugee Cash Assistance and Cuban and Haitian Entrant Cash Assistance are federally funded programs that make ongoing needs-based payments to refuges during their first 8 months in the United States.

B. This type of assistance is treated as follows:

1. RCA and CHECA payments are federally-funded income based on need and unless excluded under a PASS, are counted dollar for dollar as income under IBON policy. The $50/$20 general income exclusion does not apply.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.55: Refugee Reception and Placement Grants.

A. This type of assistance is defined as follows:

1. Federal funds are provided to national voluntary refugee resettlement agencies such as Catholic Charities or the Hebrew Immigrant Aid Society, which provide services (including food, clothing and shelter) related to initial resettlement of new refugees.

B. This type of assistance is treated as follows:

1. Assistance involving a refugee reception and placement grant or a refugee-matching grant

is subject to the general rules pertaining to income and income exclusions.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.56: Community Service Block Grants.

A. This type of assistance is defined as follows:

1. The Department of Health and Human Services makes community service block grants to states to provide a broad range of services and activities to assist low-income individuals and alleviate the causes of poverty in a community. States may subsequently make grants or enter into contracts with private nonprofit organizations or political subdivisions.

B. This type of assistance is treated as follows:

1. Assistance involving community service block grants is subject to the general rules pertaining to income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.57: Work Relief (Workfare) Programs.

A. This type of assistance is defined as follows:

1. Some governmental assistance programs require that certain recipients work in exchange for the assistance provided. Most often the amount of the assistance payment is divided by the minimum wage and the recipient required to perform some service for the resulting number of hours. Usually a participant in such a work program is given money to cover any expenses incurred (e.g., carfare, special clothing, miscellaneous, etc.).

B. This type of assistance is treated as follows:

1. The payment in such situations is an assistance payment and is not earned income. The fact that an individual is required to work in exchange for an income based on need or assistance based on need payment does not change the nature of the payment.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.58: Programs for Older Americans.

A. These programs are defined as follows:

1. The Federal Government through the Administration on Aging is involved in a variety of programs for older Americans. State or local governments or community organizations may operate the programs.

B. Payments from these programs are treated as follows:

1. A wage or salary paid under Programs for Older Americans is counted as earned income subject to the general policies regarding earned income.

2. Anything provided under the Programs for Older Americans other than a wage or salary is not counted as income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.59: Workforce Investment Act (WIA).

A. This program is defined as follows:

1. The Workforce Investment Act of 1998 (WIA), which became effective July 1, 2000, establishes a national workforce preparation and employment system to meet the needs of businesses, job seekers and those who want to further their careers.

B. Payments from this program are treated as follows:

1. Based on the type, amount and frequency of the income received, e.g., wages, stipends, bonuses, incentive payments, etc., the income will be evaluated under the general rules pertaining to income and income exclusions.

2. Any payments that represent supportive services (child care, transportation, medical care, meals, etc.) which are social services, not income, will be disregarded.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.60: Job Corps.

A. This program is defined as follows:

1. The Job Corps is a Workforce Investment Act (WIA) program.

B. Income from this program is treated as follows:

1. A Job Corps participant who is a student under age 22 qualifies for the student earned income exclusion.

2. The living allowance is wages.

3. The readjustment allowance is income including any amount deducted to pay the participant's share of a dependent's allowance, is wages.

4. Any bonus and incentive payments are also wages.

5. A bi-weekly dependent's allowance may be paid directly to a participant's dependent. This allowance is counted as unearned income to the dependent.

   a) If the participant is a deemor and his dependent is eligible for Medicaid, only one-half of the dependent's allowance is unearned income to the dependent.

6. The clothing allowance is not income.

7. Supportive services such as medical services, transportation to and from medical treatment, counseling, job placement services provided in-kind which are medical or social services are not income.

8. The rules regarding temporary absence for deeming purposes apply to Job Corps participants who reside in a Job Corps Center or who are away at school.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 7.61: Payments for Clinical Trial Participation.

A. These payments are defined as follows:

1. Payments for participation in clinical trials which research and test treatment of rare diseases or conditions, as defined in the Improving Access to Clinical Trials Act of 2009.

B. These payments are treated as follows:

1. As applicable, exclude the first $2,000 of compensation per calendar year received by a Medicaid client, spouse or deemor as compensation for participation in clinical trials.

2. Payments which are reimbursements for expenses incurred while participating in the trial do not reduce the $2,000 calendar year maximum.

3. Apply the exclusion, if applicable. Otherwise, use regular income counting rules.

4. The Act specifies this exclusion will expire on October 5, 2015. Any unspent compensation under this exclusion will count as a resource at that time.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); Clinical Trials Improvement Act of 2009.

Part 104 Chapter 8: Other Unearned Income Exclusions

Rule 8.1: Agent Orange Settlement Payments.

A. These payments are defined as follows:

1. Payments made in connection with the Agent Orange Product Liability Litigation settlement fund.

B. These payments are treated as follows:

1. Payments from Agent Orange settlement fund or any other fund established pursuant to the settlement in the Agent Orange liability litigation are excluded from both income and resources.

2. Effective July 2004, interest earned by conserved Agent Orange settlement payments is excluded income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); P. L.101-201; P. L. 101-239 §10405.

Rule 8.2: Austrian Social Insurance Payments.

A. These payments are defined as follows:

1. The nationwide class action lawsuit, Bondy v. Sullivan, involved Austrian social insurance payments based, in whole or in part, on wage credits under Paragraphs 500-506 of the Austrian General Social Insurance Act, which grant credits to person who suffered a loss (imprisoned, unemployed, forced to flee Austria from March 1933 to May 1945 for political, religious or ethnic reasons).

B. These payments are treated as follows:

1. Credits authorized under paragraphs 500-506 of the Austrian General Social Insurance Act are excluded as income.

2. Effective July 2004, interest earned on excluded Austrian social insurance payments retained is excluded from income.

3. Austrian social insurance payments not based on Paragraphs 500-506 are counted as income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.3: Child Care Payments under Child Care and Development Block Grant Act (CCDBGA).

A. These payments are defined as follows:

1. Payments to low-income families or to children with special needs for certain childcare activities, such as early childhood development, before and after school services and services designed to permit a parent to continue working.

B. These payments are treated as follows:

1. Payments to a child's family under the CCDBGA are not counted as income.

2. There are no specific resource exclusions for payments made under CCDBGA.

3. Other types of child care payments are subject to general policy pertaining to income and income exclusions.

4. Payments the child's family makes to the child care provider using the funds is income to the provider.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.4: Department of Defense (DOD) Payments to Certain Persons Captured and Interned by North Vietnam.

