

**OHIO DEPARTMENT OF JOB AND FAMILY SERVICES
BUREAU OF STATE HEARINGS**

In the matter of:

<u>Case Number:</u>	<u>County:</u>	
1899179806	CUYAHOGA	
<u>Appeal:</u>	<u>Program:</u>	<u>Disposition:</u>
1446333	MED	SUSTAINED
1446334	MED	SUSTAINED
Compliance Required		
Decision Date:	02/13/2009	
Request Date:	10/31/2008	
Hearing Officer:	MICHAEL MCCARTNEY	

State Hearing Decision

ISSUE:

Appeal # 1446334 MED (Healthy Start Medicaid)

Appeal # 1446333 MED (Low Income Families Medicaid)

Eligibility for Healthy Start Medicaid is based on the amount of income being received by the assistance group. On 10/15/08 Cuyahoga County Department of Job and Family Services (agency) denied the appellants 8/18/08 application for Healthy Start and Low Income Families Medicaid because they have determined the assistance group's income exceeds the appropriate payment standard for five people. The appellants dispute the agency's calculation of monthly income.

The denial is incorrect. The income considered by the agency is inaccurate.

PROCEDURAL MATTERS:

Notice of a Healthy Start Medicaid denial was issued on 10/15/08. The appellant disputed the denial and requested a state hearing. The state hearing request (Exhibit 1) was received by the Bureau of State Hearings on 10/31/08. The hearing scheduling notice was issued and the case was heard on 1/7/09. An appeal summary (Exhibit A) was received from the agency on 1/7/09. The appellant and her husband represented themselves at the hearing, and the agency was represented by Donna Mancuso from Cuyahoga County Department of Job and Family Services.

FINDINGS OF FACT:

1. The appellant applied for Covered Families and Children Medicaid on 8/18/08.
2. Six people are listed on the case: the appellant, her husband, their three minor children, and their 18 year old daughter. (Exhibit B)
3. The 18 year old daughter is a college student.
4. The agency formed an assistance group containing one person, and authorized Healthy Start Medicaid (MA P/02) for the 18 year old daughter. (Exhibit C)
5. The agency formed another Healthy Start assistance group (MA P/01) containing five people: the appellant, the husband, and their three minor children.
6. The appellants own rental properties on W. 115th St. and on Beech St in Cuyahoga

STATE HEARING DECISION CONTINUATION

County.

7. The appellants self-manage both rental properties.
8. The agency coded the case in the computer to show that the appellants do not self-manage the rental properties. (Exhibit D)
9. The appellants' schedule E tax form "Supplemental Income and Loss" shows \$11,410 yearly income for the rental property on W. 115th, and \$14,090 in yearly income for the rental property on Beech St. (Exhibit 2)
10. In determining monthly rental income for the property on W. 115th St., the agency counted a monthly rental gross of \$11,410 and \$7868 expense for the property resulting in \$3542 monthly unearned income. (Exhibit D)
11. The monthly \$11,410 was taken from a yearly income statement written on an IRS Schedule E form. (Exhibit 2)
12. The \$7868 rental expense was taken from line 22 of an IRS Schedule E form which lists income (or loss) from rental property.
13. Line 21 of the IRS Schedule E records total IRS allowable expenses for rental income.
14. The agency used an income figure of \$11,409 monthly for the second self-managed rental property, and this appears to be a typographical entry concerning the other yearly rental amount of \$14,090 which was written on the IRS Schedule E form.
15. The monthly figure of \$11,409 was reduced by \$7359 expense, resulting in \$4050 monthly unearned income. (Exhibit x)
16. The \$7359 expense was taken from line 22 of the IRS Schedule E form which lists income (or loss) from rental property.
17. The agency determined monthly unearned income of \$7592 from rental property. ($\$3542 + \4050 rental income = \$7592)
18. The appellants are also self-employed running a business that services cash registers.
19. In the past the husband has drawn payroll checks of \$400 bi-weekly from the business for his salary. The agency counted \$860 monthly income from regular employment in determining total income. ($\$400 \times 2.15 = \860 monthly). (Exhibit E)
20. The agency determined \$3543 in gross monthly self employment income, and \$3159 in monthly self employment expenses.
21. The appellants' 1040 tax form shows \$10,400 in the area marked "wages, tips, and salaries"; \$60 in taxable interest; and \$32,066 in the area marked "rental income, royalties, partnerships, S corporations, trusts, etc". These total \$42,526. (Exhibit 2). \$42,526 converted to monthly is \$3543.
22. The agency gave total yearly self employment deductions of \$37,911. (\$15,672 for coded as "ES- employee's FICA share", \$5,100 coded as "RB- rent for building", \$10,400 coded as "EW- employee's wages", \$6739 coded as "IR- IRS allowable expenses"). ($\$15,672 + \$5,100 + \$10,400 + \$6739 = \$37,911$). (Exhibit F). \$37,911 converted to monthly is \$3159.
23. The agency subtracted \$3159 in monthly expense from \$3543 in gross monthly self-employment income which resulted in a monthly proceeds of \$383.
24. The total monthly gross amount of \$8835 income is based on \$7592 unearned income from two rental properties ($\$3542 + \$4050 = \$7592$), \$860 earned income from regular employment for the husband, and \$383 from self employment income for the husband. ($\$7592 + \$860 + \$383 = \8835).
25. On 10/15/08, the agency issued a Healthy Start (MA P/01) denial letter based on a monthly gross income of \$8835 for an assistance group of 5 people. (Exhibit G)

