



December 12, 2022

FOOD ASSISTANCE TRANSMITTAL LETTER NO. 436

TO: All Food Assistance Manual Holders
FROM: Matt Damschroder, Director
SUBJECT: Food assistance: Kinship Guardianship Assistance Program

Ohio Administrative Code rules 5101:4-2-03, and 5101:4-4-19, are being amended due to the implementation of the state Kinship Guardianship Assistance Program (KGAP) and Federal Title IV-E KGAP. Rules for these programs are promulgated by the Office of Families and Children (OFC).

For the purposes of the Supplemental Nutrition Assistance Program (SNAP), federal KGAP and state KGAP when the child is also in receipt of Ohio Works First (OWF) are to be treated as unearned income and the child for whom these payments are made must be included in the SNAP assistance group. When the child is not in receipt of OWF and state KGAP payments are made for the child, the child for whom state KGAP payments are made can be included or excluded in the assistance group at the assistance group's discretion (similar to foster care maintenance payments). The Office of Family Assistance (OFA) has taken the actions described below.

These rules have been subject to a review by the Joint Committee on Agency Rule Review (JCARR). The changes will become effective on 01/01/2023.

Chapter 2000

5101:4-2-03 "Food assistance: Assistance Group Definitions."

This rule describes the process of determining an assistance group and who should be included in the assistance group. Changes to the rule include:

- Paragraph (A)(5) was updated to state how to establish the assistance group when a child is in receipt of federal KGAP or state KGAP when the child is or is not in receipt of OWF; and
- Paragraph (E)(1) was updated to state that children for whom state KGAP payments are received when the child is not in receipt of OWF may be excluded from the assistance group.

Chapter 4000

5101:4-4-19 "Food assistance: Countable Income."

This rule describes countable income for SNAP. Changes to the rule include:

- Paragraph (C)(3) was amended to include state KGAP when the child is not in receipt of OWF are to be excluded when the child is excluded from the assistance group;
- New paragraph (C)(4) was added to include state KGAP to be countable unearned income when the child is in receipt of OWF;
- New paragraph (C)(5) was added to include federal KGAP to be countable unearned income;
- All subsequent paragraphs were renumbered; and;
- New paragraph (C)(7) was amended to remove interest income as it is excluded income in accordance with OAC Rule 5101:4-4-13.

5101:4-2-03

Food assistance: assistance group definitions.

(A) What is an assistance group?

An assistance group is composed of one of the following individuals or groups of individuals provided they are not residents of an institution, are not residents of a commercial boarding house, or are not boarders, except as otherwise specified in paragraph (E) of this rule.

- (1) Individual: An individual living alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others.
- (2) Groups: a group of individuals who live together and customarily purchase food and prepare meals together for home consumption.
- (3) Spouses: a person living with his or her spouse, as defined in rule 5101:4-1-03 of the Administrative Code, shall be considered as customarily purchasing food and preparing meals together, even when they do not do so.
- (4) Children living with their parents: any person under the age of twenty-two who lives with the parent(s) (natural, adopted, or step) must be included in the same assistance group with the parent(s). When a person under the age of twenty-two has a spouse and/or child(ren) of his or her own, the spouse and child(ren) of the person must also be included in the same assistance group.
- (5) Person under parental control: persons (excluding children for whom the following payments are received: foster care, guardianship, or kinship support program payments, or state kinship guardianship assistance program when the child is not also in receipt of Ohio works first (OWF) are received) under eighteen years of age and unmarried living with and are under the parental control of another household member who is not their natural, adoptive, or step parent (including children for whom federal kinship guardianship assistance program payments are received, or state kinship guardianship assistance program payments are received and the child is also in receipt of OWF) shall be treated as customarily purchasing and preparing meals together for home consumption even when they do not do so. Note: "parental control" refers to unmarried minors who are dependents-financial or otherwise-of another household member as opposed to independent units. Persons under age eighteen who are married are considered emancipated and are not to be automatically considered as customarily purchasing and preparing meals together unless they state they are actually doing so.

(6) Elderly and disabled individual: although a group of individuals living together and purchasing and preparing meals together constitutes a single assistance group based on paragraph (A)(2) of this rule, an otherwise eligible member of such an assistance group who is sixty years of age or older and unable to purchase and prepare meals because he/she suffers from a disability considered permanent under the Social Security Act of 1935 or suffers from a non disease-related, severe, permanent disability may be a separate assistance group from the others, other than his spouse, provided the income (all income included in rule 5101:4-4-19 of the Administrative Code) of the others with whom the individual resides (excluding the income of the spouse of the elderly and disabled individual) does not exceed one hundred sixty-five per cent of the poverty level (FSP-14 "Separate Assistance Group Income Standards-Elderly and Disabled Assistance Groups Only").