A. These payments are defined as follows:

1. Payments made under section 657 of the National Defense Authorization Act to an individual (or if deceased, to the surviving spouse or child of any age) captured and interned by the Democratic Republic of North Vietnam as a result of participation in certain military operations.

B. These payments are treated as follows:

1. These DOD payments are excluded from income and resources.

2. Effective July 2004, interest earned on unspent payments is excluded from income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); P. L. 105-78 § 606, P. L. 104-201 §657.

Rule 8.5: Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

A. These payments are defined as follows:

1. Lump sum payments for medical and other expenses associated with energy-related occupational illnesses.

B. These payments are treated as follows:

1. Lump sum payments made under EEOICPA, including reimbursement for medical expenses, are excluded from income and resources.

2. Effective July 2004, interest earned on unspent payments is excluded from income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.6: Filipino Veterans Compensation Fund Payments (FVECF).

A. These payments are defined as follows:

1. The American Recovery and Reinvestment Act signed February 17, 2009, established a one-time payment to eligible Filipino veterans (or surviving spouse) who aided American troops during World War II. Must file within one year of enactment.

B. These payments are treated as follows:

1. The one-time FVECF payment is excluded from income.

2. The interest earned on an unspent payment is excluded from income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.7: Food Programs with Federal Involvement.

A. These payments are defined as follows:

1. SNAP;

2. School Lunch Program;

3. Child Nutrition Programs; and

4. Nutrition Programs for Older Americans.

B. These payments are treated as follows:

1. The value of food or assistance offered under these programs is excluded from income and resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.8: Gifts to Children with Life Threatening Conditions.

A. These gifts are defined as follows:

1. Any in-kind gift, not converted to cash, and cash gifts that do not exceed $2000 in any calendar year from a 501(c)(3) organization (e.g., Make-a-Wish Foundation, other charities or churches) for the benefit of a child under age 18 with a life threatening condition.

B. These gifts are defined as follows:

1. Such gifts are excluded from income and resources.

2. This exclusion includes a gift to a parent whose income is subject to deeming if the gift is for the benefit of the child and does not exceed the limits discussed above.

3. Interest and dividends earned on funds excluded by this provision are not excluded from income or resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.9: HIV and Hemophiliac Settlement Payments.

A. These payments are defined as follows:

1. Payments from Ricky Ray Hemophilia Relief Fund and Susan Walker v. Bayer Corporation, et al, settlement fund.

B. These payments are treated as follows:

1. These payments are excluded from income and resources.

2. The interest earned on retained funds is excluded from income effective July 2004.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.10: Home Produce for Personal Consumption.

A. This produce is defined as follows:

1. Home produce is food which a person catches in the wild or raises.

B. This produce is treated as follows:

1. Home produce is excluded from income if it is consumed by the individual or his household.

2. If home produce is basically raised for home consumption rather than business and the amount of produce traded or sold is small, e.g., extra eggs, home-canned beans, etc., assume the production costs equaled the value of what was received; therefore, no

income is derived from such a trade or sale.

3. Otherwise, if home produce is sold, but not as a trade or business, the income is unearned. If sold as a trade or business the income is earnings from self-employment.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.11: Individual Interest in Indian Trust or Restricted Lands Exclusion.

A. These payments are defined as follows:

1. Includes certain Tribal per capita payments and other types of Tribal income distributed or held in trust by the Secretary of the Interior and monies received from the lease or sale of natural resources, and rent or lease income resulting from federally-protected rights on excluded Indian property.

B. These payments are treated as follows:

1. All such payments are considered a converted asset rather than income.

2. The $2000 annual income exclusion allowed for eligibles and deemors since January 1, 1994, on monies derived from individual interests in Indian Trust or restricted lands is no longer applicable since all such payments are considered a converted asset.

3. Gaming revenues which are distributed to individuals on a per capita basis are not included in this exclusion. Gaming revenues are countable income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); American Recovery and Reinvestment Act of 2009 §5009.

Rule 8.12: Japanese American and Aleutian Restitution Payments.

A. These payments are defined as follows:

1. Payments by the US government to individual Japanese-Americans or the spouse or parent of an individual of Japanese ancestry and Aleuts who were interned or relocated during WWII. This exclusion also includes payments made by the Canadian government to Japanese-Canadians interned or relocated during WWII.

B. These payments are treated as follows:

1. These payments are excluded from income and resources.

2. Effective July 2004, interest earned on unspent restitution payments is excluded from income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.13: Nazi Persecution Payments.

A. These payments are defined as follows:
   1. Payments made to individuals because of their status as victims of Nazi persecution include German Reparation payments and payments under provisions of the Nazi Persecution Victims Eligibility Act.

B. These payments are treated as follows:

   1. Payments from any source to individuals because of their status as victims of Nazi persecution are excluded from income and resources.

   2. Interest on unspent payments on victims of Nazi persecution is excluded from income effective July 2004.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.14: Netherlands WUV Payments to Victims of Persecution.

A. These payments are defined as follows:

   1. Payments by the Dutch Government to Dutch/non-Dutch persons in WWII, who were victims of persecution due to religion, race, beliefs or homosexuality and are presently suffering from disabilities and illnesses as a result of that persecution

B. These payments are treated as follows:

   1. WUV payments are excluded from income.

   2. Interest earned on unspent WUV payments is excluded from income effective July 2004.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.15: Radiation Exposure Compensation Trust Fund (RECF).

A. These payments are defined as follows:

   1. Lump sum payments made to individuals who contracted certain diseases after radiation exposure due to nuclear testing and uranium mining.

B. These payments are treated as follows:

   1. Payments from RECF are excluded from income.

   2. Interest earned on unspent payments is excluded from income effective July 2004.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.16: Refunds of Taxes Paid on Real Property or Food.

A. These payments are defined as follows:

1. Any amount received from any public agency as a return or refund of taxes paid on real property or on food purchased.

B. These payments are treated as follows:

1. These refunds are excluded from income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 8.17: Victims' Compensation Payments.

A. These payments are defined as follows:

1. Payments received from a fund established by a state to aid crime victims.

B. These payments are treated as follows:

1. Any payment received from a fund established by a state to aid victims of crime is excluded from income.

2. Unspent victims' compensation assistance payments are excluded from resources for 9 months following the month or receipt.

3. Interest earned on unspent victims' compensation payments is not excluded from income or resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 104 Chapter 9: Sources and Treatment of Earned Income

Rule 9.1: Sick Pay.

