

(c) When an LRR who has a capacity to support is providing shelter and household needs, whether in his/her own home or elsewhere, the payment for such arrangement is neither made directly to the client nor stipulated by court order to made in an identifiable cash amount to a third party, the monthly monetary values shall be recognized according to Schedule VI, but shall not exceed the LRR's evaluated capacity.

Schedule VI

Shelter and Household Needs

Number in eligible unit for whom shelter is provided	Monthly monetary value
1	\$100
2	110
3	120
4	130
5	140
6	150
7 or more	160

10:82-3.13 Eligibility of sponsored aliens and deeming of sponsor's income and resources to a sponsored alien

(a) The income and resources of an alien's sponsor shall be deemed to be unearned income and resources of an alien applying for AFDC for the first time after September 30, 1981 for a period of three years following the alien's entry into the United States. For purposes of this section, a sponsor is an individual, a public or private agency or organization who executed an affidavit of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. No income or resources shall be deemed from a sponsor who is (or whose spouse is) receiving AFDC or SSI.

1. These deeming provisions do not apply to any alien who is:
 - i. Admitted as a conditional entrant refugee to the United States as a result of the application of the provision of section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Nationality Act;
 - ii. Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) (in effect after March 31, 1980) of the Immigration and Nationality Act;
 - iii. Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;
 - iv. Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act;

v. A Cuban or Haitian entrant as defined under section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422);

vi. The dependent child of the sponsor or sponsor's spouse; or

vii. An Amerasian admitted under Section 584 of the Foreign Operations Appropriations Act (P.L. 100-202) beginning March 20, 1988.

2. Any alien subject to these deeming provisions who was sponsored by a public or private agency or organization shall be ineligible for public assistance for a period of three years following his or her entry into the United States unless the agency no longer exists or has been declared bankrupt by a court of appropriate jurisdiction.

(b) The amount of income of a sponsor which shall be deemed to be the unearned income of an alien shall be determined as follows:

1. The sponsor's total monthly wages, salaries, and net earnings from self-employment (and that of his or her spouse if living with the sponsor) shall be reduced by 20 percent (not to exceed \$175.00).

2. The amount determined in (b)1 above shall be added to the unearned income of the sponsor (and that of his/her spouse if living with the sponsor).

3. The amount determined in (b)2 above shall be reduced by the following:

- i. The appropriate amount from the Standard of Need (N.J.A.C. 10:82-1.1A) for the sponsor, spouse, and other persons residing in his or her household who are or could be claimed by the sponsor as dependents for determination of Federal personal income tax liability and who are not recipients of AFDC-C, -F or -N;
- ii. Any amounts actually paid by the sponsor or sponsor's spouse to people not living in the household who are or could be claimed by them as dependents to determine their Federal personal income tax liability; and

iii. Actual payments of alimony or child support with respect to individuals not in the household.

4. The remaining amount shall be deemed to the alien and shall be counted as unearned income in the determination of eligibility and grant amount.

5. Medicaid eligibility shall be evaluated without consideration of the deemed income or resources (see N.J.A.C. 10:81-8.22(a)).

(c) The amount of resources of the sponsor (and the sponsor's spouse if living with the sponsor) shall be determined in accordance with the provisions of this subchapter excepting N.J.A.C. 10:82-3.10 through 3.12. The value of the sponsor's resources shall be reduced by \$1,500 and the remaining amount shall be deemed available to the alien

and counted in the determination of eligibility and payment level.

(d) In any case where a person is the sponsor of two or more aliens, the income and resources of the sponsor (and the sponsor's spouse if living with the sponsor), to the extent the income and resources would be deemed to any one of the aliens under the provisions of this section shall be equally divided among the sponsored aliens.

(e) Eligibility and reporting of income and resources: For a period of three years following entry for permanent residence into the United States, the sponsored alien who is not exempt from deeming under (a)1. above shall provide the CWA with any information and documentation necessary to determine the income and resources of the sponsor and the sponsor's spouse (if applicable and if living with the sponsor) that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

1. Change in circumstances and deeming: If the alien's circumstances change during the three-year period such that the alien is no longer exempt from or subject to deeming in accordance with (a)1i through vi above, the CWA shall reflect the resulting change in unearned income in the assistance payment.

2. Ineligibility: A sponsored alien is ineligible in any month in which adequate information concerning the income and resources of the sponsor or sponsor's spouse (if living with the sponsor) is not provided, regardless of the reason the alien failed to provide the information.

3. Un-sponsored family members: Un-sponsored family members are not ineligible if a sponsored alien fails to provide information concerning the sponsor or sponsor's spouse (if living with the sponsor). However, any income the un-sponsored family members actually receive from the sponsor must be reported and considered in determining their eligibility.

