

CHAPTER 181. INCOME PROVISIONS FOR CATEGORICALLY NEEDY NMP-MA AND MNO-MA

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Cross References

This chapter cited in 55 Pa. Code § 141.71 (relating to policy); 55 Pa. Code § 141.81 (relating to eligibility policy for MNO); 55 Pa. Code § 171.81 (relating to policy); 55 Pa. Code § 178.77 (relating to proceeds from the sale of an excluded resident home); 55 Pa. Code § 178.82 (relating to Japanese-American and Aleutian restitution payments); and 55 Pa. Code § 178.161 (relating to personal property exclusions).

Subchapter A. GENERAL PROVISIONS FOR MA INCOME COMMON TO ALL CATEGORIES OF MA

GENERAL PROVISIONS FOR MA INCOME

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GENERAL PROVISIONS FOR MA INCOME

§ 181.1. General policy on MA income common to all categories of MA.

(a) In determining income eligibility for categorically needy NMP-MA, the total amount of income available to the applicants/recipients in 1 calendar month is used.

(b) In determining income eligibility for MNO-MA, the total amount of income available to the applicants/recipients in a consecutive 6-calendar month period is used. In determining income eligibility for retroactive eligibility coverage for MNO-MA, the total amount of income available to the applicants/recipients in the combined retroactive and prospective period, a consecutive 6-calendar month period, is used. The combined period can be less than 6 months only if the applicant/recipient is deceased.

(c) A person receiving AFDC, GA, SBP or SSI and who is living in the household of a person applying for, or receiving, MA is not included in the determination of MA eligibility. The income of persons living in the household is not considered available to meet the needs of a person applying for, or receiving, MA except for payments made to the applicant/recipient for goods, services, rent, room and board.

(d) As a condition of eligibility for MA, an applicant/recipient shall take necessary steps to obtain and make available potential sources of income available to him, such as, but not limited to, benefits under retirement, unemployment compensation, workers compensation, State or county retirement and disability benefits, veterans benefits, union pensions and employer's pensions and annuities.

(1) An applicant, except a PD or TD applicant—see §§ 181.41 and 181.42 (relating to categories of NMP-MA; and categories of MNO-MA)—or a recipient who, without good cause, fails to cooperate in an effort to establish eligi-

bility for SSI, Retirement, Survivors and Disability Insurance (RSDI), or another potential benefit is ineligible for MA until the applicant complies with the cooperation requirement.

(2) A PD or TD applicant—see §§ 181.41 and 181.42—who, without good cause, fails to cooperate in establishing eligibility for a potential benefit is ineligible for MA for a minimum of 60 calendar days. Ineligibility for MA continues after the minimum of 60 calendar days until the applicant complies with the cooperation requirement.

(e) In determining income eligibility for MA for an applicant/recipient group in an AFDC- or GA-related category which includes a woman whose pregnancy is verified, the unborn child is counted as a member of the applicant/recipient group. If multiple births are expected and verified, each unborn child is counted as a member of the applicant/recipient group.

(f) In determining income eligibility for MA, the amounts in Appendices A—J are used as specified in this chapter. Revisions that are required by Federal law or regulations to the appendices will be published as a notice in the *Pennsylvania Bulletin*, for codification in the *Pennsylvania Code*.

(1) Appendix A is the Federal benefit rate plus the State supplement payable under Title XVI of the Social Security Act (42 U.S.C.A. §§ 1381—1383c).

(2) Appendix B is 300% of the Federal benefit rate payable under Title XVI of the Social Security Act.

(3) Appendix C is the family size allowance, by county and family size, payable under the State's AFDC Program under Title IV-A of the Social Security Act (42 U.S.C.A. §§ 602—615).

(4) Appendix D is the Federal benefit rate payable under Title XVI of the Social Security Act.

(i) Item 1 is one-half of the Federal benefit rate payable under Title XVI of the Social Security Act for one person.

(ii) Item 2 is one-half of the Federal benefit rate payable under Title XVI of the Social Security Act for two persons.

(5) Appendix E is a chart of calculations of one-third of the family size allowance payable under the State's AFDC Program under Title IV-A of the Social Security Act.

(6) Appendix F is the State's medically needy income limit determined under 42 CFR 435.812 (relating to medically needy income standards: reasonableness), subject to the limitations in 42 CFR 435.1007 (relating to medically needy).

(7) Appendix G is the monthly figures for the medically needy income limit.

(8) Appendix H is one-third of the monthly income amount for medically needy only income eligibility.

(9) Appendix I is the standard of need of the State's AFDC Program under Title IV-A of the Social Security Act.

(10) Appendix J is the gross income limit for AFDC- and GA-related NMP-MA cases, based on the gross income test in the State's AFDC Program under Title IV-A of the Social Security Act.

Authority

The provisions of this § 181.1 amended under sections 201(2) and 403(a) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(a)).

Source

The provisions of this § 181.1 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432; amended July 28, 2000, the provisions under Act 20 effective July 1, 1995, the provisions under Act 35 effective retroactive June 17, 1996, 30 Pa.B. 3779. Immediately preceding text appears at serial pages (211622) to (211624).

§ 181.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant/recipient—A person who is applying for, or receiving, MA or a group of related persons who are living together and who choose to apply for, or receive, MA as one group.

Calendar quarter—A period of 3 full calendar months beginning with January, April, July or October.

Community spouse—The spouse living at home who has a spouse who had lived at home but is now an institutionalized spouse.

Countable net income—Income counted in determining income eligibility for MA, which is actual and deemed income less appropriate exemptions, deductions and disregards.

Deemed income—Income which is attributed to the applicant/recipient whether or not the income is actually received.

Earned income—Money or other compensation received in return for services rendered.

Full-time employment—Employment which averages at least 30 hours per week in a calendar month.

IRC—Internal Revenue Code (26 U.S.C.A. §§ 1—1043).

Infrequent income—Income that is received not more than once in a calendar quarter.

Institutionalized spouse—The spouse who is receiving skilled care, heavy care/intermediate services or intermediate care in a nursing facility or other medical institution, including services in an ICF/MR facility, for a period likely to last for at least 30 consecutive days.

Irregular income—Income that is not subject to scheduling or is unpredictable.

LRR—Legally Responsible Relative—The spouse of a person, or the natural or adoptive parent of a child under 21 years of age.

Legal guardian—A person who is court appointed as the legal guardian.

MCCA—The Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, 102 Stat. 602) (July 1, 1988).

NFC—Nursing Facility Care—Skilled care, heavy care/intermediate services or intermediate care in a nursing facility or other medical institution.

Nonrecurring income—Income that is received in a single payment and not expected to continue.

Parent—The natural or adoptive father or mother of a child under 21 years of age.

Part-time employment—Employment which averages less than 30 hours per week in a calendar month.

Personal property—Privately-owned possessions. The term includes, but is not limited to, cash, bank accounts, stocks, bonds, mortgages, cash value of life insurance policies, household furnishings, personal effects, motor vehicles, boats and Federal, State and local tax refunds. The term does not include real property.

Real property—Land, buildings, mobile homes and improvements thereto.

Restricted income—Income limited by the payer for the use of a specified person.

SSI—Supplemental Security Income—The benefit amount paid to an eligible person or to an eligible person and his eligible spouse under Title XIV of the Social Security Act (42 U.S.C.A. §§ 1381—1383c).

Spouse—A person who is married to another by legal ceremony or by common-law.

Unearned income—Money or other compensation received for which a service is not rendered.

Authority

The provisions of this § 181.2 amended under sections 201(2) and 403(a) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(a)).

Source

The provisions of this § 181.2 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended August 28, 1992, effective upon publication and apply October 1, 1989, 22 Pa.B. 4432; amended July 28, 2000, the provisions under Act 20 effective retroactive to July 1, 1995, 30 Pa.B. 3779. Immediately preceding text appears at serial pages (211624) to (211625).

Notes of Decisions*Countable Net Income*

Under 55 Pa. Code §§ 181.101, 181.132 and this section, workers' compensation benefits and disability insurance were properly calculated as unearned income which must be counted for purposes of Medical Assistance eligibility. *Goldstein v. Department of Public Welfare*, 654 A.2d 295 (Pa. Cmwlth. 1995).

Cross References

This section cited in 55 Pa. Code § 181.110 (relating to income deemed available from the spouse).

§ 181.3. Income reporting and verification provisions for all categories of MA.

(a) The applicant/recipient or a person acting on his behalf is required to report and verify earned and unearned income, allowable deductions, such as work and personal expenses, and medical expenses used in determining eligibility for MA.

(b) Verification for income, expenses and deductions consists of documentation specified by the Department which is appropriate for the item being verified and includes, but is not limited to, paystubs, pay envelopes, a statement by the employer or other documentary proof of the business income and work and personal expenses of the applicant/recipient, award letters or copies of benefit checks.

(c) Verification for medical expenses includes, but is not limited to, invoices, bills, receipts and statements which identify the type, amount and the date of the medical service.

(d) An applicant/recipient may not be denied MA for lack of verification if he has cooperated in the verification attempt.

Authority

The provisions of this § 181.3 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.3 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

**CONTINUING AND RETROACTIVE ELIGIBILITY
PROVISIONS FOR ALL CATEGORIES OF MA****§ 181.11. Continuing eligibility.**

(a) Eligibility for continuing MA benefits begins with the date eligibility is established or the date of application, if the applicant/recipient is otherwise eligible.

(1) If the applicant is ineligible in the month of application, eligibility begins with the first day of the following month if the applicant is eligible beginning from the first day of that month.

(2) Authorization of MA benefits in the GA-related NMP category begins when all eligibility factors are verified, verification is received from a third party or the client has cooperated in the verification attempt and the applicant/recipient is otherwise eligible.

(b) For NMP-MA categories, income eligibility for continuing MA benefits exists when the applicant's/recipient's countable monthly net income is equal to, or less than, the income limits for the applicable category. Those income limits are:

(1) For persons in the aged, blind and disabled categories not receiving skilled nursing care or intermediate care, the NMP-MA income limits in Appendix A.

(2) For persons in the aged, blind and disabled categories receiving skilled nursing care or intermediate care, the NMP-MA income limits in Appendix B.

(3) For persons in the AFDC categories and the GA category, the NMP-MA income limits in Appendix C.

(c) For MNO-MA categories, income eligibility for continuing MA benefits exists when the applicant's/recipient's countable net income for a 6 calendar month period is equal to, or less than, the appropriate MNO-MA income limits in Appendix F.

(d) For persons who do not meet the requirements of subsection (b) or (c), eligibility for continuing MA benefits exists if the applicant/recipient meets the eligibility requirements under § 181.13 or § 181.14 (relating to eligibility under NMP-MA spend-down; and eligibility under MNO-MA spend-down).

Authority

The provisions of this § 181.11 issued under sections 201(2) and 403(a) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(a)).

Source

The provisions of this § 181.11 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended July 28, 2000, the provisions under Act 35 effective retroactive to June 17, 1996, 30 Pa.B. 3779. Immediately preceding text appears at serial pages (211626) and (267115).

Cross References

This section cited in 55 Pa. Code § 181.312 (relating to deductions from earned income for the AFDC categories of MNO-MA); and 55 Pa. Code § 181.314 (relating to deductions from earned income for the GA categories of MNO-MA).

§ 181.12. Retroactive eligibility.

(a) The earliest possible date for retroactive MA benefits to begin is the first day of the third month preceding the month of application.

(1) The period of eligibility for retroactive MA benefits under NMP-MA begins with the first day of the month in the retroactive period in which the first medical service was incurred, if the applicant was otherwise eligible during that month.

(2) The period of eligibility for retroactive MA benefits under MNO-MA begins with the first day of the month in the retroactive period in which the first medical service was incurred, if the applicant was otherwise eligible during that month.

(b) For NMP-MA categories with the exception of the persons covered in § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons), income eligibility for retroactive MA benefits exists when the applicant's/recipient's countable monthly net income for the retroactive period is equal to, or less than:

(1) The appropriate NMP-MA income limits in Appendix A for persons in the aged, blind and disabled categories not receiving skilled nursing care or intermediate care.

(2) The appropriate NMP-MA income limits in Appendix C for persons in the AFDC categories and the GA category.

(c) For MNO-MA categories, income eligibility for retroactive MA benefits exists if one of the following applies:

(1) The applicant's/recipient's countable net income in the combined retroactive/prospective period, less medical expenses is equal to, or less than, the appropriate MNO-MA 6-month period income limits in Appendix F.

(2) The applicant's/recipient's countable net income in the combined retroactive/prospective period, less medical expenses is equal to, or less than, the appropriate MNO-MA 6-month period income limits in Appendix F. Unpaid medical expenses that are not subject to payment by a third-party, which remain the legal obligation of the applicant/recipient, and are not to be paid for under the MA Program once MA is authorized and paid medical expenses, are deducted from the countable net income in the combined retroactive/prospective period as provided under § 181.14(e)(1)—(6) (relating to eligibility under MNO-MA spend-down). This includes medical expenses incurred before the retroactive period.

Authority

The provisions of this § 181.12 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)); amended under sections 201, 403 and 443.1 of the Public Welfare Code (62 P. S. §§ 201, 403 and 443.1).

Source

The provisions of this § 181.12 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended February 15, 1991, effective March 1, 1991, 21 Pa.B. 624; amended August 16, 1991, effective August 17, 1991, 21 Pa.B. 3704; amended July 28, 2000, the provisions under Act 35 effective retroactive to June 17, 1996, the expansion of allowable medical expense income deductions effective retroactive to February 1, 1999, 30 Pa.B. 3779. Immediately preceding text appears at serial pages (267115) to (267116).

Notes of Decisions

Because they relate to different things, the 60-day time period for submitting an exception under this section does not conflict with the three-month time period established at 55 Pa. Code § 181.12(a) which pertains to determinations of retroactive eligibility. *Ashton Hall, Inc. v. Department of Public Welfare*, 743 A.2d 529 (Pa. Cmwlth. 1999).

§ 181.13. Eligibility under NMP-MA spend-down.

(a) Eligibility under NMP-MA spend-down is available to an applicant/recipient except for an applicant/recipient receiving skilled nursing care or intermediate care.

(b) The applicant/recipient shall meet the NMP-MA eligibility criteria, including the income criteria, to qualify for NMP-MA spend-down.

(c) The period of NMP-MA spend-down eligibility begins the day of the calendar month in which eligibility for NMP-MA spend-down is established and continues through the last day of that calendar month.

(d) Income eligibility for NMP-MA spend-down exists when the applicant's/recipient's:

(1) Countable net income less \$10 is equal to, or less than, the appropriate NMP-MA income limits in Appendix A for the aged, blind and disabled categories not receiving skilled nursing care or intermediate care.

(2) Countable net income less \$10 and medical expenses in subsection (e) is equal to, or less than, the appropriate NMP-MA income limits in Appendix A for the aged, blind and disabled categories not receiving skilled nursing care or intermediate care.

(3) Countable net income less \$10 is equal to, or less than, the appropriate NMP-MA income limits in Appendix C for the AFDC categories and the GA categories not receiving skilled nursing care or intermediate care.

(4) Countable net income less \$10 and medical expenses in subsection (f) is equal to, or less than, the appropriate NMP-MA income limits in Appendix C for the AFDC categories and the GA categories not receiving skilled nursing care or intermediate care.

(e) Deductible medical expenses include:

(1) Unpaid medical expenses, including those reasonably expected to be incurred, which meet the requirements in this paragraph. The unpaid medical expenses:

(i) Are not subject to payment by a third-party.

(ii) Are not to be paid for under the NMP-MA Program once NMP-MA is authorized.

(iii) Are the legal obligation of the applicant/recipient.

(iv) Have not previously been used as a deduction in the determination of eligibility for a prior authorization of MA.

(2) Paid medical expenses which meet the requirements in this paragraph. The paid medical expenses:

(i) Are paid in the calendar month for which spend-down is requested.

- (ii) Have not previously been used as a deduction in the determination of eligibility for a prior authorization of MA.
- (f) Medical expenses meeting the requirements in subsection (e) are deducted in the calendar month for which spend-down is requested in the following order:
- (1) Medicare and other health insurance premiums including enrollment fees, deductibles or coinsurance charges incurred by the applicant/recipient regardless of whether they are paid or unpaid.
 - (2) Copayments or deductibles required by the Department. An applicant/recipient participating in the Copayment Program required by the Department is permitted a medical expense deduction for copayment expenses, subject to the copayment limit established by the Department.
 - (3) Expenses incurred—paid and unpaid—by the applicant/recipient for necessary medical and remedial services recognized under State statutes or regulations but not included in the NMP-MA Program.
 - (4) Expenses incurred—paid and unpaid—by the applicant/recipient for necessary medical and remedial services that are included in the NMP-MA Program.
- (g) A monthly review of eligibility for NMP-MA spend-down is required except when the countable net income less \$10 is equal to, or less than, the appropriate income limit. A monthly review does not require a reapplication unless:
- (1) The monthly review falls in the month that a complete reapplication of eligibility for NMP-MA is due.
 - (2) Three consecutive months have elapsed since the applicant/recipient requested a determination of eligibility for NMP-MA spend-down.

Authority

The provisions of this § 181.13 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.13 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.11 (relating to continuing eligibility).

§ 181.14. Eligibility under MNO-MA spend-down.

- (a) Eligibility under MNO-MA spend-down is available to applicants/recipients.
- (b) The applicant/recipient shall meet the MNO-MA eligibility criteria, including the income criteria, to qualify for MNO-MA spend-down.
- (c) Income eligibility for MNO-MA spend-down exists when the applicant's/recipient's countable net income less medical expenses is equal to, or less than,

the appropriate MNO-MA income limits in Appendix F (relating to six-month period medically needy income limits (MNIL)) for a 6-month period. Medical expenses deducted include those identified in subsection (d) and deducted in the order provided in subsection (e).

(d) Deductible medical expenses include:

(1) Unpaid medical expenses, including those reasonably expected to be incurred, which meet the requirements in this paragraph. The unpaid medical expenses:

(i) Are not subject to payment by a third-party.

