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POLICY TRANSMITTAL NO. 08-31	DATE: JUNE 12, 2008
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY

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TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:40-7-11.

EXPLANATION: OAC 340:40-7-11 Instructions to Staff are revised to clarify calculation of self-employment income. The worker must use the net income shown on the tax return if a tax return was filed and reflects the current income situation. Instructions are added to give clarification regarding rental income, lump sum payments, and irregular income.

Original signed on 6-11-08

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Mary Stalnaker, Director  
Family Support Services Division

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WF # 08-G (NAP)

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## **INSTRUCTIONS FOR FILING MANUAL MATERIAL**

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, OKDHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, OKDHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at 405-521-4326.

### **REMOVE**

340:40-7-11

### **INSERT**

340:40-7-11, pages 1-10, revised 6-1-08

**340:40-7-11. Sources of income considered**

Revised 7-1-07

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded in OAC 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income. Gross income is treated the same for both types of income.

(b) **Earned income.** Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee. ■ 1

(1) **Wages.** Wages include total money received for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before any deductions are made such as taxes, bonds, pensions, union dues, credit union payments, and cafeteria plans. ■ 2

(A) Only the portion of the cafeteria plan the client controls is counted as income. ■ 3

(B) Reimbursements for expenses such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from gross income.

(C) Payments made for annual leave, sick leave, or severance pay are considered as earned income during the month such income is received whether paid during employment or at termination of employment.

(D) Wages that are garnisheed or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** Earnings derived from a business enterprise owned solely or in part by the person are considered as self-employment income. Self-employment income for households declaring business expenses is determined by calculating total gross receipts or sales and subtracting 50% of the gross income to arrive at the net profit. Alternatively, the net business profit for the most recent tax year can be used as reported on the person's income tax return. ■ 4

(A) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household

member:

(i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

**(B) Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings. ■ 5

**(C) Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover. ■ 7

**(D) Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged over a 12-month period, even if the income is received in a short period of time. If the averaged amount does not accurately reflect the person's actual monthly circumstances because the person has experienced a substantial increase or decrease in income, self-employment income is based on anticipated earnings. ■ 5

**(E) Income from rental property.** Income from rental property is considered income from self-employment. ■ 6

**(F) Income from room and board.** Payments from roomers or boarders are considered self-employment if the roomer or boarder is paying a reasonable amount. If the roomer or boarder is a non-relative adult of the opposite sex, OAC 340:40-7-6(b)(4) applies. ■ 8

**(3) On-the-job training.** Earned income from regular employment for on-the-job training is considered as any other earned income.

**(4) Workforce Investment Act (WIA).** Income earned in on-the-job training positions provided under Section 134 of WIA is considered earned income for persons who are 19 years of age and older. On-the-job training provided must be full-time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom training and institutional

training or intern assignments sponsored by WIA, even when an hourly amount is paid for such training.

(5) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered income unless they are excluded under OAC 340:40-7-12.

(6) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded per OAC 340:40-7-12. ■ 9

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in paragraphs (1) through (11) of this subsection are considered unearned income. ■ 10

(1) **Assistance payments.** Assistance payments include state means tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Cash Assistance. ■ 11

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income. ■ 12

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, that are made directly to the household from non-household members are counted as unearned income. ■ 13

(A) If a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share co-payment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) If the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's co-payment, it is considered as an additional co-payment that must be met before OKDHS makes a subsidy payment to the provider. ■ 14

(D) Any other payment made to a third party for a household expense must be considered as income when a court order directs that the payment be made to the household. Payments for medical support are excluded.

(6) **Veterans compensation, pensions, or military allotments.** Annuities, pensions, disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income. ■ 15

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the recipient. To be appreciable, a contribution must exceed \$30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** Non-recurring lump sum payments from a countable income source are considered income the month they are received. Money not expended within the month of receipt is considered a resource. Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover. ■ 16

(10) **Title IV-E or State Adoption Subsidy.** Federal or state funded adoption subsidy payments made to adoptive parents are considered as unearned income.

(11) **Irregular income.** Income received irregularly but in excess of \$30 per quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months. ■ 17

## INSTRUCTIONS TO STAFF 340:40-7-11

Revised 6-1-08

1. (a) If the client is not making at least minimum wage, see OAC 340:40-7-8(a) to determine whether the client meets the need factor for employment.  
  