A. These payments are defined as follows:

1. Sick pay is a payment made to or on behalf of an employee by an employer or a private third party (such as a union or insurance company) for sickness or accident disability. Sick pay is either wages or unearned income.

2. Payments under a Workers' Compensation law are neither wages nor sick pay. Annual and sick leave payments are considered a continuation of salary.

B. These payments are treated as follows:

1. When sick pay is received within 6 months after stopping work, and it is not attributable to the employee's own contributions through payroll deduction to a sick pay plan, treat as earned income.

2. When sick pay is received within 6 months of stopping work, and it is attributable to the employee's own contributions through payroll deduction to a sick pay plan, treat any portion of the sick pay received by the employee which, according to the employer is attributable to the employee's own contributions, as unearned income.

3. When sick pay is received more than 6 months after stopping work, treat as unearned income.

   a) To determine the 6-month period after stopping work:

      1) Begin with the first day of non-work.

      2) Include the remainder of the calendar month in which work stops.

      3) Include the next 6 full calendar months.

   b) Example**:** If an individual stops work on May 5, the 6-month periods ends November 30th.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 9.2: Wages and Salaries.

A. These payments are defined as follows:

1. Wages are what an individual receives (before deductions) for working as someone else's employee.

   a) Under certain conditions, services performed as an employee are deemed self-employment rather than wages, e.g., ministers, real estate agents, share farmers, insurance salesmen, etc.

2. Wages may take the form of:

   a) Salaries. Payments (fixed or hourly rate) received for work performed for an employer.

   b) Commissions. Fees paid to an employee for performing a service, i.e., a percentage of sales.

c) Bonuses. Amounts paid by employers as extra pay for past employment, i.e., outstanding work, length of service, holidays, etc.

d) Severance Pay. Payment made by an employer to an employee whose employment is terminated independently of his wishes.

e) Military Pay. Service member's wage, which is based solely on the member's pay grade and length of service.

f) Special payments because of employment. Items such as vacation pay, advance/deferred wages, etc.

B. These payments are treated as follows:

1. Absent evidence to the contrary, if FICA taxes have been deducted from an item assume it meets the definition of wages.

2. Wages are counted at the earliest date of the following:

a) When received, or

b) When credited to the individual's account, or

c) When set aside for the individual's use.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 9.3: Cafeteria Plans.

A. A Cafeteria Plan is defined as follows:

1. A written benefit plan offered by an employer in which:

a) All participants are employees, and

b) Participants choose cafeteria-style from a menu of two or more cash or qualified benefits.

1) A qualified benefit is not considered part of an employee's gross income.

2) Qualified benefits include, but are not limited to:

(a) Accident and health plans, including medical plans, vision plans, dental plans, accident and disability insurance;

(b) Group term life insurance plans up to $50,000;

(c) Dependent care assistance plans;

(d) Certain stock bonus plans under Section 401(k)(2) of the IRC, but not 401(k)(1) plans.

3) Cash is not a qualified benefit.

B. Employees can participate in Cafeteria Plans in different ways as follows:

1. Salary-Reduction Agreements defined and treated as follows:

a) A salary-reduction agreement is an agreement between the employer and employee whereby the employee, in exchange for the right to participate in a Cafeteria Plan, accepts a lower salary or foregoes a salary increase.

1) The amount of a salary-reduction agreement is not part of gross income and is not subject to Social Security, Medicare or other income taxes.

2) Amounts used to purchase qualified benefits with a salary-reduction agreement are not the employee's wages and are not considered income for Medicaid purposes.

2. Employer Contributions, treated as follows:

a) Amounts an employer contributes to fund basic benefit levels under a Cafeteria Plan, with or without a salary reduction agreement, are not the employee's wages and are not considered income for Medicaid purposes.

3. Payroll deductions, treated as follows:

a) Payroll deductions used to purchase Cafeteria-Plan benefits are the employee's wages and are earned income.

b) Example: Employees who want more than basic benefits contributed by the employer may pay additional costs through payroll deductions. The amounts of those voluntary payroll deductions are the employee's wages and are considered earned income for Medicaid purposes.

1) Unless an exception applies, FICA will be deducted from these payroll deductions.

4. Cash received under a Cafeteria Plan is treated as follows:

a) Cash received under a Cafeteria Plan in lieu of benefits is wages.

b) However, cash received as reimbursement for qualified-benefit expenses, such a child care, is not income.

c) Example: ABC, Inc., contributes $50 per week to fund basic benefits under a cafeteria plan. Mr. White selects insurance that costs $35 per week and opts for a weekly cash payment of $15 in lieu of additional coverage. The $15 cash payment is part of Mr. Brown's countable wages.

C. When a cafeteria plan is involved, countable wages for Medicaid purposes can be less than the gross amount on the check stub. It can be difficult to tell whether paystubs represent payroll deductions, which are part of gross wages, or cafeteria-plan itemizations, which are not.

1. One indicator is when the deduction for Social Security and Medicare taxes is less than the tax rate times the gross wages shown on the checkstub.

2. Example: The June 2010 monthly pay stub reflects gross wages of $999.94, a deduction for FICA/Medicare taxes of $68.85 (does not equal 7.65 percent of the gross wages) and a $160 voluntary deduction for health insurance. The employer confirms the company contributes $100 per month to fund basic benefit levels under a cafeteria plan that offers a variety of insurance coverages. The $100 that the employer contributes toward benefits under a cafeteria plan is not wages. Also, the employer confirms the employee voluntarily pays $60 for additional benefits. The employee's contribution is wages.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 9.4: Wage Advances and Deferred Wages.

A. These payments are defined as follows:

1. Wage advances are payments by an employer to an individual for work to be done in the future.

2. Wages are considered "deferred" if they are received later than their normal payment date.

a) Types of wage payments that may be deferred include vacation pay, dismissal and severance pay, back pay and bonuses.

B. These payments are treated as follows:

1. An advance is wages in the month received.

2. Wages that are deferred due to circumstances beyond the control of the employee are considered earned income when actually received;

3. Wages that are deferred at the employee's request or by mutual agreement with the

employer are considered earned income when they would have been received had they not been deferred.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 9.5: Net Earnings from Self Employment (NESE).

A. NESE is defined as follows:

1. NESE is the gross income from any trade or business, less allowable deductions for that trade or business.

   a) Any distributive share (whether distributed or not) of income or loss from a trade or business carried on by a partnership is included in NESE.

   b) NESE also includes any profit or loss in a partnership.

   c) NESE is determined on an annual basis.