(ii) Are not to be paid for under the MNO-MA Program once MNO-MA is authorized.

(iii) Are the legal obligation of the applicant/recipient.

(iv) Have not previously been used as a deduction in the determination of eligibility for a prior authorization of MA.

(2) Paid medical expenses which meet the conditions listed in this paragraph. The expenses:

(i) Have been paid in the month of application, or any month in the retroactive period or a combination of both, for which the individual is applying.

(ii) Have not been previously used as a deduction in the determination of eligibility for a prior authorization of MA.

(ii) Are the legal obligation of the applicant/recipient and are not subject to payment by a third party.

(3) Medical and remedial expenses paid by a public program if the following apply:

(i) The public program is not financed in whole or in part by Federal funds.

(ii) The expenses are wholly financed by the State or a subdivision of the State, for example, county or municipality.

(iii) The expenses have been paid in the month of application, or any month in the retroactive period, or a combination of both, for which the individual is applying.

(iv) The expenses have not been previously used as a deduction in the determination of eligibility for a prior authorization of MA.

(e) Medical expenses meeting the requirements in subsection (d) are deducted from the countable net income in the following order:

(1) Medicare and other health insurance premiums, including enrollment fees, deductibles or coinsurance charges incurred by the applicant/recipient regardless of whether they are paid or unpaid.

(2) Copayments or deductibles under the following programs:

- (i) An applicant/recipient participating in the Copayment Program required by the Department is permitted a medical expense deduction for copayment expenses, subject to the copayment limit established by the Department.
 - (ii) The allowable medical expense for an applicant/recipient determined eligible for the Pharmaceutical Assistance Contract for the Elderly (PACE) Program is limited to the current PACE payment for each prescription.
- (3) For persons not eligible for, or not receiving, the PACE benefits, the allowable medical expense is the full prescription payment if:
- (i) The applicant/recipient had been denied PACE benefits and the reasons for denial have not changed.
 - (ii) The applicant/recipient has not been determined eligible for PACE.
 - (iii) The applicant/recipient had good cause for not applying for, or participating in, the PACE program. Factors that constitute good cause include the following:
 - (A) The client's health or age precludes participation or makes it impractical.
 - (B) The client had been unaware of the responsibility to apply for PACE participation.
 - (C) The client had previously been denied PACE benefits and the circumstances that caused denial have not changed.
- (4) Paid and unpaid expenses incurred by the applicant/recipient for necessary medical and remedial services recognized under State statutes or regulations but not included in the MNO-MA Program.
- (5) Paid and unpaid expenses incurred by the applicant/recipient for necessary medical and remedial services that are included in the MNO-MA Program.
- (6) Medical and remedial expenses paid by a public program meeting the requirements in subsection (d)(3).
- (7) For an applicant/recipient receiving skilled nursing care or intermediate care, the projected cost of his care, for a period not to exceed 6 months, at the private rate for the appropriate level of care anticipated to be received by the applicant/recipient in the skilled nursing or intermediate care facility.

Authority

The provisions of this § 181.14 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)); amended under sections 201, 403 and 443.1 of the Public Welfare Code (62 P. S. §§ 201, 403 and 443.1).

Source

The provisions of this § 181.14 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended February 15, 1991, effective March 1, 1991, 21 Pa.B. 624; amended August 16, 1991, effective August 17, 1991, 21 Pa.B. 3704; amended January 17, 1992, effective January 18, 1992, 22

Pa.B. 275; amended July 28, 2000, the expansion of allowable medical expense income deductions effective retroactive to February 1, 1999, 30 Pa.B. 3779. Immediately preceding text appears at serial pages (211630) to (211632).

Cross References

This section cited in 55 Pa. Code § 181.11 (relating to continuing eligibility); 55 Pa. Code § 181.12 (relating to retroactive eligibility); 55 Pa. Code § 181.312 (relating to deductions from earned income for the AFDC categories of MNO-MA); and 55 Pa. Code § 181.314 (relating to deductions from earned income for the GA categories of MNO-MA).

TREATMENT OF INCOME COMMON TO ALL CATEGORIES OF MA

§ 181.21. Treatment of actual and anticipated income and expenses.

(a) In determining retroactive eligibility for MA, the actual income and expenses verified for the retroactive period are used.

(b) In determining continuing eligibility for MA, except NMP-MA spend-down, either the anticipated or actual income, or both, and work, personal and dependent care expenses to be received beginning with the first day of the calendar month containing the effective date of the application or reapplication are used, or the actual income and work, personal and dependent care expenses received 30 days before the calendar month of application or reapplication for MA may be projected to determine anticipated income and work, personal and dependent care expenses.

(c) A combination of actual and anticipated income and expenses are considered to determine NMP-MA spend-down eligibility for MA. Actual income and expenses are used from the beginning of the calendar month to the day of the calendar month in which eligibility for NMP-MA spend-down is established. Anticipated income and work, personal and dependent care expenses are used for the remainder of the calendar month.

Authority

The provisions of this § 181.21 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.21 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Notes of Decisions

Department properly applied its "name-on-the instrument" rule attributing entire pension to petitioner for purposes of computing his patient pay amount; wife has no present ownership interest in pension although it is marital property subject to equitable distribution upon divorce. *Buck v. Department of Public Welfare*, 566 A.2d 1269 (Pa. Cmwlth. 1989).

§ 181.22. Averaging income.

Income is averaged for a person who is employed under an annual contract of employment and who works and receives income from the contract in fewer than 12 months but more than 8 months. The income payable under the contract is prorated over the period of the contract.

Authority

The provisions of this § 181.22 amended under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.22 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended February 17, 1978, effective February 18, 1978, 8 Pa.B. 404; amended October 27, 1978, effective November 27, 1978, 8 Pa.B. 2909; corrected November 10, 1978, effective November 27, 1978, 8 Pa.B. 3086; explained November 6, 1981, 11 Pa.B. 3954; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3969; amended July 9, 1982, effective July 10, 1982, 12 Pa.B. 2177; amended August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. Immediately preceding text appears at serial pages (108930) to (108931).

§ 181.23. Changes in income, expenses and circumstances.

When an applicant's/recipient's income, expenses or circumstances, or both, change, the change is considered to determine continuing eligibility for MA.

Authority

The provisions of this § 181.23 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 181.23 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; explained November 6, 1981, 11 Pa.B. 3954; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3969; amended July 9, 1982, effective July 10, 1982, 12 Pa.B. 2177; amended August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. Immediately preceding text appears at serial pages (108931) to (108935).

Cross References

This section cited in 55 Pa. Code § 161.73 (relating to requirements); and 55 Pa. Code § 161.83 (relating to requirements).

§ 181.24. [Reserved].**Source**

The provisions of this § 181.24 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended July 9, 1982, effective July 10, 1982, 12 Pa.B. 2175; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. Immediately preceding text appears at serial pages (108935) to (108938).

**TREATMENT OF LUMP SUM COMMON
TO ALL CATEGORIES OF MA**

§ 181.31. Treatment of lump sum payment.

(a) A lump sum payment is a nonrecurring payment. Types of lump sum payments include delayed wages, bonuses, Earned Income Tax Credit (EITC), cash prizes, cash lottery winnings, life insurance benefits, cash inheritances, personal injury and other damage awards and settlements and retroactive benefits, such as retirement, survivors and disability insurance, delayed unemployment compensation and workers compensation.

(b) A lump sum payment is counted as a resource under § 178.4 (relating to treatment of resources for all categories of MA) unless it would be more helpful to the applicant/recipient group to have the lump sum treated as income.

(c) If the lump sum is treated as income, it is counted as income in the calendar month received.

(1) Earned lump sum payments, such as delayed wages and bonuses, are treated as earned income and are added to other earned income received in the calendar month.

(i) A person in an SSI-related category of MA is entitled to the deductions listed under § 181.132 (relating to deductions from earned income) from the earned lump sum income.

(ii) A person in an TANF-related category of MA, including a person in a GA-related category of MA with a child who is simultaneously a recipient of MA in an TANF-related category, is entitled to the deductions listed under § 181.311 or § 181.312 (relating to deductions from earned income for the TANF categories of NMP-MA; and deductions from earned income for the GA categories of MNO-MA) from the earned lump sum income.

(iii) A person in a GA-related category of MA is entitled to the deductions listed under § 181.313 or § 181.314 (relating to deductions from earned income for the GA categories of NMP-MA; and deductions from earned income for the GA categories of MNO-MA) from the earned lump sum income.

(2) Unearned lump sum payments, such as cash prizes, cash lottery winnings, life insurance benefits, cash inheritances and personal injury, are treated as unearned income and are added to other unearned income received in the calendar month.

(i) A person in an SSI-related category of MA is entitled to the deductions listed under § 181.131 (relating to deductions from unearned income) from the unearned lump sum income.

(ii) A person in an TANF-related category of MA and a person in a GA-related category of MA are entitled to the following deductions from the unearned lump sum income:

- (A) Those listed under § 181.315 (relating to unearned income expense deductions).
- (B) Expenses the applicant/recipient incurs which are directly related to the particular type of lump sum payment, such as the charge for burial from an insurance benefit or verified medical expenses from a personal injury award.
- (d) The balance of the lump sum remaining subsequent to the calendar month the lump sum was received and counted as income as described in subsection (c) is considered a resource to the applicant/recipient.

Authority

The provisions of this § 181.31 issued under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)).

Source

The provisions of this § 181.31 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended December 28, 1990, effective December 29, 1990, and apply retroactively to October 1, 1989, 20 Pa.B. 6387; amended September 10, 1999, effective September 11, 1999, 29 Pa.B. 4784. Immediately preceding text appears at serial pages (211634) to (211635).

Cross References

This section cited in 55 Pa. Code § 178.4 (relating to treatment of resources for all categories of MA).

CATEGORIES OF MA

§ 181.41. Categories of NMP-MA.

An NMP-MA applicant or recipient shall meet the income requirements of the category of NMP-MA for which the applicant or recipient is eligible. The following explains the different NMP-MA categories:

- (1) The PA category designates an NMP person who is at least 65 years of age. This category is an SSI-related category.
- (2) The PJ category designates an NMP person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.
- (3) The PM category designates an NMP person who meets the eligibility conditions as a blind person. This category is an SSI-related category.
- (4) The PC category is a TANF-related category and designates an NMP individual who is one of the following:
 - (i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.
 - (ii) An individual 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the individual 21 years of age or older

and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent level of a vocational or technical school and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to TANF deprivation of support or care requirements).

(iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).

(5) The PU category is a TANF-related category and designates an NMP individual who is one of the following:

(i) The parents in a two parent household that includes a dependent child as defined in paragraph (4) and an unemployed principal wage earner as defined in § 153.44(d).

(ii) A pregnant woman with no other children and the father of her unborn child, who constitute a two parent household with an unemployed principal wage earner, as defined in § 153.44(d).

(6) The PD category is a GA-related category and designates an NMP person who is 21 years of age or older and under 65 years of age, who meets the GA eligibility requirements and who chooses to receive only NMP-MA.

Authority

The provisions of this § 181.41 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 1902(a)(10)(A) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A)); and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 181.41 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended July 28, 2000, the provisions under Act 49 effective retroactive to September 1, 1994, the provisions under Act 20 effective retroactive July 1, 1995, 30 Pa.B. 3779; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (268372) to (268373).

Cross References

This section cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA).

§ 181.42. Categories of MNO-MA.

An MNO-MA applicant or recipient shall meet the income requirements of the category of MNO-MA for which the applicant or recipient is eligible. The following explains the different MNO-MA categories:

- (1) The TA category designates an MNO person who is 65 years of age or older. This category is an SSI-related category.
- (2) The TJ category designates an MNO person who meets the eligibility conditions as a disabled person. This category is an SSI-related category.
- (3) The TM category designates an MNO person who meets the eligibility conditions as a blind person. This category is an SSI-related category.
- (4) The TB category designates an MNO person who receives a SBP.
- (5) The TC category is a TANF-related category and designates an MNO individual who is one of the following:
 - (i) A person under 21 years of age, regardless of school attendance, emancipation or marital status.
 - (ii) An individual 21 years of age or older and under 65 years of age who meets the requirements of a specified relative under § 151.42 (relating to definitions) and is responsible for the care and control of a dependent child. For purposes of determining if the individual 21 years of age or older and under 65 years of age is a specified relative, a dependent child, including the child who is receiving SSI, is a child under 18 years of age or under 19 years of age if the child is a full-time student in secondary school or the equivalent age level of a vocational or technical school and who meets the deprivation of support conditions under § 153.43(a)—(c) (relating to TANF deprivation of support or care requirements).
 - (iii) A pregnant woman 21 years of age or older who is a member of a two parent household which does not meet the unemployed principal wage earner definition in § 153.44(d) (relating to procedures).
- (6) The TU category is a TANF-related category and designates an MNO individual who is one of the following:
 - (i) The parents in a two parent household that includes a dependent child as defined in paragraph (5)(ii) and an unemployed principal wage earner as defined in § 153.44(d).
 - (ii) A pregnant woman who is 21 years of age or older, with no other children, in a two parent household with an unemployed principal wage earner as defined in § 153.44(d).
- (7) The TD category is a GA-related category and designates an MNO person who does not meet the requirements for another category of MA.

Authority

The provisions of this § 181.42 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)); and section 1902(a)(10)(C) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(C)).

Source

The provisions of this § 181.42 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended July 28, 2000, the provisions under Act 49 effective retroactive to September 1, 1994, the provisions under Act 20 effective retroactive to July 1, 1995, 30 Pa.B. 3779; amended September

13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (268373) to (268375).

Cross References

This section cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA).

§ 181.43. [Reserved].

Source

The provisions of this § 181.43 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended October 27, 1978, effective November 27, 1978, 8 Pa.B. 2909; corrected November 10, 1978, effective November 27, 1978, 8 Pa.B. 3086; amended January 4, 1980, effective March 5, 1980, 10 Pa.B. 43; explained November 6, 1981, 11 Pa.B. 3954; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3969; amended November 6, 1981, effective November 7, 1981, 11 Pa.B. 3972; amended July 9, 1982, effective July 10, 1982, 12 Pa.B. 2177; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. Immediately preceding text appears at serial pages (108938) to (108939).

§ 181.63. [Reserved].

Source

The provisions of this § 181.63 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; amended January 4, 1980, effective March 5, 1980, 10 Pa.B. 43; corrected January 11, 1980, effective March 5, 1980, 10 Pa.B. 130; amended July 9, 1982, effective July 10, 1982, 12 Pa.B. 2177; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. Immediately preceding text appears at serial pages (108939) to (108940).

Subchapter B. AGED, BLIND AND DISABLED CATEGORIES

SPECIAL NMP—MA INCOME LIMIT FOR INSTITUTIONALIZED AGED, BLIND AND DISABLED PERSONS

Sec.

- 181.71. Special NMP-MA income limit for institutionalized aged, blind and disabled persons.
181.73. [Reserved].

**ITEMS THAT ARE NOT INCOME FOR THE AGED, BLIND
AND DISABLED CATEGORIES**

- 181.81. Items that are not income.
- 181.82. [Reserved].
- 181.84. [Reserved].

**TYPES OF EARNED INCOME COUNTED FOR THE AGED,
BLIND AND DISABLED CATEGORIES**

- 181.91. Gross earned income.
- 181.92. Income from self-employment.
- 181.95. Payment for services in a sheltered workshop or work activities center.
- 181.96. Earned Income Tax Credit (EITC).

**TYPES OF UNEARNED INCOME COUNTED FOR THE
AGED, BLIND AND DISABLED CATEGORIES**

- 181.101. Benefits, dividends and interest.
- 181.102. Prizes and awards.
- 181.103. Inheritances.
- 181.104. Support.
- 181.107. Profit from rental property income.
- 181.109. Proceeds as beneficiary of life insurance policy.
- 181.110. Income deemed available from the spouse.

**INCOME EXCLUSIONS FOR THE AGED, BLIND AND
DISABLED CATEGORIES**

- 181.121. Income exempt by Federal statutes.
- 181.122. Earned income exclusion.
- 181.123. Unearned income exclusions.

**DEDUCTIONS FROM INCOME FOR THE AGED, BLIND
AND DISABLED CATEGORIES**

- 181.131. Deductions from unearned income.
- 181.132. Deductions from earned income.
- 181.133. Deductions from self-employment.
- 181.134. Guardian fee deductions.
- 181.135. Deductions from rental income.

Cross References

This subchapter cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

**SPECIAL NMP—MA INCOME LIMIT
FOR INSTITUTIONALIZED AGED, BLIND
AND DISABLED PERSONS****§ 181.71. Special NMP-MA income limit for institutionalized aged, blind and disabled persons.**

An aged, blind or disabled applicant/recipient who is receiving skilled nursing care or intermediate care is income eligible for NMP-MA under this special NMP-MA income limit if his total gross monthly income is equal to, or less than, the amount in Appendix B. Total gross monthly income includes:

- (1) The total earned income as specified in §§ 181.91, 181.92, 181.95 and 181.96.
- (2) The total unearned income as specified in §§ 181.101—181.104, 181.107, 181.109 and 181.110.
- (3) Some income that is identified as excluded in this subchapter is not excluded for purposes of this section and is counted when determining the MA eligible person's total gross monthly income. This includes:
 - (i) The income exclusion as specified in § 181.122 (relating to earned income exclusion).
 - (ii) The income exclusions as specified in § 181.123 (relating to unearned income exclusions).

Authority

The provisions of this § 181.71 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.71 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.12 (relating to retroactive eligibility).

§ 181.73. [Reserved].**Source**

The provisions of this § 181.73 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. Immediately preceding text appears at serial page (108941).

**ITEMS THAT ARE NOT INCOME FOR THE AGED,
BLIND AND DISABLED CATEGORIES**

§ 181.81. Items that are not income.

The following items are not income and do not count as income when determining income eligibility for MA or in the posteligibility determination of income available from an MA eligible person toward his cost of care in an institution under § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care):

(1) *Receipts from conversion of a resource.* Receipts from the conversion of a resource, such as the sale, exchange or replacement of a resource. This includes cash or an in-kind item that is provided to replace or repair a resource that has been lost, damaged or stolen.

