
POLICY TRANSMITTAL NO. 11-24	DATE: AUGUST 3, 2011
FAMILY SUPPORT SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF INTERGOVERNMENTAL RELATIONS AND POLICY

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:10-3-31; and 10-3-32.

EXPLANATION: OAC 340:10-3-31 Instructions to staff only is revised to clarify how to determine if an individual is self-employed.

OAC 340:10-3-32 Instructions to staff only is revised to: (1) add policy cite for definition of self-employment; and (2) clarify when contract income is considered self-employment.

Original signed on 8-2-11

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WF # 11-M (NAP)

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

340:10-3-31

340:10-3-32

INSERT

340:10-3-31, pages 1-3, revised 8-1-11

340:10-3-32, pages 1-4, revised 8-1-11

340:10-3-31. Earned income

Revised 6-1-10

(a) The term earned income refers to monies earned by an individual through the receipt of wages, salary, commission, or profit from activities in which the individual is engaged as self-employed or as an employee. ■ 1 Payments made for accumulated annual leave, vacation leave, sick leave, or as severance pay are considered as earned income whether paid during employment or at termination of employment. ■ 2 Temporary disability insurance payment(s) and temporary worker's compensation payments are considered as earned income if payments are employer funded and the individual remains employed.

(b) Earned income received as a one-time nonrecurring payment is considered as a lump sum payment. ■ 3

(c) Earned income includes in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. An exchange of labor or services, for example, barter, is considered as an in-kind benefit. Such benefits received in-kind are considered as earned income only when the employee and employer relationship has been established. ■ 4

(1) The cash value of the in-kind benefits must be verified by the employer.

(2) Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in the business enterprise.

(3) Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind income. ■ 5

(d) Gross earned income is used to determine eligibility for assistance. Gross earned income is defined as the "true wage" prior to payroll deductions and withholdings. Income that is based on the number of hours worked as opposed to income based on regular monthly wages must be computed as irregular income. ■ 6

(e) Countable earned income excludes income from:

(1) capital investments with respect to which the individual is not actively engaged. Dividends and interest on rental properties in the hands of a rental agent with the check forwarded to the recipient is excluded from "earned income;" and ■ 7

(2) benefits not in the nature of wages, salary, or profit accruing as compensation or reward for services, or as compensation for lack of employment. ■ 8

(f) The worker verifies income by the best available information such as pay stubs presented by the individual or an interview with the employer. The worker verifies medical insurance which may be available to the employed Temporary Assistance for Needy Families (TANF) recipient and any dependents at the same time that income is verified.

(1) Pay stubs may only be used for verification if they have the individual's name or social security number indicating that the pay stubs are in fact the individual's wages. The stubs must include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer verification is required.

(2) With new employment, it is necessary to verify the beginning date.

(3) When a member of the assistance unit accepts employment and has not received any wages, verification of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer. ■ 6

(4) Verified income which is expected to be received during a future month is considered available to the assistance unit and is counted in determining eligibility for that month.

INSTRUCTIONS TO STAFF 340:10-3-31

Revised 8-1-11

1. A person is considered self-employed when:

(1) he or she declares him or herself to be self-employed;

(2) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even if required by law to do so; or

(3) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

2. Refer to OAC 340:10-3-5(a)(9)(D); 340:10-3-28(1); and 340:10-3-39(g) for retirement benefits.

- 3. Refer to OAC 340:10-3-28; and 340:10-3-5(a)(9).**
- 4. The employer's and employee's written or verbal statement that the relationship exists is sufficient but must be documented in the case record.**
- 5. The worker records details about medical insurance in the TPL tab of the Family Assistance/Client Services (FACS) Interview Notebook and in case notes.**
- 6. Refer to OAC 340:10-3-58 for income determination procedures.**
- 7. Refer to OAC 340:10-3-39 for income other than earned income.**
- 8. Examples include pensions and benefits, such as United Mine Workers' or Veterans benefits.**

340:10-3-32. Determination of earned income

Revised 8-1-10

Earned income results from self-employment or other employment sources.

(1) **Earned income from self-employment.** If the income results from the person's activities primarily as a result of the person's own labor from the operation of a business enterprise, the countable earned income is determined by deducting 50% of the gross income as business expenses or by using the net business profit for the most recent tax year as reported on the person's income tax return. ■ 1 Self-employment income that represents a household's annual support is prorated over a 12-month period, even if the income is received in a shorter period of time. ■ 2

(A) **Room or board.** Earned income from a room rented in the home is determined by considering 25% of the gross amount received as business expenses. Earned income from room and board paid by a person in the home is determined by considering 50% of the gross income received as a business expense. ■ 3

(B) **Rental property.** Income from rental property is considered income from self-employment if none of the activities associated with renting the property is conducted by an outside person or agency. ■ 4

(C) **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.

(2) **Earned income from sources other than self-employment.**

(A) **Earned income from wages, salary, or commission.** If the income is from wages, salary, or commission, the earned income is the gross income or true wage prior to payroll deductions and withholdings. ■ 5 This includes earned income from contract employment. ■ 6 Money from the sale of whole blood or blood plasma is considered as earned income.

(B) Earned income from work and training programs.

(i) **Workforce Investment Act (WIA).** WIA earned income is exempt. ■ 7

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

INSTRUCTIONS TO STAFF 340:10-3-32

Revised 8-1-11

1. **(a) Refer to OAC 340:10-3-31 Instructions to staff (ITS) # 1 for self employed definition.**

(b) When the person filed a federal income tax return form 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 less than 12 months, to determine monthly income unless it is not representative of the person's current situation.

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

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

(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.

(d) Self-employment income tax return forms include, but are not limited to:

(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 corporations; or

(4) Form 1040 with Schedule F for farmers.

(e) Refer to OAC 340:10-3-33 for earned income deductions.

2. For example, self-employment income received by a crop farmer is averaged over a 12-month period if the income represents the farmer's annual support.

3. If the roomer or boarder is a non-relative of the opposite sex, refer to OAC 340:10-3-57(e)(3).

4. When the client does not manage the rental property, it is considered as unearned self-employment. The client is then entitled to have 50% of his or her business expenses subtracted from the income but is not eligible for a work related expense deduction.

5. When a person receives a benefit allowance from his or her 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.

6. (a) Refer to OAC 340:10-3-31 ITS # 1 to determine when contract income is

considered self employment income. Refer to (1) of this Section when self employment rules apply.

(b) Income from contract employment received by persons, such as school employees, is annualized over a 12-month period even if the income is received over a period of time shorter than 12 months.

7. Refer to OAC 340:10-3-40(35).