(f) Income and resources which are deemed to an alien shall not be considered in determining the need of other un-sponsored members of the alien's family except to the extent the income and resources are actually available. The sponsor's obligatory contribution shall not exceed the per capita share of the eligible unit's adjusted allowance for the alien(s) for whom the sponsor is liable.

(g) Overpayments to aliens: Any individual sponsor of an alien, and the alien, shall be jointly and severally, liable for any overpayment of AFDC made to the alien during the three years after the alien's entry into the United States that was caused by the sponsor's failure to provide correct information under the provisions of this section, except as provided in 1 below.

1. When a sponsor is found to have good cause or to be without fault for not providing information to the CWA, the sponsor will not be held liable for the overpayment and recovery will not be made from this sponsor.

2. Overpayment recovery: An overpayment for which the alien or the sponsor and the alien are liable as described above shall be repaid to the CWA or recovered in accordance with the provisions of N.J.A.C. 10:82-2.19. If the CWA is unable to recover the overpayment through this method, the overpayment shall be withheld from future payments to which the alien or the alien and the individual sponsor are entitled under:

i. Any State administered or supervised program established by the Social Security Act; or

ii. Any cash benefit program administered by the Social Security Administration and established by the Social Security Act.

Emergency new rule, R.1981 d.396, effective September 30, 1981, exp. November 30, 1981.

See: 13 N.J.R. 763(a).

Readopted R.1981 d.519, effective December 31, 1981.

See: 13 N.J.R. 763(a), 14 N.J.R. 102(d).

As amended, R.1982 d.443, effective December 20, 1982.

See: 14 N.J.R. 952(a), 14 N.J.R. 1459(b).

Clarified the situations for which an alien sponsor's income and resources are deemed to the AFDC family.

Amended by emergency rule, R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2837(a).

Section substantially amended.

Readopted, R.1984 d.568, effective November 28, 1984.

See: 16 N.J.R. 2837(a), 16 N.J.R. 3442(a).

Was previously filed as emergency amendment R.1984 d.463.

Amended by R.1985 d.491, effective October 7, 1985.

See: 17 N.J.R. 1523(a), 17 N.J.R. 2440(a).

Substantive changes.

Amended by R.1989 d.497, effective September 18, 1989.

See: 21 N.J.R. 1811(a), 21 N.J.R. 3014(a).

Alien categories expanded; Medicaid eligibility to be evaluated without consideration of deemed income or resources.

Amended by R.1992 d.261, effective June 15, 1992 (operative July 1, 1992).

See: 24 N.J.R. 1194(a), 24 N.J.R. 2258(a).

In (b)3i, deleted Schedule I reference and added reference to Standard of Need and N-segment.

10:82-3.14 Deeming income of parents of adolescent parents

(a) Pursuant to the Tax Reform Act of 1986 (P.L. 99-514), which clarifies certain amendments of the Deficit Reduction Act of 1984 (P.L. 98-369), an adolescent parent is an individual under the age of 18 and who is himself or herself a parent of a dependent child.

(b) When an adolescent parent lives in the same home as his or her own parent(s), the income of such parent(s) shall be considered available to the eligible family in accordance with the following procedures. These rules do not apply if the parent(s) receive(s) SSI or AFDC or if the adolescent parent is categorically eligible for the -N segment only.

1. Reduce the gross earned income (and net income from self-employment) of each employed parent by \$90.00.

2. Add the result to the unearned income of the parent(s).

3. Further reduce the remaining income by the appropriate amount from the Standard of Need (N.J.A.C. 10:82-1.1A) for the parent(s) and any other individuals residing in the household who are or could be claimed by the parent(s) as dependents for Federal personal income tax liability and who are not recipients of AFDC-C, -F or -N.

4. The remaining income shall be further reduced by amounts paid by the parent(s) to individuals not living in the household who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability.

5. Any income remaining shall be reduced by any amounts paid by the parent(s) as alimony or child support to individuals not living in the household.

6. All income remaining shall be counted as unearned income available to the eligible unit and shall be counted toward total income (N.J.A.C. 10:82-1.2) and in the determination of grant amount.

i. In the event the eligible family unit is determined financially ineligible for AFDC cash assistance due to the inclusion of such deemed income, Medicaid eligibility for the dependent child(ren) of the adolescent parent shall be determined in accordance with N.J.A.C. 10:81-8.22(a)3.

(c) If the adolescent parent does not live in the same home as his or her parents, the legally responsible relative provisions of N.J.A.C. 10:82-3.8 apply, and Schedule IV-B of N.J.A.C. 10:82-3.11(d) shall apply.