(2) *Income tax refunds.* An amount refunded on income taxes.

(3) *Payments by credit life or credit disability insurance policies.* Payments made under a credit life or credit disability insurance policy issued to, or on behalf of, borrowers to cover payments on loans or installment purchases in the event of the death or disability of the applicant/recipient which are made directly to loan companies or mortgage companies and are not available to the applicant/recipient either directly or by sale or conversion for the purposes of meeting his basic needs.

(4) *Repayment of loan.* Money received from another party in repayment of a loan. Interest received on the money lent is counted as income.

(5) *Bill paid for applicant/recipient or his spouse.* A bill paid by a third-party for the applicant/recipient or his spouse.

(6) *Replacement income.* Income received as a replacement of income lost, destroyed or stolen.

(7) *Weatherization assistance.*

(8) *MA copayment rebates.* A refund to the applicant/recipient authorized as a rebate for payment in excess of the amount required as copayment for MA services.

(9) *Veterans aid and attendance and housebound allowance.* The aid and attendance and housebound allowance portion of a veterans benefit.

(10) *Borrowed money.* Money obtained by borrowing.

(11) *Medical care and services.* Medical care and services if they are:

(i) Given free of charge or paid for directly to the provider by another person.

(ii) Room and board received during a medical confinement.

(iii) Assistance provided in cash or in-kind, including food, clothing or shelter under a Federal, State or local government program, whose purpose is to provide medical care or services including vocational rehabilitation.

(iv) In-kind assistance provided under a nongovernmental program whose purpose is to provide medical care or medical services.

(v) Cash provided by a nongovernmental medical care or medical services program or under a health insurance policy, except cash if the cash is either repayment for program approved services already paid for by the applicant/recipient or a payment restricted to the future purchase of a program approved service.

(vi) Direct payment of the applicant's/recipient's medical insurance premiums by anyone on behalf of the applicant/recipient.

(12) *Social services.* Social services if they are one of the following:

(i) Assistance provided in cash or in-kind but not received in return for a service performed by the applicant/recipient under a Federal, State or local government program whose purpose is to provide social services including vocational rehabilitation.

(ii) In-kind assistance provided under a nongovernmental program whose purpose is to provide social services.

(iii) Cash provided by a nongovernmental social services program if the cash is either repayment for program approved services already paid by the applicant/recipient or a payment restricted to the future purchase of a program approved service, such as, but not limited to, cash provided by a private social services agency to an applicant/ recipient for homemaker, attendant care and chore services.

(13) *Receipt of certain noncash items.* Noncash items which are excluded as a resource under Chapter 178 (relating to resource provisions for categorically NMP-MA and MNO-MA). If the item is retained it is not counted as income.

(14) *Assistance for the homeless.*

Authority

The provisions of this § 181.81 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.81 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.110 (relating to income deemed available from the spouse); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward the cost of care).

§ 181.82. [Reserved].

Source

The provisions of this § 181.82 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. Immediately preceding text appears at serial page (108941).

§ 181.84. [Reserved].**Source**

The provisions of this § 181.84 adopted August 4, 1977, effective August 5, 1977, 7 Pa.B. 2180; reserved August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. Immediately preceding text appears at serial pages (108941) to (108942).

**TYPES OF EARNED INCOME COUNTED FOR THE
AGED, BLIND AND DISABLED CATEGORIES****§ 181.91. Gross earned income.**

Gross earned income, including, but not limited to, wages, tips, salaries, commissions, severance pay and bonuses from employment is counted as earned income.

Authority

The provisions of this § 181.91 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.91 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.92. Income from self-employment.

Income from self-employment is counted as earned income. Self-employment includes, but is not limited to, operating a business, trade or farm, practicing a profession or renting personal or real property as a trade or business.

Authority

The provisions of this § 181.92 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.92 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.95. Payment for services in a sheltered workshop or work activities center.

A payment received for services performed in a sheltered workshop or work activities center is counted when received or when the payment is set aside for the applicant's/recipient's use.

Authority

The provisions of this § 181.95 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.95 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.96. Earned Income Tax Credit (EITC).

(a) The advance monthly EITC payment which an applicant/recipient actually receives is counted as monthly earned income.

(b) An applicant/recipient with earned income who is not receiving a monthly advance EITC does not have EITC counted as monthly earned income. The EITC counts as a lump sum payment when the EITC is refunded.

(c) A reconciliation of the EITC is required for a current recipient of MA following the end of the tax year if the recipient verifies that the total amount of the advance EITC which was counted as earned income received during the tax year by the Department differs from the year-end EITC. The recipient is responsible for providing information and documentation necessary to complete the reconciliation computation. This information includes, but is not limited to, the recipient's income tax return—IRS Form 1040, 1040A or 1040EZ—and the income tax refund check received or a photostatic copy of the income tax refund check.

(1) If the amount of the advance payments counted by the Department is less than the EITC verified on the income tax return—IRS Form 1040, 1040A or 1040EZ—and the income tax refund check or a copy of the income tax refund check, the additional EITC is treated as lump sum payment in the month of receipt. The EITC is attributed to the person who was employed during the tax year. Each person who was employed is considered to have an equal share of the EITC.

(2) If the amount of the advance payments counted by the Department is equal to, or more than, the EITC verified on the income tax return, no further adjustment is necessary.

(3) If the recipient fails to provide the necessary verification—IRS Form 1040, 1040A or 1040EZ and the income tax refund check or a copy of the income tax refund check—the entire amount of the available EITC (the maximum EITC the recipient could receive less the amount of the advance payments counted by the Department) is counted as the EITC refund and as a lump sum payment in the month of receipt.

Authority

The provisions of this § 181.96 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.96 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

**TYPES OF UNEARNED INCOME COUNTED FOR THE
AGED, BLIND AND DISABLED CATEGORIES**

§ 181.101. Benefits, dividends and interest.

Annuities, pensions and other periodic payments which include, but are not limited to, private pensions, social security benefits including Part B Medicare premiums, disability benefits, veterans benefits, worker's compensation, railroad retirement, unemployment insurance benefits, dividends, interest and royalties are counted as unearned income. In some cases, the amount counted as unearned income is more than the actual amount received by the applicant/recipient. This occurs when the amount received by the applicant/recipient is reduced for a debt resulting from an overpayment of a previously received benefit, or by deduction of an insurance premium. In this situation, the actual amount to count as unearned income is the amount of the unearned income benefit to which the applicant/recipient is entitled before the deduction of an insurance premium or the reduction to recover an overpayment unless § 181.123(14) (relating to unearned income exclusions) applies.

Authority

The provisions of this § 181.101 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.101 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Notes of Decisions*Disability Benefits*

Disability benefits are unearned income even though the stub of the disability check from employer's insurance carrier designated the income as sick pay. *Goldstein v. Department of Public Welfare*, 654 A.2d 295 (Pa. Cmwlth. 1995).

Workers' Compensation Benefits

Pursuant to 55 Pa. Code §§ 181.2, 181.132 and this section, workers' compensation benefits and disability insurance were properly calculated as unearned income which must be counted for purposes of Medical Assistance eligibility. *Goldstein v. Department of Public Welfare*, 654 A.2d 295 (Pa. Cmwlth. 1995).

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.102. Prizes and awards.

A prize, which is generally something won in a contest, lottery or game of chance, is counted as unearned income. An award, which is usually something received as the result of a decision by a court, board of arbitration or something similar, is counted as unearned income.

Authority

The provisions of this § 181.102 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.102 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.103. Inheritances.

An inheritance, which is something received as a result of someone's death, is counted as unearned income. An inheritance can be cash, or a right or interest in real or personal property.

Authority

The provisions of this § 181.103 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.103 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.104. Support.

Child support, spousal support and alimony are counted as unearned income, regardless of whether the payment or support is voluntary or court-ordered.

Authority

The provisions of this § 181.104 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.104 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.107. Profit from rental property income.

Profit from rental property income is the payment received by the applicant/recipient for the use of real or personal property, including payments for room and board and room rent less the deductions in § 181.135 (relating to deductions from rental income). Profit from rental property income is counted as unearned income.

Authority

The provisions of this § 181.107 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.107 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.109. Proceeds as beneficiary of life insurance policy.

A payment received by the applicant/recipient as a beneficiary of a life insurance policy, except for an amount up to \$1,500 that the applicant/recipient verifies that he spent on the insured's last illness and burial expense, is counted as unearned income. Illness and burial expenses include, but are not limited to, related hospital and medical expenses, funeral, burial plot and interment expenses and other related costs.

Authority

The provisions of this § 181.109 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.109 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.110. Income deemed available from the spouse.

(a) Income that is considered available to an applicant/recipient from his spouse who lives in the same household and who is not receiving, or applying for, MA is counted as unearned income.

(b) Income is not deemed available if the spouses are living separate and apart, including when one spouse is institutionalized. Income deeming stops for any month including partial months when one spouse becomes an institutionalized spouse as defined in § 181.2 (relating to definitions). Income deeming stops the first full month after the month of separation, institutionalization, other than that defined for an institutionalized spouse, or death of a spouse, even if only 1 day has elapsed since the separation began, unless the separation is temporary. Deeming continues during a temporary separation. A temporary separation, for purposes of deeming, occurs when either spouse leaves the household but intends to, and does, return to the household in the same month or the month immediately following.

(c) The following types and amounts of income of the spouse are not counted when determining deemed income for the applicant/recipient and shall be excluded in the order listed:

- (1) Income identified in § 181.121 (relating to income exempt by Federal statutes).
- (2) A cash assistance payment received by the spouse and income which was counted or excluded in determining the amount of the cash assistance payment for the spouse.

- (3) Income of the spouse that was counted in determining the amount of a cash assistance payment for another person.
 - (4) The amount of a grant, scholarship or fellowship used to pay tuition or fees.
 - (5) Money received for providing foster care to a child who was placed in the spouse's home by a public or private nonprofit child placement or child care agency.
 - (6) The value of food stamps and the value of United States Department of Agriculture donated foods.
 - (7) The value of food produced by the spouse which is used by him and his household for their own personal consumption and not for sale.
 - (8) Tax refunds on income, real property or food purchased.
 - (9) The amount of income used to comply with the terms of a court-ordered support payment or support payments enforced under Title IV-D of the Social Security Act (42 U.S.C.A. §§ 651—667).
 - (10) Periodic payments made by a state under a program established before July 1, 1973, and based solely on length of residence and attainment of 65 years of age.
 - (11) Income identified in §§ 181.122 and 181.123(4)—(7) (relating to earned income exclusion; and unearned income exclusions).
 - (12) Income paid under a Federal, State or local government program to provide the spouse with chore, attendant or homemaker services.
 - (13) Certain support and maintenance assistance benefits furnished in-kind by a certified private, nonprofit organization or furnished as cash or in-kind assistance by a certified supplier of home heating oil or gas, by a certified entity providing home energy whose revenues are primarily derived on a rate-of-return basis and regulated by the Pennsylvania Public Utility Commission or by a certified municipal utility providing home energy. Support and maintenance assistance includes Home Energy Assistance (HEA). HEA benefits may include, but are not limited to, payments for heating or cooling, storm doors, weatherization services and blankets. HEA benefits do not include food or clothing.
- (d) If the spouse meets the eligibility conditions as a blind person, the work expenses specified in § 181.132(5) (relating to deductions from earned income) are deducted from the spouse's earned income.
- (e) If the spouse has a dependent child living in his household who is not part of the applicant/recipient group and is not receiving a type of public maintenance payments based on need, the spouse is entitled to a deduction from his income for that dependent child. The child is dependent if he is not married, not the head of a household and is under 18 years of age or if a student, under 22 years of age. Eligibility for this deduction is determined in the following manner:

(1) The income of the dependent child is considered in determining the amount of the deduction from the spouse's income. The following types and amounts of income are exempt when determining the income of the dependent child:

- (i) The exemptions listed in subsection (c)(2).
- (ii) Earned income up to \$1,200 a calendar quarter, but not more than \$1,620 per year if the dependent child is a student.

(2) The income remaining after the application of appropriate exemptions in paragraph (1) is deducted from the amount in Appendix D, Item 1 for one person. The resulting figure is the dependent child deduction for the spouse for purposes of deeming the amount of income available from the spouse.

(f) If the spouse's income after application of the appropriate exemptions in subsection (c) and the deductions in subsections (d) and (e) is less than, or equal to, the amount in Appendix D, Item 1, no income is deemed available from the spouse to the applicant/recipient.

(g) If the spouse's income after the allowable exemptions in subsection (c) and the applicable deductions in subsections (d) and (e) is greater than the amount in Appendix D, Item 1, the amount of income deemed available from the spouse and the income eligibility of the applicant/recipient is determined in the following manner:

(1) Combine the spouse's remaining unearned income after deductions and exemptions with the unearned income of the applicant/recipient, and combine the spouse's remaining earned income with the earned income of the applicant/recipient.

(2) Apply the applicable exemptions, exclusions and deductions including items that are income under the following provisions:

- (i) Section 181.81 (relating to items that are not income).
- (ii) Section 181.121.
- (iii) Section 181.122.
- (iv) Section 181.123.
- (v) Section 181.131 (relating to deductions from unearned income).
- (vi) Section 181.132.
- (vii) Section 181.133 (relating to deductions from self-employment).
- (viii) Section 181.134 (relating to guardian fee deductions).
- (ix) Section 181.135 (relating to deductions from rental income).

(3) Using the combined income of both spouses, apply the income limit for a two person household in Appendix A for the NMP-MA categories and Appendix F or G for the MNO-MA categories dependent upon whether a semiannual or monthly income limit is needed when determining income eligibility for the applicant/recipient.

Authority

The provisions of this § 181.110 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.110 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432. Immediately preceding text appears at serial pages (130594) to (130596).

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

**INCOME EXCLUSIONS FOR THE AGED, BLIND
AND DISABLED CATEGORIES****§ 181.121. Income exempt by Federal statutes.**

The following types of income do not count when determining income eligibility for MA:

- (1) *Food Stamp Program benefits.* The value of food stamps received by an applicant/recipient who is participating in the Food Stamp Program (7 U.S.C.A. §§ 2011—2029).
- (2) *Value of United States Department of Agriculture surplus food donation.* The value of United States Department of Agriculture donated food-surplus commodities-distributed under section 32 of the act of August 24, 1935 (7 U.S.C.A. § 612c).
- (3) *Value of free or reduced price food.* The value of free or reduced price food received by women and children under section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C.A. § 1780(b)) and section 17 of that act (42 U.S.C.A. § 1786); and section 13(h)(3) of the National School Lunch Act (42 U.S.C.A. § 1761(h)(3)).
- (4) *Assistance to prevent fuel cutoffs.* Assistance received under the Energy Crisis Assistance Program or the Emergency Energy Conservation Services Program under section 222 (a)(5) of the Economic Opportunity Act of 1964 (42 U.S.C.A. § 2809(a)(5)).
- (5) *Fuel assistance payments.* Fuel assistance payments and allowances under the Low Income Home Energy Assistance Act of 1981 (42 U.S.C.A. §§ 8621—8629) as amended by the Human Services Reauthorization Act of 1986 (Pub. L. 99-425) (100 Stat. 966).
- (6) *Housing subsidies.* Housing subsidies paid under the United States Housing Act of 1937 (includes section 8 housing) (12 U.S.C.A. §§ 1437—1437g), the National Housing Act (12 U.S.C.A. §§ 1706(b)—1749bbb-21),

section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C.A. § 1701s), Title V of the Housing Act of 1949 (42 U.S.C.A. §§ 1471—1490o) or other Federal housing subsidy statutes.

(7) *Uniform relocation assistance and real property acquisition policies.* Payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 (42 U.S.C.A. §§ 4621—4638).

(8) *Job Training Partnership Act.* Payments received under the Job Training Partnership Act of 1982 (29 U.S.C.A. §§ 1501—1781).

(9) *Grants or loans to undergraduate students.* Grants or loans to undergraduate students for educational purposes made or insured under programs administered by the Secretary of the United States Department of Education under section 507 of the Higher Education Amendments of 1968 (20 U.S.C.A. § 1060 note and § 1091 note).

(10) *Wages, allowances or reimbursement for transportation and attendant care costs received by an eligible handicapped individual under Title VI of the Rehabilitation Act.* Wages, allowances or reimbursement for transportation and attendant care costs, unless excepted on a case-by-case basis, when received by an eligible handicapped person employed in a project under section 611(b) and (c) of Title VI of the Rehabilitation Act of 1973 (29 U.S.C.A. § 795(b) and (c)).

(11) *Alaska Native Claims Settlement Act.* Payments under section 21(a) of the Alaska Native Claims Settlement Act (43 U.S.C.A. § 1620(a)).

(12) *Payments based on age and residence in Alaska.* Payments made under a program established in Alaska before July 1, 1973, and based solely on length of residence in Alaska and attainment of 65 years of age. This includes money received in accordance with the Alaska longevity bonus which is exempt under section 1612(b)(2)(B) of the Social Security Act (42 U.S.C.A. § 1382(b)(2)(B)).

(13) *Indian Tribe per capita judgment funds.* Per capita judgment funds received by the following Indian tribes:

(i) The Blackfeet and Gros Ventre Tribes under section 4 of the act of March 18, 1972 (Pub. L. 92-254) (86 Stat. 65) (25 U.S.C.A. § 1264).

(ii) The Grand River Band of Ottawa Indians under the act of October 18, 1976 (Pub. L. 94-540) (90 Stat. 2503).

(iii) Tribes or groups under section 7 of the act of October 9, 1973 (Pub. L. 93-134) (87 Stat. 468) (25 U.S.C.A. § 1407).

(iv) The Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation under section 2 of the act of October 10, 1978 (Pub. L. 95-433) (92 Stat. 1047) (25 U.S.C.A. § 609 c-1).

(14) *Receipts from land to certain Indian tribes.* Receipts from land held in trust by the Federal government and distributed to members of certain Indian tribes under section 6 of the act of October 17, 1975 (Pub. L. 94-114) (89 Stat. 579) (25 U.S.C.A. § 459e).

