

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-04
FINANCIAL ELIGIBILITY REQUIREMENTS**

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1240-01-04-.01 FINANCIAL ELIGIBILITY REQUIREMENTS. This section provides the policies for consideration of resources and income for all household/aid groups (including legally responsible grantee/relatives) applying for Food Stamps and/or Aid to families with Dependent Children. If any nonfinancial criterion is not met, the application may be denied without a determination of financial eligibility.

Authority: TCA § 14-8-106, 14-27-104; 7 CFR 273.8, 273.9, 273.10, and 273.11. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980.

1240-01-04-.02 RESOURCE ELIGIBILITY STANDARDS - FOOD STAMPS/AFDC. Eligibility shall exist if the value of nonexempt resource, both liquid and non-liquid assets, for the HH/AG do not exceed:

- (1) Food Stamps Only.
 - (a) \$3,000 for all Food Stamps households with at least one member who is age 60 or older.
 - (b) \$2,000 for all other Food Stamp households.
- (2) AFDC Only
 - (a) Non-exempt resources of an AFDC aid group, liquid and non-liquid, may not exceed \$1,000. Resources in excess of this limit result in ineligibility. A person receiving SSI benefits cannot be included in the AFDC aid group. The SSI recipient's income and resources, including the SSI payment, are disregarded in determining eligibility for the other AFDC family members.
 - (b) Reserved for future use.

(Rule 1240-01-04-.02, continued)

Authority: TCA §§14-4-102, 14-8-104, 14-3-106, and 14-27-104; PL 97-35 and PL 99-198; 7 CFR 273.7, 273.8 and 273.9; 45 CFR 224.20. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Amendment filed December 3, 1980; effective January 19, 1981. Amendment filed December 10, 1981; effective January 25, 1982. Amendment filed April 15, 1986; effective July 14, 1986.

1240-01-04-.03 APPLICATION OF RESOURCE LIMITS - FOOD STAMPS/AFDC. The HH/AG shall report all resources at the time of application. The HH/AG's resources at the time the application is filed and at each redetermination/recertification shall be used to determine if the HH/AG's resources meet the eligibility standard.

Authority: TCA §§14-8-106, 14-27-104; PL 97-35; 7 CFR 273.8; 45 CFR 233.20. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982.

1240-01-04-.04 VERIFICATION OF RESOURCES - FOOD STAMPS/AFDC.

- (1) Food Stamps Only. The worker shall verify resource information for any household if the household indicates either on the application or during the interview that it has liquid resources prior to approval.
- (2) AFDC Only. The value of resources will be verified prior to approval and at each redetermination of eligibility.

Authority: TCA §§14-8-107 and 14-8-109; PL 97-35. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed August 17, 1982; effective September 16, 1982.

1240-01-04-.05 EXEMPT RESOURCES. In determining the resources of an HH/AG, only the following shall be exempt:

- (1) Home and Lot.
 - (a) Food Stamps Only. The home and surrounding property which is not separated from the home by intervening property owned by others is exempt. Public right of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property, (regardless of location), shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness or uninhabitability caused by casualty or natural disaster if the household intends to return. If the household does not already own a home, the value of a lot purchased to build a home on is excluded. If the new home is partially completed, the value of it is excluded.
 - (b) AFDC Only. The home owned or being purchased and occupied by the AFDC aid group and the property surrounding the home which is not separated from the home by intervening property owned by others is exempt. Public rights of way (such as roads and/or other public easements) which run through the property surrounding the home do not affect its classification as homestead property. Temporary absences from the home do not affect the classification and/or exemption of the home if the aid group has not acquired another home and intends to return to the exempted home at a specified time. Proceeds from the sale of homestead property or from a recovery due to a casualty/disaster loss of same, will remain exempt for three months following receipt of said proceeds if the Aid Group expresses an intent to reinvest in the same homestead or in a substitute homestead.
- (2) Other Property - AFDC Only.

(Rule 1240-01-04-.05, continued)

- (a) Basic Maintenance Items. Excluded are basic maintenance items essential to daily living such as clothing, furniture, appliances, and other similar essential household goods and equipment of limited value.
 - (b) Certain Real Property. Real property which is not exempted as a homestead pursuant to 1240-01-04-.05(1)(b) is exempt as a resource *if* the recipient is making a good faith effort to sell and signs an agreement to repay the AFDC grant received during the period of exemption. Exemption of the property, not to exceed nine (9) months, causes an overpayment *except* when the *net* proceeds plus other resources at the beginning of the exclusion period are within the resource limit.

Repayment of the grant is made from the sale proceeds not to exceed the total of the net proceeds. Any proceeds remaining after repayment of the grant is considered as a resource.

