

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: March 2, 2020

The proposed policy is an Permanent Rule. The proposed policy was presented at the January 7, 2020 Tribal Consultation. Additionally, this proposed change will be presented at a Public Hearing scheduled for February 19, 2020. This proposal is scheduled to be presented to the Medical Advisory Committee on March 12, 2020 and the OHCA Board of Directors on March 18, 2020.

Reference: APA WF 19-26

SUMMARY:

Countable income and resources for the Aged, Blind and Disabled (ABD) eligibility groups and Eligibility as a Qualified Medicare Beneficiary (QMB) Plus member – The proposed rule changes update policy regarding the determination of countable income for the ABD population. Additional rule changes update policy regarding establishing the value of home and real property and update QMB policy to clarify the intent of the rule and align with other Medicare savings programs.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; 20 Code of Federal Regulations (C.F.R.) § 416.1210; 20 C.F.R. § 416.1222; 20 C.F.R § 416.1224; 20 C.F.R. § 416.1236; 20 C.F.R. § 416.1235; and 20 C.F.R. § 416.1245

RULE IMPACT STATEMENT:

**STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY**

TO: Maria Maule
Legal Services

FROM: Harvey Reynolds
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 19-26

A. Brief description of the purpose of the rule:

The proposed rule changes update policy regarding the determination of countable income for Aged, Blind, and Disabled (ABD) individuals. The rule changes incorporate federal SSI standards, including earned and unearned income which is to be excluded, and clarifies guidance on how income is deemed from certain individuals to another, for example, ineligible spouses to the applicant. Additional rule changes update policy, so that the value of a life estate may be established by a written estimate instead of a written appraisal.

Additional rule changes update QMB Plus policy so that the intent of the rule regarding income and resource standards for individuals and couples is clearly stated and to align QMB Plus policy with the other Medicare savings programs.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

SoonerCare members who are applying for or receiving services from the ABD program and/or from the QMB Plus Medicare savings program will be affected by the proposed rule change. This rule change should not place any cost burden on private or public entities. No information on any cost impacts were received from any entity.

C. A description of the classes of persons who will benefit from the proposed rule:

The proposed rule change will benefit some SoonerCare members who are receiving ABD services as well as some SoonerCare members who are receiving services through the QMB Plus Medicare savings program.

D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no probable economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivisions.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated affect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

Budget neutral

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule changes will not have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule changes.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The agency does not anticipate that the proposed rule changes will have an adverse effect on small businesses.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there are no other legal methods to achieve the purpose of the proposed rule. Measures included a formal public comment period and tribal consultation.

- I. A determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should not have any effect on the public health, safety or environment. The proposed rule changes are not designed to reduce significant risks to the public health, safety and environment.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

The agency does not anticipate any detrimental effects on the public health, safety or environment if the proposed rule is not implemented.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared date: December 17, 2019

RULE TEXT:

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-
ELIGIBILITY**

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41.1. Home/real property

(a) Home property is excluded from resources regardless of value unless the individual is applying for long-term care services [See Oklahoma Administrative Code (OAC) 317:35-5-41.8(a) (relating to eligibility for long-term care services)]. For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile.

(1) Home property includes all property which is adjacent to the home. Land is considered adjacent even if separated by a boundary line, street, alley, highway, or waterway.

(2) Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered. Mineral rights and wind rights associated with the home property are not valued separate from the surface.

(3) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. When it is determined that the member does not have a feasible plan for and cannot be expected to return to his/her home, the market value of the property is considered in relation to the resource. The member is responsible for taking all steps necessary to convert the resource for use in meeting

current needs. If the member is making an effort to make the resource available, a reasonable period of time is given [not to exceed ninety (90) days] to convert the resource. He/she is advised in writing that the ninety-day (90-day) period begins with the determination that the property be considered in relation to the resource. The ninety-day (90-day) period is given only if efforts are in progress to make the resource available. Any extension beyond the initial ninety-day (90-day) period is justified only after interviewing the member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the member. A written notification is also provided to the member at any time an extension is allowed. Detailed documentation in the case record is required.

(4) If the member fails or is unwilling to take steps necessary to convert the resource for use in meeting current needs, continuing eligibility cannot be established and the member is advised as to the effective date of closure and of the right to receive assistance when the resources are within the maximum allowable resources provided other conditions of eligibility continue to be met.

(5) When a member sells his/her home with the intention of purchasing another home or when an insurance payment for damage to the home is received, a reasonable period of time is given to reinvest the money in another home. A reasonable period of time is considered to not exceed a ninety-day (90-day) period. Extensions beyond the ninety (90) days may be justified only after interviewing the member; and determining that a good faith effort is still being made; and that completion of the transaction is beyond his/her control. This must be documented in the case record.

(6) At the point a member decides not to reinvest the proceeds from the sale of his/her home in another home, the member's plan for use of the proceeds is evaluated in relation to rules on resources disposed of while receiving assistance.

(7) A home traded for another home of equal value does not affect the member's eligibility status. If the home is traded for a home of lesser value, the difference may be invested in improvement of the new home.

(8) Absences from home for up to ninety (90) days for trips or visits or six (6) months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence.

(9) Mineral rights, associated with the home property, are considered along with the surface rights and are excluded as a resource.

(b) Real property other than home property shall be treated as follows:

(1) Mineral rights which are not associated with the home property are considered as a resource. Since evaluation and ~~scalability~~salability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property. Refer to OAC 317:35-5-41.12(c)(3) for treatment of mineral rights as non-trade or non-business property.

(2) The market value of real estate other than home property owned by the member or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the member of a merchantable title to be determined when the resource approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral or written information which the applicant has on hand and counsel with persons who have specialized knowledge about this kind of resource. Refer to OAC 317:35-5-41.12(c) for exclusion of real estate that produces income.

(3) For any individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, any interest in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the federal government, shall be excluded from resource determinations, in accordance with 20 Code of Federal Regulations (C.F.R.) § 416.1234.

(4) A life estate conveys upon an individual or individuals for his/her lifetime, certain rights in property. Its duration is measured by the lifetime of the tenant or of another person; or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest. However, the contract establishing the life estate may restrain one or more rights of the individual. The individual does not have title to all interest in the property and does not have the right to sell the property other than the

interest owned during his/her lifetime. He/she may not usually pass it on to heirs in the form of an inheritance.

(A) When a life estate in property is not used as the member's home, it is necessary to establish the value. A computer procedure is available to compute the value of a life estate by input of the current market value of the property and the age of the life estate owner.

(B) The value of a life estate on mortgaged property is based on equity rather than market value and the age of the individual.

(C) In the event the member does not accept as valid the value of the life estate as established through this method, the member must secure a written appraisal estimate by two (2) persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals, the worker and the member will jointly arrange for the market value to be established by an appraisal made by a third (3rd) person who is familiar with current market values and who is acceptable to both the member and the worker.

(5) Real and/or personal property which produces income is excluded if it meets the following conditions established in OAC 317:35-5-41.12.

317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled

(a) **General.** The term income is defined as ~~that a~~ gross gain or gross recurrent benefit ~~which is derived that derives~~ from labor, business, property, retirement and other benefits, ~~and many other forms which can be counted on as currently or sources that are available for use on a regular basis. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an Asset Verification System (AVS).~~

(1) If it appears the applicant or SoonerCare member is eligible for any type of income (excluding Supplemental Security Income (SSI)) or resources, ~~he/she~~ Oklahoma Department of Human Services (OKDHS) staff must be notified notify the individual in writing by the Agency of his/her potential eligibility, per Section 416.210 of Title 20 of the Code of Federal Regulations (20 C.F.R. § 416.210). ~~The notice must contain the information that failure to file for and take all appropriate steps to obtain such benefit within thirty (30) days from the date of the notice will result in a determination of ineligibility.~~

(A) Potential income may include, but is not limited to:

- (i) Retirement, Survivors, Disability Insurance (RSDI) benefits;
- (ii) Benefits from the United States (U.S.) Department of Veterans Affairs (VA);
- (iii) Workers' compensation payments;
- (iv) Unemployment insurance benefits (UIB);
- (v) Annuities;
- (vi) Pensions or other retirement benefits; or
- (vii) Disability benefits.

(B) The notice must contain the information that failure to file for and take all appropriate steps to obtain the potential income within thirty (30) calendar days from the date of the notice will result in a determination of ineligibility.

(C) When the individual has a good cause reason for not filing for the potential income within the thirty (30) calendar day period or taking other necessary steps to obtain the income, he or she is not determined ineligible.

(2) If a husband and wife are living spouses live in their own home, the couple's total income and/or resource is resources are divided equally between the two cases. If they both enter a nursing facility, their income and resources are considered separately.

(3) When an eligible individual or child resides with an ineligible spouse or parent(s), a portion of the ineligible spouse's or parent's income is deemed as available income to the eligible individual, per Oklahoma Administrative Code (OAC) 317:35-5-42.1.

~~(3)~~ (4) If only one spouse in a couple is eligible and the couple ceases to live stops living together, only the income and resources of that the ineligible spouse that are actually contributed contributes to the eligible spouse are considered in determining the eligible spouse's eligibility, beginning with the month after the month which they ceased to live stop living together are considered.

(4) In calculating monthly income, cents are included in the computation until the monthly amount of each individual's source of income has been established. When the monthly amount of each income source has been established, cents are rounded to the nearest dollar (1 - 49 cents is rounded down, and 50 - 99 cents is rounded up). For example, an individual's weekly earnings of \$99.90 are multiplied by 4.3 and the cents rounded to the nearest dollar (\$99.90 x 4.3 = \$429.57 rounds to \$430). See rounding procedures in OAC 340:65-3-4 when using BENDEX to verify Retirement, Survivors, and Disability Insurance (RSDI) benefits. Refer to OAC 317:35-9-68 to determine how to consider a community spouse's income eligibility for SoonerCare (Medicaid) when his or her spouse:

(A) Is institutionalized in a nursing facility or an intermediate care facility for the intellectually disabled;

(B) Is sixty-five (65) years or older and lives in a mental health hospital; or

(C) Receives ADvantage or Home and Community Based Waiver services.