CONCLUSIONS OF POLICY:

Policy:

Income received by the Covered Families and Children Medicaid, including Healthy Start Medicaid, assistance group must be considered in determining need. Certain types of income are excluded from consideration and there are some disregards of income.

The determination of eligibility Healthy Start Medicaid is dependent in part upon the amount of income available to the assistance group. Since Healthy Start Medicaid is a need-oriented program, there must be an established need for assistance. Those persons who have substantial income in excess of established need are not eligible for Healthy Start Medicaid even though the other eligibility requirements are met.

Countable income is the amount of income which is compared to the appropriate Medicaid need standard to determine if an individual or family is eligible for Healthy Start Medicaid. The amount of countable income is determined by calculating the nonexempt gross unearned income and the gross earned income minus the appropriate income disregards and then totaling the results. The countable income is compared to the appropriate Medicaid need standard. Ohio Administrative Code § 5101:1-40-20 (A), (D)

The first ninety dollars of earned income is disregarded when determining financial eligibility for Healthy Start. Ohio Administrative Code § 5101:1-40-205 (D)

For children from birth through age eighteen, the assistance group's countable income may not exceed two hundred per cent of the federal poverty level (or healthy start standard) for the appropriate assistance group size. The 200% standard for five people is \$4134. Ohio Administrative Code § 5101:1-40-08 (2008) and Ohio Administrative Code § 5101:1-40-26 (2008)

The following steps outline the budgeting method to follow when determining financial eligibility for healthy start: first, total all gross countable income of the assistance group; exclude applicable income exemptions and deduction appropriate disregards. The remainder is the countable income.

The assistance group meets the healthy start income criterion if the assistance group's countable income is equal to or less than the appropriate healthy start standard. The assistance group does not meet the healthy start income criterion if the assistance group's countable income is greater than the appropriate healthy start standard. Ohio Administrative Code § 5101:1-40-08.1 (2005)

The income received from the rental of real property where the property is managed by a management firm or other company is considered unearned income to the family.

- (1) Management of rental property would entail the actual functions of upkeep of property, collection of rent payments, payment of operation costs, bookkeeping and rental procedures such as credit analysis, and filling of vacancies.
- (2) A relative, friend or tenant that provides services on a custodial basis would not be considered a property manager.
- (3) When a management firm or other company manages the rental property and the assistance group is forwarded an amount (less management expenses), that amount is to

STATE HEARING DECISION CONTINUATION

be considered unearned income. When the assistance group receives the total amount of income from rental property, the unearned income would be the amount remaining after deducting operating expenses and management fees.

- (4) Regardless of who receives the total income from the rental property, operating and management expenses are to be deducted from the total income.
- (5) If the individual receives income from his efforts as manager of rental property, that situation would be considered self-employment and as such earned income. Only in situations where the individual directly manages the rental property will this be considered self-employment. Ohio Administrative Code § 5101:1-40-20.3 (E)

"Earned income with respect to self-employment" means the total profit from a business enterprise resulting from a comparison of the gross receipts with the business expenses directly related to producing the goods or services. Where the individual is both employed and self-employed, the individual's gross earned income will consist of his or her wages plus the proceeds from self-employment minus operating expenses.

"Self-employment Operating expenses" are the identifiable costs of producing goods or services and without which the goods or services could not be produced. Verified costs of certain items necessary for the operation of a self-employment business/farm are appropriately deducted from the total business income to determine gross earnings.