New Rule as emergency rule, R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2837(a).

Readopted, R.1984 d.568, effective November 28, 1984 (amendment effective December 16, 1984).

See: 16 N.J.R. 2837(a), 16 N.J.R. 3442(a).

Previously filed as emergency rule R.1984 d.463.

Section substantially amended.

Amended by R.1986 d.115, effective April 7, 1986 (operative May 1, 1986).

See: 18 N.J.R. 20(b), 18 N.J.R. 689(b).

Added text in (c) "and Schedule IV-B of N.J.A.C. 10:82-3.11(d) shall apply."

Amended by R.1989 d.497, effective September 18, 1989.

See: 21 N.J.R. 1811(a), 21 N.J.R. 3014(a).

Definition of adolescent parent conformed to the Federal Deficit Reduction Act of 1984.

Amended by R.1992 d.261, effective June 15, 1992 (operative July 1, 1992).

See: 24 N.J.R. 1194(a), 24 N.J.R. 2258(a).

In (b)1, revised reduction amount of gross earned income from "\$75.00" to "\$90.00." In (b)3: added reference to Standard of Need and N-segment. In (b)6, revised N.J.A.C. citation.

Amended by R.1993 d.566, effective November 15, 1993.

See: 25 N.J.R. 2819(a), 25 N.J.R. 5168(a).

Amended by R.1994 d.430, effective August 15, 1994.

See: 26 N.J.R. 1584(a), 26 N.J.R. 3483(a).

Administrative Correction.

See: 26 N.J.R. 4765(a).

Case Notes

Public assistance allowance standard used to determine maternal grandmother's deemed income. *M.R. v. Mercer County Welfare Agency*, 93 N.J.A.R.2d (DEA) 5.

SUBCHAPTER 4. INCOME

10:82-4.1 General provisions

(a) Income must be in cash or in some other form readily available to meet the needs of the eligible unit. Immediate need demonstrated by an otherwise eligible unit will be met by assistance payments until other resources are in fact actually available.

(b) Income may be earned, unearned or in the form of contributions (see N.J.A.C. 10:82-4.2, 4.10, and 4.13).

(c) Earned income shall not include the amount of Earned Income Credit payment which an individual receives.

Amended on an emergency basis, R.1981 d.396, effective September 30, 1981 (operative October 1, 1981), exp. November 30, 1981.

See: 13 N.J.R. 763(a).

Readopted, R.1981 d.519, effective December 31, 1981.

See: 13 N.J.R. 763(a), 14 N.J.R. 102(d).

(c) through (c)3 added.

Amended by R.1982 d.443, effective December 20, 1982.

See: 14 N.J.R. 952(a), 14 N.J.R. 1459(b).

Revised language concerning Earned Income Tax Credits to reflect new Federal rules.

Amended as emergency rule, R.1984 d.463, effective September 28, 1984 (operative October 1, 1984).

See: 16 N.J.R. 2837(a).

Section substantially amended.

Readopted, R.1984 d.568, effective November 28, 1984.

See: 16 N.J.R. 2837(a), 16 N.J.R. 3442(a).

Was previously filed as emergency rule.

Amended by R.1991 d.7, effective January 7, 1991.

See: 22 N.J.R. 2445(a), 23 N.J.R. 93(a).

In (c): added "not" to describe that earned income shall not include the amount of Earned Income Credit payment.

Deleted (c)1-3 which outlined process for including amount of payment.

Case Notes

Income must be readily available to meet needs of eligible unit. *Boyle v. Riti*, 175 N.J.Super. 158, 165, 417 A.2d 1091 (App.Div.1980).

Parent's voluntary rental contribution constitutes household income. *Hudson County Division of Social Services v. R.M.*, 95 N.J.A.R.2d (DEA) 1.

Agency improperly included retroactive social security award to son of petitioner in determining eligibility for benefits. *M.T. v. Salem County Welfare Agency*, 94 N.J.A.R.2d (DEA) 28.

Initial eligibility for AFDC grant must be determined on all income available at any time during the month the application was received (Director's Final Decision) (cited as N.J.A.C. 10:82-2.11). In the *Matter of P.B.*, 8 N.J.A.R. 329 (1980).

Error in income calculation concerning earned income advance payments corrected by credit reduction due to weekly pay basis (citing

former regulation); benefits restored. Bergen Cty. Bd. of Social Services v. P.D., 4 N.J.A.R. 23 (1983).

10:82-4.2 Definition of earned income

(a) Earned income refers to gross income earned by an individual through the receipt of wages, tips, salaries or commissions from activities in which he/she is engaged as an employee or from his/her self-employment. It includes earnings over a period of time for which settlement is made in one payment, as in the sale of farm crops.