(B) What shall the county agency do when an individual claims to be in a separate assistance group from those with whom they reside?

Individuals who claim to be a separate assistance group from those with whom they reside shall be responsible for providing verification that they are a separate assistance group to the satisfaction of the county agency. Final determinations of living arrangements shall be made on a case-by-case basis, using reasonable judgment based on the circumstances of the particular living arrangement, and need not be reflective of these guidelines should other more conclusive factors be involved. For the purpose of determining whether people are living together, consideration shall be given to, but not limited to the following:

(1) Separate address

The county agency shall consider whether the persons involved have addresses that are commonly recognized as separate in the community.

(2) Separate utilities

The county agency shall consider whether the persons involved have separate utility meters and are, therefore, billed separately by the utility companies.

(3) Separate entrances

The county agency shall consider whether the persons involved have separate entrances to their living quarters, and whether such entrances require passing through one living quarter in order to gain access to another.

(4) Opinion of the landlord

The county agency shall consider whether the owner of the property considers the property to contain separate units.

(C) Which non-assistance group members are eligible to participate as separate assistance groups?

For the purpose of defining an assistance group under paragraph (A) of this rule, the following individuals shall not be included as a member of the assistance group unless specifically included as an assistance group member under paragraph (A)(3) (spouses), (A)(4) (parents living with their children), or (A)(5) (person under parental control) of this rule, and shall not be included as a member of the assistance group for the purposes of determining assistance group size, eligibility, or benefit level. The income and resources of such individuals shall be handled in accordance with rule 5101:4-6-15 of the Administrative Code. The following individuals (when otherwise eligible) may participate as separate assistance groups:

(1) Roomers

Individuals to whom an assistance group furnishes lodging for compensation, but not meals.

(2) Live-in attendants

Individuals who reside with an assistance group to provide medical, housekeeping, child care, or other similar personal services.

(3) Other

Other individuals who share living quarters with the assistance group but who do not customarily purchase food and prepare meals with the assistance group. For example, when an applicant family shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant assistance group.

(D) Which non-assistance group members are ineligible to participate as separate assistance groups?

Some assistance group members are ineligible to receive benefits under the provisions of the Food and Nutrition Act of 2008. Others may become ineligible for such reasons as being disqualified for committing an intentional program violation or refusing to comply with a regulatory requirement. These individuals shall be included as a member of the assistance group for the purpose of defining an assistance group in accordance with this rule. However, such individuals shall not be included as

eligible members of the assistance group when determining the assistance group's size for the purpose of comparing the assistance group's monthly income with an income eligibility standard or assigning a benefit level by assistance group size. These individuals are not eligible to participate as separate assistance groups. Ineligible individuals include the following:

- (1) Ineligible aliens are those individuals who do not meet the citizenship or eligible alien status. See rule 5101:4-6-13 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.
- (2) A person disqualified for intentional program violation is one who has been disqualified in accordance with Chapter 5101:6-20 of the Administrative Code. See rule 5101:4-6-13 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.
- (3) Persons who have been disqualified for failure to provide a social security number as provided for in rule 5101:4-3-24 of the Administrative Code are ineligible to participate. See rule 5101:4-6-13 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.
- (4) An individual who is disqualified for refusing or failing to comply with a work requirement of rule 5101:4-3-11 of the Administrative Code. See rule 5101:4-6-13 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.
- (5) Persons enrolled in an institution of higher education on at least a half-time basis who fail to meet the eligibility criteria in accordance with rule 5101:4-6-04 of the Administrative Code are ineligible to participate. See rule 5101:4-6-15 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.
- (6) No member of an assistance group who is otherwise eligible to participate in the supplemental nutrition assistance program (SNAP) shall be eligible to participate as a member of that or any other assistance group during any period during which the individual is determined to be a fleeing felon or a probation or parole violator, in accordance with this paragraph. See rule 5101:4-6-13 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.
 - (a) When the county agency has information that an individual may be fleeing to avoid prosecution or arrest for a felony, the county agency shall obtain documentary evidence of the following before imposing ineligibility under this rule:

- (i) There is an outstanding felony warrant for the individual issued by a federal, state, or local law enforcement agency, and the underlying cause for the warrant is for committing or attempting to commit a crime that is a felony under the law of the place from which the individual is fleeing or a high misdemeanor under the law of New Jersey;
 - (ii) Considering all the relevant facts and circumstances, a reasonable person would conclude that the individual is aware of, or should reasonably have been able to expect that, the felony warrant has already or would have been issued;
 - (iii) Considering all the relevant facts and circumstances, a reasonable person would conclude that the individual has taken some action to avoid being arrested or jailed; and,
 - (iv) A federal, state, or local law enforcement agency is actively seeking the individual as provided in paragraph (D)(6)(c) of this rule.
- (b) When the county agency has information that an individual may have violated a condition of probation or parole imposed under a federal or state law, the county agency shall obtain documentary evidence of the following before imposing ineligibility under this rule:
- (i) A court of competent jurisdiction or the adult parole authority has determined that the individual has violated a condition of his or her probation or parole imposed under a federal or state law; and,
 - (ii) A federal, state, or local law enforcement agency is actively seeking the individual to enforce the conditions of the probation or parole as described in paragraph (D)(6)(c) of this rule.
- (c) The county agency shall obtain documentary evidence of whether the law enforcement agency is actively seeking the individual when determining the eligibility of a fleeing felon or an individual who has violated a condition of his or her probation or parole imposed under a federal or state law.
- (i) For purposes of this rule, "actively seeking" is defined as follows:
 - (a) A federal, state, or local law enforcement agency informs the county agency that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or

parole violation within twenty days of submitting a request for information about the individual to the county agency;

(b) A federal, state, or local law enforcement agency presents a felony arrest warrant that conforms to one of the following national crime information center uniform offense classification codes to the county agency to obtain information on the location of and other information about the individual named in the warrant:

(i) Escape (4901);

(ii) Flight to avoid (4902); or,

(iii) Flight-escape (4999); or,

(c) A federal, state, or local law enforcement agency informs the county agency that it intends to enforce an outstanding felony warrant or to arrest an individual for a probation or parole violation within thirty days of the date of a request from a county agency about a specific outstanding felony warrant or probation or parole violation.

(ii) When the law enforcement agency indicates that it does intend to enforce the felony warrant or arrest the individual for the probation or parole violation within thirty days of the date of the county agency's inquiry, the county agency will postpone taking any action on the case until the thirty day period has expired and shall verify with the law enforcement agency after the thirty days whether it has attempted to execute the felony warrant or arrest the probation or parole violator.

(a) When the law enforcement agency has attempted to execute the felony warrant or arrest the probation or parole violator within the thirty days, the county agency shall deny an applicant or terminate a participant who has been determined to be a fleeing felon or a probation or parole violator in accordance with paragraph (K)(4) of rule 5101:4-7-01 of the Administrative Code. When law enforcement subsequently indicates that it no longer intends to enforce the felony warrant or arrest the individual for the probation or parole violation, the county agency shall not consider the individual a fleeing felon or probation or parole violator as of the date

law enforcement made its decision and shall document the case file accordingly.

(b) When the law enforcement agency has not taken any action within the thirty days, the county agency shall not consider the individual a fleeing felon or probation or parole violator and shall document the case file accordingly.

(iii) When the law enforcement agency indicates that it does not intend to enforce the felony warrant or arrest the individual for the probation or parole violation within thirty days of the date of the county agency's inquiry about the warrant, the county agency shall determine that the individual is not a fleeing felon or a probation or parole violator and document the case file accordingly.

(d) When awaiting verification and/or determining if an individual is a fleeing felon or probation or parole violator, the county agency shall continue to process the application in accordance with the timeframes described in rule 5101:4-2-11 of the Administrative Code. The county agency shall verify fleeing felon or probation or parole violator status in accordance with paragraph (D)(6)(a) or (D)(6)(b) of this rule. Once verification is received and it is determined that an individual is a fleeing felon or probation or parole violator, the county agency shall impose ineligibility for the individual and redetermine the assistance group's eligibility. For purposes of processing a change in benefits in accordance with paragraph (K)(4) of rule 5101:4-7-01 of the Administrative Code or calculating claims, an individual is not considered to be a fleeing felon or probation or parole violator until the date the county agency has made a determination in accordance with paragraph (D)(6) of this rule.

(7) No member of an assistance group who is otherwise eligible to participate in SNAP is to be eligible to participate as a member of an assistance group during any period which the individual is determined to be convicted of and out of compliance with their sentence for certain crimes committed on or after February 7, 2014. See rule 5101:4-6-13 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.