If assistance is terminated for any reason prior to the end of the nine-month exemption period, the assistance unit has an overpayment subject to the usual collection procedures.
 - (c) Burial Plots. One burial plot for each family member may be excluded from consideration as a resource.
- (3) Household Goods and Personal Effects—Food Stamps Only. the value of household goods and personal effects, including one burial plot per household member per ineligible alien or disqualified household member.
 - (4) Insurance Policies - Food Stamps Only. Cash value of life insurance policies shall not be considered in determining eligibility or benefit level.
 - (5) Exempt Vehicles
 - (a) Food Stamps Only. See rule 1240-01-04-.10 regarding exempt vehicles.
 - (b) AFDC Only. One licensed and operable family motor vehicle in which the equity value is \$1,500 or less. Equity is determined by deducting the amount of encumbrances from the fair market value. Fair market value is the value listed in the N.A.D.A. Used Car Guide. If a vehicle is not listed in the N.A.D.A. , or if its value is claimed to be different from the value listed, its value may be taken as that stated by one reputable automobile dealer.
 - (6) Burial Policies, Burial Agreements, and Burial Plots. These shall be considered exempt for resource purposes.
 - (7) Pension Funds. The cash value of pension plans or funds shall be exempt. (Food Stamps Only): Excludes any funds in a plan, contract, or account described in sections 401(a), 403(a), 403(b), 408, 408A, 457(b), and 501(c)(18) of the Internal Revenue Code of 1986 and the value of funds in a Federal Thrift Savings Plan as provided for in 5 U.S.C. 8439. Also the exclusion of any successor retirement accounts that are exempt from Federal taxes.
 - (8) Income Producing Property - Food Stamps Only
 - (a) Income producing property is defined as:
 - 1. Property which annually produces income consistent with the prevailing rate of return for similar property in the area, even if only used on a seasonal basis;

(Rule 1240-01-04-.05, continued)

2. Property such as farm land and rental homes (except certain vacation homes) which is essential to the employment or the self-employment of an HH member;
 3. Rental homes (including unattached trailers or mobile homes not being used as the homeplace) which are used by the HH for vacation purposes at some time during the year but which annually produce income consistent with the prevailing rate of return for similar property in the area, if not income producing, the equity value is counted;
 4. Work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of an HH member; and
 5. Installment contracts for the sale of land or building if the contract or agreement is producing income consistent with the prevailing rate of return. The exclusion shall also apply to the value of the property sold under contract or held as security in exchange for a purchase price consistent with the selling price of similar property in the area.
- (b) Determining prevailing rate of return:
1. When it is necessary to determine if property is producing income consistent with other similar property in the area, the worker may contact local realtors, county trustee's office, the Small Business Administration, Farmer's Home Administration, or similar sources to determine the prevailing rate of return in the area.
 2. If the property is not producing income consistent with similar property in the area, such property would be counted as a resource.
 3. Property exempt as essential to employment need not be producing income consistent with its fair market value.
- (9) Inaccessible Resources - Food Stamps/AFDC. The cash value of resources which are not currently accessible to the aid group or which cannot reasonably be brought to a condition of current availability are exempted. Nonavailability of such resources must be determined prior to approval and at each redetermination of eligibility. Also, in both programs, resources whose cash value is not accessible to the HH are exempt, such as, but not limited to: Security deposits on rental property or utilities; Property in probate; Real property which the HH is making a good faith effort to sell at a reasonable price and which has not been sold; and jointly owned resources determined to be inaccessible. In both programs, the worker may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement or public sale in a newspaper of general circulation or a listing with a real estate broker.
- (a) Irrevocable Trust Funds
1. Food Stamps Only
 - (i) Any funds in a trust or transferred to a trust, and the income produced by the trust to the extent it is not available to the household shall be considered inaccessible to the household if:

(Rule 1240-01-04-.05, continued)

- (I) The trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;
 - (II) Trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and
 - (III) The funds held in irrevocable trusts are either:
 - I. Established from the household's own funds if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust; or
 - II. Established from non-household funds by a non-household member; and the trustee administering the funds is either:
 - A. A court, or an institution, corporation, or organization which is not under the direction or ownership of any household member;
 - B. An individual appointed by the court who has court imposed limitations placed on his/her use of the funds which meet the requirements of the provisions above.
 - (ii) Reserved for future use
2. AFDC Only
- (i) When a person applying for or receiving AFDC has a trust which is claimed as inaccessible, he/she (or in the case of a child, his/her parent or other relative caring for him/her) will have 60 days from the date of application/redetermination or from the time the trust is reported/discovered to attempt to have this resource made currently available. The following are exceptions:
 - (I) If the trust is established by a will, the terms of the trust will be followed as they stand.
 - (II) If a trust is producing regular income which is available to the beneficiary, the body of the trust will not be considered a currently available resource, but the income will be counted in the determination of eligibility/amount of payment.
 - (ii) As a condition of eligibility, the grantee/relative must be willing to seek to have the trust made currently available within 60 days. Failure to do so renders the grantee/relative ineligible to be included as a member of the aid group.
 - (iii) If the person has followed through, assistance may be continued pending further orders of the court. The court's decision, as written in a new or amended order, will be binding. If all or part of the funds in trust are made available at any time, they must be taken into account when received.

(Rule 1240-01-04-.05, continued)

- (b) Prepaid Burial Agreements or Burial Trusts.
 - 1. Food Stamps Only. Prepaid burial agreements are a form of trust fund, and as such, their availability depends on whether they are revocable or irrevocable. Any "pre-need" burial agreement purchased 7/01/81 or later is excluded as a resource if the contract contains the following statement on its face:

"This contract is irrevocable and the funds paid hereunder are not nonrefundable."