B. NESE is treated as follows:

1. NESE is verified whenever an individual is self-employed or has been self-employed during the current taxable year based on the most recent federal income tax return filed with IRS, or if the business is new, based on the individual's business records or the best estimate available.

2. NESE, after any appropriate offsets and deductions, is counted as earned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 9.6: Payments for Services Performed in a Sheltered Workshop or Work Activities Center.

A. These payments are defined as follows:

1. Payment for services performed in a sheltered workshop or work activities center are what an individual receives for participating in a program designed to help him become self-supporting.

   a) A sheltered workshop is a nonprofit organization or institution whose purpose is:

      1) To carry out a recognized program of rehabilitation for handicapped workers; and/or

      2) To provide such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

b) A work activities center is:

1) A sheltered workshop, or

2) A physically separated department of a sheltered workshop having an identifiable program and separate supervision and records.

3) A work activities center is planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productivity capacity inconsequential.

(a) Therapeutic activities are custodial activities such as activities where the focus is on teaching basic living skills and other purposeful activity so long as work production is not the main purpose.

B. These payments are treated as follows:

1. Payments for such services are a type of earned income and are counted when received or when set aside for the person's use.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 9.7: Royalties and Honoraria.

A. These payments are defined as follows:

1. Royalties include compensation paid to the owner for the use of property, usually copyrighted material (e.g., books, music, or art) or natural resources (like minerals, oil, gravel or timber). Royalty compensation may be expressed as a percentage of receipt from using the property or as an amount per unit produced.

   a) To be considered royalties, payments for the use of natural resources also must be received:

      1) Under a formal or informal agreement whereby the owner authorizes another person to manage and extract a product like timber or oil; and

      2) In an amount that is dependent on the amount of the product actually extracted.

2. An honorarium is an honorary or free gift, reward or donation usually provided gratuitously for services rendered (like a guest speaker), for which no compensation can be collected by law. The amount also may include payment for items other than services rendered, e.g., lodging or travel expenses.

B. These payments are treated as follows:

1. Royalties are earned income when they are:

   a) Received as part of a trade or business; or

   b) Received by a person in connection with any publication of his work such as publication of a manuscript, magazine article or artwork.

2. While royalties may involve natural resources, an outright sale of natural resources by the owner of the land or by the owner of rights to use the land constitutes conversion of a resource. Proceeds from the conversion of a resource are not income.

3. Absent evidence to the contrary, assume the amount of any honorarium received is in consideration of the actual services provided by the individual and treat as earned income. Any other payment received in cash or in-kind connected with service is unearned income to the extent it exceeds the individual's expenses.

   a) If the income from royalties/honoraria that are earned income are not allowed. However, such expenses are deductible from royalties/honoraria that are unearned income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 9.8: Uniformed Services Pay and Allowances.

A. These types of income are broadly defined as follows:

1. Compensation to members of the Uniformed Services takes several forms, chiefly:

   a) Basic or Base Pay;

   b) Special and Incentive Pay; and

   c) Cash Allowances.

B. These types of income are treated as follows:

1. Cash payments for pay and allowances which are paid for service as a member of the uniformed service are treated as earned income, with the exception of the following:

   a) Service members and their families living in on-base housing or privatized military housing may receive a BAH payment or the military may direct a BAH to a housing contractor by way of payroll deduction or allotment. In each case, the BAH is not cash income. However, if service members and their families who live in private housing receive a BAH payment, it is earned income.

   b) Hostile fire pay and imminent danger pay (sometimes referred to as "combat pay") are

types of special pay to a service member who is subject to hostile fire or explosion of hostile mines or on duty in an area in which he/she is in imminent danger of being exposed to hostile fire or explosion of hostile mines and while on duty in that area, other service members in the same area are subject to, killed, injured or wounded by hostile fire, explosion of a hostile mine or any other hostile action. Hostile fire and imminent danger pay is excluded income. If retained, unspent funds are a resource the following month if not otherwise excluded.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); Heroes Earnings Assistance and Relief Tax (HEART) Act of 2008.

Rule 9.9: Income of Members of Religious Orders.

A. This type of income is treated as follows:

1. The existence of a vow of poverty is a factor in determining whether cash is considered wages or net earnings from self-employment.

2. The existence of a vow of poverty is also a factor in determining if payments made by a member to the order can be considered contributions for food, clothing, or shelter. The treatment of income to members of religious orders (nuns, monks, priests, etc.) who take a vow of poverty is determined by the source and nature of such income, as follows:

   a) Cash or in-kind remuneration for members of religious orders who take a vow of poverty is considered wages if:

      1) An individual receives compensation from the order as an active, working member of that order, whether or not the religious order has elected Title II coverage. e.g., an individual works at a hospital owned by the order.

      2) An active, working member of a religious order receives compensation for performing services from an agency of the church supervising the order or from an affiliated institution, whether or not the religious order has elected Title II coverage, e.g., an individual teaches at a school which is an affiliate of the order's supervising church.

      3) A member of a religious order receives compensation from a third party for services performed as an employee, e.g., an individual works for a private firm as a computer programmer.

   b) Remuneration for members of religious orders who take a vow of poverty is considered earnings from self-employment only when a member engages in self-employment activity unrelated to his membership in the order, e.g., an individual writes articles for nature magazines on a free-lance basis.

   c) Any income provided by the order to a member who has taken a vow of poverty,

which does not fall under one of the above provisions is unearned income to the member even if turned over to the order.

d) Any income or resources turned over by the member to the order are considered to be in fulfillment of the vow of poverty and are not considered contributions for food, clothing, or shelter received from the order.

e) Unearned income received by a member from any source other than the order (such as a Title II or VA benefits) is income to the member even if the member turns it over to the order.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 104 Chapter 10: Income Computations and Deeming

Rule 10.1: Income Computations.

A. Countable income is defined as follows:

1. Countable income is what remains after:

a) Eliminating all amounts that are not income; and

2. Applying all appropriate exclusions.

B. Countable income is the sum of a month's countable earned and unearned income, which is subtracted from the appropriate need standard to determine if an individual or couple is eligible for Medicaid.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 10.2: Need Standards.

A. The appropriate need standard used to test income depends on the coverage group for which the client is applying.

B. Medicaid need standards are based on the following:

1. SSI Federal Benefit Rates (FBR) set by SSI policy and subject to increase in January of each year. SSI FBRs are used for SSI-related cases.

a) Countable income cannot equal or exceed the appropriate FBR for Medicaid eligibility.