(b) When an individual receives shelter in return for performing work duties, the monetary value shall be determined from Schedule VI and included in the total amount of gross earned income. The amount of mandatory payroll deductions to be recognized shall be determined in relation to such total amount.

(c) When an individual is employed in a position where tipping is customary, a daily log or other acceptable documentation of tips received shall be used for income calculation. Tips income calculation shall not be based on estimated information as reported on W-2 forms.

Amended by R.1986 d.318, effective August 4, 1986.
See: 18 N.J.R. 1056(a), 18 N.J.R. 15956(a).

(c) added.

10:82-4.3 Earned income from self-employment

(a) With respect to self-employment, the term "earned income" means the total profit from a business enterprise (such as farming) resulting from a comparison of the gross receipts with the business expenses. Business expenses are those costs directly related to producing the goods or services and without which, the goods or services could not be produced. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods are not business expenses.

1. Persons who are self-employed shall be required to submit evidence of business receipts and expenditures as the basis for a sound estimate of earned income. A reliable, accurate accounting system or the method utilized in reporting to the Internal Revenue Service shall be acceptable for determining net income.

(b) In the case of an individual who is self-employed, it may be clearly evident that the expense of producing the income exceeds the income produced. Assistance shall not be granted or continued if such person persists in operating the business, since this in effect would be using public assistance to subsidize a failing business.

1. New business: A period of up to 24 months from the start of a new business will be considered adequate to demonstrate its potential for self-support. In situations where, in the judgment of the county welfare agency, additional time would enable the business to show a profit, the period may be extended up to 12 months.

2. Business already established: A business which is already established (that is, in operation for at least 36 months) and which shows only marginal profit, either constant or intermittent, will be considered for purposes of this manual to be failing if the profit, averaged over the preceding 12 months, is less than \$375.00 per month.

(c) An individual who is providing extensive personal services along with room and board accommodation to a noneligible individual shall be considered self-employed. An amount of \$125.00 shall be recognized as the business expense and cost of providing room, board and extensive personal services. Any income from this arrangement in excess of \$125.00 shall be recognized as earned income.

Amended by R.1982 d.443, effective December 20, 1982.
See: 14 N.J.R. 952(a), 14 N.J.R. 1459(b).

Clarified term "earned income" and specified what are business expenses.

Amended by R.1986 d.470, effective December 1, 1986.
See: 18 N.J.R. 928(a), 18 N.J.R. 2388(a).

Deleted text in (c) "adult other than a relative" and substituted "a noneligible individual"; also added "An amount of ... extensive personal services."

Case Notes

Existence of failing business; finding that benefits recipient not persisting in operating business but in process of terminating it; benefits continued. J.D. v. Monmouth Cty. Bd. of Social Services, 5 N.J.A.R. 199 (1979).

Support payment received for foster child under Youth Advocate Program is exempt from consideration as income in calculation of AFDC grant. Burlington Cty. Welfare Agency v. L.N., 4 N.J.A.R. 159 (1982).

10:82-4.4 Disregard of earned income in AFDC-C and -F segments

(a) The CWA shall disregard from the earned income of each employed individual, the first \$90.00 of such earnings.

(b) The CWA shall disregard from the total earned income not already disregarded, the first \$30.00 and one-third of the remainder for each employed individual.

1. This disregard shall apply to the earned income of a person for a period of four consecutive months. Once this disregard has applied for a four consecutive month period, it shall not again be applied on behalf of that individual as long as he or she continues to receive AFDC-C, -F or -N. If after receiving this disregard for a four consecutive month period, the individual becomes ineligible for AFDC-C, -F or -N, this disregard shall not be applied to his or her income unless the individual has remained ineligible for AFDC for a period of 12 consecutive months.

2. The \$30.00 and one-third disregard is to be applied only when an amount of earned income remains, after application of the disregard in (a) above, to permit application of this disregard.

2. The exception to this procedure concerns the State registered family day care providers participating in the special Family Development Program (FDP) or REACH initiative which has designated 600 child care provider slots Statewide as a FDP or REACH activity for participants of those programs. The self-employment income earned by those clients participating in that initiative is budgeted according to procedures set forth at N.J.A.C. 10:86-5.8(a) and 10:81-14.21(b) in most instances. Those special budgeting procedures at N.J.A.C. 10:86-5.8(a) and 10:81-14.21(b) are limited to the 600 cases allocated among the counties and the allocation is based on the county's proportionate share of the AFDC population. However, if a child(ren) is born to the participant and the provisions of N.J.A.C. 10:82-1.11 are applicable, then the participant shall have the option of having income budgeted in accordance with N.J.A.C. 10:86-5.8(a) and 10:81-14.21(b) or may have the earned income disregards applied as set forth at N.J.A.C. 10:82-2.8 and 4.4 to include applications of the State earned income disregard.