In addition, contracts established before 7/02/81, which were previously required to be revocable under state law, may be exempted if a chancery, circuit, probate, or general sessions court declares them to be irrevocable. Verification of the court's declaration must be obtained.
 - 2. AFDC Only. Exclude one burial agreement with equity value of \$1500 or less (whether revocable or irrevocable) per family member as a resource.
 - (c) Equipment - AFDC Only. Equipment used in a self-employment enterprise used to produce income is considered as inaccessible resource.
 - (d) Food Stamps Only - Non-liquid assets against which a lien or security agreement has been placed for a business loan are considered inaccessible. Such assets are excludable only when the lien or security agreement with the creditor specifically prohibits the household from selling the asset(s).
- (10) Resources Excluded by Law. The following types of payments are excluded by law from considerations as income or as resources in the determination of eligibility/level of benefit:
- (a) Food Stamps and AFDC.
 - 1. Relocation Assistance Payments. Relocation payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are excluded.
 - 2. Alaska Native Claims Payments and Sac and Fox Indian Claim Payments. Payments received under the Alaska Native Claims Settlement Act, PL 92-203, §21 (a) and the Sac and Fox Indian Claims Agreement PL 94-189 are excluded.
 - 3. Payments for Certain Indian Tribes. Payments derived from certain submarginal lands of the United States which are held in trust for certain Indian Tribes are excluded.
 - 4. Jobs Training and Partnership Act. Payments received pursuant to the Jobs Training and Partnership Act (JTPA).
 - 5. Payments from Disposition of Funds of Ottawa Indians. Payments made to the Grande River of Ottawa Indians under PL 94-540 are excluded.
 - 6. Payments Under Title IV of the Higher Education Act.

Federal assistance provided by a program funded in whole or in part under Title IV of the Higher Education Act is excluded. Such payments include, but are not limited to, Pell grants, Supplemental Education Opportunity (SEOG) grants, the

(Rule 1240-01-04-.05, continued)

PLUS Program grants, the National Direct Student Loans (NDSL), the Byrd Honor Scholarships, and college work study funds.

7. Energy Assistance Payments.

(i) Food Stamps Only. Any payments made under federal law for the purpose of energy assistance are not counted. To be excluded, the payments must be clearly designated as energy assistance by the entity providing the funds. Payments for the purpose of energy assistance made through State and/or local funding are counted.

(ii) AFDC Only. Any payments or allowances made by any federal, state or local organization for the purpose of energy assistance are not counted.

(b) Food Stamps Only.

1. HUD retroactive tax and utility cost subsidy payments issued pursuant to settlement of Underwood vs. Harris (Civil No. 78-0469 D.D.C.) against HUD for the month in which payment was received and for the following month.

2. Payments of relocation assistance to member(s) of the Navajo and Hopi Indian Tribes under PL 93-531.

3. Benefits from Food Programs. The following benefits from food programs are excluded:

(i) WIC

(ii) Value of food stamps

(iii) Value of school lunches or other school fund programs

(c) AFDC Only

1. Domestic Volunteer Service Act. Payments received by volunteers for services performed in programs stipulated in the Domestic Volunteer Service Act of 1973 as amended are excluded.

2. Payments from Crisis Intervention Program. One-time payments to assist with utility costs from the Crisis Intervention Program are excluded.

(11) Benefits from Food Programs - AFDC Only

(a) WIC

(b) Value of food stamps

(c) Value of school lunches or other school food programs

(12) Resources of Non-Household Members - Food Stamps Only. The resources belonging to non-household members are excluded from consideration except for the following excluded household members:

(a) Ineligible Aliens/Individuals with Questionable Citizenship. Individuals who do not meet the citizenship or eligible alien status. The resources of these individuals shall be counted in their entirety to the remaining household members.

(Rule 1240-01-04-.05, continued)