The following are those items which may be deducted as operating expenses: the cost of renting land, buildings, machinery, and equipment necessary for the operation of the business or farm; the cost of utilities for business or farm buildings; the cost of office supplies; the amount of real property taxes (except special assessment taxes that increase the value of the property) on business or farm land owned or being purchased by the individual; the cost of employees' wages and benefits and the employer's share of the employees' social security taxes; the costs of repairs and maintenance of business or farm property (including buildings, machinery, equipment, trucks, etc.) owned or being purchased by the individual, if such expenditures do not appreciably add to the value of the property; the interest portion of business and farm loans or mortgages.; insurance on business and farm property (including buildings, machinery, livestock, cars, trucks, etc.); business licenses; the cost of gas and oil for business or farm vehicles; the cost of feed, fertilizer, seeds, plants, and farm supplies; the cost of breeding fees, veterinary fees, and livestock medicines; the cost of advertising; postage; the cost of tools purchased for the business; attorney fees related to the business; the cost of tax return preparation; wholesale cost of products sold; business-related travel expenses; the cost of business transportation (including parking expenses). Travel expenses to and from the individual's home to place of employment are not deductible. Travel expenses while at work (such as going to pick-up materials required for the business) are considered a business expense. Personal use of a motor vehicle is not an allowable expense. All transportation expenses must be prorated according to how the motor vehicle is used.

Deductions from gross receipts from self-employment may not be made for any of the following: monies paid to purchase capital assets, equipment, machinery, and other durable goods; payments on the principal of mortgages on income-producing real property; any amount claimed as depreciation for federal income tax or other purposes; any amount claimed as a net loss sustained in any prior period; any amount claimed as the applicant/recipient's own federal, state,

STATE HEARING DECISION CONTINUATION

local, and social security taxes; any amount claimed as personal business and entertainment expenses and personal transportation.

The amount of annual gross earned income from self-employment shall be determined by subtracting the allowable annual operating expenses from the annual gross receipts. The amount of the gross annual self-employment earnings shall then be distributed into all months of the taxable year. Ohio Administrative Code § 5101:1-40-20.4 (A), (C), (D)

The hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing. It's up to the agency to show by a preponderance of the evidence, that its action or inaction was in accordance with ODJFS rules. Ohio Administrative Code § 5101:6-7-01 (2008)

Analysis:

The agency was correct in forming two Healthy Start assistance groups, since the 18 year old daughter no longer fits the definition of "minor child". There was no dispute concerning the 18 year old's eligibility as she was approved for Healthy Start Medicaid. The appellants are concerned about Medicaid eligibility for their minor children, and did not dispute their individual ineligibility. The assistance group containing the husband, wife, and their three children was denied Healthy Start Medicaid due to income in excess of the Healthy Start 200% standard of \$4134. The appellants are disputing the agency's calculation of their monthly income. They own and manage two rental properties, and they also run a business that services cash registers. The appellants provided a copy of some of their 2007 tax forms at the hearing. The agency determined a total monthly gross income of \$8835. This total is based on \$7592 unearned income from two rental properties ($\$3542 + \$4050 = \$7592$), \$860 earned income from regular employment for the husband, and \$383 from self employment income for the husband. ($\$7592 + \$860 + \$383 = \8835).

The agency erroneously counted the income from the two rentals as unearned income. The appellants manage the two rental properties, so based on the rules, this income should be considered self-employment income rather than unearned income. When characterized as self employment income, business operating expenses can be deducted from the rental payments, and earned income disregards can be afforded in the Healthy Start budget. The Schedule E tax form shows gross rental amounts of \$14,090 and \$11,410 which total \$25,500 yearly. This amount converted to a monthly figure is \$2,125 gross, and this is before deductions for insurance, utilities, etc. It appears that the agency made typographical errors in entering information from the IRS Schedule E form, and the evidence shows that the agency entered gross *yearly* income and expense amounts on the computer screen AERRP which records *monthly* amounts. As a result, in addition to being incorrectly characterized as unearned income, the monthly rental income was also incorrectly determined to be higher than what it actually is.