Amended by R.1989 d.497, effective September 18, 1989.
 See: 21 N.J.R. 1811(a), 21 N.J.R. 3014(a).
 Family day care income references updated.
 Amended by R.1991 d.7, effective January 7, 1991.
 See: 22 N.J.R. 2445(a), 23 N.J.R. 93(a).
 Added new (a)2.
 Amended by R.1992 d.367, effective September 21, 1992 (operative October 1, 1992).
 See: 24 N.J.R. 2155(a), 24 N.J.R. 3352(a).
 Text added to include Family Development Program; reference to 1.11 added.

10:82-4.9 Division of Youth and Family Services

(a) Division of Youth and Family Services' monthly payments for the placement of children in foster care and the clothing allowance shall be considered as equal to the cost of providing such care and maintenance. However, when extra payment is received for special services, such additional amount shall be considered as earned income from self-employment (see N.J.A.C. 10:82-4.3).

(b) For purposes of determining the public assistance allowance, such foster care children are not considered members of the eligible unit.

(c) The basic monthly rates for foster care as established by the Division of Youth and Family Services are as follows:

Age	New Base Rate/Child
0-5	\$256.00 per month
6-9	\$272.00 per month
10-12	\$301.00 per month
13 and over	\$320.00 per month

Amended by R.1980 d.83, effective May 1, 1980.
 See: 12 N.J.R. 29(b), 12 N.J.R. 127(c).
 (c)1-4 was \$110, \$116, \$125 and \$135 respectively.
 Amended by R.1980 d.332, effective August 1, 1980.
 See: 12 N.J.R. 320(c), 12 N.J.R. 484(b).
 (c)2 was six through 10 years.
 (c)3 was 11 through 14 years.
 Amended by R.1982 d.208, effective July 6, 1982.

See: 14 N.J.R. 374(b), 14 N.J.R. 709(c).
 (c)1. changed monthly foster care rate from \$116.00 to \$160.00 for six years and under.
 2. \$122.00 to \$171.00 for six through nine years.
 3. \$132.00 to \$189.00 for 10 through 14 years.
 4. \$144.00 to \$200.00 for 15 years and over.
 Amended by R.1984 d.528, effective November 19, 1984.
 See: 16 N.J.R. 2336(b), 16 N.J.R. 3206(b).
 (c)1. changed monthly foster care rate from \$160.00 to \$176.00.
 2. \$171.00 to \$188.00.
 3. \$189.00 to \$208.00.
 4. \$200.00 to \$220.00.
 Amended by R.1992 d.106, effective March 2, 1992.
 See: 23 N.J.R. 3420(a), 24 N.J.R. 852(a).
 Revised table in subsection (c).
 Amended by R.1992 d.340, effective September 8, 1992.
 See: 24 N.J.R. 2160(a), 24 N.J.R. 3092(a).
 In (c): increased base rate amounts.

Case Notes

Determination of foster child status required recalculation of AFDC grant. Burlington Cty. Welfare Agency v. L.N., 4 N.J.A.R. 159 (1982).

10:82-4.10 Income which is not earned

Net income from noneligible household members (except as stated in N.J.A.C. 10:82-4.3(c)), returns from capital investment such as dividends and interest, benefits and pensions, annuities, contributions from relatives, compensation payments, and so forth, shall be considered as unearned income. All such income shall be recognized in establishing eligibility and in computing the assistance grant.

Amended by R.1984 d.191, effective May 21, 1984.
 See: 15 N.J.R. 2019(a), 16 N.J.R. 1272(a).
 Reference to rental of apartments or housekeeping units deleted.

Case Notes

AFDC applicant entitled to recalculation of eligibility utilizing federal regulations where state regulations under which eligibility was first calculated were held invalid in an unpublished Appellate Division decision. Eherenstorfer v. Div. of Public Welfare, 196 N.J.Super. 405, 483 A.2d 212 (App.Div.1984).

10:82-4.11 Income from roomer-boarders and table boarders

Roomer-boarders or table boarders are non-eligible household members. See N.J.A.C. 10:82-2.3 regarding payment received from such persons.

Amended by R.1985 d.385, effective August 5, 1985.
 See: 17 N.J.R. 1045(a), 17 N.J.R. 1895(b).
 Deleted "Roomers" from text.

Case Notes

Roomer-boarders are non-eligible household members; determination of foster child status versus roomer-boarder status for AFDC grant calculation. Burlington Cty. Welfare Agency v. L.N., 4 N.J.A.R. 159 (1982).