2. Federal Poverty Levels (FPL**)** set by the federal government and subject to change each year, usually in February or March. FPLs are used at varying rates (100%, 120%, 135%,

200%, and 250%) depending on the coverage group.

a) Countable income can be equal to, but cannot exceed the appropriate FPL for Medicaid eligibility.

3. 300% of the SSI FBR is the formula required by federal regulation, 42 CFR 435.1005, to set the institutional need standard for all long term care coverage groups. This limit is subject to increase in January of each year when SSI FBRs increase.

   a) Countable income cannot be equal to or exceed the institutional limit for Medicaid eligibility.

   b) If income does equal or exceed the limit, ineligibility exists for that month unless an Income Trust is in effect.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); 42 CFR 435.1005.

Rule 10.3: Deemed Income.

A. Deeming is defined as follow:

1. The term "deeming" identifies the process of considering another person's income and resources to be available for meeting a Medicaid client's basic needs.

2. Deemed income and resources are attributed to an eligible individual whether or not they are actually made available, with the following restrictions:

   a) Deeming only applies in household situations;

      1) Deeming of income is not applied in the eligibility determination for either an institutional or community spouse and deemed income is never included in the Medicaid Income computation post-eligibility.

   b) Income is only deemed from an ineligible spouse to an eligible spouse and from ineligible parent(s) to eligible child.

      1) Deeming is based on the concept that a husband and wife (including "holding out" couples) and/or parents and child who live together have a responsibility for each other and share income and resources.

      2) Both SSI and Medicaid regulations require deeming in household situations.

B. It would not be equitable to deem the entire amount of an ineligible parent's or spouse's income to the eligible individual without some provision to permit the deemor to meet his own needs and those of ineligible children in the household.

1. An allocation is an amount deducted from income subject to deeming which is considered to be set aside for the support of certain individuals other than the eligible individual.

    a) Based on this consideration, allocations are applied for the following:

        1) Ineligible parent(s); and

        2) Ineligible children in the household.

2. Application of these allocations reduces the amount of income available for deeming.

C. For deeming purposes, a child is someone who is neither married nor the head of a household and is:

1. Under age 18 or

2. Under age 22 and a student.

D. For deeming purposes, an eligible child is a natural or adopted child under age 18 who lives in the household with one or both parents, is not married and is eligible for or applying for Medicaid.

1. A child is eligible if the child receives Medicaid from any source (SSI, DHS, etc.).

    a) Deeming no longer applies beginning the month following the month the eligible child attains age 18.

        1) An individual attains a particular age on the day preceding the anniversary of his/her birth.

        2) Deeming applies in the month of attainment of age 18 regardless of whether the application filed that month is filed before or after the day of attainment.

E. For deeming purposes, an ineligible child is either a natural or adopted child of an:

1. Eligible individual or the eligible individual's spouse; or

2. An ineligible parent or the ineligible parent's spouse.

F. In addition to the general definition of a child, an ineligible child must also be unmarried and either:

1. Under age 18; or

2. Under age 22 and a student.

a) Prior to 06/16/08, an ineligible student child could remain a "child" for deeming purposes only until age 21.

G. A parent whose income and resources are subject to deeming is one who lives in the same household with an eligible child and is:

1. A natural parent of the child; or

2. An adoptive parent of the child.

H. A parent's income and resources are deemed to an eligible child beginning the month:

1. After the month the child come home to live with the parent(s)(e.g., the month following the month the child comes home from the hospital; or

2. Of birth when a child is born in the parent's home; or

3. After the month of adoption when the month, i.e., the month the adoption become final.

I. Deeming is applied from parent to child when they live together in the same household.

1. When the child lives with a stepparent, the stepparent is not considered a parent or spouse of a parent of the eligible child for deeming purposes.

2. Other relatives or individuals who have legal custody of a child, but are not natural or adoptive parents, are also not considered parents for deeming purposes.

3. An individual whose parental rights have been terminated due to adoption no longer meets the definition of "parent" for Medicaid purposes.

a) This remains true if the adopted child later lives in the same household as the former parent.

J. Parental deeming rules are waived for the following coverage group:

1. Effective July 1, 1998, a child in the Disabled Child Living at Home coverage group is exempt from parental deeming of income and resources.

2. The eligible child's own income and resources affect Medicaid eligibility in the usual manner.

K. For deeming purposes, a temporary absence exists when an individual (eligible individual or child or ineligible spouse, parent or child) leaves the household but intends to, and does, return in the same month or the following month. If the absence is temporary, deeming continues to apply.

1. A child, away at school (vocational or educational training facility), who returns home on some weekends, holidays, or vacations and is subject to parental control is considered temporarily absent from the parents' household regardless of the duration of the absence.

   a) Evidence which may indicate a child away at school is not subject to parental control includes an existing agreement, court order or signed statements from parents or school authorities. In the absence of such evidence, consider the child subject to parental control.

L. Any item which is not income to an eligible individual is also not income to an ineligible spouse or parent. In addition, the following types of income are excluded from deeming:

   1. Exclude income used by an ineligible spouse or ineligible parent (or child) to make support court-ordered payments.

      a) If an ineligible child receives child support payments, do not disregard one-third of the payment as is done for an eligible child.

   2. Exclude a stepparent's income from deeming.

      a) The case is treated as a one-parent household, deeming the legal parent's income to the eligible child.

   3. Exclude In-Home Supportive Services Payments provided under Title XX or other federal, state or local governmental programs to an eligible individual and paid by the individual to his ineligible spouse, parent or child living in the same household in return for in-home supportive services (chore, attendant, homemaker, etc.).

      a) Such payments made directly to the ineligible spouse, parent or child to provide services to the ineligible are also excluded for deeming purposes.

      b) Retroactive IHSS payments are not a resource for one calendar month following month of receipt.

         1) Any unspent portion becomes a resource if retained into the second calendar month following receipt.

M. Public Income Maintenance Payments (PIM) Received by a Deemor are treated as follows:

   1. PIM payments are payments based on need paid under the following:

      a) Temporary Assistance for Needy Families (TANF);

      b) Supplemental Security Income (SSI);

      c) The Refugee Act of 1980;

d) The Disaster Relief Act of 1974;

e) General Assistance programs of the Bureau of Indian Affairs;

f) State or local government assistance programs based on need; and

g) VA benefits based on need.