(5) In certain circumstances, the amount of income determined to be available to an individual may be greater than the amount of income the individual actually receives for his or her own use. This includes, but is not limited to:

(A) Court-ordered income deductions for child and/or spousal support even when the support is paid directly to the child's guardian or spouse by the individual's employer or benefit payer;

(B) Deductions due to a repayment of an overpayment, loan, or other debt, unless the amount being withheld to reduce a previous overpayment was included when determining the amount of unearned income for a previous month in the determination of medical assistance eligibility; or

(C) Garnishments or liens placed against earned or unearned income of the individual, regardless of the purpose for the garnishment or lien.

(6) The individual's statement regarding the source and amount of available income must be verified at application, renewal, and when changes occur by:

(A) Award letters, warrants, or other documents provided by the individual;

(B) Automated data exchange with other agencies such as Beneficiary and Earnings Data Exchange System (BENDEX), SSI/State Data Exchange System (SDX), or UIB;

(C) The Asset Verification System (AVS) when income is held in bank accounts or other financial institutions;

(D) Public records; or

(E) Collateral contacts such as employers, agencies, businesses, or community action groups.

(7) The individual is responsible for reporting and verifying income changes within ten (10) calendar days of the change occurring.

~~(b) **Income disregards.** In determining need, the following are not considered as income:~~

~~(1) The value of Supplemental Nutrition Assistance Program (food stamps) received;~~

~~(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;~~

~~(3) Educational grants (excluding work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;~~

~~(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:~~

~~(A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Form 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.~~

~~(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.~~

~~(C) Proceeds of a loan secured by an exempt asset are not an asset;~~

~~(5) One-third of child support payments received on behalf of the disabled minor child;~~

~~(6) Indian payments (including judgment funds or funds held in trust) distributed by the Secretary of the Interior (Bureau of Indian Affairs) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc. However, any interest or income derived from the principal or produced by purchases made with funds after distribution is considered as any other income;~~

~~(7) Special allowance for school expenses made available upon petition (in writing) for funds held in trust for the student;~~

~~(8) Title III benefits from State and Community Programs on Aging;~~

~~(9) 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 to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);~~

~~(10) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;~~

~~(11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;~~

~~(12) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;~~

~~(13) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training and uniform allowance if the uniform is uniquely identified with company names or logo;~~

~~(14) Assistance or services from the Vocational Rehabilitation program such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and any other such complementary payments;~~

~~(15) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;~~

~~(16) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;~~

~~(17) Governmental rental or housing subsidies by governmental agencies, e.g., HUD (received in kind or in cash) for rent, mortgage payments, or utilities;~~

~~(18) Low Income Home Energy Assistance Program (LIHEAP) payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;~~

~~(19) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);~~

~~(20) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;~~

~~(21) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations;~~

~~(22) Income of a sponsor to the sponsored eligible alien;~~

~~(23) Income that is set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration (SSA) approves the plan, the amount of income excluded and the period of time approved. A plan can be approved for an initial period of eighteen (18) months. The plan may be extended for an additional eighteen (18) months if needed, and an additional twelve (12) months (total forty-eight (48) months) when the objective involves a lengthy educational or training program;~~

~~(24) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);~~
~~(25) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;~~
~~(26) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. However, if the payments are placed in an interest-bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual;~~
~~(27) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);~~
~~(28) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);~~
~~(29) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);~~
~~(30) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010, and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009;~~
~~(31) Wages paid by the Census Bureau for temporary employment related to Census activities;~~
~~(32) Income tax refunds;~~
~~(33) Home energy assistance;~~
~~(34) Food or shelter based on need provided by nonprofit agencies;~~
~~(35) Money someone else spends to pay your expenses for items other than food or shelter (e.g., someone pays for your telephone or medical bills);~~
~~(36) Earned income for working students younger than twenty-two (22) years of age when they regularly attend a school, college, university or a course of vocational or technical training. Refer to Appendix C-1, Schedule VIII.E; Maximum Income, Resource and Payment Standards for the maximum monthly and yearly exclusion amounts;~~
~~(37) The cost of impairment-related work expenses for items or services that a disabled person needs in order to work; and~~
~~(38) The first \$2,000 of compensation received per calendar year for participating in certain clinical trials.~~

(b) **Sources of income considered.** The individual is responsible for reporting information regarding all sources of available income. All monies or payments that are available for current living expenses, unless specifically disregarded per (c) of this

Section are considered in determining monthly gross income. Some of the more common income sources to be considered in determining eligibility are included in (1) through (9) of this subsection:

(1) **Annuities, pensions, retirement, disability, and other payments.** In accordance with 20 C.F.R. 416.1123, benefits and payments are considered income for the month they are received, unless they include retroactive payments. Retroactive payments are considered as lump sum payments per (b) (5) of this Section.

(A) Payments include, but are not limited to:

- (i) RSDI and SSI benefits;
- (ii) Veteran's benefits;
- (iii) Railroad retirement annuities;
- (iv) Pensions, retirement, or disability benefits from government or private sources;
- (v) Workers' compensation; and
- (vi) UIB.

(B) RSDI cost-of-living adjustments (COLAs) are disregarded in determining income eligibility for former State Supplemental Payment recipients, who reapply for medical benefits under the Pickle Amendment, per Section 1396v of Title 42 of the United States Code (42 U.S.C. § 1396v), OAC 317:35-7-38(a) (3) (C), and OKDHS Appendix C-2-A, COLA Increase Computation Formulas.

(C) The U.S. Department of Veterans Affairs allows their recipients to request reimbursement for medical expenses not covered by SoonerCare. When a recipient is eligible for a readjustment payment, it is paid in a lump sum for the entire past year. When received, this reimbursement is disregarded as income or a resource for the month received. Any amount retained in the month following receipt is considered as a resource.

(D) Government financial assistance in the form of VA Aid and Attendance or Champus payments are considered as:

- (i) A third party resource whether paid to the individual or the facility when the individual resides in a nursing facility. These payments do not affect income eligibility or the vendor payment of the member; or
- (ii) Excluded income when paid for an attendant in the individual's home.

(E) SSI benefits may be continued for up to three (3) months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for individuals with an intellectual disability, or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three (3)

months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(F) A veteran or his or her surviving spouse who receives a VA pension may have the pension reduced to ninety dollars (\$90) per month if the veteran does not have dependents, is SoonerCare (Medicaid) eligible, and resides in a nursing facility that is approved under SoonerCare, per 38 U.S.C. § 5503. The VA pension for a veteran or his or her surviving spouse who meets these conditions is reduced the month following the month of admission to a SoonerCare (Medicaid) approved nursing facility.

(i) The reduced VA pension is not used to compute the vendor payment or spenddown. The nursing facility resident is entitled to receive the ninety dollars (\$90) reduced VA pension and the regular nursing facility maintenance standard, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.B.2, Maximum Income, Resource, and Payment Standards.

(ii) The vendor payment or spenddown is computed using other income minus the monthly nursing facility maintenance standard and any applicable medical deductions.

(2) **Child support and alimony payments.** Child support and alimony payments are counted as unearned income whether in cash or in-kind. Per (f)(11) of this Section, one-third of child support payments received on behalf of the disabled minor child is excluded.

(3) **Dividends, interest, and certain royalties.** Dividends, interest, and certain royalties are counted as unearned income. Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are compensation paid to the owner for the use of property or natural resources. Royalties are considered earned income when received as part of the individual's trade or business or in conjunction with a work publication.

(4) **Income from capital resources and rental property.** Income from capital resources may be received from the use of real or personal property, such as land, housing, machinery, leasing of minerals, a life estate, homestead rights, or interest.

(A) Rental income may be treated as self-employment income when the individual participates in the management of the trade or business or invests his/her own labor in producing the income. When the individual does not participate in the management of the trade or business or does not invest

his/her own labor in producing the income, it is considered as unearned income.

(i) The individual's federal income tax return or business records verify when the rental income is considered as self-employment income. When the individual's federal tax return or business records do not verify the rental income is from self-employment, the income is considered unearned income.

(ii) Expenses necessary for the production or collection of the rental income are deducted when paid, not when they are incurred. Examples of deductible expenses include interest on debt, state and local taxes on real or personal property, motor fuel, and general sales taxes, and expenses on managing or maintaining the property. Depreciation or depletion of property is not considered a deductible expense.

(iii) When rental property is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the individual is considered as income.

(B) If the individual receives royalty income monthly but in irregular amounts or less often than monthly, the income is averaged over the previous six (6) month period to determine the countable monthly income.

(i) At any time a dramatic increase or decrease in royalty income occurs, the previous two (2) months of royalty income is averaged to compute the countable monthly income.

(ii) When the difference between the gross and net royalty income is due to a production or severance tax, the net income is used to determine income eligibility as this tax is considered the cost of producing the income.

(5) **Lump sum payments.** Any income received in a lump sum, with the exception of an SSI or RSDI lump sum, covering a period of more than one (1) month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount retained on the first day of the month following receipt of the lump sum is considered as a resource.

(A) A lump sum payment may be considered as earned or unearned income, depending on the source of the lump sum payment. Lump sum payments may include, but are not limited to:

(i) Wages or wage bonuses;

(ii) Retroactive RSDI, VA, or workers' compensation payments;

(iii) Bonus lease payments;

(iv) Annual rentals from land or minerals;

- (v) Life insurance death benefits;
- (vi) Lottery or gambling winnings;
- (vii) Personal injury awards or settlements; or
- (viii) Inheritances.

(B) RSDI and SSI retroactive payments do not count as income in the month of receipt. Any unspent portion retained on the first day of the month following receipt of the lump sum is excluded from resources for nine (9) calendar months, per 20 C.F.R. § 416.1233. However, unspent money from a retroactive payment must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds, but if this is done in such a fashion that the retroactive amount can no longer be separately identified, that amount is counted toward the resource limit.

(C) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for children with disabilities or blindness who are under eighteen (18) years of age are excluded as income or a resource. The interest income generated from dedicated bank accounts is also excluded.

