

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>TRUMBULL</b>	District Hearings Section <b>CLEVELAND</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>Z</b>	Initial Hearing Date <b>07/26/1999</b>	Rescheduled Postponed to <b>09/27/1999</b>	Rescheduled Postponed to <b>09/27/1999</b>	Rescheduled Postponed to <b>09/14/1999</b>

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Lisa Mochtyak-CHO Frank Soriano</b>

Date Notice Mailed <b>06/09/1999</b>	Date Received by Local Agency	Date Received by ODHS <b>07/06/1999</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>11/11/1111</b>
Appeal Number(s)/Program(s) <b>916042/OWF, 916043/PAF</b>				

### Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be available for examination at the local agency during normal office hours.

If you believe the state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Human Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43266-0423 or FAX (614) 752-8298. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. The department will respond to your request quickly, so any information, arguments, or documents you want considered must be sent with your request. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. ***(If the 15th day falls on a weekend or holiday this deadline is extended to the next work day.)***

During the 15th day administrative appeal period, you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services, but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

### ISSUE:

Whether appellant is entitled to deductions from self employment for (1) continuing education classes and related travel expense; and (2) an expense incurred in 1993 for which appellant is finally making a delinquent payment.

### FINDING OF FACT:

#### Agency Testimony:

Appellant has been a recipient of OWF and Food Stamps, most recently, since 9/98. Appellant inquired in 7/98 about past months budgets as they related to whether he was entitled to receive the \$250 1/2 deduction (which he had not received). A hearing was requested and at the hearing a withdrawal was executed as the agency agreed to review appellant's eligibility since the 9/98

DMZ

Appeal(s) <b>SUSTAINED 916042, SUSTAINED 916043</b>	Date Issue <b>01/25/2000</b>	Compliance <b>916042, 916043</b>
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**Distribution:** Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. (Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)

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application, properly affording him the \$250 1/2 earned income disregard. The hearing was dismissed as withdrawn by the District Office Hearings Section on 7/27/99. Appellant administratively appealed this dismissal, continuing to disagree with the agency's action in his case. This resulted in a decision to vacate the dismissals and schedule the appeal for a hearing.

The agency originally recomputed appellant's benefits from 9/98, affording him the \$250 1/2 deduction which had previously been denied him. The computation of cash and food stamp benefits from 1/99 ongoing were based upon appellant's 1998 tax return. This was done as appellant and wife both claim to be self employed. Appellant provided two amended tax returns (exhibits A and B) to the agency in 8/99 and 9/99 expecting the agency to explore whether he was still entitled to a restoration of lost monies as his tax returns now reflected additional expenses.

The basis for the 8/99 amended return was appellant's inclusion of expenses for continuing education classes for both himself and his wife. Also associated with these expenses were the cost of travel. The 9/99 amended return further included for appellant only, a deduction for computer software that appellant entered into a contract to purchase in 1993. Appellant had only recently began restitution of this expense.

Specifically, the 8/99 amended return identified five separate continuing education classes taken by appellant with a total expense of \$420. Also identified was travel expense for these classes totalling \$748. Appellant's wife is a real estate agent. As part of continuing education, the return also identifies a class expense of \$54 and a travel expense of \$198. All of these deductions were disallowed by the agency. Disallowance of the continuing education classes and related expenses was due to the fact that the agency could find no basis for such an expense as work related.

The 9/99 amended return identifies payment of \$226 to West Group as an installment payment for software. The disallowance of the software was due to its relationship to employment in 1993, not 1998.

Appellant Testimony:

Appellant testified that he was employed as an attorney until he was suspended by the Supreme Court of Ohio (see exhibit C, 8/13/97 Supreme Court Filing). Appellant states that in order to be reinstated to the practice of law, he must complete the continuing education requirements of this decision. He is not a licensed attorney, but recently applied for reinstatement on 7/2/99.

The amended appeal filed to reflect the cost of the software is for a contract entered into in 1993. Recent pursuit by a collection agency reinforced appellant's desire to settle this debt. This debt is from a time when appellant was a practicing attorney.

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Appellant's wife, as a licensed realtor is required to attend continuing education classes in a three year span. Appellant presents exhibit D, a copy of OAC 1301:5-7-02(A) which states that: "All real estate licensees, sales associates and brokers are required to satisfactorily complete thirty classroom hours of continuing education courses every three years."

Appellant states that the deduction of continuing education classes and expenses from gross receipts in determining total profit from self employment is supported in OAC 5101:1-23-20(D)(1)(b)(ii).