(a) Individuals who self attest to a conviction as an adult and who are out of compliance with their sentence for the following crimes:

(i) Aggravated sexual abuse 18 U.S.C. 2241 (12/2007);

(ii) Murder 18 U.S.C. 1111 (4/2003);

- (iii) An offense under 18 U.S.C. Chapter 110 (as in effect on 7/1/19);
 - (iv) A federal or state offense involving sexual assault, as defined in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)); or
 - (v) An offense under state law determined by the attorney general of the United States, to be substantially similar to an offense described in paragraphs (D)(7)(a)(i) to (D)(7)(a)(iii) of this rule.
- (b) The county agency is to verify attestations, when questionable, as described in rule 5101:4-2-09 of the Administrative Code. When awaiting verification and/or determining if an individual is convicted of and is out of compliance with their sentence for a crime described in paragraph (D) (7) of this rule, the county agency is to continue to process the application in accordance with the timeframes described in rule 5101:4-2-11 of the Administrative Code.
- (8) For individual(s) who have failed to perform an action required under rule 5101:4-3-09 of the Administrative Code, see rule 5101:4-6-13 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.
- (9) For persons ineligible under rule 5101:4-3-20 of the Administrative Code, the time limit for able-bodied adults without dependents, see rule 5101:4-6-13 of the Administrative Code for how to treat the income, resources, and expenses of these individuals.
- (E) Which individuals or groups are ineligible for SNAP?
- (1) Boarders, individuals in foster care, children for whom guardianship payments are received in accordance with rule 5101:4-1-03 of the Administrative Code, ~~and~~ children for whom kinship support payments are received as described in rule 5101:2-42-18.2 of the Administrative Code, and children for whom state kinship guardianship assistance program payments are received as described in rule 5101:2-56-01 of the Administrative Code when the child is not in receipt of OWF.

Boarders are defined as individuals or groups of individuals residing with others and paying reasonable compensation to the others for lodging and meals (excluding residents of a commercial boarding house). Boarders are also defined as adults or children who have been placed in foster care by a government agency, children receiving guardianship payments as defined in

rule 5101:4-1-03 of the Administrative Code, and children for whom kinship support payments are received as described in rule 5101:2-42-18.2 of the Administrative Code. Boarders are ineligible to participate in the program as independent assistance groups. They may, however, participate as members of the assistance group providing the boarder services to them, at such assistance group's request pursuant to rule 5101:4-6-03 of the Administrative Code. In no event shall boarder status be granted to those individuals or groups of individuals described in paragraphs (A)(2) to (A)(5) of this rule.

(2) Residents of institutions

Residents of public institutions who apply for SSI prior to their release from an institution under the social security administration's prerelease program for the institutionalized shall be permitted to apply for SNAP at the same time they apply for SSI. Individuals shall be considered residents of an institution if the institution provides them with the majority of their meals (over fifty per cent of three meals daily) as part of the institution's normal services. Residents of institutions are not eligible for participation in the program, with the following exceptions:

- (a) Residents of federally subsidized housing for the elderly built under either section 202 of the Housing Act of 1959 (12 U.S.C. 1701) (2013) or section 236 of the National Housing Act (12 U.S.C 1701).
- (b) Narcotic addicts or alcoholics together with their children who, for the purposes of regular participation in a drug or alcohol treatment and rehabilitation program, reside at a facility or treatment center.
- (c) Disabled or blind individuals, as defined in rule 5101:4-1-03 of the Administrative Code, who are residents of group homes, as described in rule 5101:4-1-03 of the Administrative Code. (See rule 5101:4-6-26 of the Administrative Code for full details on certification of group home residents.)
- (d) Women or women with their children temporarily residing in a shelter for battered women and children. Such persons temporarily residing in shelters for battered women and children shall be considered individual assistance group units for the purpose of applying for and participating in SNAP.
- (e) Residents of public or private shelters for homeless persons.

(3) Strikers

Assistance groups with striking members shall be ineligible to participate unless the assistance group was eligible for benefits the day prior to the strike and is otherwise eligible at the time of application. Assistance groups where the member on strike is exempt from work registration requirements the day prior to the strike (other than those exempt solely on the grounds that they are employed) would not be affected by the striker provisions and could be eligible for program benefits.