(D) A life insurance death benefit received by the individual for another person is considered as income in the month received except for amounts paid for the person's last illness and burial expenses. Money retained in the month following receipt of the benefit is counted as a resource to the extent that it is available.

(E) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment, all other things being equal.

(6) **Non-negotiable notes and mortgages.** Installment payments received on a note or mortgage are considered as monthly unearned income.

(7) **Income from the Workforce Innovation and Opportunity Act (WIOA).** Unearned income received by an adult, such as a need-based payment, cash assistance, compensation in lieu of wages, or allowances from a program funded by WIOA is considered as any other unearned income.

(8) **In-kind support and maintenance.** In-kind support and maintenance is food or shelter given to the individual or that the individual receives because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. The value of this support may be counted as income using the one-third reduction rule, per 20

C.F.R. §§ 416.1131 through 416.1133 or the presumed value rule, per 20 C.F.R. §§ 416.1140 through 416.1145.

(A) **One-third reduction rule.** The one-third reduction rule applies when the individual or the individual and his/her spouse lives in the household of a person who provides him/her with both food and shelter for at least a full calendar month. Per 20 C.F.R. § 416.1131, instead of determining the actual value of in-kind support and maintenance, one-third of the SSI federal benefit rate, per OKDHS Appendix C-1, Schedule VIII.C, is counted as income.

(i) The one-third reduction rule applies in full or not at all. When the individual lives in another person's household and the one-third reduction rule applies, no income exclusions are applied to the reduction amount.

(ii) When the one-third reduction rule applies and the individual receives other support and maintenance, the other support and maintenance is not counted.

(iii) The one-third reduction rule does not apply when the individual or the individual and his/her spouse:

(I) Lives in another person's household but does not receive both food and shelter from that person;

(II) Lives in his/her own household; or

(III) Lives in a non-medical institution such as a public or private non-profit educational or vocational institution, or a private non-profit retirement home.

(B) **Another person's household.** The individual is considered to be living in another person's household if the person is not considered to be living in his/her own home per (C) of this subsection, the person who supplies the support and maintenance lives in the same household, and is not:

(i) The individual's spouse;

(ii) A minor child; or

(iii) An ineligible person whose income may be deemed to the individual per OAC 317:35-5-42.1.

(C) **Living in own household.** The individual or the individual and his/her spouse are considered to be living their own household when:

(i) The individual, the individual and his/her spouse, or a person whose income is deemed to the individual, live in a home in which one of them has an ownership interest or life estate in the home;

(ii) The individual, the individual and his/her spouse, or a person whose income is deemed to the individual is liable for any part of the rent charges;

(iii) The individual pays at least a pro rata share of the household and operating expenses;

(iv) The individual lives in a non-institutional care setting. The individual is considered to be living in a non-institutional care situation when:

(I) He/she is placed by a public or private agency under a specific program such as foster or family care;

(II) The placing agency is responsible for the individual's care;

(III) He/she lives in a private household that is licensed or approved by the placing agency to provide care; and

(IV) The individual, a public agency, or someone else pays for his/her care; or

(v) All members of the household receive public maintenance payments such as:

(I) SSI;

(II) SSP;

(III) Temporary Assistance for Needy Families (TANF);

(IV) Refugee cash assistance;

(V) Assistance provided under the Disaster Relief and Emergency Assistance Act;

(VI) Bureau of Indian Affairs (BIA) general assistance programs;

(VII) State or local government assistance programs based on need; or

(VIII) VA payments based on need.

(D) **Presumed value rule.** The presumed value rule applies when the individual receives in-kind support and maintenance and the one-third reduction rule does not apply. The maximum presumed value is one-third of the SSI FBR, per OKDHS Appendix C-1, Schedule VIII.C plus the twenty dollar (\$20) general income exclusion.

(i) The presumed value rule allows the individual to show that the amount of in-kind support and maintenance is not equal to the maximum presumed value. When the individual does not question the maximum presumed value, one-third of the SSI FBR, per OKDHS Appendix C-1, Schedule VIII.C plus the twenty dollar (\$20) general income exclusion is counted as unearned income.

(I) When the individual disputes the amount counted for in-kind support and maintenance, he/she may verify that the current market value of the food or shelter he/she receives or the actual amount someone else pays for the individual's food and shelter is lower than the maximum presumed value.

(II) When the individual verifies that the food or shelter received is lower the maximum presumed value,

the lower amount is used as the presumed value and counted as unearned income.

(III) When the individual verifies the actual value of the food or shelter he she receives and it is higher than the maximum presumed value amount, the actual amount is counted as unearned income.

(ii) In-kind support and maintenance received by an individual is excluded if:

(I) It is identified as excluded per (e) or (f) of this Section,

(II) It is received from another member of a public assistance household; or

(iii) The individual receives SSI and the SSA does not reduce the individual's SSI benefit because of in-kind support and maintenance.

(iv) When the individual or the individual and his or her spouse live in a household in which all members receive a public maintenance payment per (b) (8) (C) (v) of this subsection, in-kind support and maintenance is not counted unless the individual receives food and shelter from someone outside of the household.

(9) **Earned income.** Earned income may include:

(A) **Wages.** Wages include the gross income earned for work performed as an employee before deductions, such as taxes, bonds, pensions, union dues, credit union payments, or cafeteria plans are subtracted.

(i) Wages paid in cash may include salaries, commissions, tips, piece-rate payments, longevity payments, bonuses, severance pay, and any other special payments received due to employment.

(ii) Wages paid to uniformed service members include basic pay, some types of special pay, and some allowances. Allowances paid for on-base housing or privatized military housing are considered unearned income in the form of in-kind support and maintenance. Allowances paid for private housing are considered wages.

(iii) Wages paid in-kind may include the value of food, clothing, shelter, or other items provided in lieu of or in conjunction with wages. The cash value of in-kind benefits must be verified by the employer. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered a countable in-kind benefit. Exception: In-kind pay received by a domestic or agricultural worker is considered unearned income.

(iv) Work study received by an individual who is attending school is considered as earned income with appropriate

earned income exclusions, per (g) of this Section applied.

(v) Payments received for services performed in a sheltered workshop or work activities center are counted as earned income. Payments for each calendar quarter are averaged to determine monthly income.

(vi) Income received as wages from a program funded by WIOA is counted as any other earned income.

(vii) Earnings received from the Senior Community Service Employment Program under Title V of the Older Americans Act of 1965 as amended and employment positions allocated at the discretion of Governor of Oklahoma are counted as earned income.

(B) **Self-employment income.** Self-employment income is the gross income earned from a trade or business. Self-employment income also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise, such as an exchange of business or labor, the individual's share of profit or loss in any partnership to which he/she belongs, and money received for the sale of whole blood or plasma. Income eligibility is based on the individual's net self-employment income after subtracting business expenses. Refer to (h) (4) of this Section for self-employment income determination procedures.

(c) **What is not income.** Items that are not considered income per 20 C.F.R. § 416.1103 because the individual cannot use them as food or shelter or to obtain food or shelter include, but are not limited to:

(1) Medical care and services, including medical insurance premiums paid directly by anyone on the individual's behalf:

(2) Social services, as follows:

(A) Assistance provided in cash or in-kind under any federal, state, or local government program to provide social services such as vocational rehabilitation or VA aid and attendance services;

(B) In-kind assistance provided under a non-governmental program for social services. This does not include food or shelter;

(C) Cash provided by a non-governmental social services program, except for cash to cover food or shelter, when the cash:

(i) Is a repayment for program-approved services for which the individual already paid; or

(ii) Is a payment restricted to the future purchase of a program-approved service.

(3) Receipts from the sale, exchange, or replacement of a resource, including cash or an in-kind item provided to replace or repair a resource that was lost, damaged, or stolen;

(4) Any amount refunded on income taxes already paid by the individual;

(5) Payments made to the individual under a credit life or credit disability insurance policy;

(6) Money the individual borrows or receives as repayment of a loan. When the individual borrow money, regardless of use, it is not considered income if a bona fide debt or obligation to pay can be established. Interest the individual receives on money he/she loans someone else is considered income. Criteria to establish a loan as bona fide includes:

(A) An acknowledgment of the obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, OKDHS Form 08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form 08AD103E are not available, documentation must show that the loan is bona fide and how the debt amount and date of receipt was verified.

(B) The borrower's acknowledgment of obligation to repay, with or without interest, and the lender's verification of the loan are required to indicate that the loan is bona fide when the loan is from a person(s) not in the loan business.

(7) Bills paid for the individual by someone else directly to the provider unless it is considered payment for food or shelter;

(8) Replacement of income that is lost, destroyed, or stolen, such as receiving a replacement paycheck because the original payment was stolen;

(9) Weatherization assistance; or

(10) Receipt of certain non-cash items that would be excluded as a non-liquid resource.

(d) **Income exclusions.** Certain types and amounts of income are excluded in determining the individual's eligibility for SoonerCare.

(1) Order of exclusions:

(A) Unearned income exclusions are applied before applying earned income exclusions;

(B) Income excluded by other federal laws per (e) of this Section are excluded first and then unearned income excluded by the Social Security Act per (f) of this Section; and

(C) Earned income exclusions are then applied in the order listed per (g) of this Section.