- (b) **SSN Disqualified.** Individuals disqualified from participation in the program for failure to provide or apply for an SSN. The resources of these individuals shall be counted in their entirety to the remaining household members.
 - (c) **Intentional Program Violation Disqualified.** The resources of these individuals shall continue to count in their entirety to the remaining household members.
- (13) **Resources of Non-AG Members - Cash Assistance and Food Stamps.** Resources of individuals disqualified because of an intentional program violation or an employment and training program sanction are counted in their entirety to the remaining AG members.
- (14) **Agent Orange Settlement Payments - Cash Assistance and Food Stamps.** Agent Orange settlement payments are excluded as income and resources for both programs. Lump sum payments received by survivors of deceased veterans are also excluded.
- (15) **Allowances paid to children of Vietnam veterans born with Spina Bifida** are excluded as resources in the Food Stamp and Cash Assistance programs.
- (16) **Individual Development Accounts (IDA).** Up to five thousand dollars (\$5,000) deposited in an Individual Development Account by a Families First recipient is excluded as a resource as long as the individual continues to receive Families First and maintains the funds in the IDA.
- (17) **Dedicated Accounts for SSI Children,** set up in accordance with Section 213 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are excluded as resources.
- (18) **Other Exempt Resources.**
 - (a) **Earmarked Resources.** Exempt any governmental payments which are designated for the restoration of a home which has been damaged in a disaster if the household is subject to a legal sanction if the funds are not used as intended.
 - (b) **Prorated Income.** Resources, such as those of students or self-employed persons, which have been prorated and counted as income, are exempt.
 - (c) **Indian Lands.** Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs are exempt.
 - (d) **Livestock and poultry consumed as home produce.**
- (19) **Handling of Excluded Funds**
 - (a) **Excluded liquid assets that are kept in a separate account and that are not commingled in an account with non-excluded funds shall retain their exclusion as a resource for an unlimited period of time.**
 - (b) **Resources which have been excluded as prorated income that are commingled in an account with non-excluded funds shall retain their exclusion for the period of time over which they have been prorated as income (i.e., they will not be counted as both income and resources during the same period of time).**
 - (c) **All other excluded monies which are commingled with non-excluded funds shall retain their exemption for six (6) months from the date they are commingled. After six (6) months all funds in the commingled account other than those in (a) above are counted as a resource.**
- (20) **Educational Savings Accounts – Food Stamps**

(Rule 1240-01-04-.05, continued)

- (a) Educational savings accounts under Section 529 of the Internal Revenue Code of 1986 qualified tuition programs, shall be exempt.
- (b) Coverdell Education Savings Accounts (Section 530 of the Internal Revenue Code) shall be exempt.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 14-8-104, 14-8-106, 14-27-104, 14-27-106, 71-1-105, 71-5-304, 71-5-306, 71-3-165, 7 U.S.C.A § 2014(g); 7 CFR 273.8(c)(e)(14), 273.8(e)(15)(h)(1)(iv), 273.9, 273.9(b)(1)(v), 273.10, 273.11(c), 45 CFR 233.20, PL 98-369 §2625, PL 98-369 §2626, PL 97-35, and PL 110-246, Title IV § 4104(b). **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Amendment filed November 6, 1980; effective December 22, 1980. Amendment filed March 16, 1981; effective June 29, 1981. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed August 17, 1982; effective September 16, 1982. Amendment filed July 20, 1982; effective October 13, 1982. Amendment filed March 28, 1983; effective April 27, 1983. Amendment filed May 17, 1983; effective June 16, 1983. Amendment filed March 12, 1984; effective June 12, 1984. Amendment filed January 7, 1985; effective February 6, 1985. Amendment filed April 30, 1985; effective July 14, 1985. Amendment filed November 6, 1987; effective February 28, 1988. Amendment filed February 12, 1988; effective May 29, 1988. Amendment filed September 18, 2001; effective December 2, 2001. Amendments filed December 30, 2008; effective March 15, 2009.

1240-01-04-.06 REPEALED.

Authority: TCA §14-8-104, 14-8-106, 14-27-104; 7 CFR 273.8; 45 CFR 233.20. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal filed December 10, 1981; effective January 25, 1982.

1240-01-04-.07 COUNTABLE RESOURCES - FOOD STAMPS/AFDC. The fair market value of liquid resources and the fair market value less encumbrances (equity) of non-liquid resources are used to determine the total countable resources available to the HH/AG.

- (1) The following are counted as liquid resources for Food Stamps and AFDC unless otherwise specified:
 - (a) Cash on hand
 - (b) A checking or savings account in a bank or other savings institution including credit union. (In a checking account, only that amount which exceeds known monthly income is counted as a resource.)
 - (c) Savings certificates
 - (d) Stocks or bonds
 - (e) Burial Agreements-See Section 1240-01-04-.05 (9)(b)
 - 1. If the burial agreement was purchased prior to 7/01/81 and has not been declared irrevocable by court, it will be considered a resource.
 - 2. if purchased after 7/01/81 and the contract does not contain a statement that the "contract is irrevocable" the agreement must be counted as a resource.
 - (f) Proceeds from sale of property if received as a lump sum.

(Rule 1240-01-04-.07, continued)

1. AFDC Only. Lump sum proceeds from the sale of exempt property will also be exempt for a period of up to three months following the month of sale if intended to be used to replace the exempt resource.
 - (g) Proceeds from estate settlement if received as a lump sum.
 - (h) Other Non-recurring Lump Sum/Retroactive Payments
 1. Food Stamps Only - Lump sum liquid resources such as the following are considered a resource in the month received, unless specifically excluded from consideration as a resource by other federal laws:
 - (i) Retroactive Payments such as RSDI, Veterans Benefits, Unemployment Compensation and Workers Compensation
 - (ii) Windfalls, cash gifts, prizes and awards
 - (iii) Income tax refunds
 - (iv) Tax rebates and credits
 - (v) Refunds of security deposits on rental property or utilities
 - (vi) Vacation pay withdrawn in a lump sum payment by an employee who has been laid off. If the employee chooses not to withdraw his/her vacation pay and leaves the vacation time with the employer in case he/she is called back to work, the value of the vacation pay is counted as a resource.
 2. AFDC Only
 - (i) Income tax refunds are a non-recurring lump sum payment that is considered a resource in the month received, and thereafter if retained.
 - (ii) Non-recurring lump sum payments countable as income (such as retroactive RSDI, VA, etc.) are considered a resource only if retained beyond the benefit month(s) for which they are budgeted as income.
- (2) Countable Non-liquid Resources
 - (a) Food Stamps/AFDC. Unless otherwise exempt, the equity in all non-liquid resources shall be counted as a resource. Examples are as follows:
 1. Non-exempt licensed and unlicensed vehicles
 2. Non-exempt buildings
 3. Non-exempt land
 4. Recreational properties
 5. Property such as boats, vacation homes and mobile homes, or other property not specifically excluded.
 - (b) AFDC Only
 1. Non-exempt personal property