10:82-4.12 Income from apartments, rooms or housekeeping units

(a) When the eligible unit is receiving payment from rental of apartments, rooms or housekeeping units, the net

income shall be determined by deducting the costs of operation and maintenance from the gross rental income received.

1. The costs of operation and maintenance are the greater of:

- i. The actual costs of operation and maintenance, if known or subject to determination, or such reasonable allocation of actual or determined costs as may be indicated according to the space being rented out; or
- ii. The number of rooms, excluding bathrooms, being rented out multiplied by the applicable monthly cost figure as follows:

- (1) With no utilities: \$23.00;
- (2) Including heat only: \$29.00;
- (3) Including all utilities: \$34.00.

2. To determine the total costs, multiply the monthly cost figure by the number of rooms in each apartment or housekeeping unit, excluding any room used solely as a bathroom.

3. Deduct the total cost from the amount of rental income received by the eligible unit. The difference is the net income, to be entered on Form PA-3A or 105.

- i. Rental income shall be treated as earned income except in those situations where rental properties are in the hands of rental agencies; in such cases the income shall be considered as unearned.

(b) When the functions of property management including the collection of rents are performed by a member(s) of the eligible unit, the net is earned income, otherwise it is unearned income.

Amended by R.1984 d.191, effective May 21, 1984.
See: 15 N.J.R. 2019(a), 16 N.J.R. 1272(a).

Reference to income from rooms added; (a)3i added.
Amended by R.1985 d.385, effective August 5, 1985.
See: 17 N.J.R. 1045(a), 17 N.J.R. 1895(b).

(a)1 deleted; new (a)1 inserted.

Case Notes

Absent father's monthly contribution to household rent was unearned income in calculating AFDC benefits. Hudson County v. R.M., 95 N.J.A.R.2d (DEA) 1.

AFDC applicant entitled to recalculation of eligibility utilizing federal regulations where state regulations under which eligibility was first calculated were held invalid in an unpublished Appellate Division decision. Eherenstorfer v. Div. of Public Welfare, 196 N.J.Super. 405, 483 A.2d 212 (App.Div.1984).

10:82-4.13 Contributions of support

(a) Obligatory contributions to the support of one or more members of the eligible unit shall be recognized as unearned income, regardless of whether such contributions are in cash or in kind. (See N.J.A.C. 10:82-3.12, Acceptable forms of support.)

(b) When shelter is being provided by a legally responsible relative (LRR) who has been determined by the CWA IV-A unit to have a capacity to provide support, the actual cash value shall, whenever possible, be determined and recognized as unearned income to the eligible unit. Where the actual value cannot be established, and is not stipulated by a court order to be made in an identifiable cash amount to a third party, the monthly monetary values shall be recognized according to Schedule VI and shall not exceed the LRR's evaluated capacity.

(c) Nonobligatory contributions, other than occasional gifts identified in N.J.A.C. 10:82-3.2(b)8, shall be recognized as unearned income only when made in cash to one or more members of the eligible unit (see also N.J.A.C. 10:82-2.3). This does not apply to LRRs who have an evaluated capacity to support.

Amended by R.1980 d.389, effective November 1, 1980.

See: 12 N.J.R. 414(c), 12 N.J.R. 600(a).

(b) substantially amended.

Amended by R.1986 d.115, effective April 7, 1986 (operative May 1, 1986).

See: 18 N.J.R. 20(b), 18 N.J.R. 689(b).

Added text in (b) "been determined by the CWA IV-A unit to have".

Amended by R.1987 d.285, effective July 20, 1987.

See: 19 N.J.R. 344(a), 19 N.J.R. 1317(a).

Substituted "to" for "of", deleted text "are an available resource".

Case Notes

Monthly mortgage payments made by legally responsible relative. Schmidt v. N.J. Dept. of Institutions and Agencies, 147 N.J.Super. 150, 153, 370 A.2d 892 (App.Div.1977) (regulation cited as ASH § 431.1).

Child support payments received on behalf of non-eligible child could be counted as unearned income with appropriate setoff to eligible unit. J.R. v. Passaic County, 95 N.J.A.R.2d (DEA) 7.

Absent father's monthly contribution to household rent was unearned income in calculating AFDC benefits. Hudson County v. R.M., 95 N.J.A.R.2d (DEA) 1.

Money to pay rent was not unearned income. Bergen County Board of Social Services v. C.L., 92 N.J.A.R.2d (DEA) 9.

Regulations in N.J.A.C. 10:82 regarding loans inapplicable to Food Stamp dispute by provision of N.J.A.C. 10:87-1.5. In re: S.C., 6 N.J.A.R. 333 (1981).