2. In the deeming computation, the PIM payment and any income counted in determining the PIM payment are excluded when received by an ineligible spouse or parent.

   a) Assume all of the income of the person who received the PIM payment was used (counted or excluded) in determining the payment.

   b) There is no deeming allocation given for ineligible spouses, parents or children who receive PIM payments.

   c) Resources continue to be deemed (or combined) from the spouse or parent receiving Income Based on Need.

   d) If the spouse or parent who receives the PIM payments wishes to apply for Medicaid, the PIM payment is counted according to the income rules regarding the specific payment.

   e) As a result of these exclusions from the deeming process, there may be situations advantageous to a couple if the potentially eligible spouse who has non-deemable income does not file.

      1) Example: One spouse has a VA pension of $500. The pension (and any income used to determine the pension payment) is not deemable. The other applicant spouse has no income and would be treated as an individual with zero income. If the spouse who has the pension also files, the $500 would result in a dollar for dollar reduction in the couple FBR or FPL since income based on need is considered income to an eligible individual.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 10.4: In-Kind Income.

A. In-kind income is defined as follows:

1. In-kind income is any income other than cash income.

   a) To meet the definition of income, the in-kind item received by the individual must be:

1) Food or shelter; or

2) Something the individual can sell or convert to obtain food or shelter.

(a) If the in-kind item is neither food nor shelter, and it cannot be sold or converted to cash, then it is not income.

B. In-kind income is treated as follows:

1. In-kind Support and Maintenance (ISM) is unearned income in the form of food or shelter, or both. Receipt of clothing is no longer counted as ISM effective March 9, 2005.

a) ISM is an SSI policy principal that may be applicable to all categories of eligibility as described below:

1) Whenever in-kind payments, as defined above, are received by individuals in SSI-related categories, such as SSI retro cases and former SSI recipient cases, the value of the ISM is determined by one of the three methods discussed below and the ISM is counted as unearned income.

2) For cases associated with the Federal Poverty Level (FPL) or Institutional Income limit, the source of the in-kind payment determines whether the ISM is countable. If the source of the in-kind payment is for the benefit of the client and the in-kind payment is for food or shelter, the actual amount of the ISM is countable unearned income.

(a) Example: The client is the beneficiary of a trust, which is not a resource. A monthly disbursement of $300 is made from the trust to pay his shelter costs. The amount of the disbursement is countable unearned income.

(b) Example: The client's mother pays his rent of $300 to his landlord from her own funds. This third party payment is not countable ISM to the Medicaid recipient.

b) To determine the value of ISM for an eligible individual or couple in an SSI-related category of eligibility, use the lesser of the three values discussed below when the individual or couple:

1) Lives in the household of another,

2) Receives rent free shelter,

3) Has someone else (a third party) pay for goods and services provided to the eligible, or

4) Receives rental subsidies.

c) Current Market Value (CMV). This is the amount for which something can be purchased locally on the open market.

1) Depending on the type of support and maintenance received, the determination of the CMV may be based on various factors such as the assessed value from a knowledgeable source, property owner's statement, and the individual's payment.

d) Actual Value (AV). The current market value is divided by the number of people receiving support and maintenance minus any payment made out of an individual's own funds. If he makes no payment, AV and CMV may be the same amount.

e) Presumed Maximum Value (PMV). This is an amount equivalent to one-third of the applicable Federal Benefit Rate (FBR) plus $20.

1) The PMV rules apply to in-kind support and maintenance that is countable as unearned income. The PMV never applies to earned income.

2) Use of the PMV in determining an individual's countable income is rebuttable by the individual's showing that the AV of the in-kind support and maintenance he receives is less than the PMV.

(a) The lower of these two figures is always used, but never an amount in excess of the PMV, regardless of the number of sources of such income or the variety of living arrangements during any one given period.

3) PMV is not used to determine the value of ISM for individuals in FPL or institutional categories.

f) ISM is counted as income in the month in which the individual has use of the food or shelter item, with the exception that a third party vendor payment received as a gift is income in the month in which the payment is made.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 10.5: In-Kind Items Received as Remuneration for Employment (SSI Categories Only).

A. In-kind items may be provided as remuneration for employment, as follows:

1. Wages may include the value of food and/or shelter (ISM), or other items received in lieu of cash for individuals in SSI-related categories only.

2. In-kind payment of food or shelter to the following people or under the following conditions is unearned income:

a) Agricultural employees;

b) Domestic employees;

c) Service not in the course of the employer's trade or business;

d) Service by certain home workers;

e) Members of the Uniformed Services;

f) In the form of food and/or shelter which is on the employer's business premises for the employer's convenience and, if shelter, its acceptance by the employee is a condition of employment

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 104 Chapter 11: Introduction to Income – FCC Programs

Rule 11.1: Income Rules

A. The Affordable Care Act (ACA) requires that state Medicaid programs use modified adjusted gross income or MAGI-based methodology for determining the income of an individual and the individual's household. MAGI methodology and rules are required in determining eligibility for Medicaid or CHIP or an 1115 demonstration that involve FCC covered populations of children, pregnant women and parents and needy caretaker relatives. The ABD population is exempt from MAGI rules.

B. The MAGI methodology is aligned with the process used to determine eligibility for the premium tax credits and cost sharing reductions available to certain individuals purchasing coverage through the federal health insurance marketplace. The requirement that both Medicaid and the marketplace use MAGI-based income methodologies is designed to promote coordination and avoid gaps in coverage, to the extent possible, for individuals that transfer between different types of insurance affordability programs.

C. The use of liberalized income rules under 1902(r)(2) of the Social Security Act is prohibited under MAGI based methodology. This provision is only available to certain ABD covered categories of eligibility.

Source: 42 CFR§ 435.603 (Rev. 2012)

Rule 11.2: MAGI Defined

A. MAGI and household income are defined in section 36B(d)(2)(A) and(B) of the Internal Revenue Code (IRC). The treatment of income is based on IRS tax rules, except for specified exceptions.

B. Modified adjust gross income, as amended by the ACA, has the literal meaning of income that is:

1. Decreased by allowable tax deductions that include trade and business deductions, losses from the sale or exchange of property, deductions attributable to rents or royalties, and deductions for alimony paid. Generally, the same adjustments to income allowable under IRS rules are allowable deductions from countable income for Medicaid and CHIP purposes.

2. Increased by the amount of interest received or accrued that is exempt from tax and foreign earned income that is excludable as taxable income.

Source: Internal Revenue Code § 36B (d)(2)(A) and (B) (Rev. 2011)

Rule 11.3: Household Income

A. MAGI based income rules require that financial eligibility is based on household income for FCC related programs.

B. Household income is the sum of the MAGI-based income of every individual included in the individual's household minus as amount equivalent to five (5) percentage points of the federal poverty level for the applicable family size, with the following exceptions.