(b) For this source of income to be considered self-employment, the person must:
  - (1) state he or she is self-employed;
  - (2) be eligible to file federal and state income tax returns as a self-employed person. A person who owns an interest in a corporation does not qualify as self-employed because the person does not have business expenses. Self-employment income tax return forms include, but are not limited to:
    - (A) Form 1040 with Schedule C for sole proprietors;
    - (B) Form 1065 with Schedule 8865 K-1 for partnerships;
    - (C) Form 1120-S with Schedule K-1 for S corporations; or
    - (D) Form 1040 with Schedule F for farmers;
  - (3) not have an employer/employee relationship with another entity; and
  - (4) have the potential to realize a profit or a loss.
2. (a) Wages are averaged over a minimum of the last 30 days unless these wages are not indicative of future earnings. See OAC 340:40-7-13 for more information on computing income. The worker records income information in the Family Assistance/Client Services (FACS) Interview Notebook under the Income tab.  
  
(b) Money allotted for rent and food that may appear on an active military person's pay check is considered part of that person's earned income.
3. If a person receives a benefit allowance from the person's employer, the worker counts the regular gross earnings plus any excess money left after deducting the insurance cost from the benefit allowance. For example, a person:
  - (1) is given a \$300 benefit allowance to purchase insurance and uses the

entire amount to purchase the insurance. None of the benefit allowance is counted as income;

(2) is given a \$300 benefit allowance but only purchases \$280 in insurance. The remaining \$20 that is given to the client as an excess benefit allowance is counted as income; or

(3) has an option of purchasing insurance and would receive a \$300 benefit allowance if insurance was purchased but the person elects not to purchase the insurance. In this situation, the employer makes \$150 of the \$300 benefit allowance available as cash. The \$150 is an excess benefit allowance and is counted as income.

4. (a) Capital gains income is excluded as income for subsidized child care benefits. See OAC 340:50-7-30(1) for food benefits.

(b) Persons who own an interest in a corporation do not qualify for the business expense deduction as they do not have individual business expenses.

(c) If the person filed a federal income tax return for the self-employment income for the most recent year, the worker uses the net self-employment income shown on the person's federal income tax return and divides the income by 12 or the number of months the business has been in existence, if fewer than 12 months, to determine monthly income unless it does not represent the person's current situation. If the federal income tax return does not reflect the household's current circumstances because the business has experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings using the business records that reflect the current situation. Self-employment income tax return forms include:

(1) Form 1040 with Schedule C for sole proprietors and some limited liability companies;

(2) Form 1065 with Schedule 8865 K-1 for partnerships;

(3) Form 1120-S with Schedule K-1 for S corporation; or

(4) Form 1040 with Schedule F for farmers.

**(d) When the person did not file an income tax return on his or her self-employment income for the most recent year, the worker uses (1) through (3) to determine the net monthly self-employment income.**

**(1) The gross self-employment income is computed using the person's self-employment business records for the past 12 months, or the actual number of months the person has been in business, if fewer than 12 months.**

**(2) If the person declares he or she incurred business expenses, the worker then subtracts 50% of the gross self-employment income as business expenses. If the household did not incur business expenses, a business expense deduction is not given.**

**(3) If the person's self-employment enterprise has been in existence for at least one year, the worker divides the net self-employment income by 12. If the person's self-employment enterprise has been in existence for less than a year, the worker divides the net self-employment income by the number of months the person has been in business.**

**(e) The worker documents in FACS Case Notes how the countable income was calculated.**

**5. (a) If the client states that his or her income has increased or decreased, the worker uses whatever income is representative of future earnings to determine the family share co-payment. The worker documents in FACS Case Notes how income was calculated and why the full 12-month average was not used.**

**(b) If the person's self-employment enterprise has been in existence for less than a year, the worker divides the total income by the number of months the person has been in business.**

**(c) If the client has not yet received income from the enterprise, no income is considered in accordance with OAC 340:40-7-10 until the client receives some income.**

**6. Income from rental property is considered as self-employment whether the client or an outside source manages the property. There is no minimum number of hours the client must manage the property for the income to be considered self employment.**

**7. (a)** For example, if a person is self-employed only during the summer months and works as an employee for someone else during the rest of the year, the worker averages the self-employment income only for the summer months.

**(b)** If this income is from a new source and no income has been received, income is not counted from this source until income has been received. If the client had this same seasonal business the prior year, the worker anticipates income for the first month based on the prior year's income records unless it is not representative. The worker records documentation about how income is calculated in FACS Case Notes.