The agency did not support how self employment income was calculated. Self employment income and expenses would be recorded on an IRS Schedule C form, and then the yearly proceeds (after IRS allowable deductions) would be listed on the 1040 form. The agency used a figure of \$42,526 obtained from an IRS 1040 in determining gross self employment income. The IRS allows some deductions that Medicaid does not allow, and the 1040 form lists other income besides self employment. Given this information alone, the gross self employment income counted in determining Healthy Start eligibility is incorrect. The agency provided an AEISE self employment information screen from the computer system, but did not support how they

STATE HEARING DECISION CONTINUATION

determined which deductions were allowable in determining monthly income. The agency was also incorrect in counting \$860 in income from regular employment, because although the appellant has paid himself from his business, he does not have a job outside of the business.

Based on the evidence and testimony presented at the hearing, I find the following: the agency correctly formed a Healthy Start Medicaid assistance group of five people; the agency counted an incorrect gross monthly amount of rental income and expense and erroneously coded it as unearned income; and the agency failed to support how self employment income was determined. Based on these findings, the appeals should be sustained.

HEARING OFFICER'S RECOMMENDATIONS:

Appeal # 1446334 MED (Healthy Start Medicaid)

Appeal # 1446333 MED (Low Income Families Medicaid)

Based on the record before me, I find the appeals should be sustained with compliance. The agency calculated countable monthly income incorrectly. The agency should recalculate monthly self-employment income, and redetermine Healthy Start Medicaid eligibility effective 8/18/08. The agency should send written notice of the redetermination, affording appeal rights.

FINAL ADMINISTRATIVE DECISION AND ORDER:

Appeal # 1446334 MED (Healthy Start Medicaid)

Appeal # 1446333 MED (Low Income Families Medicaid)

Finding the Hearing Officer's decision to be supported by the evidence, the recommendations above are adopted, and the appeal is SUSTAINED. The Agency is required to comply with the Hearing Officer's recommendations. Ohio Administrative Code § 5101:6-7-03(B)(1)(a) requires compliance with this decision within fifteen calendar days from the date of this decision, but no later than ninety calendar days from the hearing request date. Compliance shall be promptly reported to ODJFS, Bureau of State Hearings, via JFS 04068, compliance form, accompanied by supporting documentation. (2008)

Hearing Authority

February 13, 2009

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 maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the hearing supervisor at the CLEVELAND District hearing section at 1-866-635-3748.

If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O.BOX 182825, Columbus, OH 43218-2825 or fax: (614) 728-9574. Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Bureau of State Hearings 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 15-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.

STATE HEARING DECISION CONTINUATION

Aviso a la Apelante

Esta es la decisión estatal administrativa de su caso. Todos los documentos y materiales presentados como prueba en la vista o de otra manera radicados componen el récord administrativo. El récord administrativo será mantenido por el Ohio Department of Job and Family Services.

Si usted cree que esta decisión estatal administrativa es errónea, usted puede solicitar una apelación administrativa escribiendo al: Ohio Department of Job and Family Services, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 o facsímil (614) 728-9574. Su solicitud debe indicar por qué usted piensa que la decisión administrativa es errónea. Usted puede completar la solicitud de apelación incluida con esta decisión. Su solicitud escrita o formulario de apelación tiene que ser recibido por el Bureau of State Hearings dentro de los 15 días calendario desde la fecha en que esta decisión es expedida. (Si el 15to. día recae sobre un fin de semana o un día feriado, esta fecha límite es extendida al próximo día laborable). Durante el período de 15 días de apelación administrativa, usted o su representante pueden solicitar una copia gratuita del récord administrativo y de la grabación de la vista llamando al Bureau of State Hearings al 1-866-635-3748 (seleccione la opción 1 del menú principal).

Si usted quiere información sobre servicios legales gratuitos pero no sabe el número de su oficina local de servicios legales, usted puede llamar al Ohio State Legal Services Association, gratuitamente, al 1-800-589-5888, para el número local.

Appendix

Appellant's Exhibits:

1. Hearing request (1 page)
2. IRS tax forms (4 pages)

CDJFS Exhibits:

- A. Appeal summary (1 page)
- B. AEIID screen from the CRIS-E system. (1 page)
- C. Healthy Start approval notice and budget computation for Healthy Start Medicaid (MA P/02) (5 pages)
- D. AERRP rental property screens from the CRIS-E system (3 pages)
- E. AEISE self employment screen from the CRIS-E system (1 page)
- F. Healthy Start (MA P/02) denial notice dated 10/15/08 (1 page)

Papers and Effects:

Miscellaneous documents submitted by the agency (26 pages)

Miscellaneous documents submitted by the appellant (6 pages)