(Rule 1240-01-04-.07, continued)

2. Insurance policies
 - (i) The total cash value of all policies is considered in relation to the personal property reserve.
 - (ii) The owner of insurance is considered to be the insured person named in the policy, unless otherwise specified by the insurance company.

Authority: TCA §§14-8-104, 14-8-106, 14-27-104; PL 97-35; 45 CFR 224.50; 7 CFR 273.8(c); and CFR 244.50. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Repeal and new rule filed July 20, 1982; effective October 13, 1982. Amendment filed March 28, 1983; effective April 27, 1983. Amendment filed December 2, 1983; effective January 1, 1984. Amendment filed April 30, 1985; effective July 14, 1985. Amendment filed October 9, 1987; effective January 27, 1988.

1240-01-04-.08 DOCUMENTING CASE FILE - FOOD STAMPS/AFDC.

- (1) Verification of Resources. If verification was required because of questionable information, the worker must document why it was considered questionable and what documents were used to resolve it.
- (2) Actions on Cases Receiving One-Time Payments
 - (a) Case File Review. Upon obtaining information that a certified HH/AG has received one-time payment, the worker shall review the case file in order to determine if the amount received, in addition to the amount of resources listed on the application, will exceed resource limitation for the particular HH/AG.
 - (b) If Resources Do Not Exceed Limits in 1240-01-04-.02. If the amount does not exceed the limitation, the case file should be annotated to document the information received and the household should be notified in accordance with the procedures for reported changes.
 - (c) If Resources Exceed Limits in 1240-01-04-.02 - Food Stamps Only. If the total amount exceeds the allowable resources limitation, the HH/AG should be given an opportunity to update its entire resource statement. If it declines to do so or the amount of resources still exceeds the limit, the worker shall take action to terminate the HH's/AG's certification.
 - (d) If Resources Exceed Limits in 1240-01-04-.02 - AFDC Only.
 1. If the amount of a non-recurring lump sum payment exceeds DHS personal property reserve limits for the aid group, the A/R must be notified that the possession of the resource causes the aid group to be ineligible but that he/she may reapply as soon as the resource is within the limit for the aid group. Action to close the case will be initiated. However, at the point that the A/R reapplies and the resources are within appropriate limits, eligibility again exists (if all other eligibility requirements continue to be met). In some instances assistance will continue uninterrupted even though a client received a substantial lump sum payment.

Authority: TCA §14-8-106 and PL 97-35. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980; Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed October 9, 1987; effective January 27, 1988.

1240-01-04-.09 SPECIAL RESOURCE SITUATIONS - FOOD STAMPS/AFDC.

(1) Jointly Owned Resources.

- (a) Resources owned jointly with any other person(s) outside the HH/AG shall be considered available in their entirety to that person(s) and to the HH/AG, unless it can be demonstrated that the resources are inaccessible to the HH/AG. If the HH/AG can demonstrate that it has access to only a portion of the resource shall be counted toward the HH/AG resource level. The resource shall be considered inaccessible to the HH/AG if the resources cannot be practically subdivided and access to the value of the resource is dependent on the agreement of the joint owner who refuses to comply.

Resources owned jointly with any other person(s) outside of the HH/AG shall be considered totally inaccessible to the HH/AG if the resource cannot practically be subdivided and the HH/AG's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For Food Stamp purposes ineligible aliens or disqualified individuals residing with the household shall be considered house hold members.

1. Exception: Food Stamps. Resources shall be considered inaccessible to persons residing in shelters for battered women as defined in 1240-01-08-(74), if the resources are jointly owned by such persons and by members of their former household; and the shelter resident's access to the value of the resource is dependent on the agreement of a joint owner who still resides in the former household.

- (b) Real property that the HH/AG cannot sell because it only has a life estate, use rights, lifetime occupancy, or dower rights shall also be considered inaccessible to the HH/AG.

(2) Resources of Legally Responsible Relatives - AFDC Only.

- (a) The availability of a resource often depends on the individual's legal right to share property which may be in the possession of another person. Therefore, the following regulations apply to the treatment of resources of legally responsible relatives of an A/R who live in the home with him/her.