- (2) Unearned income exclusion rules:
- (A) Other than the twenty dollar (\$20) general income exclusion, unused unearned income exclusions are not applied to earned income; and
 - (B) Unused earned income exclusions are never applied to unearned income.
- (3) General exclusion rules:
- (A) Income must never be reduced below zero; and
 - (B) Unused portions of a monthly exclusion must not be carried over for use in a subsequent month.
- (e) **Income excluded by other federal laws.** Unearned income excluded by federal laws other than the Social Security Act, per the Appendix to Subpart K of Part 416, includes:
- (1) Federal food and nutrition programs, including:
- (A) The value of Supplemental Nutrition Assistance Program food benefits;
 - (B) U.S. Department of Agriculture food commodities distributed by a private or governmental program;
 - (C) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the National School Lunch Act;
 - (D) Women, infants, and children program (WIC); and
 - (E) Nutrition programs for older Americans;
- (2) Housing and utility programs including:
- (A) Energy assistance provided through the Low Income Home Energy Program that includes the Energy Crisis Assistance Program;
 - (B) Housing assistance provided under the:
 - (i) U.S. Housing Act of 1937;
 - (ii) National Housing Act;
 - (iii) Governmental rental or housing subsidies received in-kind or in cash by governmental agencies, such as the Department of Housing and Urban Development (HUD) for rent, mortgage payments, or utilities;
 - (iv) Title V of the Housing Act of 1949; or
 - (v) Any payment received under Section 216 of P. L, 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (3) Student financial assistance that includes:
- (A) Grants or loans to undergraduate students made or insured under programs administered by the Secretary of Education under Section 507 of the Higher Education Amendments of 1968 (P. L. 90-575);
 - (B) Wages, allowances, or reimbursements for transportation and attendant care costs, unless excepted on a case-by-case basis, when received by an eligible individual with disabilities employed in a project under Title VI of the

Rehabilitation Act of 1973 as added by 29 U.S.C. § 795(b) (c); and

(C) Student financial assistance received for attendance costs from a program funded in whole or in part under Title IV of the Higher Education Act of 1965, as amended, or under BIA student assistance programs when it is made available for tuition and fees normally assessed to a student carrying the same academic workload, as determined by the institution. This includes costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study and an allowance for books, supplies, transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution, under Section 14(27) of P. L. 100-50, the Higher Education Technical Amendments Act of 1987 (20 U.S.C. § 1087uu);

(4) American Indian/Alaska Native payments excluded without regard to a specific tribe or group includes:

(A) Indian judgment funds that are held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under P. L. 93-134 as amended by Section 4 of P. L. 97-458 (25 U.S.C. § 1408). Indian judgment funds include interest and investment income accrued while such funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds but does not apply to sales or conversions of initial purchases or to subsequent purchases. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;

(B) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under P.L. 98-64 (25 U.S.C. § 117b). Funds held by Alaska Native Regional and Village Corporations (ANRVC) are not held in trust by the Secretary of the Interior and therefore ANRVC dividend distributions are not excluded from countable income under this exclusion. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;

(C) Cash distributions and dividends received by an individual Alaska Native or descendant under the Alaska Native Claims Settlement Act Amendments of 1987, P.L. 100-241, (43 U.S.C. § 1626(c)) to the extent that it does not, in the aggregate, exceed two-thousand dollars (\$2,000) per individual each year. This exclusion does not apply in deeming income from sponsors to aliens;

(D) Up to two-thousand dollars (\$2,000) per year received by Indians that is derived from individual interests in trust or restricted lands under P.L. 103-66, (25 U.S.C. § 1408), as amended;

(5) Payments made to members of specific Indian tribes and groups. Refer to 20 C.F.R § 416 Subpart K Appendix, Section IV.B for the complete list. Payments to tribes in Oklahoma on this list include:

(A) Judgment funds distributed per capita to, or held in trust for, members of the Sac and Fox Indian Nation, and the availability of such funds under Section 6 of P. L. 94-189. This exclusion applies to the income of sponsors of aliens only if the alien lives in the sponsor's household;

(B) Any judgment funds distributed per capita or made available for programs for members of the Delaware Tribe of Indians and the Absentee Delaware Tribe of Western Oklahoma under Section 8 of P. L. 96-318;

(C) Any distribution of judgment funds to members of the Wyandotte Nation of Oklahoma under Section 6 of P. L. 97-371;

(D) Distributions of judgment funds to members of the Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants) under Section 7 of P. L. 97-372;

(E) Judgment funds distributed per capita or made available for programs for members of the Miami Tribe of Oklahoma and the Miami Indians of Indiana under Section 7 of P. L. 97-376;

(F) Judgment funds distributed per capita or made available for any tribal program for members of the Wyandotte Nation of Oklahoma and the Absentee Wyandottes under Section 106 of P. L. 98-602; and

(F) Judgment funds distributed per capita, or held in trust, or made available for programs, for members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida under Section 8 of P. L. 101-277. This exclusion applies to income of sponsors of aliens only when the alien lives in the sponsor's household;

(6) Receipts from lands held in trust and:

(A) Distributed to members of certain Indian tribes under Section 6 of P.L. 94-114, (25 U.S.C. § 459e);

(B) Awarded to the Pueblo of Santa Ana and distributed to members of that tribe under Section 6 of P.L. 95-498; and

(C) Awarded to the Pueblo of Zia in New Mexico and distributed to members of that tribe under Section 6 of P.L. 95-499;

(7) Compensation provided to volunteers by the Corporation for National and Community Service (CNCS), unless determined by the CNCS to constitute the federal or state minimum wage. Programs included under CNCS include:

- (A) Americorps programs;
- (B) The Retired Senior Volunteer Program;
- (C) The Foster Grandparent Program; and
- (D) The Senior Companion Program;

(8) Benefits from State and Community Programs on Aging, per Title III of the Older Americans Act of 1965, as amended by P.L. 114-144, Older Americans Act Reauthorization Act of 2016. Per (b) (9) (A) (vii) of this Section, wages from the Senior Community Service Employment Program are counted as income.

(9) Payments made as restitution under the Civil Liberties Act of 1988 to certain individuals of Japanese ancestry and Aleuts who were detained in internment camps during World War II;

(10) Payments made on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) under P. L. 101-201 and Section 10405 of P.L. 101-239;

(11) Payments made under Section 6 of the Radiation Exposure Compensation Act, P.L. 101-426;

(12) The value of any child care provided or arranged under the Child Care and Development Block Grant Act, as amended by Section 8(b) of P.L. 102-586;

(13) Payments made to individuals because of their status as victims of Nazi persecution per P.L. 103-286;

(14) Matching funds and any interest earned on these funds that are deposited into individual development accounts (IDAs), as a demonstration project or TANF-funded, per 42 U.S.C. § 604;

(15) Payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations, per P.L. 105-78;

(16) Payments made to certain Vietnam or Korea veterans' children with spina bifida, per P.L. 104-204 (38 U.S.C. § 1805(a));

(17) Payments made to the children Vietnam veterans who suffer from certain birth defects, per P.L. 106-419 (38 U.S.C. § 1833(c));

(18) Payments of the refundable child tax credit made under Section 24 of the Internal Revenue Code of 1986;

(19) Assistance provided for flood mitigation activities, per Section 1 of P.L. 109-64 (42 U.S.C. § 4031);

(20) Payments made to individuals under the Energy Employees Occupational Illness Compensation Program Act of 2000, per Section 1 of P.L. 106-398 (42 U.S.C. § 7385e); and

(21) The Oklahoma Achieving a Better Life Experience (ABLE) Program, in accordance with OAC 317:35-5-41.9(c)(1) and 26 U.S.C. § 529A.

(22) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation", per Section 4735 of P.L. 105-33. These payments are made to hemophilia patients who are infected with human immunodeficiency virus (HIV). However, if the payments are placed in an interest-bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual;

(23) Wages paid by the Census Bureau for temporary employment related to Census activities for the eligibility groups in (A) through (E):

(A) children under 6 years of age whose income is at or below 133 percent of the federal poverty level, per 42 U.S.C. § 1396(a)(10)(A)(i)(VI);

(B) children under 19 years of age whose income is at or below 100 percent of poverty, per 42 U.S.C. § 1396

(a)(10)(A)(i)(VII);

(C) qualified Medicare beneficiaries (QMB) per 42 U.S.C. § 1396d(p);

(D) specified low-income Medicare beneficiaries (SLMB), per 42 U.S.C. § 1396(a)(10)(E)(iii); and

(E) qualifying individuals (QI), per 42 U.S.C. § 1396(a)(10)(E)(iv)(1); and

(24) Any other income exempted by new or revised federal statutes that are in effect before the Subpart K Appendix is updated.

(f) **Unearned income excluded by the Social Security Act.** Unearned income excluded by the Social Security Act, per 20 C.F.R. § 416.1124 includes:

(1) Any public agency's refund of taxes on real property or food;

(2) Need-based assistance that is wholly funded by a State or one of its political subdivisions. For purposes of this rule, an Indian tribe is considered a political subdivision of a State. Assistance is based on need when it is provided under a program that uses the individual's income as an eligibility factor. State need-based assistance programs include the SSP program, but not federal/state programs such as TANF;

(3) Any portion of a grant, scholarship, fellowship, or gift used or set aside for paying tuition, fees, or other necessary educational expenses. This does not include any portion set aside or actually used for food or shelter;

(4) Food raised by the individual and/or his or her spouse, if it is consumed by the individual or the individual's household;

(5) Assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any federal statute because of a presidentially-declared disaster;

(6) The first sixty dollars (\$60) of unearned income received in a calendar quarter that is received infrequently or irregularly. Income is considered:

(A) To be infrequent when the individual receives it only once during a calendar quarter from a single source and did not receive that type of income in the month preceding or following the month the income was received; and

(B) Irregular when the individual cannot reasonably expect to receive it;

(7) Alaska longevity bonus payments;

(8) Payments for providing foster care to an ineligible child placed in the individual's home by a public or private nonprofit child placement or child care agency;

(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become a part of the separate burial fund;

(10) Certain support and maintenance assistance as described in 20 C.F.R. §416.1157 that is certified in writing by the appropriate state agency to be both based on need and:

(A) Provided in-kind by a private nonprofit agency; or

(B) Provided in cash or in-kind by a:

(i) Supplier of home heating oil or gas;

(ii) Rate-of-return entity providing home energy; or

(iii) A municipal utility providing home energy;

(11) One third of child support payments received by or on the behalf of a minor child with disabilities from a non-custodial parent.