(15) *Payment to volunteers.* Payment to volunteers in the Foster Grandparent Program and other similar programs under sections 404(g) and 418 of the Domestic Volunteer Service Act of 1973 (42 U.S.C.A. §§ 5044(g) and 5058).

(16) *Older Americans Act benefits.* Benefits received other than wages or salaries under section 210 of the Older Americans Act of 1965 (42 U.S.C.A. § 3020a).

(17) *Retroactive SSI and RSDI Payments.* Retroactive payments received under Title II or Title XVI of the Social Security Act (42 U.S.C.A. §§ 401—433 or 1381—1383c) are exempt for 6 months after the month in which the retroactive payment is received. If a portion of the retroactive payment remains after the 6th month, it is counted as a resource under section 1613 of the act (42 U.S.C.A. § 1382b) under Chapter 178 (relating to resource provisions for categorically NMP-MA and MNO-MA).

(18) *Japanese-American and Aleutian restitution payments.* Restitution payments made by the United States government to eligible Japanese-Americans and Aleuts who were interned or relocated during World War II. If the eligible Japanese-Americans are deceased at the time of payments, payments will be made to certain of their survivors as specified under the Civil Liberties Act of 1988 (50 App. §§ 1989b and 1989b-1—1989b-9). This payment is also excluded. This paragraph does not apply to eligible Aleuts who are covered under the Aleutian and Pribilof Islands Restitution Act (50 App. §§ 1989c and 1989c-1—1989c-8). Interest received on retained restitution payments is also not excluded but is subject to the usual regulations governing interest as specified in this chapter.

(19) *Agent orange settlement payments.* Payments made from the Agent Orange Settlement Fund or another fund established pursuant to the settlement in the agent orange product liability litigation.

(20) *Interest from certain burial space arrangements.* Interest earned on agreements representing the purchase of burial spaces which are excluded under Chapter 178 (relating to resource provisions for categorically NMP-MA and MNO-MA) if the interest is left to accumulate. Interest that is not left to accumulate is counted as interest income.

Authority

The provisions of this § 181.121 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.121 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended March 22, 1991, effective upon publication in the *Pennsylvania Bulletin*, and applies retroactively to August 10, 1988, 21 Pa.B. 1182; amended August 27, 1993, effective August 28, 1993, with the exception of the Agent Orange Settlement Payments requirement which is retroactive to January 1, 1989, 23 Pa.B. 4071. Immediately preceding text appears at serial pages (130597) to (130598) and (157085).

Cross References

This section cited in 55 Pa. Code § 181.110 (relating to income deemed available from the spouse).

§ 181.122. Earned income exclusion.

Earned income that does not exceed \$10 in a month is excluded if it is irregular or infrequent and received from a single source.

Authority

The provisions of this § 181.122 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.122 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons); 55 Pa. Code § 181.110 (relating to income deemed available from the spouse); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.123. Unearned income exclusions.

The following do not count when determining income eligibility for MA and shall be excluded in the order noted:

- (1) *Refund or return of taxes paid on real property.* A refund or return from a public agency of taxes paid on real property.
- (2) *Educational expenses.* The amount of a grant, scholarship or fellowship used for paying tuition, fees or other necessary educational expenses.
- (3) *Home produce.* The value of food produced by an applicant/recipient which is used by him and his household for their own personal consumption and not for sale.
- (4) *Disaster relief assistance.*
 - (i) Support and maintenance provided as disaster relief assistance, including income-in-kind, received as the result of a catastrophe declared by the President as a major disaster under the Disaster Relief Act of 1974 (42 U.S.C.A. §§ 5121—5202) or another Federal statute, if the following conditions are met:
 - (A) At the time of the catastrophe, the applicant/recipient was living in and maintaining his own home but discontinued living in his home because of the catastrophe.
 - (B) The applicant/recipient began to receive disaster assistance within 30 days after the last day of the catastrophe.

(C) The applicant/recipient received the disaster assistance while living in a residential facility, including a private household maintained by another person.

(D) The exclusion applies for a period beginning on the date the assistance is received and ending on the last day of the 18th full month following the month the cash was received.

(ii) Other assistance is not counted as income if received under the Disaster Relief Act of 1974 or under another Federal statute because of a catastrophe which the President declares to be a major disaster.

(5) *Interest on disaster relief assistance.* Interest earned on disaster relief assistance for a period beginning on the date the assistance is received and ending on the last day of the 9th full month following the month the cash was received. Interest earned for a period beginning on the date the assistance is received and ending on the last day of the 18th full month following the month the cash was received, if the applicant/recipient has good cause for not repairing or replacing the property or contracting for the repair or replacement of the property for which the disaster relief assistance was given.

(6) *German reparations payments.* Payments made under the Republic of Germany's federal law for compensation or Nationalist Socialist Persecution—German Restitution Act—to certain survivors of the Holocaust. The payments may be made periodically or as a lump sum.

(7) *Unearned income not exceeding \$20 in a month.* Unearned income that does not exceed \$20 in a month, if it is received irregularly or infrequently. If the total amount of infrequent or irregular unearned income received in a month exceeds \$20 or the unearned income is received more than once in a quarter, this exclusion is not given.

(8) *Periodic payments by a state based solely on residence.* Periodic payments made by a state under a program established before July 1, 1973, and based solely on the length of residence and attainment of 65 years of age.

(9) *Payments for providing foster care.* Payments for providing foster care to a child who is not receiving, or applying for, MA as part of the applicant/recipient group and who was placed in the applicant's/recipient's home by a public or private nonprofit child placement or child care agency.

(10) *Interest earned on burial funds.* Interest earned on burial funds if the burial fund is excluded as a resource under Chapter 178 (relating to resource provisions for categorically NMP-MA and MNO-MA) and the interest is left to accumulate and become part of the burial fund.

(11) *Certain support and maintenance assistance.* In-kind support or maintenance assistance benefits furnished in-kind or by a certified private, nonprofit organization or furnished as cash or in-kind assistance by a certified supplier of home heating oil or gas, by a certified entity providing home energy whose revenues are primarily derived on a rate-of-return basis and regulated by the Pennsylvania Public Utility Commission or by a certified municipal utility pro-

viding home energy. Support and maintenance assistance includes Home Energy Assistance (HEA) and may include, but is not limited to, payments for heating or cooling, storm doors, weatherization services and blankets. HEA benefits do not include food or clothing.

(12) *Interest income.* Interest income if it is received only once during a calendar quarter and the total of the interest income plus infrequent or irregular unearned income received in the month in which the interest income is received does not exceed \$20.

(13) *Property tax and rent rebate payments.* Property tax and rent rebate payments and inflation dividend payments received under the Senior Citizens Rebate and Assistance Act (72 P. S. §§ 4751-1—4751-12) originally enacted March 11, 1971.

(14) *Reduction in unearned income to recover a previous overpayment.* If unearned income of the applicant/recipient is reduced to cover a previous overpayment, the amount of the reduction is exempt from consideration as current income if the amount of the overpayment was considered in determining financial eligibility for MA at the time the overpayment was received.

(15) *Advance payments against expenses of obtaining income.* A lump sum advance to cover expenses to obtain income. The advance is considered reimbursement for expenses of obtaining the income.

Authority

The provisions of this § 181.123 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.123 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended August 27, 1993, effective August 28, 1993, with the exception of the Agent Orange Settlement Payments requirement which is retroactive to January 1, 1989, 23 Pa.B. 4071.

Cross References

This section cited in 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled); 55 Pa. Code § 181.101 (relating to benefits, dividends and interest); 55 Pa. Code § 181.110 (relating to income deemed available from the spouse); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

DEDUCTIONS FROM INCOME FOR THE AGED, BLIND AND DISABLED CATEGORIES

§ 181.131. Deductions from unearned income.

(a) *Unearned income expenses.* For each applicant/recipient, the expenses which the applicant/recipient pays to be eligible for, or to receive, unearned income are deducted. These unearned income expenses include, but are not lim-

ited to, attorney fees, court costs and transportation costs. Personal income taxes are not expenses the applicant/recipient had to pay to get this income and are not allowable deductions.

(b) *First \$20 of income in a month other than income based on need.* The first \$20 of income received in a calendar month by an applicant/recipient group is deducted after allowable expense deductions in subsection (a) are deducted. The application of the deduction is as follows:

(1) The deduction does not apply to unearned income based on need and funded in whole or in part by the Federal government or by a nongovernment agency.

(2) The deduction applies to income based on need and funded wholly by the State.

(3) The deduction applies to veterans benefits received by an applicant/recipient who is a veteran or is a dependent of a veteran on the basis of one of the following:

(i) A special act of Congress.

(ii) Service in the Indian Wars: January 8, 1817—December 31, 1881.

(iii) Service in the Civil War: 1861—1865.

(iv) Service in the Spanish-American War: April 12, 1898—July 4, 1902.

(4) The deduction is first applied to the unearned income received by the applicant/recipient.

(5) If the applicant/recipient does not have unearned income or has less than \$20 of unearned income in a calendar month, the remaining portion of the \$20 deduction is applied to the earned income received in the calendar month under § 181.132(1) (relating to deductions from earned income).

Authority

The provisions of this § 181.131 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.131 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.31 (relating to treatment of lump sum); 55 Pa. Code § 181.110 (relating to income deemed available from the spouse); and 55 Pa. Code § 181.132 (relating to deductions from earned income).

§ 181.132. Deductions from earned income.

The following amounts are deducted from earned income in the order listed in determining income eligibility:

(1) *Portion of \$20 monthly deduction not deducted from unearned income.* The portion of the \$20 monthly deduction in § 181.131(b) (relating to deductions from unearned income) which has not been deducted from unearned income is deducted from earned income in the same month for each applicant/recipient group.

(2) *Sixty five dollars of earned income in a month.* An employed aged, blind or disabled applicant/recipient is entitled to an earned income deduction of \$65 of his gross earned income per month.

(3) *Earned income of a disabled applicant/recipient used to pay impairment-related work expenses.* Earned income used by an applicant/recipient who is disabled and under 65 years of age to pay impairment-related work expenses is excluded. This exclusion is given to an applicant/recipient who is disabled and 65 years of age or older if he had received MA benefits as a disabled recipient in at least one of the 12 consecutive months prior to the month that he reached 65 years of age. This exclusion is also given to an applicant/recipient who is disabled and 65 years of age or older if it can be determined that the person should have been determined eligible for MA benefits as a disabled MA recipient in at least one of the 24 consecutive months prior to the month that he reached 65 years of age and was denied. This exclusion is not given to blind applicants/recipients. Impairment-related work expenses include, but are not limited to:

(i) Payments for attendant care services if assistance is needed by the applicant/recipient in traveling to and from work, while at work, and at home because of his impairment.

(ii) Payments for a medical device if the applicant's/recipient's impairment requires him to use the device to work.

(iii) Payments for a prosthetic device if the applicant's/recipient's impairment requires him to use the prosthetic device to work.

(iv) Payments for impairment related nonmedical appliances and equipment and residential modifications needed by the applicant/recipient for his employment.

(v) Payments for drugs and medical services if necessary to the applicant/recipient to control his impairment.

(vi) Payments for installing, maintaining and repairing the items listed in subparagraphs (i)—(v) that are necessary for the applicant's/recipient's employment.

(vii) Payments for similar items and services not listed in subparagraphs (i)—(vi) which are directly related to the applicant's/recipient's impairment and needed by him to work.

(4) *One-Half of remaining earned income in a month.* An employed aged, blind or disabled applicant/recipient is entitled to a deduction of 1/2 of the remaining earned income after the deduction in paragraph (2), and when applicable, the deductions in paragraphs (1) and (3).

(5) *Earned income of a blind applicant/recipient used to pay expenses attributable to earning the income.* Earned income of an applicant/recipient who is blind and under 65 years of age which is used to pay expenses reasonably attributable to the earning of the income. This exclusion is given to an applicant/recipient who is blind and 65 years of age or older if he had received MA benefits as a blind recipient in at least one of the 12 consecutive months prior to the month that he reached 65 years of age. This exclusion is also given to an applicant/recipient who is blind and 65 years of age or older if it can be determined that the person should have been determined eligible for MA benefits as a blind MA recipient in at least one of the 24 consecutive months prior to the month that he reached 65 years of age and was denied. An employed applicant/recipient who is blind and under 65 years of age is entitled to deductions from his earned income for the following expenses:

(i) Transportation expenses which include cane travel instruction, a guide dog and the dog's upkeep expenses, and public transportation such as bus or cab fare. If the transportation is provided by private automobile, the deduction is the actual cost up to 15¢ per mile.

(ii) Job performance expenses such as, but not limited to, braille instruction, child care costs if not otherwise provided, equipment needed on the job, lunches, optical aids, uniforms and care of the uniforms, a wheelchair if necessary due to disability, translation of materials into braille and a reader.

(iii) Job improvement expenses which include, but are not limited to, stenotype instruction for a blind typist, key punch training and computer program training courses.

Authority

The provisions of this § 181.132 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.132 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Notes of Decisions

Workers' Compensation Benefits

Pursuant to 55 Pa. Code §§ 181.2, 181.101 and this section, workers' compensation benefits and disability insurance were properly calculated as unearned income which must be counted for purposes of Medical Assistance eligibility. *Goldstein v. Department of Public Welfare*, 654 A.2d 295 (Pa. Cmwlth. 1995).

Cross References

This section cited in 55 Pa. Code § 181.31 (relating to treatment of lump sum); 55 Pa. Code § 181.110 (relating to income deemed available from the spouse); and 55 Pa. Code § 181.131 (relating to deductions from unearned income).

§ 181.133. Deductions from self-employment.

For a self-employed person, the verified costs to produce or continue the income are deducted. The deductible costs include expenses reported on the Federal income tax return except depreciation, personal business, entertainment expenses and depletion.

Authority

The provisions of this § 181.133 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.133 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.110 (relating to income deemed available from the spouse).

§ 181.134. Guardian fee deductions.

Guardian fees are deducted from earned or unearned income if having a guardian is a requirement for receiving the income.

Authority

The provisions of this § 181.134 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.134 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.110 (relating to income deemed available from the spouse).

§ 181.135. Deductions from rental income.

- (a) Expense deductions from rental income include:
- (1) Necessary expenses paid for the production or collection of the rental income.
 - (2) Real estate insurance costs related to the rental property, whether or not the mortgage holder requires the insurance.
 - (3) The interest portion of a mortgage payment.
 - (4) A repair which is an incidental correction to an existing structure, or to a piece of equipment.
- (b) Items such as depreciation or depletion, personal expenses which are not related to the rental income and capital expenditures are not allowable deduc-

tions. A capital expenditure represents an expenditure for an addition or increase in the value of fixed assets, and is subject to depreciation for income tax purposes.

(c) Allowable expenses are prorated if only a portion of the total property is designated for rent, regardless of whether it is actually rented.

Authority

The provisions of this § 181.135 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.135 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.107 (relating to profit from rental property income); and 55 Pa. Code § 181.110 (relating to income deemed available from the spouse).

Subchapter C. THE TANF AND GA CATEGORIES

Sec.
181.251. [Reserved].

TYPES OF INCOME NOT COUNTED FOR THE TANF AND GA CATEGORIES

- 181.261. Gross earnings of a child.
- 181.262. Educational loans, grants and work-study income.
- 181.263. Other types of income not counted for the TANF and GA categories.
- 181.264. Income and benefits not counted by Federal and State statutes for the TANF and GA categories.

TYPES OF EARNED INCOME COUNTED FOR THE TANF AND GA CATEGORIES

- 181.271. Gross earned income.
- 181.272. Profit from self-employment.
- 181.273. [Reserved].
- 181.275. [Reserved].

**TYPES OF UNEARNED INCOME COUNTED FOR THE
TANF AND GA CATEGORIES**

- 181.281. Benefits, dividends and interest.
- 181.282. Support.
- 181.283. Contributions.
- 181.284. Income of a child.
- 181.285. Income deemed available from the LRR.
- 181.287. [Reserved].
- 181.288. Rental property income.

RESTRICTED INCOME NOT COUNTED

- 181.302. Nonservice connected veterans benefits.
- 181.303. Income of an SSI recipient.
- 181.304. Income received as representative payee for a child.

**DEDUCTIONS FROM INCOME FOR TANF
AND GA CATEGORIES**

- 181.311. Deductions from earned income for TANF categories of NMP-MA.
- 181.312. Deductions from earned income for the TANF categories of MNO-MA.
- 181.313. Deductions from earned income for the GA categories of NMP-MA.
- 181.314. Deductions from earned income for the GA categories of MNO-MA.
- 181.315. Unearned income expense deductions.
- 181.316. Deductions from delayed or retroactive benefits.
- 181.317. Rental property agency fees.
- 181.318. Guardian fee deductions.

Cross References

This subchapter cited in 55 Pa. Code § 140.232 (relating to applicable income).

§ 181.251. [Reserved].**Source**

The provisions of this § 181.251 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended December 28, 1990, effective December 29, 1990, apply retroactively to October 1, 1989, 20 Pa.B. 6387; reserved September 13, 2002, effective September 14, 2002, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (211662) to (211664).

**TYPES OF INCOME NOT COUNTED
FOR THE TANF AND GA CATEGORIES**

§ 181.261. Gross earnings of a child.

The gross earnings of a child do not count as income when determining income eligibility for MA, if one of the following conditions is met:

(1) The child is under 21 years of age, meets the deprivation of support conditions under § 153.43 (relating to TANF deprivation of support or care requirements), and is a student as follows:

(i) A full-time student in an elementary or a secondary school, college, university, vocational or technical school. The student shall be enrolled in, and physically attending full-time, as defined and certified by the school or institute attended, a program of study or training leading to graduation or an equivalent certificate.

(ii) A part-time student who is employed part-time. The employment status of the student, that is, whether he is employed full-time or part-time is determined during that period when school is in session. Full-time employment during school vacation does not affect the status of the student as a part-time employe as long as it is reasonably expected that the child will return to school.

(iii) A participant in the Job Corps Program under the Job Training Partnership Act of 1982 (29 U.S.C.A. §§ 1501—1781).