10:82-4.14 Exempt income

(a) Exempt income is not considered in determining eligibility for assistance or in computing the amount of the assistance payments.

(b) Exempt income is as follows:

1. Items set forth in N.J.A.C. 10:82-3.2(b); and

2. Income tax refunds, including Homestead Property Tax Rebates; however, any portion of the actual refund remaining in the month following the month of receipt shall be considered as a resource in that following month.

3. EIC payments are to be considered excluded resources in the month of receipt and the month following the month of receipt.

New Rule, R.1987 d.285, effective July 20, 1987.

i. The EIC is not considered a countable income source in the calculation of AFDC benefits (for all segments -C, -F, and -N).

See: 19 N.J.R. 344(a), 19 N.J.R. 1317(a).

Old rule "Income received at regular intervals" was repealed.

Amended by R.1991 d.7, effective January 7, 1991.

See: 22 N.J.R. 2445(a), 23 N.J.R. 93(a).

In (b)2: added new text changing "except the" to "including" in discussing earned income credit refunds.

Added new (b)2i.-ii.

Amended by R.1994 d.430, effective August 15, 1994.

See: 26 N.J.R. 1584(a), 26 N.J.R. 3483(a).

Case Notes

Regulations in N.J.A.C. 10:82 regarding loans inapplicable to Food Stamp dispute by provision of N.J.A.C. 10:87-1.5. In re: S.C., 6 N.J.A.R. 333 (1981).

10:82-4.15 Nonrecurring earned or unearned lump sum income

(a) When a recipient receives nonrecurring earned or unearned lump sum income, including retroactive R.S.D.I. payments and other monthly benefits, and payments in the nature of a windfall, such as inheritances and lottery winnings, personal injury and worker compensation awards, to the extent it is not earmarked and used for the purpose for which it was paid (for example, monies for back medical bills resulting from accidents or injury, funeral and burial costs, replacement or repair of resources, and so forth), that income will be added together with all other income received that month by the eligible family after application of the disregards in N.J.A.C. 10:82-2.8 and the exemption of income in N.J.A.C. 10:82-2.7. The AFDC assistance payment shall not be considered income. No portion of lump sum or other income may be applied toward the resource limit in the month of its receipt. When this total exceeds the Standard of Need for the eligible family size as set forth at N.J.A.C. 10:82-1.1A, the family will be ineligible for AFDC for the number of full months derived by dividing this total income by the Standard of Need applicable to the eligible family. Any remaining income from this calculation is treated as if it is unearned income received in the first month following the period of ineligibility and is considered available for use at that time. SSI payments shall not be subject to lump sum treatment.

1. For purposes of determining the period of ineligibility, the family includes the AFDC assistance unit and any other individual (such as a stepparent) whose lump sum income caused the unit's income to exceed the allowance standard.

2. The period of ineligibility shall begin in the first month subsequent to the month the nonrecurring income is received or if there is insufficient time for a timely adverse action notice, the following month.

3. In the event the nonrecurring income is not reported timely, the period of ineligibility shall begin at the point the ineligibility would have occurred had the CWA had knowledge of its receipt. The amount of overpayment for the period of ineligibility must be established and recovery made.

4. The period of ineligibility applies to each individual in the eligible family at the time of receipt of the lump sum nonrecurring income. Other family members to whom the penalty does not apply, may be eligible as a separate assistance unit.

5. Once established, the period of ineligibility may be reduced only in the circumstances below. It is the responsibility of the former eligible family to provide all necessary information and documentation required to make a determination to shorten the period of ineligibility. The basis for a determination to shorten the period of ineligibility shall be thoroughly documented in the case record.

i. The period of ineligibility may be recalculated when the AFDC Standard of Need is increased. Upon request of a former AFDC eligible family, the period of ineligibility will be reduced as follows:

(1) The number of months of ineligibility already elapsed shall be multiplied by the Standard of Need used to compute the original period of ineligibility;

(2) The result shall be subtracted from the original lump sum amount; and

(3) The remaining amount shall be divided by the new AFDC Standard of Need for the eligible family size and the result will be the number of months of ineligibility remaining.

ii. The period of ineligibility may be recalculated if the income used to determine such period becomes unavailable to the eligible family for reasons beyond the control of the family members. Acceptable reasons are limited to those below:

(1) Loss or theft of the income: The former eligible family shall thoroughly substantiate an allegation of loss or theft of part or all of the lump sum income and must provide the CWA with evidence that a police report of an incident of theft has been filed. Upon receipt of credible evidence of loss or theft of the income the CWA shall reduce the amount of the original lump sum by the amount of the loss or theft. Loss of the income, for the purposes of this section, shall include circumstances where a member of the former eligible family has absconded with the funds.

