



October 26, 2021

Food Assistance Transmittal Letter No. 423

TO: All Food Assistance Manual Holders

FROM: Matt Damschroder, Director

SUBJECT: Five-Year Review: Food assistance: determining eligibility of assistance groups with income from self-employment.

In accordance with section 106.03 of the Ohio Revised Code (ORC), each state agency is required to review each of its rules in the Ohio Administrative Code a minimum of once every five years. The intent of the review is to ensure that Administrative Code rules are clearly written and that program requirements are accurate, up-to-date based on regulations from the United States Department of Agriculture (USDA) Food and Nutrition Services (FNS) and clearly expressed. To the extent possible, unnecessary paperwork will be eliminated, local agencies will be given increased flexibility, and any adverse impact on businesses will be eliminated or reduced. As a result of the review, the agency may amend the rule; rescind the rule; or continue the rule without amendment.

These rules have been subject to a review by the Joint Committee on Agency Rule Review (JCARR). The changes will become effective on 11/01/2021.

Chapter 6000

5101:4-6-11 "Food assistance: determining eligibility of assistance groups with income from self-employment."

This rule describes how to determine eligibility of assistance groups with income from self-employment. Changes to the rule include:

- Paragraph (A)(2) was amended for clarity;
- The term "food assistance" was replaced with "supplemental nutrition assistance program (SNAP)";
- Paragraph (C)(2)(a)(xii) was removed as it describes a type of exempt income which should be treated in accordance with rule 5101:4-4-13 of the Ohio Administrative Code;
- Language was added to new paragraph (C)(2)(a)(xii) to provide an example of what is considered allowable business transportation costs; and
- Minor language changes for clarity.

5101:4-6-11

Food assistance: determining eligibility of assistance groups with income from self-employment.**(A) How is self-employment income determined?****(1) Averaging self-employment income**

- (a) Self-employment income must be averaged over the period the income is intended to cover, even when the assistance group receives income from other sources. When the averaged amount does not accurately reflect the assistance group's actual circumstances because the assistance group has experienced a substantial increase or decrease in business, the county agency must calculate the self-employment income on the basis of anticipated, not prior, earnings. When possible the county agency should secure a copy of the self-employed individual's tax return. The income listed on the previous year's tax return should be used to estimate the expected earnings.

The internal revenue service (IRS) publications: IRS publications 17, "Your Federal Income Tax"; and 334, "Tax Guide for Small Business"; provide detail on how self-employment income is handled for federal income tax purposes and can be accessed on the IRS website <http://www.irs.gov>.

- (b) When the assistance group's self-employment enterprise has been in existence for less than a year, the income from the self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(2) ~~Anticipating~~ Calculating monthly self-employment income

For the period of time over which self-employment income is determined the county agency shall:

- (a) Add all gross self-employment income (either actual or anticipated as provided in paragraph (A)(1) of this rule) and capital gains (as provided in paragraph (B)(2) of this rule); then,
- (b) Exclude the costs of producing the self-employment income (as determined in paragraph (C) of this rule); and
- (c) Divide the remaining amount of the self-employment income by the number of months the income will be averaged.

(3) Offsetting farm income losses

When the cost of producing self-employment income exceeds the income earned from self-employment, those losses shall be prorated in accordance with paragraph (A)(1) of this rule and then offset against countable income to the assistance group as follows:

- (a) Offset farm self-employment income losses first against other self-employment income.
- (b) Offset any remaining farm self-employment losses against the total amount of earned and unearned income after the earned income deduction has been applied.

(B) What are ~~some of the~~ other income producing categories of self-employment?

(1) Income from rental property

- (a) Income derived from rental property is considered earned income for the twenty per cent earned income deduction only when a member of the assistance group is actively engaged in the management of the property at least an average of twenty hours per week. Regardless, income from rental property always has the costs of doing business excluded.
- (b) When management of the property for at least an average of twenty hours per week is not met, the net income is considered unearned income and the earned income deduction is not allowed.