**EXHIBITS:**

A-amended tax return dated 8/19/99

B-amended tax return dated 9/1/99

C-appellant's 1997 suspension by the Supreme Court of Ohio

D-OAC Chapter 1301:5-7

**CONCLUSIONS OF FACT:**

Appellant requests, as a valid cost of doing business, expenses associated with continuing education for himself and his wife.

The expenses for himself are for courses associated with the practice of law. Appellant testified that these requirements are mandated by his suspension from the practice of law by the Supreme Court (see exhibit C, the court's decision). These are requirements placed upon the appellant so that he may return to the practice of law; as such, he is not now a practicing attorney and the costs of these courses do not allow a appellant to remain a practicing attorney, but to be reinstated to the practice of law. His claimed income cannot be due to the practice of law as he is not now an attorney. He is, in effect, taking course so that he may again become an attorney. Allowing this cost would be similar to allowing a college student the cost of his education as a business expense for a future career.

Appellant is also requesting deduction for the cost of continuing education for his wife, who is a licensed real estate agent. Such costs are directly related to the cost of doing business as such courses are a requirement by law.

**CONCLUSIONS OF POLICY:**

For OWF income computation, OAC 5101:1-23-20(D)(1)(c)(v) excludes self employment income as determined in the computation of self employment income in the rules pertinent to Food Stamp income computation: "Exclusions from self employment income as set forth in rules 5101:4-4-13 and 5101-1:4-6-11 of the Administrative Code. A deduction claim as personal business and/or entertainment expense is not an allowable deduction from self-employment." This rule is binding for

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both OWF and Food Stamps.

exclusion and refers the reader to OAC 5101:4-6-11 "for procedures on computing the cost of producing self employment income."

from costs of producing self employment income. Primary is the statement that allowable exclusions are those costs of producing self employment income. As stated previously, in order for such a cost

an attorney and these expenses to be relevant to his practice of law. Such is not the case, appellant is taking these courses to regain his admission to the bar so that he may begin employment as an

will be his future employment. These are not allowable exclusions.

Appellant has, however, demonstrated that similar costs for his wife are relevant to her continued

Regarding the claim for exclusion of appellant restitution of a past due bill from 1993 that was relevant to his then practice of law, the hearing officer does not find that this is a relevant cost of

**HEARING OFFICER'S RECOMMENDATIONS:**

The appeal should be sustained. The agency should be directed to redetermine appellant's eligibility

appellant's wife's claimed exclusion for continuing education costs and related expenses. Exclusion for appellant's claim for continuing education, related expenses and payment on an obligation from

The subsequent determinations should be in writing with all appeal rights afforded.

**FINAL ADMINISTRATIVE DECISION AND ORDER:**

Appellant has not demonstrated that expenses he has incurred for continuing education and expenses incurred on an obligation from 1993 are excluded or deducted as a income. These expenses may not be deducted from appellant's self employment earnings in calculating the appellant's average, 1998 income. Appellant's wife, however, has costs for continuing education and related expenses which may be subject to exclusion or deduction from the self employment earnings.

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The agency, upon receipt of this decision, shall redetermine appellant's eligibility from 1/99 and ongoing for both OWF and Food Stamps giving consideration to allowable exclusion for the costs of continuing education and related expenses related to appellant's spouse's self employment earnings. The agency shall provide appellant a written explanation of the results of this determination and the opportunity for a state hearing.

**Appeals # 916042 and # 916043 are SUSTAINED - COMPLIANCE IS REQUIRED**

O.A.C. Section 5101: 6-7-03 requires prompt compliance with state hearing decisions. For decisions involving public assistance, compliance shall be achieved within 15 calendar days from the date the decision is issued, but in no event later than 90 calendar days from the date of the hearing request. For decisions involving food stamps, any increase in benefits must be reflected in the coupon allotment within ten calendar days of receipt of this decision, even if the local agency must provide a supplement. The local agency may take longer than ten days if it elects to make the decision effective in the assistance group's normal issuance cycle, provided that issuance will occur within 60 calendar days of the date of the hearing request. If the agency elects to follow this procedure, the benefit increase may be reflected in the normal issuance cycle or with a supplement.

Compliance shall be promptly reported to the Bureau of State Hearings, ODHS, via "State Hearing Compliance," ODHS 4068, accompanied by appropriate documentation.

Date Issued: 01/25/2000