Effective: 1/1/2023
 Five Year Review (FYR) Dates: 12/1/2025

CERTIFIED ELECTRONICALLY

Certification

12/08/2022

Date

Promulgated Under: 111.15
 Statutory Authority: 5101.54
 Rule Amplifies: 329.04, 329.042, 5101.54, 5101.884
 Prior Effective Dates: 06/02/1980, 12/01/1980, 04/01/1981, 10/01/1981, 02/12/1982, 07/01/1982, 09/27/1982, 05/20/1983, 06/01/1983, 07/01/1983 (Temp.), 08/19/1983, 09/24/1983, 11/17/1983 (Temp.), 02/01/1984, 08/20/1986 (Emer.), 11/15/1986, 07/01/1987 (Emer.), 09/28/1987, 12/14/1987 (Emer.), 01/01/1988 (Emer.), 02/26/1988, 03/24/1988 (Emer.), 06/18/1988, 10/01/1989 (Emer.), 12/21/1989, 01/05/1990 (Emer.), 03/22/1990, 01/11/1991, 11/01/1992, 08/01/1993, 09/01/1994, 07/01/1996, 09/22/1996 (Emer.), 10/01/1996 (Emer.), 12/21/1996, 02/01/1997 (Emer.), 04/01/1997 (Emer.), 04/13/1997, 04/25/1997, 06/06/1997, 07/01/1997 (Emer.), 08/14/1997, 09/03/1997 (Emer.), 10/01/1997, 10/24/1997, 05/02/1998, 05/14/1998 (Emer.), 07/24/1998, 05/01/1999, 10/01/1999 (Emer.), 12/16/1999, 03/01/2001 (Emer.), 05/31/2001, 10/11/2001, 05/01/2003, 08/01/2005, 11/01/2007, 12/01/2009, 08/01/2011, 09/01/2012, 08/01/2015, 03/01/2017, 04/01/2020, 12/01/2020, 04/01/2021

5101:4-4-19

Food assistance: countable income.

(A) What is countable income?

Countable income is earned income minus the twenty per cent earned income deduction as described in rule 5101:4-4-23 of the Administrative Code plus any unearned income. Types of excluded income are listed in rule 5101:4-4-13 of the Administrative Code.

(B) What is earned income?

Earned income includes:

(1) All wages and salaries of an employee including:

- (a) Garnished or diverted payments from wages; and
- (b) The gross amount of sick pay, without any deductions for taxes and other work expenses, when the payee is a current employee of the payer.

(2) Self-employment income:

- (a) Gross income from a self-employment enterprise.
- (b) Income from the sale of any capital goods or equipment related to the business. Any business expense paid from this income would be deducted from this income.
- (c) Income from rental property minus the cost of doing business when a member of the assistance group is actively engaged in management of the property for at least an average of twenty hours per week.
- (d) Payments from a roomer or boarder, except a boarder for whom foster care, guardianship, or kinship support payments are received.
- (e) Payments for daycare or from the child and adult care food program to assistance groups providing child care services minus the cost of meals provided to individuals. The county agency may elect one of the following methods of determining the cost of meals provided to the individuals:
 - (i) Actual documented costs of meals;
 - (ii) Fifty per cent of the gross earnings from day care; or

(iii) The current reimbursement amount used in the child and adult care food program.

(f) The portion of the child and adult care food program payments intended for the provider's own children is exempt as income.

(3) Training allowances

Training allowances from vocational and rehabilitative programs sponsored by federal, state, or local governments. Countable earned income does not include an allowance to reimburse an assistance group member for money already spent and does not represent a gain to the assistance group member.

(4) Americorps volunteers in service to America (VISTA) income

Payments under Title I (VISTA, university year for action, etc.) of the Domestic Volunteer Service Act of 1973 Pub. L. 43-113 (1973), shall be considered earned income and subject to the earned income deduction unless the individual was receiving supplemental nutrition assistance program (SNAP) or public assistance at the time they joined the Title I program as described in rule 5101:4-4-13 of the Administrative Code.

(5) On the-job-training under WIOA

Earnings to individuals who are participating in on-the-job training programs under Title I section 129 of WIOA of 2014. Countable income does not include on-the-job training earnings to assistance group members under nineteen years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment.

(C) What is unearned income?

Unearned income includes:

(1) Basic assistance payments from federal or federally-aided public assistance programs that are needs-based:

(a) Ohio works first (OWF). This includes income such as the attendance bonus payment for teenage parents who return to or remain in school under the learning, earning and parenting (LEAP) program; and

(b) Supplemental security income (SSI).