**8.** For a client to declare someone to be paying room and board rather than being a roommate, the client must own or be buying the home separately from the tenant. Determining who must be considered part of a household is different for food stamp purposes, per OAC 340:50-5-1 and 340:50-7-30(9).

**9.** A child who turns 18 years of age is considered an adult for child care purposes. If the child is a sibling to the child needing subsidized child care benefits, the 18 year old's income is not counted. See OAC 340:40-7-6 regarding household composition and income consideration. See OAC 340:50-5-1 regarding who must be included in a household for food benefits.

**10.** See OAC 340:65-3-4 regarding ways to verify and document unearned income.

**11.** Recipients of these assistance programs are predetermined income eligible with a zero family share co-payment for the subsidized child care benefits in accordance with OAC 340:40-7-1.

**12. (a)** A recipient of Supplemental Security Income (SSI) is predetermined income eligible with a zero family share co-payment for subsidized child care benefits in accordance with OAC 340:40-7-1.

**(b)** The worker considers the SSI income in determining the family share co-payment for other household members. The child receiving SSI is not counted as a child in OKDHS subsidized care on OKDHS Appendix C-4 when determining the family share co-payment for the other children. The only exception is if it makes a difference in whether the other children are income eligible for child care per OAC 340:40-7-1(1)(B). For example, household income may be \$2,425 if the client is approved for two children in care. Household income for one child in care is \$1,950. If the client has one child receiving SSI and one child who is not and the client's household income is

**\$2,400, it is better for the client to be approved for both children in the same case with a family share co-payment than to receive a zero co-payment for the child receiving SSI and not be eligible for the other child.**

**(c) The child is counted as a family member in determining household size.**

**13.(a) The worker obtains copies of any established court orders. If the client states he or she is receiving any of these types of income, the worker obtains current statements or phone interviews from the person providing this assistance as to dates and amounts of all payments made within the last 60 calendar days. If support is received sporadically or in varying amounts, the worker may choose to average income over a longer period of time and document his or her reasoning in FACS Case Notes.**

**(b) To determine if these payments are paid through the Child Support Enforcement Division, the worker uses the Information Management System (IMS) and enters SSN space and the client's Social Security number to find the family group number (FGN). The worker enters KI1 space FGN to display a list of payments received. For an explanation of the FGN enter M space CSMLDATA; and for information on using transaction KI1, enter M space KI1.**

**(c) The worker codes child support income on the child for whom it is being received if that child is considered a household member. If the client is receiving child support for a child not included in the household, it is coded as a contribution to the client. See OAC 340:40-7-12(10) if child support income is being received for the care and maintenance of a third party.**

**(d) If the absent parent is paying a portion of the client's family share co-payment and the client is also receiving food benefits, the portion that the absent parent is paying is not considered a dependent care deduction for the Food Stamp Program, per OAC 340:50-7-31(b)(4).**

**(e) Exclude money paid directly to household expenses that are not court-ordered. See OAC 340:50-7-29(b)(3) for information on how this income is considered for the Food Stamp Program.**

**14.(a) When someone outside of the client's home is paying a portion of the cost of child care directly to the child care provider and states this money is in addition to the client's family share co-payment, the worker enters this additional co-payment in the FACS Eligibility Notebook under the Social Services tab, "Court-ordered" field E55. When a dollar amount is entered in**

field E55, OKDHS does not make a payment to the child care provider until both the family share co-payment and the additional co-payment is applied to the cost of care first.

(b) The worker sends Form 08MP037E, Notice Regarding Social Services, to both the client and the provider advising them that an additional co-payment is being paid by someone other than the client in addition to the family share co-payment owed by the client.

(c) If this additional co-payment stops being paid, the worker removes the additional co-payment from the "Court-ordered" field E55 and e-mails Form 10EB004E, Report of EBT Child Care Payment Adjustments, to the e-mail address on the form to request an adjustment be made to the provider's pay.

**15.** Military benefits whose receipt is contingent upon the person regularly attending school are excluded.

**16.** Lump sum payments are considered in the month they are received unless the income is from an excluded source. See OAC 340:40-7-12(1) regarding income exclusions. Lump sum payments from SSI income are also excluded. An example of a countable lump sum is one-time gambling winnings when there is no established gambling pattern. For gambling winnings that are received on a more consistent basis where the client has an established gambling pattern, see the policy on irregular income in (c)(11) of this Section.

**17.** An example of irregular income is gambling winnings that are received on a consistent basis where the client has an established gambling pattern.