(2) The child meets the deprivation of support conditions under § 153.43 and is a nonstudent under 18 years of age whose earnings are from a program under the Job Training Partnership Act. This earnings exemption is for a maximum of 6 calendar months per calendar year for a child.

(3) The child does not meet the deprivation of support conditions under § 153.43 and is under 14 years of age.

(4) The child does not meet the deprivation of support conditions under § 153.43, is 14—17 years of age, and the earnings are from a program under the Job Training Partnership Act of 1982. This earning exemption is for a maximum of 6 calendar months per calendar year.

Authority

The provisions of this § 181.261 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.261 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 140.441 (relating to income not counted); and 55 Pa. Code § 181.284 (relating to income of a child).

§ 181.262. Educational loans, grants and work-study income.

The following do not count as income:

- (1) Educational assistance in the form of loans, grants and scholarships.
- (2) Work-study income.

Authority

The provisions of this § 181.262 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P.S. §§ 201(2) and 403(b)); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 1902(a)(10)(A) and (C) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A) and (C)); and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 181.262 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended September 13, 2002, effective September 14, 2002, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (211665) to (211666).

Cross References

This section cited in 55 Pa. Code § 140.441 (relating to income not counted); and 55 Pa. Code § 181.284 (relating to income of a child).

§ 181.263. Other types of income not counted for the TANF and GA categories.

The following types of income are not counted for the TANF and GA categories:

- (1) *Funds subject to reimbursement.* Funds for which a Department reimbursement agreement has been executed.
- (2) *MA Copayment rebates.* A refund to the applicant/recipient authorized as a rebate for payment made in excess of the amount required as copayment for MA services.
- (3) *Retroactive cash assistance payments.* Retroactive cash assistance payments authorized to correct underpayments to previous recipients of cash assistance are not considered income in the month paid nor in the following month. In subsequent months, money remaining from the payments is treated as a resource under Chapter 178 (relating to resources provisions for categorically NMP-MA and MNO-MA).
- (4) *Corrective cash assistance payment.* A corrective cash assistance payment when authorized retroactively as a result of a prehearing conference, a fair hearing decision or a court order.
- (5) *Refund of assigned support payment.* An assigned court order or voluntary support payment refunded to the applicant/recipient due to a month of suspension of the monthly cash assistance payment.
- (6) *Donations from public or private agencies.* Money, goods or services an applicant/recipient receives from a public or private agency or organization.

(7) *Donations from individuals.* In-kind goods or services provided by a person to an applicant/recipient or third-party payments made to a vendor on behalf of an applicant/recipient.

(8) *Gifts, loans and borrowed money.* A loan or borrowed money such as, but not limited to, a car loan or a personal loan from non-LRR sources. Occasional nonrecurring small amounts of money given as a gift, regardless of whether the giver is or is not an LRR, if the amount of the gifts does not exceed \$50 per person in a calendar quarter. A gift received by a member who is included in the application for MA or is a recipient of MA may be divided among the members applying for, or receiving, MA, if the member who received the gift claims that the gift is intended for the entire group. If the gifts exceed \$50 per person per calendar quarter, only the amount of the gifts over \$50 per person is treated as a resource in the month received for all of the members.

(9) *Home produce.* The value of an applicant's/recipient's home produce which is used by him and his household for their own personal consumption and not for sale.

(10) *Day care.* Money received from providing day care for children in an approved family day care home.

(11) *Earned Income Tax Credit (EITC).* The advance monthly payment or year-end payment which an applicant/recipient receives.

Authority

The provisions of this § 181.263 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 1902(a)(10)(A) and (C) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A) and (C)); and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 181.263 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended December 28, 1990, effective December 29, 1990, apply retroactively to October 1, 1989, 20 Pa.B. 6387;; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (211666) to (211667).

Cross References

This section cited in 55 Pa. Code § 140.441 (relating to income not counted); 55 Pa. Code § 178.151 (relating to additional resource requirements); 55 Pa. Code § 181.283 (relating to contributions); 55 Pa. Code § 181.284 (relating to income of a child); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.264. Income and benefits not counted by Federal and State statutes for the AFDC and GA categories.

The following are not counted by Federal and State statutes for the TANF and GA categories:

(1) *Food Stamp Program Benefits.* The value of free stamps received by an applicant/recipient who is participating in the food stamp program under section 8 of the act of August 31, 1974 (Pub.L. 88-525) (78 Stat. 705) (7 U.S.C.A. § 2017(b)).

(2) *Value of United States Department of Agriculture Surplus Food Donation.* The value of United States Department of Agriculture donated foods—surplus commodities—distributed under section 32 of the act of August 24, 1935 (49 Stat. 774) (7 U.S.C.A. § 612c).

(3) *Food assistance and free school lunches.* The value of supplemental food assistance received under the Child Nutrition Act of 1966 (42 U.S.C.A. §§ 1771—1789), and the special food services program for children under the National School Lunch Act (42 U.S.C.A. § 1751).

(4) *LIHEAP.* Home energy assistance payments or services received under the Low Income Home Energy Assistance Program (LIHEAP).

(5) *Experimental Housing Allowance Program.* Experimental Housing Allowance Program (EHAP) payments made under annual contribution contracts entered into before January 1, 1975, under the United States Housing Act of 1937 (42 U.S.C.A. §§ 1437—1440).

(6) *Subsidies paid for housing or utilities.* Subsidies paid for housing or utilities under the United States Housing Act of 1937 and housing rehabilitation grants under the Housing and Community Development Act of 1974 (Pub.L. No. 93-383) (88 Stat. 633).

(7) *Uniform relocation assistance and real property acquisition policies.* Money received under Subchapter II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 4601, 4602 and 4621—4655, specifically § 4636).

(8) *Job Training Partnership Act.* Money received as need based payments or payments for supportive services from the Job Training Partnership Act (29 U.S.C.A. §§ 1501—1781).

(9) *Alaska Native Claims Settlement Act.* Tax exempt portions of payments made under the Alaska Native Claims Settlement Act (43 U.S.C.A. §§ 1601—1628).

(10) *Payments to Indian tribes.* The following payments to Indian tribes:

(i) Funds distributed per capita to, or held in trust for, members of an Indian tribe under the act of March 18, 1972 (Pub.L. 92-254) (86 Stat. 64) (25 U.S.C.A. §§ 1261—1265) or the act of October 19, 1973 (Pub.L. 93-134) (87 Stat. 466) (25 U.S.C.A. §§ 1401—1408).

(ii) Effective October 17, 1975, receipts distributed to members of certain Indian tribes referred to in the act of October 17, 1975 (Pub.L. 94-114) (89 Stat. 579) (25 U.S.C.A. § 459d).

(iii) Effective January 12, 1983, interest and investment income accrued on Indian Judgement funds while held in trust under the Per Capita Act (25 U.S.C.A. §§ 117a—117c) and Sections 2—8 of the act of October 19, 1973 (Pub.L. 93-134) (87 Stat. 466) (25 U.S.C.A. §§ 1402—1408).

(11) *Payment to volunteers.* Payment to volunteers under one of the following provisions:

(i) Payment to volunteers under Subchapter I of the Domestic Volunteer Services Act of 1973 (42 U.S.C.A. §§ 4951—4993). Payments for volunteer work in VISTA, Service Learning Programs and Special Volunteer Programs.

(ii) Payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides or senior companions and other programs established under Subchapter II of the Domestic Volunteer Service Act of 1973 (42 U.S.C.A. §§ 5001—5024), if the payments when divided by the number of hours served, result in an amount that is less than the Commonwealth's minimum hourly wage.

(12) *Congregate meals.* Benefits received under Part C, Congregate Nutrition Service of the Older American Act of 1965 (42 U.S.C.A. § 3030e).

(13) *Senior Citizens Rebate and Assistance Act.* Money received as a rent rebate or as property tax assistance under provisions of the Senior Citizens Rebate and Assistance Act (72 P. S. §§ 4751-1—4751-12).

(14) *Adoption subsidies.* Maintenance subsidies received under the Adoption Opportunity Act (62 P. S. §§ 771—774) for the use of the special need child.

(15) *Foster care payments.* Payments received for providing foster care under Title IV-E of the Social Security Act (42 U.S.C.A. §§ 670-676—735) or Article VII of the Public Welfare Code (62 P. S. §§ 701—735).

(16) *Support.* The first \$50 per month of court-ordered and voluntary support payments received, excluding arrearages.

(17) *Home Energy Assistance (HEA) benefits.* HEA benefits furnished in-kind by a certified private, nonprofit organization or furnished as cash or in-kind assistance by a certified supplier of home heating oil or gas, by a certified entity providing home energy whose revenues are primarily derived on a rate-of-return basis and regulated by the Pennsylvania Public Utility Commission or by a certified municipal utility providing home energy. HEA benefits may include, but are not limited to, payments for heating or cooling, storm doors, weatherization services, and blankets. HEA benefits do not include food or clothing.

(18) *Support or Maintenance Assistance (SMA) benefits.* In-kind SMA benefits provided by a certified private, nonprofit organization. SMA benefits may include, but are not limited to, in-kind provision of food, clothing, temporary emergency shelter, furniture, toys and appliances.

(19) *Japanese-American and Aleutian restitution payments.* Restitution payments made by the United States government to eligible Japanese-Americans and Aleuts who were interned or relocated during World War II are excluded. If the eligible Japanese-Americans are deceased at the time of payments, payments will be made to certain of their survivors as specified under the Civil Liberties Act of 1988 (50 App. §§ 1989b and 1989b-1—1989b-9). This payment is also excluded. This paragraph does not apply to eligible Aleuts who are covered under the Aleutian and Pribilof Islands Restitution Act (50 App. §§ 1989c and 1989c-1—1989c-8). Interest received on retained restitution payments is also not excluded but is subject to the usual regulations governing interest as specified in this chapter.

(20) *Agent orange settlement payments.* Payments made from the Agent Orange Settlement Fund or another fund established pursuant to the settlement in the agent orange product liability litigation.

Authority

The provisions of this § 181.264 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.264 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended March 22, 1991, effective upon publication in the *Pennsylvania Bulletin*, and applies retroactively to August 10, 1988, 21 Pa.B. 1182; amended August 27, 1993, effective August 28, 1993, with the exception of the Agent Orange Settlement Payments requirement which is retroactive to January 1, 1989, 23 Pa.B. 4071. Immediately preceding text appears at serial pages (157086) and (175277) to (175278).

Cross References

This section cited in 55 Pa. Code § 140.441 (relating to income not counted); and 55 Pa. Code § 181.284 (relating to income of a child).

TYPES OF EARNED INCOME COUNTED FOR TANF AND GA CATEGORIES

§ 181.271. Gross earned income.

Gross earned income including, but not limited to, wages, tips, salaries, commissions and bonuses from employment is counted as earned income.

Authority

The provisions of this § 181.271 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.271 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.272. Profit from self-employment.

Profit from self-employment is counted as earned income. Self-employment includes, but is not limited to, operating a business or farm, practicing a profession, renting nonresident real property, renting rooms or apartments contained in the resident property and providing board. Profit from self-employment is determined using one of the following methods:

(1) From self-employment gross receipts, the verified costs to the applicant/recipient of producing or continuing the income are deducted. For NMP-MA categories, depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal of loans for capital assets or durable goods, are not included in the deductions.

(2) From renting rooms or apartments contained in the resident property and providing board to tenants and providing room and board to tenants, the following amounts are deducted from the gross receipts:

(i) From total room and apartment rent, \$10 plus an amount equal to 50% of the remainder.

(ii) From board payments, the maximum food stamp coupon allotment for the household size equal to the total number of boarders.

(iii) From room and board payments, 40% of the total gross payment added to the maximum food stamp coupon allotment for the household size equal to the total number of roomers and boarders.

(iv) If there are roomers, boarders and room and boarders, the following amounts are deducted from the gross receipts and the results are added to determine the profit as follows:

(A) From total room or apartment rent, \$10 plus an amount equal to 50% of the remainder.

(B) From room and board payments, 40% of the total room and board payment.

(C) From board payments and the balance of the room and board payments after the deduction in clause B, the maximum food stamp coupon allotment for the household size equal to the total number of boarders and room and boarders.

Authority

The provisions of this § 181.272 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.272 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.273. [Reserved].**Source**

The provisions of this § 181.273 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; reserved September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial page (211672).

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.275. [Reserved].**Source**

The provisions of this § 181.275 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; reserved December 28, 1990, effective December 29, 1990, and apply retroactively to October 1, 1989, 20 Pa.B. 6387. Immediately preceding text appears at serial pages (130617) to (130618).

**TYPES OF UNEARNED INCOME COUNTED
FOR THE TANF AND GA CATEGORIES****§ 181.281. Benefits, dividends and interest.**

Annuities, pensions and other periodic payments which include, but are not limited to, private pensions, social security benefits including Part B Medicare premiums, disability benefits, veterans benefits, workmen's compensation, railroad retirement, unemployment insurance benefits, dividends, interest and royalties are counted as unearned income.

Authority

The provisions of this § 181.281 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.281 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.282. Support.

Child support, spousal support and alimony are counted as unearned income, regardless of whether the payment or support is voluntary or court-ordered. The mother or the putative father shall acknowledge in writing that the payment from the putative father is child support.

Authority

The provisions of this § 181.282 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.282 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.283 (relating to contributions); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.283. Contributions.

(a) Cash contributions by an LRR including the putative father are considered support as defined in § 181.282 (relating to support).

(b) Cash contributions by a person other than an LRR are counted as unearned income unless exempt under § 181.263(8) (relating to other types of income not counted for the TANF and GA categories).

Authority

The provisions of this § 181.283 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.283 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.284. Income of a child.

(a) Income paid on behalf of a child included in the applicant/recipient group is counted in determining income eligibility for MA. If the income covers more

than one child, each child covered is considered to have an equal share unless the payer or the court order specifies otherwise.

(b) Income of a child is not counted in determining income eligibility for MA if it is:

(1) Income which is exempt under §§ 181.261—181.264 (relating to types of income not counted for the TANF and GA categories).

(2) RSDI benefits paid under Title II of the Social Security Act (42 U.S.C.A. §§ 401—433) to a representative payee who does not live in the same household as the child and which the representative payee does not actually make available for the support of the child.

Authority

The provisions of this § 181.284 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.284 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.285. Income deemed available from the LRR.

Income is deemed available to an applicant/recipient from a parent and a spouse if living in the same household as the applicant/recipient. Only the income actually contributed to a child who is 18 years of age or older and 20 years of age or younger by his parents is counted in determining the MA eligibility of a child in a MNO-MA category.

(1) Income is not deemed available from the LRR who is receiving MA, TANF, GA, SBP or SSI.

(2) The total income used in determining the amount of deemed income includes the earned and unearned income of a dependent of the LRR if he is, or could be, claimed in determining the LRR's Federal income tax liability, resides in the household, but is not included in the applicant/recipient group, and is included in the basic living need deduction of paragraph (3)(v).

(3) The following are allowable deductions from the total income of the LRR and the LRR's dependents:

(i) For AFDC-related categories, from earned income, \$90 for full-time employment or part-time employment for work and personal expenses.

(ii) For GA-related categories, from earned income, up to \$25 for work and personal expenses.

(iii) From unearned income, the expenses to be eligible for, or to assure receipt of, the unearned income.

(iv) For GA-related categories, from the income of a spouse or parent who is residing elsewhere solely for purposes of employment or training, the reasonable expenses incurred while living away from home for rent, utilities, and food, if they are not provided for by the employer or training program.

(v) A basic living need deduction. The deduction is the difference between the applicant/recipient group and the applicant/recipient group plus the spouse/parent and dependents, using the income limits in Appendix C for the NMP-MA categories and Appendix G for the MNO-MA categories.

(vi) The verified payments of court-ordered support paid, not owed, by the LRR for a person not living with the LRR.

(vii) The verified payments paid by the parent, or spouse to dependents who are not living with the LRR but who are, or could be, claimed in determining Federal income tax liability.

(4) The amount of income deemed available for the applicant/recipient from the spouse or parent is the income remaining after the appropriate deductions in paragraph (3).

Authority

The provisions of this § 181.285 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.285 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended December 28, 1990, effective December 29, 1990, and apply retroactively to October 1, 1989, 20 Pa.B. 6387. Immediately preceding text appears at serial pages (130621) to (130622).

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.287. [Reserved].

Source

The provisions of this § 181.287 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; reserved September 13, 2002, effective September 14, 2002, 32 Pa.B. 4435. Immediately preceding text appears at serial page (211676).

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

§ 181.288. Rental property income.

Income from a rental property owned by an applicant/recipient but handled by a rental agency is counted as unearned income if the applicant/recipient has no specific responsibility for the management of the property.

Authority

The provisions of this § 181.288 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.288 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

RESTRICTED INCOME NOT COUNTED**§ 181.302. Nonservice connected veterans benefits.**

The amount of increased nonservice connected Veterans benefits available under 38 U.S.C. §§ 503, 506, 521, 522, 541—543, 617 and 3203 (relating to the Veterans Pension Act of 1959) is not deemed or counted. The person does not have to apply for the increase if the person qualified for veterans benefits on June 30, 1960 and elected not to receive the increase in benefits provided under the Veterans Pension Act of 1959.

Authority

The provisions of this § 181.302 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.302 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

§ 181.303. Income of an SSI recipient.

The income of an SSI recipient is not considered available to meet the needs of an applicant/recipient except those payments made to the applicant/recipient for goods, services and room and board. The person receiving SSI is not included in an applicant/recipient group.

Authority

The provisions of this § 181.303 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.303 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

§ 181.304. Income received as representative payee for a child.

If a member of the applicant/recipient group is payee for a benefit for a child and the benefit is legally restricted to the use of that child, the income is not counted in determining income eligibility for MA if:

- (1) The child is not included in the applicant/recipient group.
- (2) The child is not an LRR to another person in the applicant/recipient group.
- (3) The income is restricted to the use of a child on whose behalf it is paid. This type of income includes RSDI, veterans benefits, court-ordered support, allotments, benefits, awards, trust fund payments and voluntary support which is received from a parent. If the restricted income covers more than one child, each child is considered to have an equal share unless the payer or the court order specifies otherwise.