(12) The first twenty dollars (\$20) of any unearned income received in a month other than income in the form of in-kind support and maintenance received in the household of another per (b) (8) of this Section and need-based income. Need-based income is a benefit that uses financial need as a factor to determine eligibility. The twenty dollar (\$20) exclusion does not apply to a needs-based benefit that is totally or partially funded by the federal government or by a nongovernmental agency. However, assistance which is based on need and funded wholly by a State or one of its political subdivisions, such as SSP, is excluded totally from income. When the individual has less than twenty dollars (\$20) of unearned income in a month, the rest of the twenty dollar (\$20) exclusion may be deducted from the individual's countable earned income;

(13) Any unearned income received and used to fulfill an approved plan to achieve self-support (PASS) for an individual

under 65 years of age with disabilities or blindness or an individual with disabilities or blindness who received SSI for the disability or blindness in the month before reaching 65 years of age. The Social Security Administration (SSA) approves the plan, the amount of income excluded, and the period of time approved per 20 C.F.R. §§ 416.1180 through 416.1182;

(14) Federal housing assistance provided under:

(A) The U.S. Housing Act of 1937;

(B) The National Housing Act;

(C) Section 101 of the Housing and Urban Development Act of 1965;

(D) Title V of the Housing Act of 1949; or

(E) Section 202(h) of the Housing Act of 1959;

(15) Any interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement. This exclusion from income applies to interest accrued on or after April 1, 1990;

(16) The value of any commercial transportation ticket among the fifty states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, that is received as a gift and is not converted to cash;

(17) Payments received by an individual from a fund established by a state to aid crime victims;

(18) Relocation assistance provided by a state or local government that is comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 that is subject to the treatment required by Section 216 of that Act;

(19) Special pay received from one of the uniformed services, per 37 U.S.C. § 310;

(20) Interest or other earnings on a dedicated account established for an eligible individual under eighteen (18) years of age when past due benefit payments must or may be paid into such an account, per 20 C.F. R. § 416.1247;

(21) Gifts to children under eighteen (18) years of age with life-threatening conditions from an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, provided that:

(A) In-kind gifts are not converted to cash; or

(B) Cash gifts do not exceed two-thousand dollars (\$2,000) within a calendar year;

(22) Interest and dividend income from a countable resource or from a resource excluded under a federal statute other than Section 1613(a) of the Social Security Act;

(23) AmeriCorps State and National and Americorps National Civilian Community Corps cash or in-kind payments made to

participants or on their behalf, such as food, shelter, and clothing allowances;

(24) Any annuity paid by a state to an individual, or his or her spouse, based on the State's determination that the individual is a veteran and is blind, disabled, or aged; and

(25) The first two-thousand dollars (\$2,000) per calendar year received as compensation for participation in clinical trials that meet the criteria, per Section 1612(b)(26) of the Social Security Act.

(g) **Earned income exclusions.** Per 20 C.F.R. § 416.1112, earned income exclusions are applied after the unearned income exclusions, and in the order listed per (1) through (11) of this subsection. Earned income exclusions must not exceed the amount earned and include:

(1) Earned income tax credit including advance payments of the earned income tax credit;

(2) The first thirty dollars (\$30) of infrequent or irregular earned income received in a calendar quarter;

(3) The student earned income exclusion (SEIE) up to the SEIE monthly limit, per OKDHS Appendix C-1, Schedule VIII.E., is applied to the earned income of a student who:

(i) Is blind or disabled;

(ii) Is under twenty-two (22) years of age; and

(iii) Attends a college, university, or a course of vocational or technical training designed to prepare students for gainful employment;

(4) Any portion of the twenty dollar (\$20) monthly general income exclusion that was not excluded from unearned income in the same month;

(5) The first five-hundred dollars (\$500) of the monthly earnings of an individual who is blind, per Section 15 of Title 7 of the Oklahoma Statutes;

(6) Sixty-five dollars (\$65) of earned income in a month. This exclusion is applied once per couple;

(7) The earned income individuals with disabilities who are not blind used to pay impairment-related work expenses, per 20 C.F.R. § 416.976, including, but not limited to:

(A) Attendant care services;

(B) Assistance with personal functions;

(C) Payments for medical devices;

(D) Payments for prosthetic devices;

(E) Payments for work-related equipment;

(F) Payments for drugs and medical services used to control the impairment; and

(G) Payments for transportation costs;

(8) One-half of any remaining earned income in a month;

(9) Actual work expenses paid by individuals who are blind and under age sixty-five (65) or who receive SSI as a blind person the month before reaching the age of sixty-five (65), such as transportation expenses to and from work and job performance or improvement expenses;

(10) Earned income received and used to fulfill an approved PASS for individuals who are blind or disabled and under sixty-five (65) years of age or who are blind and disabled and received SSI as a blind or disabled person for the month before reaching sixty-five (65) years of age. The SSA approves the plan, the amount of income excluded, and the period of time approved; and

(11) Payments made to participants in AmeriCorps State and National and AmeriCorps National Civilian Community Corps (NCCC). These payments may be made in cash or in-kind and may be made directly to the AmeriCorps participant or on the AmeriCorps participant's behalf. These payments include, but are not limited to: living allowance payments, stipends, educational awards, and payments in lieu of educational awards.

(h) **Monthly income determination.** The total gross amount of earned and unearned income available to the eligible individual and eligible or ineligible spouse is determined before subtracting applicable unearned and earned income exclusions per (d) through (g) of this section. In calculating monthly income, cents are included in the computation until the monthly amount of each income source is established. Once the monthly amount of each income source is established, cents are rounded to the nearest dollar (one (1) to forty-nine (49) cents is rounded down, and fifty (50) to ninety-nine (99) cents is rounded up).

~~(1) Gross income is listed for purposes of determining eligibility. It may be derived from many sources, and some items may be automatically disregarded by the computer when so provided by state or federal law.~~

~~(2) If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income (see OAC 317:35-5-42(d)(3) to determine countable income) will not affect receipt of SoonerCare and amount of State Supplemental Payment (SSP) as long as the amount does not cause SSI ineligibility. Income which will be considered by SSI in the retrospective cycle is documented in the case with computer update at the time that SSI makes the change (in order not to penalize the member twice). If the SSI change is not timely, the worker updates the computer using the appropriate date as if it had been timely. If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the SoonerCare benefit and SSP ease. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the~~

~~worker becomes aware of income changes which will affect SSI eligibility or payment amount, the information is to be shared with the SSA office.~~

~~(3) Some of the more common income sources to be considered in determining eligibility are as follows:~~

~~(A) **Retirement and disability benefits.** These include but are not limited to OASDI, VA, Railroad Retirement, SSI, and unemployment benefits. Federal and State benefits are considered for the month they are intended when determining eligibility.~~

~~(i) Verifying and documenting the receipt of the benefit and the current benefit amount are achieved by:~~

~~(I) seeing the member's award letter or warrant;~~

~~(II) obtaining a signed statement from the individual who cashed the warrant; or~~

~~(III) by using BENDEX and SDX.~~

~~(ii) Determination of OASDI benefits to be considered (disregarding COLA's) for former State Supplemental recipients who are reapplying for medical benefits under the Pickle Amendment must be computed according to OKDHS Form 08AX011E.~~

~~(iii) The Veterans Administration allows their recipients the opportunity to request a reimbursement for medical expenses not covered by SoonerCare. If a recipient is eligible for the readjustment payment, it is paid in a lump sum for the entire past year. This reimbursement is disregarded as income and a resource in the month it is received; however, any amount retained in the month following receipt is considered a resource.~~

~~(iv) Government financial assistance in the form of VA Aid and Attendance or Champus payments is considered as follows:~~

~~(I) **Nursing facility care.** VA Aid and Attendance or Champus payment whether paid directly to the member or to the facility, are considered as third party resources and do not affect the income eligibility or the vendor payment of the member.~~

~~(II) **Own home care.** The actual amount of VA Aid and Attendance payment paid for an attendant in the home is disregarded as income. In all instances, the amount of VA Aid and Attendance is shown on the computer form.~~

~~(v) Veterans or their surviving spouse who receive a VA pension may have their pension reduced to \$90 by the VA if the veteran does not have dependents, is SoonerCare eligible, and is residing in a nursing facility that is approved under SoonerCare. Section 8003 of Public Law 101-508 allows these veterans' pensions to be reduced to~~

~~\$90 per month. None of the \$90 may be used in computing any vendor payment or spenddown. In these instances, the nursing home resident is entitled to the \$90 reduced VA pension as well as the regular nursing facility maintenance standard. Any vendor payment or spenddown will be computed by using other income minus the monthly nursing facility maintenance standard minus any applicable medical deduction(s). Veterans or their surviving spouse who meet these conditions will have their VA benefits reduced the month following the month of admission to a SoonerCare approved nursing facility.~~

~~(B) **SSI benefits.** SSI benefits may be continued up to three months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for individuals with an intellectual disability or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three (3) months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.~~

~~(C) **Lump sum payments.**~~

~~(i) Any income received in a lump sum (with the exception of SSI and Retirement, Survivors, and Disability Insurance (RSDI) lump sum) covering a period of more than one (1) month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount from any lump sum source, excluding RSDI and SSI (with the exception of dedicated bank accounts for disabled/blind children under age eighteen (18)), retained on the first day of the next month is considered as a resource. Such lump sum payments may include, but are not limited to, accumulation of wages, VA benefits, Workers' Compensation, bonus lease payments and annual rentals from land and/or minerals.~~

~~(ii) OASDI and SSI retroactive payments do not count as income in the month of receipt. Any unspent portion of retroactive SSI and RSDI benefits is excluded from resources for nine (9) calendar months following the month of receipt. However, unspent money from a retroactive payment must be identifiable from other resources for this exclusion to apply. The money may be commingled with other funds, but if this is done in such a fashion that the retroactive amount can no longer be separately identified, that amount will count toward the~~

~~resource limit. Refer to 20 Code of Federal Regulations (CFR) § 416.1233.~~

~~(iii) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age eighteen (18) are excluded as income. The interest income generated from dedicated bank accounts is also excluded. The dedicated bank account consisting of the retroactive SSI lump sum payment and accumulated interest is excluded as a resource in both the month received and any subsequent months.~~

~~(iv) A life insurance death benefit received by an individual while living is considered as income in the month received and as a resource in the following months to the extent it is available.~~