1. Resources of a Spouse

- (i) Real and personal property belonging to the spouse of an applicant or recipient is to receive the same consideration as if owned by the applicant or recipient, except real and personal property belonging exclusively to an SSI beneficiary is disregarded in determining the eligibility of his/her spouse to receive AFDC. If property is jointly owned, that portion of the property which belongs to the SSI beneficiary is disregarded. If the proportionate share cannot be determined, then the property is considered available in its entirety to each owner.
- (ii) In stepparent situations, real and personal property belonging to a stepparent is considered available to his/her spouse but the value of the property cannot be considered available to the aid group unless the spouse or stepparent is included in the aid group.

2. Minor Recipients

- (i) When a minor in the aid group lives with his/her parents:

(Rule 1240-01-04-.09, continued)

- (I) The resources of the parent are considered available to the child. The resources belonging exclusively to an SSI beneficiary are disregarded in determining eligibility for his/her children. If resources are jointly owned, that portion of the resources which belongs to the SSI beneficiary is disregarded. If the proportionate share cannot be determined, the property is considered available in its entirety to each owner.
 - (II) The resources of a child are not considered available to his/her parents or siblings unless the child is included in the aid group. However, if the child's resource exceeds the maximum allowance for one person, he/she cannot be included in the aid group unless it is established that the resource is not or cannot be made available to meet the child's maintenance needs.
 - (ii) When the A/R is a minor living with a relative other than the parent, the resources of the relative are not considered available to the A/R or the A/R's child.
3. Other Relatives. The resources of relatives other than a parent are not considered available to the child(ren) in the aid group unless the relative is included in the aid group. If resources of a relative exceed defined limits, neither the grantee relative nor the grantee relative's spouse may be included in the aid group.

Authority: TCA §14-8-106; PL 97-35. **Administrative History:** Original rule filed August 15, 1980; effective September 19, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed April 2, 1982; effective May 17, 1982. Amendment filed August 17, 1982; effective September 16, 1982

1240-01-04-.10 TREATMENT OF VEHICLES.

- (1) Food Stamps Only. If a household has only one licensed vehicle and the fair market value of that vehicle is \$4,650 or less, such vehicle is exempt. However, if the value exceeds \$4,650 or if the household has more than one vehicle, the following must be determined:
 - (a) Totally Exempt Vehicles.
 - 1. The entire value of any licensed vehicle shall be exempt if:
 - (i) The vehicle is used primarily (over 50 percent of the time the vehicle is used) for income producing purposes (such as, but not limited to, a taxi, tractor, or fishing boat).
 - (ii) The vehicle annually produces income consistent with the prevailing rate of return of similarly used vehicles in the area, even if used only on a seasonal basis.
 - (iii) The vehicle is necessary for long distance travel other than daily commuting that is essential to the employment of a household member (or ineligible alien or disqualified person whose resources are being considered available to the household). For example, the vehicle of a traveling salesperson or a migrant farm worker following the work stream.
 - (iv) The vehicle used is used as the household's home and, therefore, excluded under 1240-01-04-.05(I) of this section.

(Rule 1240-01-04-.10, continued)

- (v) The vehicle is necessary to transport a physically disabled household member (or ineligible alien or disqualified person whose resources are being considered available to the household) regardless of the purpose of such transportation (limited to one vehicle per physically disabled person). A vehicle necessary to transport a physically disabled person need not have special equipment or be used primarily by the physically disabled person.
 - (vi) Any other vehicle used to transport household members (or an ineligible alien or disqualified household member whose resources are being considered available to the household) to and from employment or to and from training or education which is preparatory to employment in compliance with the job search criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of unemployment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded shall be attributed toward the household's resource level.
2. The exclusion in parts (i) through (v) above will apply when the vehicle is not in use because of temporary unemployment such as when a taxi driver is ill and cannot work or when a fishing boat is frozen and cannot be used.
 3. Property, real or personal, is excludable to the extent that it is directly related to the maintenance or use of a vehicle that is excluded because it is income producing or necessary to transport a physically disabled person (refer to 1. above). Only that portion of real property determined necessary for the maintenance or use of the vehicle is excludable.
- (b) Family Vehicle. One licensed vehicle, in addition to those exempted in 1240-01-04-.10(1)(a), is exempt if the fair market value is \$4,650 or less. If the fair market value is more than \$4,650, the amount exceeding \$4,650 is considered a resource.
 - (c) Vehicle for Employment/Training. Any other licensed vehicles are exempt if they are used to transport household members to and from employment or to and from training or education which is preparatory to employment, or to seek employment in compliance with the job search criteria and if the fair market value of each vehicle is \$4,650 or less. If the fair market value is more than \$4,650, the amount exceeding \$4,650 is considered a resource. A vehicle customarily used to commute to and from employment shall be covered by this provision during temporary periods of unemployment.
 - (d) Other Vehicles. For all other licensed vehicles, count the fair market value over \$4,650 or the equity, whichever is higher.
- (2) AFDC Only.
- (a) Exempt - The equity, up to \$1,500, of one licensed vehicle per AFDC aid group is exempt.
 - (b) Non-Exempt - Equity value over \$1,500, of one licensed vehicle, and equity value of all other vehicles owned by the aid group or responsible relative in the home will be counted as part of the aid group's resources.
 - (c) One unlicensed vehicle on those Indian Reservations which do not require vehicles driven by tribal members to be licensed, shall be exempt up to \$1,500 as a resource.