1. The MAGI-based income of an individual who is included in the household of his or her natural, adopted or step parent and is not required to file a tax return is not included in the household income whether or not the individual files a tax return.

2. The MAGI-based income of a tax dependent other than a spouse or child and is not required to file a tax return is not included in the household income whether or not the individual files a tax return.

C. No other income disregards are permitted from gross income other than the five (5) percentage points disregard.

Source: 42 CFR § 435.603 (Rev. 2012)

Rule 11.4: Exceptions to IRS Income Rules for MAGI Based Income

A. The following are exceptions to using IRS rules for determining MAGI-based income for a household.

1. Income received in a lump sum, whether recurring or non-recurring, is counted in the month received. Recurring lump sum payments are not averaged.

2. Scholarships, awards or fellowship grants used for education purposes and not for living expenses are excluded from income. Amounts used for room and board are not excluded and count as income.

3. Certain income derived from American Indian and Alaska Native sources are excluded from income. Income that is excluded includes:

   a. Distributions from Alaska Native Corporations and Settlement Trusts;

   b. Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the Secretary of the Interior;

   c. Distributions and payments from rents, leases, rights of way, royalties, usage rights or natural resource extraction and harvest from rights of ownership or possession in any lands described in above or federally protected rights regarding off-reservation hunting, fishing, gathering or usage of natural resources;

   d. Distributions resulting from real property ownership interests related to natural resources and improvements located on or near a reservation or within the most recent boundaries of a prior federal reservation or resulting from the exercise of federally-protected rights relating to such real property ownership interests;

   e. Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

   f. Student financial assistance provided under the Bureau of Indian Affairs education programs.

4. Social Security benefits that are not taxable income under IRS rules are countable as income for MAGI purposes for all insurance affordability programs, including Medicaid and CHIP.

Source: 42 CFR § 435.603 (Rev. 2012) and Internal Revenue Code, § 36B (d)(2)(iii) (Rev. 2011)

Rule 11.5: When Income Counts

A. Current monthly income counts in determining eligibility for Medicaid and CHIP for new applicants and for recipients at the time of an annual review.

Source: 42 CFR § 435.603 (Rev. 2012)

Part 104 Chapter 12: Income That Does Not Count Under IRS Rules – FCC Programs

Rule 12.1: Income That Does Not Count

A. The following is not an exhaustive list of income that does not count but represents the types more commonly encountered. If not addressed herein, IRS tax rules provide the governing policy.

1. Alimony is deducted from the income of the payer and is therefore a type of non-countable income; however, alimony payments received by an individual count as income.

2. Black Lung benefits are not taxable income and are not counted as income.

3. Child Support benefits are not counted as income to the payee or the child(ren) for whom it is paid; however, Child Support is not a deduction allowable from the income of the payer.

4. VA Benefits are not counted as income. Benefits paid by the Department of Veterans Affairs are not taxable income.

5. Workers' Compensation Benefits are not taxable income and are not counted as income.

6. Life Insurance Proceeds paid due to the death of the insured person are not taxable income and are not counted as income, unless the policy was sold or reassigned for a price.

7. Accelerated Death Benefits paid under a life insurance contract prior to the insured's death are excluded from income if the insured is terminally ill.

8. Public Assistance Benefits, such as SSI, TANF, and the value of assistance from programs such as SNAP and WIC are excluded from income. IV-E Foster Care and Adoption Assistance payments are also excluded from income.

9. Disaster relief income or grants from a qualified disaster relief payment, meaning the payment is to reimburse certain necessary living expenses following a federally declared disaster, are excluded from income.

Source: 42 CFR § 435.603 (Rev. 2012)

Rule 12.2: Excluded Income from Specific Programs Providing Assistance

A. The following are payments excluded from income that originate from a specific program that provides assistance payments.

1. Home Affordable Modification Program (HAMP). Pay-for-Performance Success Payments under the HAMP are not taxable income and are not countable.

2. Hardest Hit Fund and Emergency Homeowners' Loan Program payments. Payments from a State Housing Finance agency that can be used to pay mortgage interest or payments from Housing and Urban Development for an Emergency Homeowners' Loan Program (EHLP) are not countable as income.

3. Mortgage assistance payments under section 235 of the National Housing Act for mortgage assistance are not included in the homeowner's income.

4. Replacement housing payments made under the Uniform Relocation Assistance and Real Property Acquisition Policies Act for Federal and Federally Assisted Programs are not counted as income.

5. Relocation payments and home rehabilitation grants under section 105(a)(11) of the Housing and Community Development Act made by a local jurisdiction to a displaced individual moving from a flood-damaged residence to another residence is not counted as income. Home rehabilitation grants received by low-income homeowners in a defined area under the same act are also not countable as income.

6. Payments to reduce the cost of winter energy made by a state to qualified individuals to reduce their cost of winter energy are not countable as income.

7. Holocaust Victims Restitution. Payments received by a Holocaust victim or the heir of a Holocaust victim and interest earned on the payments are not taxable and are therefore not countable as income.

8. Historic preservation grants. Payments received under the National Historic Preservation Act to preserve a historically significant property are excluded from income.

Source: 42 CFR § 435.603 (Rev. 2012)

Rule 12.3: Income that is Partially Excluded

A. The following income is partially countable and partially excluded under the conditions specified for each type of payment.

1. Foster Care Provider payments received from a state, political subdivision, or qualified foster care placement agency for providing care to qualified foster individuals in an individual's home are not countable as income except in the following situations. A qualified foster individual is someone living in a foster family home who was placed there by an agency of the state or a qualified foster care placement agency.

a) Foster care payments are income to the foster care provider if the individual received payment for more than 5 individuals age 19 or older. Count as income the payment received for foster individuals in excess of the limit.

b) Difficulty-of-care payments are additional payments that are designated by the payer as compensation for providing additional care that is required for the physically, mentally or emotionally handicapped qualified foster individual. These payments count as income if received for more than 10 foster

individuals under age 19 or 5 foster individuals age 19 or older. Count as income the payment received for foster individuals in excess of the limit.

c) If payment is made to maintain space in the home for emergency foster care, the payment is countable as income.

2. Gulf Oil Spill payments. Payment received for lost wages or income are taxable income and are therefore countable as income. Payments received for property damage are non-taxable and not countable as income if the payment does not exceed the basis in the property. Payments received for physical injury or emotional distress is non-taxable and therefore not countable as income.