Authority

The provisions of this § 181.304 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.304 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949. categories).

**DEDUCTIONS FROM INCOME FOR THE
TANF AND GA CATEGORIES****§ 181.311. Deductions from earned income for the TANF categories of
NMP-MA.**

Each employed individual who qualifies for MA in the PC category, PU category or in the PD category with PC category children is entitled to the following deductions from earned income in the following order:

- (1) *Work expenses.* The first \$90 per month from the earned income of each applicant or recipient who is employed if the employed individual is not eligible to receive an earned income incentive deduction as described in paragraph (2) or if the \$90 deduction is more advantageous to the applicant or recipient group.
- (2) *Earned income incentive deductions.*
 - (i) Each employed individual in the NMP-MA applicant or recipient group is eligible to receive an earned income incentive deduction if one of the following applies:
 - (A) The employed individual in the NMP-MA applicant or recipient group is a recipient in a TANF-related category or a GA-related category with a child who is simultaneously a recipient of MA in a TANF-related category.

(B) The employed applicant has been a recipient of cash assistance, NMP-MA or MNO-MA in a TANF-related category in 1 of the 4 calendar months before the calendar month of his application for NMP-MA.

(C) The employed applicant has been a recipient of cash assistance, NMP-MA or MNO-MA in a GA-related category with a child who was simultaneously a recipient of MA in a TANF-related category in 1 of the 4 calendar months before the calendar month of his application for NMP-MA.

(D) The total income of persons in the NMP-MA applicant group which is the sum of earned income less work and dependent care expenses and unearned income less appropriate deductions is less than, or equal to, the appropriate standard of need in Appendix I.

(ii) Each employed individual in the applicant or recipient group who meets one of the requirements in subparagraph (i) is eligible to receive a continuous 50% earned income incentive deduction or the first \$90 per month work expense deduction from earned income and a \$30 plus 1/3 remainder earned income incentive deduction per requirements in subparagraph (iii), whichever is most advantageous to the applicant or recipient group.

(iii) The application of the \$30 plus 1/3 remainder earned income incentive deduction is treated as follows:

(A) The employed applicant or recipient is eligible to receive the \$30 plus 1/3 remainder earned income incentive deduction for 4 consecutive months if:

(I) Twelve or more consecutive months have elapsed since the employed applicant or recipient last received NMP-MA in a TANF-related category or in a GA-related category with a child who was simultaneously a recipient in a TANF-related category. The count begins with the first month following the month of termination for NMP-MA regardless of whether the employed individual received the entire 8 consecutive months of the \$30 income incentive deduction described in clause (B).

(II) The employed applicant/recipient is eligible for a new 4 consecutive month count if the employed applicant/recipient had an interruption in the 4 consecutive month count of receipt of the \$30 and 1/3 incentive deduction. Each of the following is treated as an interruption:

(-a-) If there is no earned income to be counted when determining eligibility for NMP-MA after the deduction of work and dependent care expenses for the employed person, that month does not count as 1 of the 4 consecutive months.

(-b-) An applicant/recipient whose receipt of 4 consecutive months of the work incentive is interrupted by loss of income.

(III) An applicant or recipient who has his NMP-MA terminated due to receipt of a regularly recurring extra paycheck within a 5-week month is not considered to have had an interruption in the accumulation of consecutive months and does not have that month count as one of the 4 consecutive months. The applicant or recipient shall meet one of the qualifications described in subparagraph (i) to qualify for a balance remaining in the 4-month count unless 12 consecutive months have elapsed in which the applicant or recipient has not been a recipient of NMP-MA in a TANF-related category or in a GA-related category with a child who was simultaneously a recipient in a TANF-related category. If 12 consecutive months have elapsed, the employed applicant or recipient is eligible for a new 4 consecutive month count.

(IV) If an applicant/recipient received retroactive NMP-MA and qualified for receipt of the earned income incentive deduction as described in subparagraph (i) and elected to receive the earned income incentive deduction, each month that he received the earned income incentive deduction during the retroactive period counts as 1 of the 4 consecutive months when determining the balance remaining in the 4-month count.

(B) Each employed individual in the applicant or recipient group who received 4 months of the \$30 plus 1/3 income incentive deduction is eligible for an income deduction of \$30 per month during the next 8 consecutive months. The application of the \$30 incentive is treated as follows:

(I) Each employed individual in the applicant or recipient group is eligible to receive the deduction for 8 consecutive calendar months.

(II) The applicant or recipient is entitled to the \$30 income incentive deduction during a calendar month of the 8-month period for which the income of the applicant or recipient is sufficient to qualify.

(III) The 8 months of eligibility for the \$30 income incentive deduction begins with the calendar month following the end of the 4 consecutive calendar months of the \$30 and 1/3 income incentive deduction.

(IV) The 8 months of eligibility are counted consecutively, whether or not MA is interrupted or income is sufficient to qualify for it.

(3) *Dependent care expenses.* The actual work-related cost of care of dependent children or incapacitated persons living in the home of the applicant/recipient if no other sound plan can be made for their care, up to a maximum of:

(i) One hundred seventy-five dollars per month per child 2 years of age or older or incapacitated person when the applicant/recipient is employed full-time.

(ii) One hundred fifty dollars per month per child 2 years of age or older or incapacitated person when the applicant/recipient is employed part-time.

(iii) Two hundred dollars per month per child 1 year of age or younger regardless of whether the client is employed full-time or part-time.

Authority

The provisions of this § 181.311 amended under sections 201(2) and 403(b) of the Public Welfare Code (62 P. S. §§ 201(2) and 403(b)); Titles I and III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) (PRWORA), creating the Temporary Assistance for Needy Families (TANF) Program, and amending 42 U.S.C.A. §§ 601—619, 651—669(b) and 1396u-1; section 1902(a)(10)(A) of the Social Security Act (42 U.S.C.A. § 1396a(a)(10)(A)); and the Federal TANF regulations in 45 CFR 260.10—265.10.

Source

The provisions of this § 181.311 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended December 28, 1990, effective December 29, 1990, and apply retroactively to October 1, 1989, 20 Pa.B. 6387; corrected January 11, 1991, effective December 29, 1990, and apply retroactively to October 1, 1989, 20 Pa.B. 163; amended September 13, 2002, effective retroactively to March 3, 1997, 32 Pa.B. 4435. Immediately preceding text appears at serial pages (211678) to (211681).

Cross References

This section cited in 55 Pa. Code § 141.71 (relating to policy); and 55 Pa. Code § 181.31 (relating to treatment of lump sum).

§ 181.312. Deductions from earned income for the TANF categories of MNO-MA.

Each employed person who qualifies for MA in the TC category, TU category or in the TD/TK category with TC children is entitled to the following deductions from earned income in the following order:

(1) *Work incentive deduction.* A work incentive deduction of \$30 plus 1/3 of the remainder of the earned income which is treated as follows:

(i) Each employed person in the MNO-MA applicant/recipient group is eligible to receive the deduction if one of the following applies:

(A) The employed recipient is in an TANF-related category or in a GA-related category with a child who is simultaneously a recipient of MA in an TANF-related category.

(B) The employed applicant has been a recipient of cash assistance, NMP-MA or MNO-MA in an TANF-related category in one of the 4 calendar months prior to the calendar month of his application for MNO-MA.

(C) The employed applicant has been a recipient of cash assistance, NMP-MA or MNO-MA in a GA-related category with a child who was

simultaneously a recipient of MA in an TANF-related category in one of the 4 calendar months prior to the calendar month of his application for MNO-MA.

(D) The total income of persons in the MNO-MA applicant group, which is the sum of earned income less work, personal and dependent care expenses and unearned income less appropriate deductions is less than, or equal to, the appropriate standard of need in Appendix I.

(ii) If the total income of persons in the MNO-MA applicant/recipient group, which is the sum of earned income less work, personal and dependent care expenses and unearned income less appropriate deductions meets the income eligibility criteria in §§ 181.11(c) or 181.14(c) (relating to continuing eligibility; and eligibility under MNO-MA spend-down) without the application of the \$30 plus 1/3 work incentive deduction, the work incentive deduction of \$30 plus 1/3 is not applied as a deduction.

(2) *Work expenses.* The income taxes and social security taxes the applicant/recipient is required to pay are deducted from gross income from operating a business or farm, or practicing a profession other than renting rooms or apartments or furnishing board. Work expenses include the following:

- (i) Federal income tax withholding.
- (ii) Social Security withholding.
- (iii) Pennsylvania income tax withholding.
- (iv) Union dues, if mandatory.
- (v) Wage tax, including wage taxes paid directly to the governing authority.

(3) *Personal expenses.* Expenses for transportation to and from employment using one of the following methods:

- (i) Actual cost for public transportation or transportation by the automobile of another person.
- (ii) Actual operating expenses plus the monthly payment on the automobile. The monthly automobile payment is subject to a maximum of \$30 a month. The operating expenses include, but are not limited to, gas, oil, tires and repairs. The total operating expenses are divided by the total monthly mileage to secure the actual cost per mile. The actual cost per mile is multiplied by the number of miles traveled to and from employment.
- (iii) Twelve cents per mile plus the monthly payment on the automobile. The monthly automobile payment is subject to a maximum of \$30 a month.

(4) *Minimum deduction.* Ninety dollars per month rather than the actual work expenses determined in paragraph (2) and personal expenses determined in paragraph (3) if the total of actual work expenses determined in paragraph (2) and personal expenses determined in paragraph (3) is less than \$90 per month.

(5) *Dependent care expenses.* The actual work-related cost of care of dependent children or a sick or disabled adult living in the home of the

applicant/recipient if care cannot be provided by other family members, and if no other sound plan can be made for their care.

Authority

The provisions of this § 181.312 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.312 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended December 28, 1990, effective December 29, 1990, and apply retroactively to October 1, 1989, 20 Pa.B. 6387. Immediately preceding text appears at serial pages (130627) to (130628).

Cross References

This section cited in 55 Pa. Code § 181.31 (relating to treatment of lump sum).

[Next page is 181-63.]

§ 181.313. Deductions from earned income for the GA categories of NMP-MA.

An employed person who qualifies for MA in the PD or PK category is entitled to the following deductions from earned income in the following order:

(1) *Work and personal expense deductions.* A maximum work and personal expense deduction not to exceed \$25 per month is allowed from earned income. This allowance includes, but is not limited to, expenses related to employment such as, transportation, child and adult care, union dues, uniforms and mandatory deductions for Federal, State and local taxes.

(2) A work incentive deduction of \$20 plus 50% of the next \$60 of the earned income which is treated as follows:

(i) Each employed person in the NMP-MA applicant/recipient group is eligible to receive the deduction for 4 consecutive months if one of the following applies:

(A) The employed recipient is in a GA-related category.

(B) The employed applicant has been a recipient of cash assistance, NMP-MA or MNO-MA in a GA-related category in one of the 4 calendar months prior to the calendar month of his application for NMP-MA.

(C) The total income of persons in the NMP-MA applicant group, which is the sum of earned income less work and dependent care expenses and unearned income less appropriate deductions is less than, or equal to, the appropriate standard of need in Appendix I.

(ii) The employed applicant/recipient who received the \$20 plus 50% of the next \$60 for 4 consecutive months has not received the deduction since 12 consecutive months have elapsed since the employed applicant/recipient last received NMP-MA in a GA-related category. The count begins with the first month following the month of termination of NMP-MA.

(iii) The employed applicant/recipient is eligible for a new 4 consecutive month count if the employed applicant/recipient had an interruption in the 4 consecutive month count of receipt of the \$20 plus 50% of the next \$60 incentive deduction. The following are treated as interruptions:

(A) If there is no earned income to be counted when determining eligibility for NMP-MA after the deduction of work and personal expenses for the employed person, that month does not count as one of the 4 consecutive months.

(B) An applicant/recipient whose receipt of 4 consecutive months of the work incentive is interrupted by loss of income.

(iv) An applicant/recipient who has his NMP-MA terminated due to receipt of a regularly recurring extra paycheck within a 5-week month is not considered to have had an interruption in the accumulation of consecutive months and does not have that month count as one of the 4 consecutive months. The applicant/recipient shall meet one of the qualifications described

in subparagraph (i) to qualify for a balance remaining in the 4-month count unless 12 consecutive months have elapsed in which he has not been a recipient of NMP-MA in a GA-related category. If 12 consecutive months have elapsed, the employed applicant/recipient is eligible for a new 4 consecutive month count.

(v) If an applicant/recipient received retroactive NMP-MA and qualified for receipt of the earned income incentive deduction as described in subparagraph (i) and elected to receive the earned income incentive deduction, each month that he received the earned income incentive deduction during the retroactive period counts as one of the 4 consecutive months when determining the balance remaining in the 4-month count.

Authority

The provisions of this § 181.313 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.313 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.31 (relating to treatment of lump sum).

§ 181.314. Deductions from earned income for the GA categories of MNO-MA.

An employed person who qualifies for MA in the TD or TK category is entitled to the following deductions from earned income in the following order:

(1) *Work incentive deduction.* A work incentive deduction of \$20 plus 50% of the next \$60 of the earned income which is treated as follows:

(i) Each employed person in the MNO-MA applicant/recipient group is eligible to receive the deduction if one of the following applies:

(A) The employed recipient is in a GA-related category.

(B) The employed applicant has been a recipient of cash assistance, NMP-MA or MNO-MA in a GA-related category in one of the 4 calendar months prior to the calendar month of his application for MNO-MA.

(C) The total income of persons in the MNO-MA applicant group, which is the sum of earned income less work, personal and dependent care expenses and unearned income less appropriate deductions is less than, or equal to, the appropriate standard of need in Appendix I.

(ii) If the total income of persons in the MNO-MA applicant/recipient group, which is the sum of earned income less work, personal and dependent care expenses and unearned income less appropriate deductions meets the income eligibility criteria in §§ 181.11(c) or 181.14(c) (relating to continuing eligibility; and eligibility under MNO-MA spend-down) without the

application of the \$20 plus 50% of the next \$60 work incentive deduction, the work incentive deduction of \$20 plus 50% of the next \$60 is not applied as a deduction.

(2) *Work expenses.* The income taxes and social security taxes the applicant/recipient is required to pay are deducted from gross income from operating a business or farm, or practicing a profession other than renting rooms or apartments or furnishing board. Work expenses include the following:

- (i) Federal income tax withholding.
- (ii) Social security withholding.
- (iii) Pennsylvania income tax withholding.
- (iv) Union dues, if mandatory.
- (v) Wage tax, including wage taxes paid directly to the governing authority.

(3) *Personal expenses.* Expenses for transportation to and from employment using one of the following methods:

- (i) Actual cost for public transportation or transportation by the automobile of another person.
- (ii) Actual operating expenses plus the monthly payment on the automobile. The monthly automobile payment is subject to a maximum of \$30 a month. The operating expenses include, but are not limited to, gas, oil, tires and repairs. The total operating expenses are divided by the total monthly mileage to secure the actual cost per mile. The actual cost per mile is multiplied by the number of miles traveled to and from employment.

(iii) Twelve cents per mile plus the monthly payment on the automobile. The monthly automobile payment is subject to a maximum of \$30 a month.

(4) *Dependent care expenses.* The actual work-related cost of care of dependent children or a sick or disabled adult living in the home of the applicant/recipient if care cannot be provided by other family members, and if no other sound plan can be made for their care.

Authority

The provisions of this § 181.314 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.314 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.31 (relating to treatment of lump sum).

§ 181.315. Unearned income expense deductions.

(a) The expenses which the applicant/recipient is required to pay to be eligible for, or to receive, the unearned income are deducted. Expenses include, but are not limited to, attorney fees, transportation costs and court costs.

(b) The replacement cost of real or personal property that is covered by a personal damage award or insurance settlement is deducted from the damage award or insurance settlement.

Authority

The provisions of this § 181.315 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.315 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This section cited in 55 Pa. Code § 181.31 (relating to treatment of lump sum).

§ 181.316. Deductions from delayed or retroactive benefits.

If delayed or retroactive benefits are subject to reimbursement to the Department, the amount owed under the reimbursement agreement is deducted from the amount of the delayed benefit.

Authority

The provisions of this § 181.316 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.316 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

§ 181.317. Rental property agency fees.

The amount paid to a rental agency to manage rental property owned by the applicant/recipient is deducted.

Authority

The provisions of this § 181.317 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.317 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

§ 181.318. Guardian fee deductions.

The fee paid to a guardian who controls the income or property of an applicant/recipient when the guardian has been court appointed and the guardian fee is imposed as a part of the court order is deducted.

Authority

The provisions of this § 181.318 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.318 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

**Subchapter D. POSTELIGIBILITY DETERMINATION OF
ELIGIBILITY FOR MA PAYMENT TOWARD COST OF
CARE IN INSTITUTIONS****POSTELIGIBILITY DETERMINATION
PROVISIONS**

Sec.

- 181.451. General policy on posteligibility determination of eligibility for MA payment toward cost of care in institutions.
181.452. Posteligibility determination of income available from an MA eligible person toward his cost of care.
181.453. Determination of MA payment toward cost of care in institutions.

POSTELIGIBILITY DETERMINATION PROVISIONS**§ 181.451. General policy on posteligibility determination of eligibility for
MA payment toward cost of care in institutions.**

(a) A person who is eligible for MA and who requests an MA payment toward his cost of skilled care, heavy care/intermediate services or intermediate care, including services in an ICF/MR facility shall have his total gross income considered to determine the amount he is expected to pay toward his cost of care. This process is separate from the eligibility determination for MA eligibility. The total gross income considered to determine the amount the MA eligible person shall pay toward his cost of care includes income amounts previously deducted in determining MA eligibility.

(b) The Department will reduce its payment for skilled care, heavy care/intermediate services, intermediate care or services in an ICF/MR facility by the amount of income available from an MA eligible person toward his cost of care.

Authority

The provisions of this § 181.451 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.451 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432. Immediately preceding text appears at serial page (165982).