~~(v) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment.~~

~~(D) **Income from capital resources and rental property.**~~

~~Income from capital resources can be derived from rental of a house, rental from land (cash or crop rent), leasing of minerals, life estate, homestead rights or interest.~~

~~(i) If royalty income is received monthly but in irregular amounts, an average based on the previous six (6) months' royalty income is computed and used to determine income eligibility. When the difference between the gross and net income represents a production or severance tax (e.g., most oil royalties are reduced by this tax), the OHCA only uses the net figure when determining income eligibility. The production or severance tax is the cost of producing the income, and, therefore, is deducted from the gross income. Exception: At any time that the county becomes aware of and can establish a trend showing a dramatic increase or decrease in royalty income, the previous two (2) months' royalty income is averaged to compute countable monthly income.~~

~~(ii) Rental income may be treated as earned income when the individual participates in the management of a trade or business or invests his/her own labor in producing the income. The individual's federal income tax return will verify whether or not the income is from self-employment. Otherwise, income received from rental property is treated as unearned income.~~

~~(iii) When rental property is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the member is considered as income.~~

~~(E) **Earned income/self-employment.** The term "earned income" includes income in cash earned by an individual through the receipt of wages, salary, commission, or profit from activities in which he/she is engaged as a self-employed individual or as an employee. See subparagraph (G) of this paragraph for earnings received in fluctuating amounts. "Earned Income" is also defined to include in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. The cash value of the in-kind benefits must be verified by the employer. 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 his/her business enterprise. An exchange of labor or services, e.g., barter, is considered as an in-kind benefit. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind but is recorded on the case computer input document for coordination with SoonerCare benefits.~~

~~(i) Work study received by an individual who is attending school is considered as earned income with appropriate earned income disregards applied.~~

~~(ii) Money from the sale of whole blood or blood plasma is considered as self-employment income subject to necessary business expenses and appropriate earned income disregards.~~

(1) **Averaging income.** When the individual indicates that he/she receives income monthly, but on an irregular basis, the most recent two (2) months of income are averaged to determine income eligibility.

(A) Income that is received less often than monthly or in amounts that vary significantly over the course of a year may be averaged over a longer period of time. For instance, royalty income must be averaged over a six (6) month period.

(B) Less than two (2) months of income may be used when the income started less than two (2) months ago or previous income amounts are not representative of future income. For instance, the individual may have started a new job less than two (2) months ago or may have received a one-time bonus or overtime pay that is not expected to recur.

(2) **Converting income to a monthly amount.** Income received more often than monthly is converted to monthly amounts as indicated in (A) through (E) of this subsection:

(A) **Daily.** Income received on a daily basis is converted to a weekly amount. When there is consistency in days worked

each week and regular pay dates, the income is multiplied by 4.3. When there is no consistency, refer to (3) of this subsection for irregular income processing.

(B) **Weekly.** Income received weekly is multiplied by 4.3.

(C) **Twice a month.** Income received twice a month is multiplied by two (2).

(D) **Biweekly.** Income received every two (2) weeks is multiplied by 2.15.

(E) **Irregular income.** Income received monthly but at irregular intervals is not converted by 4.3, 2, or 2.15 when there is no consistency in the work offered or when pay is received. Instead, the income received over the last two (2) months is added together and divided by two (2) to arrive at a monthly average.

(3) **Infrequent or irregular income.** Infrequent or irregular income is considered countable income in the month it is received unless excluded per (C) of this paragraph.

(A) Income is considered to be infrequent if the individual receives it only once during a calendar quarter from a single source and the individual did not receive that type of income in the month preceding or following the month the income was received.

(B) Income is considered to be irregular if the individual cannot reasonably expect to receive it.

(C) When the individual receives infrequent or irregular income, exclude the first:

(i) Thirty dollars (\$30) per calendar quarter of earned income; and

(ii) Sixty dollars (\$60) per calendar quarter of unearned income.

~~(iii) Self-employment income is determined as follows:~~

(4) **Self-employment income determination.** Self-employment income is determined per (A) through (E) of this paragraph:

~~(I) Generally, the federal or state income tax form for the most recent year is used for calculating the self-employment income to project income on a monthly basis for the certification period. The gross income amount, as well as the allowable deductions, are the same as can be claimed under the Internal Revenue code for tax purposes.~~

~~(II) Self-employment income which represents a household's annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.~~

~~(III) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise is averaged over the period of time the business has been in operation to establish the monthly income amount.~~

~~(IV) If a tax return is not available because one has not been filed due to recent establishment of the self-employment enterprise, a profit and loss statement must be seen to establish the monthly income amount.~~

~~(V) The purchase price and/or payment(s) on the principal of loans for capital assets, equipment, machinery, and other durable goods is not considered as a cost of producing self-employed income. Also not considered are net losses from previous periods, depreciation of capital assets, equipment, machinery, and other durable goods; and federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation (these expenses are accounted for by the work related expense deduction given in OAC 340:10-3-33(1)).~~

~~(iv) Countable self-employment income is determined by deducting allowable business expenses to determine the adjusted gross income. The earned income deductions are then applied to establish countable earned income.~~

(A) When filed, the federal income tax form for the most recent year is used to calculate the individual's self-employment income and business expenses for the certification period. The net earnings shown on the income tax form after business expenses are subtracted is divided by twelve (12) months to determine the individual's monthly countable self-employment income.

(B) When the individual did not file a federal tax form for the most recent year, the individual's business records showing monthly income and expenses are used to determine the individual's self-employment income. When the business was in operation for the entire year, the individual's net income after subtracting business expenses is divided by twelve (12) months to determine the individual's monthly countable self-employment income.

(C) Self-employment income that represents a household's annual support is prorated over a twelve-month (12-month) period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a twelve-month (12-month) period if the income represents the farmer's annual support.

(D) If the household's business has operated for less than a year, the income from that business is averaged over the period of time the business has operated to establish the monthly income amount.

(E) After the net countable self-employment income is determined, the earned income exclusions per (g) of this section are then applied to establish countable earned income.

~~(F) **Infrequent or irregular income.**~~

~~(i) Income is considered to be infrequent if the individual receives it only once during a calendar quarter from a single source and the individual did not receive that type of income in the month preceding or following the month the income was received.~~

~~(ii) Income is considered to be irregular if the individual cannot reasonably expect to receive it.~~

~~(iii) OHCA excludes the following amount of infrequent or irregular income:~~

~~(I) the first \$30 per calendar quarter of earned income; and~~

~~(II) the first \$60 per calendar quarter of unearned income.~~

~~(iv) Infrequent or irregular income, whether earned or unearned, that exceeds these amounts is considered countable income in the month it is received.~~

~~(G) **Monthly income received in fluctuating amounts.** Income which is received monthly but in irregular amounts is averaged using two (2) months' income, if possible, to determine income eligibility. Less than two (2) months' income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:~~

~~(i) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.~~

~~(ii) **Weekly.** Income received weekly is multiplied by 4.3.~~

~~(iii) **Twice a month.** Income received twice a month is multiplied by two (2).~~

~~(iv) **Biweekly.** Income received every two (2) weeks is multiplied by 2.15.~~

~~(H) **Non-negotiable notes and mortgages.** Installment payments received on a note, mortgage, etc., are considered as monthly income.~~

~~(I) **Income from the Job Training and Partnership Act (JTPA).** Unearned income received by an adult, such as a needs based payment, cash assistance, compensation in lieu of wages,~~

~~allowances, etc., from a program funded by JTPA is considered as any other unearned income. JTPA earned income received as wages is considered as any other earned income.~~

~~(J) **Other income.** Any other monies or payments which are available for current living expenses must be considered.~~

(5) **SSI recipients.** If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income does not affect SoonerCare receipt and the SSP payment amount as long as the changed income amount does not cause SSI ineligibility.

(A) Income considered by SSI in the retrospective cycle is not counted until SSI makes the change so the income is not counted twice. If the SSI change is not made timely by SSA, the income is counted as if it had been timely.

(B) If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the SoonerCare and SSP benefit. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the OKDHS worker becomes aware of income changes that affect the individual's SSI eligibility or payment amount, he/she shares the information with the SSA office.

~~(d)~~ (i) **Computation of income.** After determining the individual's and his/her spouse's monthly income.

(1) ~~**EarnedGeneral income or unearned income**~~**exclusion.** The general income exclusion of ~~\$20~~twenty dollars (\$20) per month is ~~allowed for~~subtracted from earned or unearned income, unless the unearned income is SSP, on the combined unearned income of the eligible individual and eligible or ineligible spouse, unless the only unearned income is SSP. ~~See paragraph (5) of this subsection if there are ineligible minor children.~~ After the \$20 exclusion, deduct \$65 and one-half of the remaining combined earned income. The total gross amount of unearned income of the eligible individual and eligible or ineligible spouse is considered. If any portion of the general income exclusion is not subtracted from unearned income, it is subtracted from earned income.

~~(2) **Countable income.** The countable income is the sum of the earned income and the total gross unearned income after exclusions.~~

(2) **Earned income deduction.** When the individual has earned income, after deducting the twenty dollar (\$20) exclusion, the sixty-five dollars (\$65) and one-half of the remaining combined earned income is then deducted.