(Rule 1240-01-04-.10, continued)

- (3) Procedures To Be Followed in Treatment of Vehicles.
- (a) Food Stamps Only. Once ownership of vehicles has been determined, then a decision must be made as to whether a vehicle is totally exempted, or the fair market value in excess of \$4,650 is counted, or the equity is counted. Ownership would be established only when questionable.
1. If a vehicle is totally exempted in accordance with 1240-01-04-.10(1)(a), no value is counted as a resource.
 2. A licensed vehicle used as a "family car" or for employment/training will be individually evaluated and the fair market value in excess of \$4,650 shall be counted as a resource. The value of two or more vehicles shall not be added together in order to reach a total fair market value in excess of \$4,650.
 3. Licensed vehicles other than those cited in 1 and 2 above will be assigned both a fair market value and an equity value in excess of \$4,650 or the equity value will be considered as a resource. Equity is the fair market value less any encumbrances in effect at the time of determination of eligibility (redetermination or recertification).
 4. Unlicensed vehicles, unless exempt as necessary for self-employment or as income producing, shall be evaluated for equity. Also, licensed vehicles not producing income and not otherwise exempt, will be evaluated for equity value. Equity value of these vehicles will be counted as resource.
 5. Unlicensed vehicles on those Indian Reservations that do not require vehicles driven by tribal members to be licensed, shall be totally exempt as a resource. Vehicles which are not driven by tribal members will be considered as a non-liquid resource.
- (4) Reserved for future use.

Authority: TCA §§4-5-202, 71-1-105, 71-3-157, 71-3-158; PL 104-193; 7 CFR 273.8. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Amendment filed December 3, 1980; effective January 19, 1981. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed August 17, 1982; effective September 16, 1982. Amendment filed August 5, 1986; effective November 29, 1986. Amendment filed November 6, 1987; effective February 28, 1988. Amendment filed April 4, 1997; effective June 18, 1997.

1240-01-04-.11 TRANSFER OF RESOURCES - FOOD STAMPS ONLY.

- (1) Transfer of Resources - Food Stamps Only. At the time of application, household shall be asked to provide information regarding any resources which any household member (or ineligible alien or disqualified person whose resources are being considered available to the household) had transferred within the 3 month period immediately preceding the date of application. This includes resources which are transferred between members of the same household (including ineligible aliens or disqualified persons whose resources are being considered available to the household). Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits are disqualified from participation in the program for up to one year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the three-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits.

(Rule 1240-01-04-.11, continued)

- (2) Transfers Not Resulting in Disqualification. Eligibility for the program will not be affected by transfers of resources:
 - (a) Which would not otherwise affect eligibility;
 - (b) Which are sold or traded at or near fair market value;
 - (c) Which are transferred between members of the same household; and
 - (d) Which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits.
- (3) Period of Disqualification. The length of the disqualification period is based on the amount by which the transferred resource, when added to other countable resources, exceeded the allowable resource limits.
- (4) Disqualifying a Household. In the event the worker establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the worker sends the household a notice of denial explaining the reason for and length of disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, HS-0751, Notice of Disposition, explaining the reason for and length of the disqualification is sent. The period of disqualification is effective with the first allotment issued after the adverse notice period has expired, unless the household requested a fair hearing and continued benefits.

Authority: TCA §14-27-104; 7 CFR 173.8; PL 97-35. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed August 17, 1982; effective September 16, 1982.

1240-01-04-.12 INCOME. The following sections describe the treatment of income and budgeting to determine eligibility and level of benefits,

- (1) General Policy Matters. All sources of income are to be explored and gross nonexempt income from all sources shall be verified prior to approval or continuation of benefit except when a Food Stamp household qualifies for expedited service. The applicant/recipient has primary responsibility for providing acceptable verification of income. If he/she is unable to secure/provide acceptable verification the worker shall give reasonable assistance in securing the required information.
- (2) Requirement to Apply for Other Benefits - (AFDC Only). As a condition of eligibility for AFDC, a person who is reasonably certain to be entitled to any other cash benefit or tax credit (not SSI) must apply for and accept such benefit or tax credit for himself/herself and/or any member of the assistance group. Failure to apply for or to accept the benefit renders the applicant/grantee relative ineligible to be included as a member of the aid group. His/her needs may not be taken into consideration in the AFDC budget or for the purpose of diverting any other income.

Authority: TCA §14-8-106; 45 CFR 233.20; PL 97-35. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982.

1240-01-04-.13 INCOME ELIGIBILITY STANDARDS.

- (1) Food Stamps. The gross income and net income eligibility standards are used in determining the eligibility of households applying for food stamps. Households which contain an elderly

(Rule 1240-01-04-.13, continued)

or disabled member (as defined in 1240-01-08-.01) are subject to a net income eligibility standard for the appropriate household size. Households which do not contain an elderly or disabled member must meet both net and gross income eligibility standards for the appropriate household size.