(2) Capital gains

- (a) The term "capital gains" as used by the internal revenue service (IRS) describes the handling of the profit from the sale or a transfer of capital assets used in a self-employment enterprise or securities, real estate, or other real property held as an investment for a set period of time.
- (b) The proceeds from the sale of capital goods or equipment shall be calculated in the same manner as a capital gain for federal income tax purposes. Even ~~if~~when only fifty per cent of the proceeds from the sale of capital goods or equipment is taxed for federal income tax purposes, the county agency must count the full amount of the capital gain as income for ~~food assistance~~supplemental nutrition assistance program (SNAP) purposes.
- (c) For assistance groups whose self-employment income is calculated on an anticipated (rather than averaged) basis in accordance with paragraph (A) of this rule, the county agency shall count the amount of the capital gains

the assistance group anticipates receiving during the months the income is being averaged.

- (d) Lump sum payments for the sale of property not connected with a self-employment enterprise will be treated ~~as provided in paragraph (B) of rule~~ in accordance with rules 5101:4-4-07 and 5101:4-4-13 of the Administrative Code ~~and paragraph (I) of rule 5101:4-4-13 of the Administrative Code.~~

- (C) What business costs are allowed to be deducted when determining self-employment net income?

The assistance group may choose one of the following two methods:

- (1) Fifty per cent standard deduction from gross self-employment income; or
- (2) Actual deductions from the gross self-employment income.

- (a) Allowable ~~exclusions~~ costs include but are not limited to:

- (i) Identifiable costs of labor;
- (ii) Stock;
- (iii) Raw material;
- (iv) Seed and fertilizer;
- (v) Payments on the principal of the purchase price of income-producing real estate and capital assets;
- (vi) Equipment, machinery and other durable goods;
- (vii) Interest paid to purchase income-producing property;
- (viii) Insurance premiums;
- (ix) Taxes paid on income producing property;
- (x) When the assistance group can document the costs on the portion of a home used in a self-employment enterprise are separate and identifiable, those costs may be ~~excluded~~ included as costs of doing business.

(xi) ~~Exclusions from income received from~~The cost of doing business for boarders who are not included in the assistance group shall be considered in accordance with rule 5101:4-6-03 of the Administrative Code.

(xii) ~~Exempt income of children in migrant assistance groups shall be handled in accordance with paragraph (G) of rule 5101:4-4-13 of the Administrative Code.~~

~~(xiii)~~(xii) Business transportation costs. Use actual costs or the federal or state mileage reimbursement rate, whichever is higher. For example, when an individual drives to different work locations throughout the work day, the transportation costs to drive from one work location to the next work location would be allowable business transportation costs.

(b) Unallowable ~~exclusions~~costs include but are not limited to:

- (i) Net losses from previous periods;
- (ii) Federal, state, and local income taxes;
- (iii) Money set aside for retirement purposes;
- (iv) Other work-related personal expenses, such as transportation to and from work. These expenses are accounted for by the twenty per cent earned income deduction described in rule 5101:4-4-23 of the Administrative Code; and
- (v) Depreciation.

(D) Are assistance groups with individuals who are self-employed required to register for work?

The receipt of income from self-employment does not automatically exempt a member from the work registration requirement. The member must be actively engaged in the enterprise on a day-to-day basis, and the county agency shall determine that the self-employment enterprise either:

- (1) Requires at least thirty hours of work per week during the period of certification or an average of thirty hours per week on an annual basis; or
- (2) When not generating thirty hours of work a week, is receiving weekly gross earnings at least equal to the federal minimum wage multiplied by thirty hours.

(E) What if a self-employed individual contracts work out?

When the assistance group member hires or contracts another person or firm to handle the daily activities of the self-employment, the member will not be considered as self-employed for the purpose of work registration unless the person continues to work at least thirty hours per week or receives the equivalent of the federal minimum wage multiplied by thirty hours from the self-employment business.

(F) Can seasonal work exempt an individual from the work registration requirement?

~~When~~ When on an annual basis the seasonal employment either averages thirty hours of work per week, or produces earnings averaging at least the federal minimum wage multiplied by thirty hours per week, the assistance group member engaged is exempt from registering even in non-work periods.

For example, when an individual works a minimum of one thousand five hundred sixty hours during the season (thirty hours times fifty-two) or earns the equivalent of this multiplied by the federal minimum wage, he or she is exempt from work registration even during the off-seasons. When the annual average does not meet the minimum for exemption, the member must register for work unless another exemption is met.

Effective: 11/1/2021
Five Year Review (FYR) Dates: 8/6/2021 and 11/01/2026

CERTIFIED ELECTRONICALLY

Certification

10/20/2021

Date

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