(3) ~~**Deeming computation for disabled or blind minor child(ren)**~~**procedures.** An automated calculation is available for computing the income amount to be deemed from parent(s) and the

~~spouse of the parent to eligible disabled or blind minor child(ren) by use of transaction CID. The ineligible minor child in the computation regarding allocation for ineligible child(ren) is defined as: a dependent child under age eighteen (18). Refer to OAC 340:35-5-42.1 for deeming computation procedures from an ineligible spouse, ineligible parent, or sponsor of an alien to the eligible individual or child.~~

~~(A) An intellectually disabled child living in the home who is ineligible for SSP due to the deeming process may be approved for SoonerCare under the Home and Community Based Services Waiver (HCBS) Program as outlined in OAC 317:35-9-5.~~

~~(B) For TEFRA, the income of child's parent(s) is not deemed to him/her.~~

~~(4) **Premature infants.** Premature infants (i.e., thirty-seven (37) weeks or less) whose birth weight is less than twelve hundred (1200) grams (approximately two (2) pounds ten (10) ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents' income is not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.~~

~~(5) **Procedures for deducting ineligible minor child allocation.** When an eligible individual has an ineligible spouse and ineligible minor children (not receiving TANF), the computation is as follows:~~

~~(A) Each ineligible child's allocation (OKDHS Form 08AX001E, Schedule VII. C.) minus each child's gross countable income is deducted from the ineligible spouse's income. Deeming of income is not done from child to parent.~~

~~(B) The deduction in subparagraph (A) of this paragraph is prior to deduction of the general income exclusion and work expense.~~

~~(C) After computations in subparagraphs (A) and (B) of this paragraph, the remaining amount is the ineligible spouse's countable income considered available to the eligible spouse.~~

~~(6) **Special exclusions for blind individuals.** Any blind individual who is employed may deduct the general income exclusion and the work exclusion from the gross amount of earned income. After the application of these exclusions, one-half of the remaining income is excluded. The actual work expense is then deducted from the remaining half to arrive at the amount of countable income. If this blind individual has a spouse who is also eligible due to blindness and both are working, the amount of ordinary and necessary expenses attributable to the earning of income for each of the blind individuals may be~~

~~deducted. Expenses are deductible as paid but may not exceed the amount of earned income. To be deductible, an expense need not relate directly to the blindness of the individual, it need only be an ordinary and necessary work expense of the blind individual. Such expenses fall into three (3) broad categories:~~

- ~~(A) transportation to and from work;~~
- ~~(B) job performance; and~~
- ~~(C) job improvement.~~

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-42.1 Income deeming procedures

(a) **General.** The term deeming is used to identify the process for considering another individual's income to be available to the applicant or SoonerCare member, described in this Section as the eligible individual or child. Per Section 416.1160 of Title 20 of the Code of Federal Regulations (20 C.F.R. § 416.1160), there are four (4) categories of individuals whose income may be deemed when determining eligibility: an ineligible spouse, ineligible parent, the sponsor of an alien, or an essential individual. The first step in deeming is determining how much income the applicable individual(s) has. When deeming rules apply, it does not matter if the other individual's income is actually available to the eligible individual or child.

(1) **Ineligible spouse.** An ineligible spouse is a spouse who lives in the same household with the eligible individual and is not eligible for Supplemental Security Income (SSI). For spouse-to-spouse deeming to apply, the eligible individual must be eligible based on his or her own income.

(2) **Ineligible parent.** An ineligible parent is a natural or adoptive parent or stepparent who lives with an eligible child under eighteen (18) years of age and is not eligible for SSI. A stepparent's income is not deemed if the eligible child's natural or adoptive parent dies or permanently leaves the home and the child begins or continues to live with the stepparent, per 20 C.F.R. § 416.1165.

(3) **Sponsor of an alien.** A sponsor is an individual, not an organization or an employer, who signs an affidavit agreeing to support the alien as a condition for the alien's admission for permanent residence in the United States (U.S.). A portion of the sponsor's income is deemed to the alien for three (3) years even when the sponsor and alien do not live together unless (A) if this paragraph applies.

(A) Deeming rules regarding sponsored aliens do not apply when the alien:

(i) Is a refugee admitted to the United States (U.S.), per Section 203(a)(7), 207(c)(1), or Section 212(d)(5) the Immigration and Nationality Act;

(ii) Was granted asylum by the U.S. Attorney General; or
(iii) Becomes blind or disabled, per 20 C.F.R §416.901, after admission to the U. S. When this occurs, the sponsor's income is no longer deemed beginning with the month in which the disability or blindness begins.

(B) If the sponsor is the alien's ineligible spouse or ineligible parent(s), the spouse-to-spouse or parent-to-child deeming calculations apply.

(C) If a sponsored alien has a sponsor and an ineligible spouse or ineligible parent(s) who is not his/her sponsor, both sponsor-to-alien and spouse-to-spouse or parent-to-child deeming calculations apply.

(4) **Household definition.** A household for deeming purposes may include the eligible individual or child, an eligible or ineligible spouse, and any children of the couple or of either member of the couple. A household for an eligible child includes the eligible child's parent(s), and any other children of the parent(s).

(A) A child is considered a member of the household from birth for deeming purposes unless the parent(s) completed paperwork to give the child up for adoption or the child was placed in the temporary custody of a public children's services agency. Provided, however, a parent's income and resources are deemed to an eligible child beginning the month after the month the child comes to live with the parent(s) (e.g., the month following the month the child comes home from the hospital).

(B) An eligible individual or an ineligible spouse or ineligible parent who is temporarily absent from the home per (5) of this subsection, is considered to be a member of the household for deeming purposes per 20 C.F.R. § 416.1167.

(5) **Temporary absence for deeming purposes.** During a temporary absence, per 20 C.F.R. § 416.1167, the absent individual is considered a household member for deeming purposes when an:

(A) Eligible individual or child, ineligible spouse, ineligible parent, or an ineligible child leaves the household but intends to and does return in the same month or the next month;

(B) Eligible individual or child enters a medical treatment facility for up to two (2) or three (3) full months;

(C) Eligible child is away at school but comes home on some weekends or lengthy holidays and is subject to his/her parent's control; or

(D) Ineligible spouse or parent is absent from the household due solely to a duty assignment as a member of the Armed Forces on active duty.

(b) Income exclusions for an ineligible spouse or ineligible parent. Income excluded for an ineligible spouse or parent per 20 C.F.R. § 416.1161 include:

(1) Income excluded by federal laws other than the Social Security Act, per the Appendix to Subpart K of Part 416 and Oklahoma Administrative Code (OAC) 317:35-5-42(e);

(2) Any public income-maintenance payments the ineligible spouse or parent receives and any income that was counted or excluded in figuring the amount of that payment. Per 20 C.F.R. § 416.1142, these payments include SSI, State Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF), refugee cash assistance, disaster relief and emergency assistance, general assistance provided by the Bureau of Indian Affairs, U.S. Department of Veteran Affairs, and state or local government assistance programs based on need;

(3) Any of the ineligible spouse's or parent's income that is used by a public income-maintenance program to determine that program's benefits to someone else;

(4) Income used to comply with the terms of court-ordered support, or support payments enforced under Title IV-D of the Social Security Act;

(5) Income the ineligible spouse or ineligible parent was paid under a federal, state, or local government program to provide the eligible spouse or child with chore, attendant, or homemaker services, such as payments under Title XX of the Social Security Act;

(6) Any portion of a grant, scholarship, fellowship, or gift used or set aside to pay tuition, fees, or other necessary educational expenses;

(7) Money received for providing foster care to an ineligible child;

(8) The value of Supplemental Nutrition Assistance Program food benefits and the value of Department of Agriculture donated foods;

(9) Food raised by the spouse or parent and consumed by members of the household;

(10) Tax refunds on income, real property, or food purchased by the family;

(11) Income used to fulfill an approved plan for achieving self-support, per 20 C.F.R. §§ 416.1180 through 416.1182 and OAC 317:35-5-42(f)(13) and (g)(10);

(12) The value of in-kind support and maintenance as described in OAC 317:35-5-42(b)(8);

(13) Alaska longevity bonus payments;

- (14) Disaster assistance, per 20 C.F.R. §§ 416.1150 and 416.1151;
- (15) Income received infrequently or irregularly, per 20 C.F.R. §§ 416.1112(c)(1) and 416.1124(c)(6) and OAC 317:35-5-42(f)(6) and (g)(2);
- (16) Work expenses if the ineligible spouse or parent is blind, such as transportation expenses to and from work and job performance or improvement expenses;
- (17) Certain support and maintenance assistance, per 20 C.F.R. § 416.1157(c) and OAC 317:35-5-42 (f)(10);
- (18) Housing assistance, per 20 C.F.R. §416.1124(c)(14);
- (19) The value of a commercial transportation ticket, per 20 C.F.R. § 416.1124(c)(16) and OAC 317:35-5-42(f)(16);
- (20) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, per 20 C.F.R. § 416.1112(c);
- (21) Payments from a fund established by a State to aid victims of crime, per 20 C.F.R. § 416.1124(c)(17);
- (22) Relocation assistance, per 20 C.F.R. §416.1124(c)(18);
- (23) Special pay received from one of the uniformed services pursuant to Section 310 of Title 37 of the United States Code;
- (24) Impairment-related work expenses, per 20 C.F.R. 404.1576, incurred and paid by an ineligible spouse or parent, if the ineligible spouse or parent receives disability benefits under Title II of the Social Security Act;
- (25) Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements which are left to accumulate and become part of separate burial funds, and interest accrued on and left to accumulate as part of the value of agreements representing the purchase of excluded burial spaces, per 20 C.F.R. § 416.1124(c)(9) and (15);
- (26) Interest and dividend income from a countable resource or from a resource excluded under a Federal statute other than Section 1613(a) of the Social Security Act;
- (27) Earned income of a student, per 20 C.F.R. § 416.1112(c)(3) and OAC 317:35-5-42(g)(3); and
- (28) Any additional increment in pay, other than any increase in basic pay, received while serving as a member of the uniformed services, if the ineligible spouse or parent:
- (A) Received the pay as a result of deployment to or service in a combat zone; and
- (B) Was not receiving the additional pay immediately prior to deployment to or service in a combat zone.
- (c) **Deeming from an ineligible spouse.** When the eligible individual lives with an ineligible spouse who has income, the deeming steps in (1) through (5) of this paragraph are used to calculate the amount of income to deem to the eligible individual.

(1) The ineligible's spouse's total gross unearned and earned income is determined and appropriate exclusions per (b) of this Section are applied.

(2) An ineligible child allocation is then subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Maximum Income, Resource, and Payment Standards, Schedule VIII.C.

(A) The ineligible child allocation is subtracted from the ineligible spouse's unearned income before subtracting any remaining allocation from his/her earned income.

(B) An ineligible child allocation is not allowed for a child who receives a public income-maintenance payments, per 20 C.F.R. § 416.1142 and as listed per (b) (2) of this Section.