(2) Fire, flood, natural disaster, or other emergent situation: When the former eligible family incurs and pays verifiable expenses due to an emergent situation, for which, had the family been eligible, emergency assistance would have been authorized under N.J.A.C. 10:82-5.10, those expenses shall reduce the amount of the original lump sum.

iii. The period of ineligibility may be reduced if the family incurs, becomes responsible for, and pays medical expenses during the period of ineligibility. In such cases the original income used to compute the period of ineligibility shall be offset by verified medical expen-

ditures. For this purpose, allowable medical expenses are as follows:

(1) Medical and dental care: Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State law or other qualified health professional;

(2) Hospitalization: Hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for an individual who was an eligible family member immediately prior to entering a hospital or nursing home, provided by a facility recognized by the State;

(3) Prescription drugs: Prescription drugs when prescribed by a licensed practitioner authorized under State law and other over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies, sick-room equipment (including rental) or other prescribed equipment;

(4) Health and hospital insurance: Health and hospitalization insurance policy premiums;

(5) Medicare premiums: Medicare premiums related to coverage under Title XVIII of the Social Security Act;

(6) Dentures, hearing aids, and prosthetics: Dentures, hearing aids, and prosthetics;

(7) Seeing eye or hearing dog: Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills;

(8) Eye glasses: Eye glasses prescribed by a physician skilled in eye disease or by an optometrist;

(9) Transportation and lodging: Reasonable cost of transportation and lodging to obtain medical treatment or services; and

(10) Attendant care: Maintaining an attendant, homemaker, home health aide, housekeeper, or child care services, necessary because of age, infirmity, or illness.

6. In all instances, where the previously eligible family has been terminated due to receipt of lump sum income, the notice of adverse action shall include:

- i. The reason for the family's termination from AFDC;
- ii. The duration of the period of ineligibility;
- iii. The earliest date the ineligible family may apply to reopen their AFDC case; and
- iv. A statement concerning possible reduction of the ineligibility period (see (a)5ii or 5iii above).

(b) For the AFDC and Medicaid programs, lump sum income and the resulting period of ineligibility shall be treated in accordance with the following provisions:

1. AFDC program: Only those individuals actually receiving AFDC cash assistance or deemed to be receiving AFDC are considered to be AFDC recipients. An individual receiving Medicaid Only or Medicaid Special is not considered an AFDC recipient. Therefore, a period of ineligibility imposed on a recipient of Medicaid Only or Medicaid Special benefits due to the receipt of lump sum income cannot be carried over into the AFDC program, and cannot cause ineligibility for either AFDC or associated Medicaid benefits, if such individual applies and is determined eligible for AFDC cash assistance.

2. Medicaid program: Eligibility for Medicaid Only and Medicaid Special benefits, with respect to the receipt of lump sum income and application of a period of ineligibility, is determined in accordance with AFDC regulations. Thus, an AFDC recipient determined ineligible for AFDC and Medicaid for a certain number of months due to the receipt of lump sum income shall continue to be ineligible if he or she applies for Medicaid Only or Medicaid Special benefits during the period of ineligibility. However, an individual receiving Medicaid Only or Medicaid Special benefits, who is ineligible for such benefits due to the receipt of lump sum income, shall not be required to complete the period of ineligibility if subsequently determined eligible for AFDC.

i. Example: An employed woman applies for AFDC for herself and her two children. Upon learning that the family is eligible for only a \$12.00 AFDC grant, she elects to forego the AFDC grant and to receive Medicaid Only. The next month, a family member receives a \$2,500 lump sum payment, causing ineligibility for Medicaid benefits for a period of eight months. Five months later the woman loses her job; the family applies for AFDC and is determined eligible. The family will not be required to complete the remaining three months of ineligibility for Medicaid caused by the receipt of lump sum income, because a period of ineligibility imposed on a recipient of Medicaid Only cannot be carried over into the AFDC program.

ii. Example: A pregnant woman applies for Medicaid Special benefits on behalf of her unborn child. Three months before the child is born, she receives a \$1,900 lump sum payment, causing ineligibility for Medicaid benefits for a period of six months. Within four months, she has given birth to her child. She applies for AFDC for herself and her child and is determined eligible. The mother and child will be eligible for Medicaid effective with the date of eligibility for AFDC. The mother will not be required to complete the remaining two months of ineligibility for Medicaid caused by the receipt of lump sum income, because a period of ineligibility imposed on a recipient of Medicaid Special cannot be carried over into the AFDC program.