- (2) Annuities, pensions, retirement, veterans' or disability benefits (all before taxes), workers' or unemployment compensation, retirement, survivors and disability insurance (RSDI) (before medicare deductions), strike benefits.
- (3) ~~Foster care payments for children or adults, guardianship payments for children as defined in rule 5101:4-1-03 of the Administrative Code, and kinship support payments for children as described in rule 5101:2-42-18.2 of the Administrative Code, who are considered members of the assistance group. The following payments are to be counted when the individual is considered a member of the assistance group:~~
- ~~(a) Foster care payments for children or adults;~~
 - ~~(b) Guardianship payments for children as defined in rule 5101:4-1-03 of the Administrative Code;~~
 - ~~(c) Kinship support payments for children as described in rule 5101:2-42-18.2 of the Administrative Code; and~~
 - ~~(d) State kinship guardianship assistance program payments as described in rule 5101:2-56-01 of the Administrative Code when the child is not in receipt of OWF.~~
- (4) State kinship guardianship assistance program payments as described in rule 5101:2-56-01 of the Administrative Code when the child is in receipt of OWF.
- (5) Federal kinship guardianship assistance program payments as described in 42 U.S.C. 673 (1/2018) and 42 U.S.C. 675 (1/2018).
- ~~(4)~~(6) Support and alimony payments made directly to the assistance group from non-assistance group members.
- ~~(5)~~(7) Payments from government sponsored programs, dividends, ~~interest,~~ royalties, and all other direct money payments from any source that can be defined as a gain or benefit, including certain vendor payments.
- ~~(6)~~(8) The unearned income or the earned income of an ineligible individual excluded from the assistance group as provided in rule 5101:4-6-13 of the Administrative Code.
- ~~(7)~~(9) Gross income from rental property minus the cost of doing business when an assistance group member is not actively engaged in management of the property at least twenty hours a week.

- ~~(8)~~(10) Any payment made directly to the assistance group shall be counted as income except for energy assistance payments specified in rule 5101:4-4-13 of the Administrative Code. If the payment is not made on a monthly basis, the county agency shall prorate it over the period it is intended to cover.
- ~~(9)~~(11) Sick pay when the payee is not a current employee of the payer, such as from insurance. The gross amount, without any deductions for taxes and any other work expenses.
- ~~(10)~~(12) Termination or severance pay is to be counted as income unless the payment is received as a one time payment that is not intended to cover a period of time. When the payment is received as a one time payment not intended to cover a period of time it is treated in accordance with rule 5101:4-4-13 of the Administrative Code.
- (D) When an assistance group contains a sponsored alien, the income of the sponsor and the sponsor's spouse must be deemed in accordance with procedures established in rule 5101:4-6-31 of the Administrative Code.
- (E) After establishing an assistance group's countable income allowable deductions must be considered pursuant to rule 5101:4-4-23 of the Administrative Code.

Effective: 1/1/2023

Five Year Review (FYR) Dates: 4/1/2026

CERTIFIED ELECTRONICALLY

Certification

12/08/2022

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Promulgated Under: 111.15
 Statutory Authority: 5101.54
 Rule Amplifies: 329.04, 329.042, 5101.54, 5101.884
 Prior Effective Dates: 06/02/1980, 12/01/1980, 01/01/1981, 06/18/1981, 10/01/1981, 09/27/1982, 06/01/1983, 07/01/1983 (Temp.), 08/19/1983, 12/25/1983 (Temp.), 03/01/1984, 03/01/1984 (Temp.), 06/01/1984, 12/31/1984 (Emer.), 04/01/1985, 08/16/1985 (Emer.), 11/01/1985 (Emer.), 01/01/1986, 05/01/1986 (Emer.), 08/01/1986 (Emer.), 10/01/1986, 04/10/1987 (Emer.), 06/22/1987, 08/01/1987 (Emer.), 09/15/1987 (Emer.), 10/25/1987, 03/24/1988 (Emer.), 06/18/1988, 07/20/1988 (Emer.), 10/16/1988, 10/01/1989 (Emer.), 12/21/1989, 10/01/1990, 02/03/1992, 08/01/1992 (Emer.), 10/30/1992, 09/01/1994, 01/01/1995, 08/01/1995 (Emer.), 10/13/1995, 02/01/1996, 05/01/1996, 07/01/1996 (Emer.), 08/01/1996, 08/25/1996, 04/01/1997 (Emer.), 06/06/1997, 02/01/1998, 07/01/1998 (Emer.), 09/28/1998, 07/15/1999, 06/01/2001 (Emer.), 08/27/2001, 06/01/2003 (Emer.), 06/16/2003, 06/12/2008, 08/01/2010, 12/01/2011, 10/01/2016, 04/01/2021