§ 181.452. Posteligibility determination of income available from an MA eligible person toward the cost of care.

(a) The total gross income of an aged, blind or disabled MA eligible person's income includes:

(1) The total earned income as specified in §§ 181.91, 181.92, 181.95 and 181.96.

(2) The total unearned income as specified in §§ 181.101—181.104, 181.107, 181.109 and 181.110.

(3) *Aged, blind and disabled categories.* Some income that is identified as excluded in Subchapter B (relating to aged, blind and disabled categories) is not excluded under this subchapter and is counted when determining the MA eligible person's total gross income. This includes:

(i) The income exclusion as specified in § 181.122 (relating to earned income exclusion).

(ii) The income exclusions as specified in § 181.123 (relating to unearned income exclusions).

(4) *Income from nontrust property.* Unless the instrument specifically provides otherwise as follows:

(i) Payment of income made solely in the name of the institutionalized spouse or the community spouse is considered only available to that spouse.

(ii) Payment of income made in the names of both spouses is considered available in equal shares to each of them.

(iii) Payment of income made in the names of the institutionalized spouse or the community spouse, or both, and to another person is considered available to each spouse in proportion to the spouse's interest, or if payment is made with respect to both spouses and no interest is specified, one-half of the joint interest is considered available to each spouse.

(5) *Income from trust property.*

(i) Income is considered available to each spouse as provided for in the trust.

(ii) In the absence of a specific provision in the trust, if payment of income is made solely to the institutionalized spouse or the community spouse, the income is considered available only to that spouse.

(iii) In the absence of a specific provision in the trust, if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income is considered available to each spouse.

(iv) In the absence of a specific provision in the trust, if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person, the income is considered available to each spouse in proportion to the spouse's interest or, if payment is made with respect to both spouses and no interest is specified, one-half of the joint interest is considered available to each spouse.

(6) *Income from property with no instrument.* In the case of income not from a trust in which there is no instrument establishing ownership, subject to the requirements in paragraph (7), one-half of the income is considered available to the institutionalized spouse and one-half to the community spouse.

(7) *Rebutting income ownership.* The requirements in paragraphs (4) and (6) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of evidence, that the ownership interests in income are other than as provided under those paragraphs.

(b) The total gross income of an TANF-related category and a GA-related category MA eligible person's total income includes:

(1) The total earned income as specified in §§ 181.271 and 181.272 (relating to gross earned income; and profit from self-employment).

(2) The total unearned income as specified in §§ 181.281—181.285, 181.287 and 181.288.

(3) Income that is identified as a type of income that is not counted when determining MA eligibility is counted when determining the MA eligible person's total gross income. This includes income specified in § 181.263 (relating to other types of income not counted for the TANF and GA categories).

(4) Income from nontrust property, unless the instrument specifically provides otherwise, as follows:

(i) Payment of income made solely in the name of the institutionalized spouse or the community spouse is considered only available to that spouse.

(ii) Payment of income made in the names of both spouses is considered available in equal shares to each of them.

(iii) Payment of income made in the names of the institutionalized spouse or the community spouse, or both, and to another person is considered available to each spouse in proportion to the spouse's interest, or if payment is made with respect to both spouses and no interest is specified, one-half of the joint interest is considered available to each spouse.

(5) Income from trust property.

(i) Income is considered available to each spouse as provided for in the trust.

(ii) In the absence of a specific provision in the trust, if payment of income is made solely to the institutionalized spouse or the community spouse, the income is considered available only to that spouse.

(iii) In the absence of a specific provision in the trust, if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income is considered available to each spouse.

(iv) In the absence of a specific provision in the trust, if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person, the income is considered available to each spouse in proportion to the spouse's interest or, if payment is made with respect to both spouses and no interest is specified, one-half of the joint interest is considered available to each spouse.

(6) Income from property with no instrument. In the case of income not from a trust in which there is no instrument establishing ownership, subject to the requirements in paragraph (7), one-half of the income is considered available to the institutionalized spouse and one-half to the community spouse.

(7) Rebutting income ownership. The requirements in paragraphs (4) and (6) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of evidence, that the ownership interests in income are other than as provided under those paragraphs.

(c) For an MA eligible person in the aged, blind or disabled related categories or an MA eligible person in the TANF-related or GA-related categories, the veterans aid and attendance and housebound allowance portion of the Veterans Affairs pension as specified in § 181.81(9) (relating to items that are not income) is excluded and is not counted when determining the MA eligible person's total gross income unless if the Veterans Administration states, in writing, that the benefit is for an incompetent veteran or incompetent spouse or child of a deceased veteran who is determined incompetent by the Veterans Administration and that the benefit shall be counted toward cost of care.

(d) The following amounts are deducted from the MA eligible person's total gross income identified in subsection (a) for persons in the aged, blind and disabled-related categories, or subsection (b) for persons in the TANF-related or GA-related categories and adjusted as applicable by the treatment of Veterans Administration benefits under subsection (c) for all MA eligible persons in the following order:

(1) A personal needs allowance deduction for clothing and other personal needs while in the institution.

(i) A personal needs allowance deduction of \$30 a month for one person, except for those persons as specified in subparagraphs (ii)—(v) who are in intermediate care facilities for the mentally retarded—ICF/MR—and have sheltered workshop earnings or other earnings from therapeutic activities arranged by the institution.

(ii) A personal needs allowance deduction of \$50 a month for a person in an ICF/MR who has sheltered workshop earnings or other earnings from therapeutic activities arranged by the institution which do not exceed \$50 gross per month.

(iii) A personal needs allowance deduction of \$70 a month for a person in an ICF/MR who has sheltered workshop earnings or other earnings from therapeutic activities arranged by the institution which are more than \$50 gross per month but do not exceed \$90 gross per month.

(iv) A personal needs allowance deduction of \$110 a month for a person in an ICF/MR who has sheltered workshop earnings or other earnings from therapeutic activities arranged by the institution which are more than \$90 gross per month but do not exceed \$150 gross per month.

(v) A personal needs allowance deduction of \$110 a month plus 50% of the difference between the actual gross earnings and \$150.01, subject to a maximum personal needs allowance deduction equal to the one person NMP-MA income limit in Appendix A if the person in an ICF/MR has sheltered workshop earnings or other earnings from therapeutic activities arranged by the institution which are more than \$150 gross per month.

(2) If the MA-eligible person's spouse remains at home, an amount for the maintenance needs of the spouse.

(i) The maintenance need for the spouse in the community is reduced by the community spouse's available income. The available income is obtained by determining the community spouse's total gross earned income as specified in §§ 181.91—181.96 (relating to types of earned income counted for the aged, blind and disabled categories); the total gross unearned income as specified in §§ 181.101—181.109.

(ii) The amount of the community spouse's monthly available income is then compared to the monthly standard community spouse maintenance need allowance under 42 U.S.C.A. § 1396r-5(d)(3)(A) and (B) plus an excess shelter allowance for the couple's principal residence. The excess monthly shelter allowance is the amount by which the actual monthly verified shelter expenses specified in subparagraph (iii) exceed the excess shelter standard in 42 U.S.C.A. § 1396r-5(d)(4)(A) and (B). The monthly standard community spouse maintenance need allowance and the excess monthly shelter standard will be changed effective July of each year based on 42 U.S.C.A. § 1396r-5(d)(3)(B). Revisions required by Federal law and regulations to the amounts will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request at the CAOs.

(iii) Actual verified monthly shelter expenses include rent, mortgage payment, including principal and interest, taxes and insurance, and the maintenance charge for a condominium or cooperative and an amount for utilities. The amount for utilities is one of the two standard utility allowances (SUAs) or the telephone cost only rate contained in the Department's Food Stamp

Handbook, Chapter 560, Income Deductions. The two SUAs are based on the standard utility allowance specified in section 5(e) of the Food Stamp Act of 1977 (Pub. L. 95-400, 92 Stat. 856) (September 30, 1978) and 7 CFR 273.9(d)(6) (relating to income and deductions) and are set forth in a waiver request approved by the United States Department of Agriculture, Food and Nutrition Service, under 7 CFR 272.3(c)(1)(ii) (relating to operating guidelines and forms). If all utility expenses including the telephone are included in the rent or the maintenance charge for a condominium or cooperative, no utility amount is deducted from the total determined in this subparagraph. Annual payments for items such as taxes and insurance shall be converted to a monthly figure.

(iv) The monthly payment of the community spouse maintenance need allowance may not exceed the maximum monthly community spouse maintenance need amount specified in 42 U.S.C.A. § 1396r-5(d)(3)(C) subject to adjustment under 42 U.S.C.A. § 1396r-5(g) unless the requirements in subparagraphs (ix) or (x) apply. Revisions required by Federal law and regulations to the amounts will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request at the CAOs.

(v) If the community spouse's net monthly income is equal to, or exceeds, the amount determined in subparagraph (ii), no community spouse maintenance need allowance deduction is provided.

(vi) If the community spouse's net monthly income is less than the amount determined in subparagraph (ii), the community spouse's net monthly income is subtracted from the amount in subparagraph (ii) to determine the monthly community spouse maintenance need allowance. Only the amount actually provided to, or for the benefit of, the community spouse by the institutionalized spouse is deducted. The CAO is responsible for obtaining verification from the institutionalized spouse or someone acting on his behalf, in writing, of the amount the institutionalized spouse intends to give to the community spouse. The amount shall be verified by the CAO, in writing, at each application/reapplication or whenever the institutionalized spouse or someone acting on his behalf indicates, in writing, that the amount has changed.

(vii) The requirements in this paragraph no longer apply beginning the first full calendar month following changes in the couple's circumstances which end the community spouse/institutionalized spouse relationship.

(viii) The community spouse maintenance need allowance may exceed the amount determined in subparagraph (ii) and the amount specified in subparagraph (iv) if a greater amount is ordered through a court support order under 42 U.S.C.A. § 1396r-5(d)(5).

(ix) The community spouse maintenance need allowance may exceed the amount determined in subparagraph (ii) and the amount specified in subparagraph (iv) if a greater amount is determined as a result of a Departmen-

tal hearing decision in which either spouse establishes that the community spouse needs income above the standard due to exceptional circumstances resulting in significant financial duress. The CAO shall review the increased income need established by the Departmental hearing decision at each application/reapplication or whenever a change in the circumstances that warranted the increase no longer exist.

(x) A written notice of the monthly community spouse maintenance need allowance and the right to appeal the amount shall be provided to both members of the couple.

(3) If the MA-eligible person has a community spouse and dependent children, dependent parents or dependent siblings of either member of the couple living at home with the community spouse, an amount for the maintenance needs of the other family members.

(i) A dependent child of either member of the couple who lives with the community spouse is a child of any age who is or may be claimed as a dependent by either member of the couple for tax purposes under the IRC.

(ii) A dependent parent is the parent of either member of the couple who lives with the community spouse and who is or may be claimed as a dependent by either member of the couple for tax purposes under the IRC.

(iii) A dependent sibling of either member of a couple which includes half-brothers, half-sisters and siblings by adoption who lives with the community spouse and who is or may be claimed as a dependent by either member of the couple for tax purposes under the IRC.

(iv) The family member maintenance need amount is reduced by the family member's available income. The available income is obtained by determining the family member's total gross earned income as specified in §§ 181.91—181.96; the total gross unearned income as specified in §§ 181.101—181.109. The income of a dependent child or a child regardless of age who is blind or disabled who does not receive SSI minus the exemptions specified in § 181.110(c) (relating to income deemed available from the spouse) shall also be obtained.

(v) In addition, if the child is a student, the child's earned income up to \$1,200 a calendar quarter, but not more than \$1,620 per year is excluded.

(vi) The net amount of the dependent family member's income is then compared to the standard monthly dependent family member maintenance allowance under 42 U.S.C.A. § 1396r-5(d)(1)(C) and (3)(A)(i). Revisions required by Federal law and regulations to the amounts will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request at the CAOs.

(vii) If the dependent family member's income equals, or exceeds, the standard, no dependent family member maintenance need allowance deduction is provided.

(viii) If the dependent family member's income is less than the standard, the dependent family member's income is subtracted from the standard. The dependent family member's maintenance need allowance deduction is 1/3 of the remaining amount.

(ix) The dependent family member's maintenance need allowance deduction, which may not exceed the institutionalized spouse's remaining available income, shall be deducted from the institutionalized spouse's income even if the amount is not actually given to the family member by the institutionalized spouse.

(x) A written notice of the family member maintenance need allowance and the right to appeal the amount deducted shall be provided to both members of the couple.

(xi) The requirements in this paragraph no longer apply beginning the first full calendar month following changes in the dependent family member's or the institutionalized spouse's circumstances which end the dependent family member's/institutionalized spouse's relationship.

(4) If the MA-eligible person has no spouse in the community with whom he lived before being institutionalized but does have a dependent child or a disabled child, a dependent child maintenance need allowance is determined.

(i) A dependent child for this subsection is a child who is not married, not the head of a household, and is either 17 years of age or younger, or if a student, 21 years of age or younger and is or may be claimed as a dependent by the institutionalized person for tax purposes under the IRC.

(ii) A disabled child is a child who meets the eligibility conditions as a disabled person and is claimed as a dependent by the institutionalized person for tax purposes under the IRC.

(iii) The dependent child maintenance need allowance is reduced by the dependent/disabled child's available income. The available income is obtained by determining the dependent/disabled child's total gross earned income as specified in §§ 181.91—181.96 and the total gross unearned income as specified in §§ 181.101—181.109. The available income is also obtained by determining the income of a dependent child or a child regardless of age who is blind or disabled who does not receive SSI minus the exemptions specified in § 181.110(c). In addition, if the dependent child is a student, the child's earned income up to \$1,200 a calendar quarter, but not more than \$1,620 per year, is excluded.

(iv) The net income of the dependent child is then compared to the one person MA income limit in Appendix C for the county in which the dependent child resides. If the dependent child resides out-of-State, the amount listed in Schedule No. 2 in Appendix C for one person is used.

(v) The net income of the disabled child is then compared to the one person MA income limit in Appendix A.

(vi) If the dependent or disabled child's net income is less than the amount in subparagraph (iv) or (v), the dependent/disabled child's maintenance need allowance is the difference between the net income and the amount in subparagraph (iv) or (v).

(vii) This amount, which may not exceed the institutionalized person's remaining available income, is deducted from the institutionalized person's income only if the amount is given to the dependent/disabled child. The CAO is responsible for obtaining verification from the institutionalized spouse or someone acting on his behalf, in writing, of the amount the institutionalized person intends to give to the dependent or disabled child. The amount shall be verified by the CAO, in writing, at each application/reapplication or whenever the institutionalized person or someone acting on the person's behalf indicates, in writing, that the amount has changed.

(viii) A written notice of the dependent/disabled child maintenance need allowance and the right to appeal the amount shall be provided to the institutionalized person.

(ix) The requirements in this paragraph no longer apply beginning the first full calendar month following changes in the dependent/ disabled child's or the institutionalized person's circumstances which end the dependent/ disabled child's or institutionalized person's relationship.

(5) The following medical expenses which are not subject to payment by a third party are deducted in the calendar month the medical expenses are paid.

(i) Medicare and other health insurance premiums, including enrollment fees, deductibles or coinsurance charges incurred by the MA eligible person.

(ii) Copayments or deductibles, including the amount an applicant/ recipient participating in the Copayment Program is required to pay by the Department subject to the Department's established copayment limit.

(iii) Expenses paid by the MA eligible person for necessary medical or remedial care recognized under State statutes or regulations but not covered under the MA Program.

(6) An amount for maintenance of a single MA eligible person's home if a physician has certified that he is likely to return to his home within a 6-month period from the date he entered the facility. When this deduction is given, it may not be deducted for more than one 6-consecutive month period. The maintenance need amount for the single person is the MA income limit for one person in Appendix A. A home is defined as the residence maintained by the MA eligible person before he entered the facility and to which he plans to return. If a person is discharged and subsequently returns to a facility, the single MA eligible person is eligible for a new 6 consecutive month period for this deduction if a physician certifies that the person is likely to return to his home within a 6-month period from the date of admittance to the facility.

(e) The amount that the MA eligible person is expected to pay toward the cost of care is the amount that remains and as adjusted under subsection (c), if applicable, and after the deductions in subsection (d) are applied to the person's total gross income as determined under subsections (a) and (b).

Authority

The provisions of this § 181.452 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)); amended under sections 201, 403 and 443.1 of the Public Welfare Code (62 P. S. §§ 201, 403 and 443.1).

Source

The provisions of this § 181.452 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended February 15, 1991, effective March 1, 1991, 21 Pa.B. 624; amended August 16, 1991, effective August 17, 1991, 21 Pa.B. 3704; amended January 24, 1992, effective upon publication and apply retroactively to April 1, 1989, 22 Pa.B. 357; amended August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432; corrected September 11, 1992, effective December 1, 1991, 22 Pa.B. 4627; corrected November 26, 1993, effective December 5, 1992, 23 Pa.B. 5639; amended June 19, 1998, effective June 20, 1998, and apply retroactively to March 1, 1991, 28 Pa.B. 2810; amended June 15, 2001, effective June 16, 2001, apply retroactively to June 1, 1994, 31 Pa.B. 3200. Immediately preceding text appears at serial pages (244848) to (244856).

Notes of Decisions

Construction; No Deference to Agency

Although courts generally defer to an agency's interpretation of regulatory text, where the meaning of a regulation is essentially a question of law for the court, and where the court deems the agency's interpretation to be unwise or erroneous, that deference is unwarranted. *Davis v. Department of Public Welfare*, 776 A.2d 1026 (Pa. Cmwlth. 2001).

Exceptional Circumstances

In a case of first impression, the court held that deciding whether the community spouse needs income above the standard due to "exceptional circumstances," requires that the circumstances be exceptional, not the expenses themselves. *Davis v. Department of Public Welfare*, 776 A.2d 1026 (Pa. Cmwlth. 2001).

Legislative Intent

The application of the "exceptional circumstances" standard is consistent with the intent of the public welfare statute, which is to enable the community spouse to reside in the community and prevent his impoverishment. *Davis v. Department of Public Welfare*, 776 A.2d 1026 (Pa. Cmwlth. 2001).