3. Dependent Care Benefits. If an employer provides dependent care benefits under a qualified plan, benefits can be excluded as follows: the amount to exclude is the lesser of the total amount of benefits received or incurred during the tax year; the individual or spouse's income; or $5,000 annually ($2,500 if married filing separately). Any benefits exceeding the limit are countable as wages.

Source: 42 CFR § 435.603 (Rev. 2012)

Part 104 Chapter 13: Income That Counts Under IRS Rules – FCC Programs

Rule 13.1 – Income That Counts

A. The following is not an exhaustive list of the types of income that counts but is meant to cover the types most commonly encountered If not addressed herein, IRS tax rules provide the governing policy.

1. Employee Compensation includes all things received in payment for personal services, such as wages, salaries, commissions, fees, bonuses, tips, severance pay, sick pay paid by an employer while out on sick leave and back pay awards. Employment income that counts is the gross income prior to any payroll deductions.

2. Volunteer Income. The treatment of income received as a volunteer is as follows:

a) Peace Corp – living allowances paid to the volunteer for housing, utilities, supplies, food and clothing are not counted as income. Countable wages includes allowances paid to a spouse and minor children while the volunteer is a volunteer leader training in the U.S.; living allowances designated as basic compensation; leave allowances and readjustment allowances.

b) VISTA (Volunteers in Service to America) – meal and lodging allowances paid to the volunteer are counted as wages.

c) AmeriCorps education awards and living allowances are countable income.

d) National Senior Service Corps programs, includes the RSVP or Retired Senior Volunteer Program, Foster Grandparent Program, and Senior Companion Program. Income received for supportive services or reimbursements for out-of-pocket expenses are not counted as income.

3. Military Pay – payments received as a member of a military service are wages. Military retirement benefits are treated as pensions. Allowances, such as a basic allowance for housing or subsistence, are generally not taxable income and do not count as income.

4. Self-Employment – for IRS purposes, an individual is considered to be self-employed if the individual has a trade or business as a sole proprietor, an independent contractor, is a member of a partnership that carries on a trade or business or is otherwise in business for himself/herself, including a part-time business. Self-employment is business income less allowable business expenses that results in a net profit or loss. Net profit counts as income. Annualize the income to arrive at a monthly countable amount provided the business has been in existence for a twelve (12) month period. Annualize even if the income is received over a short period of time during the year unless the business is designed to be seasonal, such as a summer business that operates only three (3) months out of the year. Such business income would be averaged over the period of time the business covers. If a business has been in existence less than a full taxable year, average over the period of time the business has been in existence.

   a) Partnership income – each partner's distributive share of profit counts as self-employment income which is annualized.

5. Rental Income – countable income includes the net proceeds after allowing all IRS allowed deductions for rental income.

6. Farm Income – farm income that counts is the net earnings or profit that remains after allowing all IRS allowed business expenses involved in raising livestock, poultry or fish or from the growing of fruits or vegetables. Farm income is annualized or averaged over the time the farming business operates, as appropriate.

7. Royalties from copyrights, patents and oil, gas and mineral properties are taxable income and therefore countable.

8. Unemployment Compensation – all unemployment compensation benefits are countable as income.

9. Retirement, Survivors and Disability Insurance (RSDI) or benefits paid by the Social Security Administration are only partially taxable as income under certain conditions but are fully countable as income for insurance affordability programs.

10. Alimony payments received are countable as income to the divorced or separated spouse receiving the payment.

11. Annuities – payments from annuities are countable as income.

12. Pensions and Retirement benefits are countable as income, including pensions paid by any private, municipal, county, state or federal plan.

13. Estate and trust income is countable income when distributed or when it should have been distributed, regardless of whether it was actually distributed.

14. Gambling, Lotteries and Raffle Winnings – cash winnings are countable income in the month received.

15. Jury duty pay is countable as income.

16. Alternative trade adjustment assistance (ATAA) payments received from a state agency under the Demonstration Project for Alternative Trade Adjustment Assistance for Older Workers is countable as income.

17. Interest income, including tax-exempt interest, is countable under MAGI rules.

18. Disability benefits received through an accident or health insurance plan – the IRS rules for counting such benefits are as follows:

    a) If both the individual and the employer paid the premiums for the plan, only the amount received for disability that is due to the employer's payments is countable as income,

    b) If the individual paid the entire cost of the plan, the payments are not countable as income,

    c) If the premiums of a plan were paid through a cafeteria plan and the amount of the premium was not taxable income to the individual, the premiums are considered paid by the employer and the disability payments are countable as income.

Source: 42 CFR § 435.603 (Rev. 2012)

Part 104 Chapter 14: Verification of Income – FCC Programs

Rule 14.1 – Verification Requirements

A. The ACA mandates that states rely heavily on electronic data sources to verify income. Data sources include IRS tax return data for households that file taxes, the Social Security Administration (SSA) for benefits paid through SSA and state data sources such as the MS Department of Employment Security for wage and unemployment compensation verification. Other available state and federal data sources may be used as appropriate.

B. Self-attested income reported on the application form must be compared to income verified through electronic data sources to determine if the various sources are reasonably compatible and allow a decision regarding eligibility or ineligibility for Medicaid, CHIP or other insurance affordability programs.

Rule 14.2 – Reasonable Compatibility Rules

A. Income verified from electronic data sources that is reasonably compatible with self-attested income allows a Medicaid or CHIP decision regarding eligibility without requesting paper verification from the applicant.

B. The first test of reasonable compatibility for income is the comparison of income reported from the federal data services hub against income declared or self-attested on the application form. If both sources are at or below the appropriate Medicaid income limit for the household size, Medicaid approval is allowed for individuals in the household who otherwise qualify for Medicaid. If both sources are above the Medicaid limit, Medicaid is denied but CHIP eligibility for children in the household will be assessed and adults in the household will referred to the Federal Market Place as appropriate.

C. Discrepancies in income that result from comparing income from the federal hub to self-attested income will result in a hierarchy of attempts to resolve the discrepancy prior to requesting that the applicant provide paper verification. Attempts include the comparison of income to a state-established threshold that would allow a decision and/or pending the decision awaiting secondary data sources to arrive for comparison purposes. A written request for paper verification will be requested only when:

   1. The applicant fails to provide a reasonable explanation for the discrepancy when contacted.

   2. Efforts to contact the individual to discuss reasons for any discrepancy fail.

   3. Reported income is not available for verification through an electronic data source.

Source: 42 CFR § 435.945 (rev. 2012)