(C) When the ineligible child has countable income, the child's income is subtracted from the ineligible child allocation before subtracting the remaining allocation from the ineligible spouse's income.

(3) When the ineligible spouse sponsors an alien(s), the allocation for the alien(s) that is deemed from the ineligible spouse's income is subtracted from the ineligible spouse's unearned income before subtracting any remaining allocation from his/her earned income.

(A) The allocation for each sponsored alien is the difference between the SSI federal benefit rate (FBR) for an eligible couple minus the FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C.

(B) Each alien's allocation is reduced by the amount of the alien's own income, per (f) of this Section.

(4) When, after subtracting the ineligible child allocation and, if appropriate, the sponsored alien allocation, the ineligible spouse's income is less than or equal to the difference between the SSI FBR for an eligible couple and the SSI FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C, no income is deemed from the ineligible spouse.

(A) In this instance, only the eligible individual's own countable income is considered.

(B) When the eligible individual's countable income is less than or equal to the SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, he/she is financially eligible for SoonerCare (Medicaid).

(5) When, after subtracting the appropriate allocations, the ineligible spouse's income is greater than the difference between the SSI FBR for an eligible couple and the SSI FBR for an eligible individual, per OKDHS Appendix C-1, Schedule VIII.C, the spouses are treated as an eligible couple by:

(A) Combining the remainder of the ineligible spouse's unearned income with the eligible individual's unearned

income and the remainder of the ineligible spouse's earned income with the eligible individual's earned income;

(B) Applying appropriate income exclusions, per OAC 317:35-5-42(e), (f), and (g) from the eligible spouse's income, including the twenty dollar (\$20) general exclusion from the couple's unearned income and sixty-five (\$65) plus one-half of the remaining earned income from the couple's earned income; and

(C) Subtracting the couple's countable income from the SSI FBR for an eligible couple, per OKDHS Appendix C-1, Schedule VIII.C. When the income is less than or equal to the SSI FBR for an eligible couple, the eligible individual is financially eligible for SoonerCare (Medicaid).

(d) **Deeming from ineligible parent(s).** When a child with disabilities or blindness lives with ineligible parent(s), the deeming steps in (1) through (6) of this paragraph are used to calculate the amount of income to deem to the eligible child, up through the month in which the child reaches age eighteen (18).

(1) The gross unearned and earned income of each ineligible parent living in the home is determined and appropriate exclusions are applied, per (b) of this Section.

(2) An ineligible child allocation is subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Schedule VIII.C. Exception: An ineligible child allocation is not allowed for a child who receives public income-maintenance payments, per 20 C.F.R. § 416.1142 and as listed per (b) (2) of this Section.

(A) The ineligible child allocation is first subtracted from the ineligible parent(s)' combined unearned income before subtracting any remaining allocation from their earned income.

(B) When the ineligible child has countable income, the child's income is subtracted from the ineligible child allocation before applying the allocation.

(3) When the ineligible parent sponsors an alien(s), the allocation for the alien(s) that is deemed from the ineligible parent's income per (f) of this Section is subtracted from the ineligible parent(s)' income.

(4) An allocation is then subtracted for the ineligible parent(s) unless the parent receives public income-maintained payments. The allocation is calculated by:

(A) Subtracting the twenty dollar (\$20) general exclusion from the combined unearned income of the ineligible parent(s). If there is less than twenty dollars (\$20) of unearned income, subtract the balance of the twenty dollars (\$20) from their combined earned income;

(B) Subtracting sixty-five dollars (\$65) and one-half of the remainder of their earned income; and

(C) Totaling the ineligible parent(s)' remaining earned and unearned income and, depending on the number of parents in the home, subtracting the SSI FBR for an individual or a couple, per OKDHS Appendix C-1, Schedule VIII.C.

(5) The parent(s)' remaining income is then deemed to the eligible child. When there is more than one eligible child in the home, the parent(s)' remaining income is divided by the number of eligible children in the home.

(6) The deemed income is added to the eligible child's own countable unearned income. When the eligible child's deemed and own unearned and earned income, minus appropriate exclusions, per OAC 317:35-5-42(e), (f), and (g), is less than or equal to the SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the child is financially eligible for SoonerCare (Medicaid).

(A) When a child with intellectual disabilities is ineligible for SoonerCare due to the deeming process, he/she may be approved for SoonerCare under the Home and Community Based Services Waiver (HCBS) Program, per OAC 317:35-9-5.

(B) When a child is eligible for Tax Equity & Fiscal Responsibility Act (TEFRA), the income of child's parent(s) is not deemed to him/her.

(C) A parent's income and resources are deemed to an eligible child beginning the month after the month the child comes to live with the parent(s) (e.g., the month following the month the child comes home from the hospital).

(e) Deeming when the household includes an ineligible spouse, an eligible spouse, and one or more eligible children. When the household includes an ineligible spouse, an eligible spouse, one or more eligible children, and one or more ineligible children, the ineligible spouse's income is first deemed to the eligible spouse and the remainder to the eligible child(ren) using the deeming steps in (1) through (6) of this subsection.

(1) The gross unearned and earned income of the ineligible spouse is determined and appropriate exclusions are applied, per (b) of this Section.

(2) An ineligible child allocation is subtracted for each ineligible child in the home, per OKDHS Appendix C-1, Schedule VIII.C. Exception: An ineligible child allocation is not allowed for a child who receives public income-maintenance payments, per 20 C.F.R. § 416.1142 and as listed per (b)(2) of this Section.

(3) If the ineligible spouse's remaining income is less than or equal to the current SSI FBR for a couple minus the current SSI

FBR for an individual, no income is deemed to the eligible spouse or eligible child(ren).

(A) Compare the eligible spouse's and each eligible child's own countable income, after applying appropriate exclusions, per OAC 317:35-5-42(e), (f), and (g) to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(B) When the eligible spouse's and/or each eligible child's own income is less than or equal to the current SSI FBR for an individual, they are financially eligible for SoonerCare.

(4) If the ineligible spouse's remaining income after subtracting the ineligible child allocation(s) is greater than the current SSI FBR for a couple minus the current SSI FBR for an individual:

(A) Combine the ineligible spouse's post-allocation unearned and earned income and the eligible spouse's unearned and earned income, after applying the appropriate exclusions, per OAC 317:35-5-42(e), (f), and (g);

(B) Subtract the twenty dollar (\$20) general exclusion from the couple's combined unearned income. If there is less than twenty dollars (\$20) of unearned income, then subtract the remainder of the exclusion from the couple's combined earned income; and

(C) Subtract sixty-five dollars (\$65) plus one-half of the remainder from the couple's combined earned income.

(5) If the couple's countable income is less than or equal to the current SSI FBR for a couple, per OKDHS Appendix C-1, Schedule VIII.C, the eligible spouse is financially eligible for SoonerCare and no income is deemed to the eligible child(ren). If the couple's countable income is greater than the current SSI FBR for a couple, the eligible spouse is not financially eligible for SoonerCare.

(6) When the eligible spouse is not financially eligible for SoonerCare, the amount of the couple's income in excess of the SSI FBR for a couple is divided by the number of eligible children in the household. The resulting amount is deemed to each eligible child.

(A) Any income deemed to an eligible child is added to the eligible child's own unearned income.

(B) The eligible child's unearned and earned income are combined after applying appropriate exclusions, per OAC 317:35-5-42(e), (f), and (g).

(C) If each eligible child's resulting countable income is less than or equal to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the eligible child is financially eligible for SoonerCare.

(f) **Deeming from a sponsor to an alien.** Sponsor-to-alien deeming applies regardless of whether the sponsor and the sponsored alien

live in the same household or whether the sponsor actually provides any support to the sponsored alien unless (a) (3) (A) applies.

(1) The income of the sponsor and the sponsor's spouse, if applicable, is first determined and applicable exclusions applied, per OAC 317:35-5-42(e).

(2) The appropriate allocation for the sponsor, the sponsor's spouse, and any children of the sponsor is then subtracted. An ineligible dependent's income is not subtracted from the sponsor's child(ren)'s allocation.

(A) The allocation amount for the sponsor is the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(B) The allocation for each sponsor's spouse and child(ren) of each sponsor is one-half of the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C.

(3) The remaining income amount is deemed to the sponsored alien as unearned income. If the sponsor sponsors multiple aliens, the deemed amount is applied in full to each sponsored alien.

(4) The sponsored alien's unearned and earned income is combined and applicable exclusions applied, per OAC 317:35-5-42(e), (f), and (g). When the alien's countable income and deemed income is less than or equal to the current SSI FBR for an individual, per OKDHS Appendix C-1, Schedule VIII.C, the alien is financially eligible for SoonerCare.

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-40. Eligibility as Qualified Medicare Beneficiary Plus

An individual determined to be categorically related to aged, blind or disabled is eligible for Medical Services as a Qualified Medicare Beneficiary Plus (QMBP) if he/she meets the conditions of eligibility shown in paragraphs (1)-(3) of this subsection. For persons age 65 and older in mental health hospitals, refer to Oklahoma Administrative Code 317:35-9-7.

(1) ~~The individual's/couple's income and resources do not exceed the standards as shown on DHS Appendix C-1, Schedule VI, of which the income standard is based on 100 percent of the Federal Poverty Level.~~The individual's income and resources do not exceed the standard as shown on OKDHS Appendix C-1, Schedule VI, of which the income standard is based on 100 percent (100%) of the Federal Poverty Level. For an individual whose spouse is not eligible for Medicare, total countable income of the eligible individual must be equal to or less than the QMBP standards for an individual, and the income of both must be equal to or less than the QMBP standards for a couple. For a

couple who are both eligible for Medicare, total countable income must be equal to or less than the QMBP standards for a couple.

(2) Countable income and resources are determined using the same rules followed in determining eligibility for individuals categorically related to Aged, Blind or Disabled, except that a ~~\$20~~twenty dollar (\$20) general income disregard is applied to either earned or unearned income, but not both. For couples, only one ~~\$20~~twenty dollar (\$20) general income disregard is given.

(3) The individual meets all other eligibility conditions for SoonerCare.