MMMNA Not Available Income

The minimum monthly maintenance needs allowed (MMMNA) of the community spouse is excluded from income available in determining whether the institutionalized spouse is eligible for Medicare Assistance. *Davis v. Department of Public Welfare*, 776 A.2d 1026 (Pa. Cmwlth. 2001).

Proof

The community spouse must present proof that specific expenses are "exceptional circumstances resulting in significant financial duress" in order to be granted an increase in the MMMNA. The fact that the community spouse's repayment obligation of unreimbursed medical expenses is 80% of her remaining disposable income is the type of exceptional circumstance creating financial duress con-

templated by the General Assembly. Therefore, the hearing officer's focus on the nature of the expense, rather than on the community spouse's exceptional circumstances, was improper. *Davis v. Department of Public Welfare*, 776 A.2d 1026 (Pa. Cmwlth. 2001).

Cross References

This section cited in 55 Pa. Code § 178.124 (relating to resource eligibility for the institutionalized spouse); 55 Pa. Code § 181.81 (relating to items that are not income); and 55 Pa. Code § 181.453 (relating to determination of MA payment toward cost of care in institutions).

§ 181.453. Determination of MA payment toward cost of care in institutions.

(a) A person who is eligible for MA is eligible for a contribution from the Department toward the cost of his skilled nursing care, heavy care/intermediate services or intermediate care or services in an ICF/MR facility, if the amount of his payment determined under § 181.452 (relating to posteligibility determina-

tion of income available from an MA eligible person toward his cost of care) is less than the MA payment rate multiplied by the total number of days of care received by the MA eligible person.

(b) The contribution from the Department toward the cost of care is the difference between the MA payment rate multiplied by the total number of days of care received by the MA eligible person less the amount of the payment determined under § 181.452.

(c) If an MA eligible person is determined under § 181.452 to have income sufficient to reduce the Department's payment to zero, the MA eligible person is not obligated to pay a greater amount than the Department's payment rate toward his cost of care.

Authority

The provisions of this § 181.453 issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this § 181.453 adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended August 28, 1992, effective upon publication and apply retroactively to October 1, 1989, 22 Pa.B. 4432. Immediately preceding text appears at serial page (168654).

**APPENDIX A
CATEGORICALLY NEEDY NONMONEY PAYMENT
MONTHLY INCOME LIMITS FOR THE AGED,
BLIND AND DISABLED CATEGORIES
EFFECTIVE JANUARY 1, 2008**

1 PERSON	\$664.40
2 PERSONS	\$999.70

Authority

The provisions of this Appendix A issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this Appendix A adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended July 12, 1991, effective January 1, 1991, 21 Pa.B. 3184; amended March 20, 1992, effective January 1, 1992, 22 Pa.B. 1307; amended January 14, 1994, effective January 1, 1994, 24 Pa.B. 414; amended March 24, 1995, effective January 1, 1995, 25 Pa.B. 1129; amended April 12, 1996, effective January 1, 1996, 26 Pa.B. 1762; amended April 11, 1997, effective January 1, 1997, 27 Pa.B. 1891; amended May 4, 2001, effective January 1, 2001, 31 Pa.B. 2443; amended April 26, 2002, effective January 1, 2002, 32 Pa.B. 2166; amended April 16, 2004, effective April 17, 2004, 34 Pa.B. 2139; amended February 3, 2006, effective January 1, 2006, 36 Pa.B. 628; amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2353; amended March 14, 2008, effective January 1, 2008, 38 Pa.B. 1318. Immediately preceding text appears at serial pages (328023) to (328024).

Cross References

This appendix cited in 55 Pa. Code § 178.91 (relating to deeming of resources); 55 Pa. Code § 178.105 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994); 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA); 55 Pa. Code § 181.11 (relating to continuing eligibility); 55 Pa. Code § 181.12 (relating to retroactive eligibility); 55 Pa. Code § 181.13 (relating to eligibility under NMP-MA spend-down); 55 Pa. Code § 181.110 (relating to income deemed available from the spouse); and 55 Pa. Code § 181.452 (relating to posteligibility determination of income available from an MA eligible person toward his cost of care).

**APPENDIX B
CATEGORICALLY NEEDY NONMONEY PAYMENT
MONTHLY INCOME LIMITS FOR AGED,
BLIND AND DISABLED CATEGORIES RECEIVING
SKILLED CARE, HEAVY CARE/INTERMEDIATE
SERVICES OR INTERMEDIATE CARE
EFFECTIVE JANUARY 1, 2008**

1 PERSON \$1,911

Authority

The provisions of this Appendix B issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this Appendix B adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended July 12, 1991, effective January 1, 1991, 21 Pa.B. 3184; amended March 20, 1992, effective January 1, 1992, 22 Pa.B. 1307; amended January 14, 1994, effective January 1, 1994, 24 Pa.B. 414; amended March 24, 1995, effective January 1, 1995, 25 Pa.B. 1129; amended April 12, 1996, effective January 1, 1996, 26 Pa.B. 1762; amended April 11, 1997, effective January 1, 1997, 27 Pa.B. 1891; amended May 4, 2001, effective January 1, 2001, 31 Pa.B. 2443; amended April 26, 2002, effective January 1, 2002, 32 Pa.B. 2166; amended April 16, 2004, effective April 17, 2004, 34 Pa.B. 2139; amended February 3, 2006, effective January 1, 2006, 36 Pa.B. 628; amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2353; amended March 14, 2008, effective January 1, 2008, 38 Pa.B. 1318. Immediately preceding text appears at serial page (328024).

Cross References

This appendix cited in 55 Pa. Code § 178.175 (relating to presumption of disposition of assets to qualify for MA for transfers on or after July 30, 1994); 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA); 55 Pa. Code § 181.11 (relating to continuing eligibility); and 55 Pa. Code § 181.71 (relating to special NMP-MA income limit for institutionalized aged, blind and disabled persons).

APPENDIX C
CATEGORICALLY NEEDY NONMONEY PAYMENT MONTHLY
INCOME LIMITS FOR THE AID TO FAMILIES WITH
DEPENDENT CHILDREN RELATED CATEGORIES AND THE GENERAL
ASSISTANCE RELATED CATEGORIES

EFFECTIVE JANUARY 1, 1990

NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP

Schedule	1	2	3	4	5	6	each additional person
1	\$215	\$330	\$421	\$514	\$607	\$687	\$83
Bucks	Chester		Lancaster		Montgomery		Pike
2	\$205	\$316	\$403	\$497	\$589	\$670	\$83
Adams	Centre		Erie		Monroe		Union
Allegheny	Columbia		Lackawanna		Montour		Warren
Berks	Crawford		Lebanon		Northampton		Wayne
Blair	Cumberland		Lehigh		Philadelphia		Westmoreland
Bradford	Dauphin		Luzerne		Sullivan		Wyoming
Butler	Delaware		Lycoming		Susquehanna		York
3	\$195	\$305	\$393	\$479	\$569	\$647	\$83
Beaver	Elk		Lawrence		Mifflin		Snyder
Cameron	Franklin		McKean		Perry		Tioga
Carbon	Indiana		Mercer		Potter		Venango
Clinton							Washington
4	\$174	\$279	\$365	\$454	\$543	\$614	\$83
Armstrong	Clarion		Forest		Huntingdon		Northumber- land
Bedford	Clearfield		Fulton		Jefferson		Schuylkill
Cambria	Fayette		Greene		Juniata		Somerset

Note: If a pregnancy is medically verified, the unborn child is counted as a member of the applicant/recipient group when establishing the income limits. If multiple births are expected and verified, each unborn child is counted.

Authority

The provisions of this Appendix C issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

181-79

(332751) No. 402 May 08

Source

The provisions of this Appendix C adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended February 2, 1990, effective February 3, 1990, 20 Pa.B. 554. Immediately preceding text appears at serial page (130659).

Cross References

This appendix cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA); 55 Pa. Code § 181.11 (relating to continuing eligibility); 55 Pa. Code § 181.12 (relating to retroactive eligibility); 55 Pa. Code § 181.13 (relating to eligibility under NMP-MA spend-down); and 55 Pa. Code § 181.285 (relating to income deemed available from the LRR).

APPENDIX D
MONTHLY FEDERAL BENEFIT RATE
EFFECTIVE JANUARY 1, 2008

1 PERSON	\$637
2 PERSONS	\$956

PERCENTAGES OF MONTHLY FEDERAL
BENEFIT RATE
EFFECTIVE JANUARY 1, 2008

ITEM 1) 50% of Federal Benefit Rate for 1 person	= \$318.50
ITEM 2) 50% of Federal Benefit Rate for 2 persons	= \$478

Authority

The provisions of this Appendix D issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this Appendix D adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended July 12, 1991, effective January 1, 1991, 21 Pa.B. 3184; amended March 20, 1992, effective January 1, 1992, 22 Pa.B. 1307; amended January 14, 1994, effective January 1, 1994, 24 Pa.B. 414; amended March 24, 1995, effective January 1, 1995, 25 Pa.B. 1129; amended April 12, 1996, effective January 1, 1996, 26 Pa.B. 1762; amended April 11, 1997, effective January 1, 1997, 27 Pa.B. 1891; amended May 4, 2001, effective January 1, 2001, 31 Pa.B. 2443; amended April 26, 2002, effective January 1, 2002, 32 Pa.B. 2166; amended April 16, 2004, effective April 17, 2004, 34 Pa.B. 2139; amended February 3, 2006, effective January 1, 2006, 36 Pa.B. 628; amended May 18, 2007, effective May 19, 2007, 37 Pa.B. 2353; amended March 14, 2008, effective January 1, 2008, 38 Pa.B. 1318. Immediately preceding text appears at serial page (328026).

Cross References

This appendix cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA); and 55 Pa. Code § 181.110 (relating to income deemed available from the spouse).

181-80

APPENDIX E

ONE-THIRD OF THE CATEGORICALLY NEEDY NONMONEY PAYMENT
MONTHLY INCOME LIMITS FOR THE AID TO FAMILIES WITH
DEPENDENT CHILDREN RELATED CATEGORIES AND THE GENERAL
ASSISTANCE RELATED CATEGORIES

EFFECTIVE JANUARY 1, 1990

MONTHLY AMOUNT	ONE-THIRD AMOUNT
\$ 83.00 =	\$ 27.66
174.00 =	58.00
195.00 =	65.00
205.00 =	68.33
215.00 =	71.66
279.00 =	93.00
305.00 =	101.66
316.00 =	105.33
330.00 =	110.00
365.00 =	121.66
393.00 =	131.00
403.00 =	134.33
421.00 =	140.33
454.00 =	151.33
479.00 =	159.66
497.00 =	165.66
514.00 =	171.33
543.00 =	181.00
569.00 =	189.66
589.00 =	196.33
607.00 =	202.33
614.00 =	204.66
647.00 =	215.66
670.00 =	223.33
687.00 =	229.00

Note: If a pregnancy is medically verified, the unborn is counted as a member of the applicant/recipient group when establishing the income limits. If multiple births are expected and verified, each unborn is counted.

Authority

The provisions of this Appendix E issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

181-81

(291065) No. 336 Nov. 02

Source

The provisions of this Appendix E adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended February 2, 1990, effective February 3, 1990, 20 Pa.B. 554. Immediately preceding text appears at serial page (130641).

Cross References

This appendix cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA).

APPENDIX F

**SIX-MONTH PERIOD
MEDICALLY NEEDY INCOME LIMITS
(MNIL)**

1 PERSON	\$2,450
2 PERSONS	\$2,650
3 PERSONS	\$2,800
4 PERSONS	\$3,400
5 PERSONS	\$4,050
6 PERSONS	\$4,550
EACH ADDITIONAL PERSON	\$ 550

Note: If a pregnancy is medically verified, the unborn is counted as a member of the applicant/recipient group when establishing the income limits. If multiple births are expected and verified, each unborn is counted.

Authority

The provisions of this Appendix F issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this Appendix F adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended February 2, 1990, effective February 3, 1990, 20 Pa.B. 554. Immediately preceding text appears at serial page (130642).

Cross References

This appendix cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA); 55 Pa. Code § 181.11 (relating to continuing eligibility); 55 Pa. Code § 181.12 (relating to retroactive eligibility); 55 Pa. Code § 181.14 (relating to eligibility under MNO-MA spend-down); and 55 Pa. Code § 181.110 (relating to income deemed available from the spouse).

181-82

APPENDIX G
MONTHLY
MEDICALLY NEEDY INCOME LIMITS
(MNIL)

1 PERSON	\$408
2 PERSONS	\$442
3 PERSONS	\$467
4 PERSONS	\$567
5 PERSONS	\$675
6 PERSONS	\$758
EACH ADDITIONAL PERSON	\$ 92

Note: If a pregnancy is medically verified, the unborn is counted as a member of the applicant/recipient group when establishing the income limits. If multiple births are expected and verified, each unborn is counted.

Authority

The provisions of this Appendix G issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this Appendix G adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949; amended February 2, 1990, effective February 3, 1990, 20 Pa.B. 554. Immediately preceding text appears at serial pages (130642) to (130643).

Cross References

This appendix cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA); 55 Pa. Code § 181.12 (relating to retroactive eligibility); 55 Pa.Code § 181.110 (relating to income deemed available from the spouse); and 55 Pa. Code § 181.285 (relating to income deemed available from the LRR).

APPENDIX H
ONE-THIRD OF THE MONTHLY
MEDICALLY NEEDY INCOME LIMITS

1 PERSON	\$136.00
2 PERSONS	\$147.00
3 PERSONS	\$156.00
4 PERSONS	\$189.00
5 PERSONS	\$225.00
6 PERSONS	\$253.00

181-83

APPENDIX I
STANDARD OF NEED

SCHEDULE 1	NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP					
1	2	3	4	5	6	Each Additional Person
\$313	\$481	\$614	\$749	\$885	\$1001	\$121
Bucks	Chester	Lancaster		Montgomery		Pike

SCHEDULE 2	NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP					
1	2	3	4	5	6	Each Additional Person
\$298	\$461	\$587	\$724	\$859	\$976	\$121
Adams	Centre	Erie		Monroe		Union
Allegheny	Columbia	Lackawanna		Montour		Warren
Berks	Crawford	Lebanon		Northampton		Wayne
Blair	Cumberland	Lehigh		Philadelphia		Westmoreland
Bradford	Dauphin	Luzerne		Sullivan		Wyoming
Butler	Delaware	Lycoming		Susquehanna		York

SCHEDULE 3	NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP					
1	2	3	4	5	6	Each Additional Person
\$284	\$444	\$573	\$698	\$829	\$943	\$121
Beaver	Elk	Lawrence		Mifflin		Snyder
Cameron	Franklin	McKean		Perry		Tioga
Carbon	Indiana	Mercer		Potter		Venango
Clinton						Washington

SCHEDULE		NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP						
4		1	2	3	4	5	6	Each Additional Person
		\$253	\$406	\$532	\$662	\$791	\$894	\$121
Armstrong	Clarion			Forest		Huntingdon		Northumberland
Bedford	Clearfield			Fulton		Jefferson		Schuylkill
Cambria	Fayette			Greene		Juniata		Somerset

Note: If a pregnancy is medically verified, the unborn child is counted as a member of the applicant/recipient group when establishing the income limits. If multiple births are expected and verified, each unborn child is counted.

Authority

The provisions of this Appendix I issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this Appendix I adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This appendix cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA); 55 Pa. Code § 181.311 (relating to deductions from earned income for the AFDC categories of NMP-MA); 55 Pa. Code § 181.313 (relating to deductions from earned income for the GA categories of NMP-MA); and 55 Pa. Code § 181.314 (relating to deductions from earned income for the GA categories of MNO-MA).

APPENDIX J

NMP-MA GROSS INCOME TEST LIMITS

SCHEDULE		NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP					
1							Each Additional Person
1	2	3	4	5	6		
\$579	\$890	\$1136	\$1386	\$1637	\$1852	\$224	
Bucks	Chester	Lancaster		Montgomery		Pike	

SCHEDULE		NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP					
2							Each Additional Person
1	2	3	4	5	6		
\$551	\$853	\$1086	\$1339	\$1589	\$1809	\$224	
Adams	Centre	Erie		Monroe		Union	
Allegheny	Columbia	Lackawanna		Montour		Warren	
Berks	Crawford	Lebanon		Northampton		Wayne	
Blair	Cumberland	Lehigh		Philadelphia		Westmoreland	
Bradford	Dauphin	Luzerne		Sullivan		Wyoming	
Butler	Delaware	Lycoming		Susquehanna		York	

SCHEDULE		NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP					
3							Each Additional Person
1	2	3	4	5	6		
\$525	\$821	\$1060	\$1291	\$1534	\$1745	\$224	
Beaver	Elk	Lawrence		Mifflin		Snyder	
Cameron	Franklin	McKean		Perry		Tioga	
Carbon	Indiana	Mercer		Potter		Venango	
Clinton						Washington	

SCHEDULE 4	NUMBER OF PERSONS IN APPLICANT/RECIPIENT GROUP						
	1	2	3	4	5	6	Each Additional Person
	\$468	\$751	\$984	\$1225	\$1463	\$1654	\$224
Armstrong	Clarion	Forest		Huntingdon			Northumberland
Bedford	Clearfield	Fulton		Jefferson			Schuylkill
Cambria	Fayette	Greene		Juniata			Somerset

Note: If a pregnancy is medically verified, the unborn child is counted as a member of the applicant/recipient group when establishing the income limits. If multiple births are expected and verified, each unborn child is counted.

Authority

The provisions of this Appendix J issued under section 403(b) of the Public Welfare Code (62 P. S. § 403(b)).

Source

The provisions of this Appendix J adopted August 26, 1988, effective November 1, 1988, 18 Pa.B. 3949.

Cross References

This appendix cited in 55 Pa. Code § 181.1 (relating to general policy on MA income common to all categories of MA).

[Next page is 183-1.]

181-88