- (a) The income eligibility standards are used as the criteria in determining the eligibility of all households for food stamps. Participation in the program shall be limited to those households whose incomes are determined to be within the eligibility standards. To be eligible for food assistance, the total gross monthly income of all household members shall not exceed the maximum income standard for the appropriate household size with the following exception:
 - (b) For households which contain a member who is elderly or who is disabled (See definition of "elderly" and "disabled" in 1240-01-08-.01) the eligibility standards shall be based on net income.
- (2) AFDC. Gross income as defined is tested against a Gross Income Standard which is 185% of the Consolidated Need Standard for the appropriate number of people. If the gross income is greater than this standard by any amount, the family/individual is not eligible for AFDC. If gross income is equal to or less than the Gross Income Standard for the appropriate number of people, then net income is computed and this amount is used to determine eligibility and amount of payment. If there is a deficit of \$1.00 or more between the need standard and net income, then eligibility on this basis exists. Payment is the lesser of the deficit or a standard payment amount for the family size, except that no payment can be made in a monthly amount less than \$10.00.

Authority: TCA §§14-8-104, 14-8-106, 14-27-104, 14-27-105; PL 97-35; 7 CFR 273.9 (a); 45 CFR 233.20; PC 640, Public Acts of 1986. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed March 3, 1982; effective April 4, 1983. Amendment filed March 28, 1983; effective April 27, 1983. Amendment filed September 29, 1986; effective December 29, 1986.

1240-01-04-.14 DEFINITION OF INCOME. Household or Aid Group income shall mean all monies from whatever source, earned or unearned, except the exclusions listed in 1240-01-04-.15.

- (1) **Earned Income.** Earned income is income which is derived from the work efforts of an individual as wages, salaries, commissions, or as profits from self-employment enterprise, including farming, carried on either alone or jointly. It includes bonuses, vacation pay, pay received while on maternity leave and sick pay when mandatory deductions are made. Garnished or diverted wages, etc. are also considered in determining gross earned income. The following types of income are considered earned income:
 - (a) Wages, salaries, commissions
 - (b) Profit from self-employment enterprise such as the following:
 1. Farming
 2. Small business enterprises
 3. Roomer/boarders
 4. Rental Receipts

(Rule 1240-01-04-.14, continued)

- (i) Food Stamps Only - If an owner of rental property is actively engaged in the rental, maintenance, management of property at least 20 hours per week, the income from the property is earned.
 - (ii) AFDC Only. Rent receipts from property owned/being purchased by an individual/ family when the owner/purchaser is actively engaged in the production of the income are earned income.
 - 5. Total gains of any capital goods or equipment related to the business, excluding the costs of doing business.
 - (c) Training and Rehabilitation Allowances
 - 1. Food Stamps Only. Training allowances from vocational and rehabilitative programs sponsored by federal, state or local governments such as Work Incentive Program are considered earned income unless the allowances are excluded.
 - 2. AFDC Only. Any wages paid for on-the-job training or public service employment are earned income, except JTPA earnings of child recipients. Training allowances and incentive payments in WIN and JTPA projects are excluded as income.
 - (d) Earned Income Tax Credits.
 - (e) Severance Pay (AFDC Only). Severance pay is considered earned income for AFDC.
 - (f) College Work Study Program as Earned Income.
 - 1. Food Stamps Only. Allowable educational expenses [as defined in §§1240-01-04-.15 (1)(k)1(i) and (iii)] are excluded. All other work study amounts are considered earned income.
 - 2. AFDC Only. The excess over tuition and mandatory fees (i.e., fees charged all students within a certain curriculum) is considered earned income subject to earned deductions (i.e., work expense allowance, child care expense, and \$30 and 1/3 disregard, if applicable).
 - (g) Vacation Pay (Food Stamps Only). Vacation pay received in more than one installment, when mandatory deductions are applied.
 - (h) Food Stamps Only. Earnings to individuals who are participating in on-the-job training programs under the Job Training Partnership Act (JTPA) and who are age nineteen (19) or older, or under age nineteen (19) and not under parental control of another adult household member.
- (2) Unearned Income. Unearned income is any income which does not meet the definition of earned income. No earned income exclusions or work expense deductions may be applied to unearned income as defined. The following payments are considered unearned income (this list is not all inclusive):
- (a) Scholarships, educational grants, fellowships, deferred payment loans for education, veteran educational amounts and the like, in excess of amount excluded in 1240-01-04-.15 are considered unearned income.

(Rule 1240-01-04-.14, continued)

- (b) Unemployment Compensation and Workmen's (workers) Compensation-Food Stamp/AFDC.
- (c) Strike Benefits.
 - 1. Food Stamps. Strikers are eligible to participate in the program if they meet all eligibility requirements prior to the strike and their deemed income from the strike site, plus any other household income, does not exceed the appropriate income limit. For specific information regarding strikers, refer to §1450-01-32.
 - 2. AFDC. A parent on strike on the last day of a month renders the entire family ineligible for AFDC. Any other individual on strike on the last day of a month causes ineligibility for the individuals.
- (d) Vacation and sick pay and bonuses are considered unearned when mandatory deductions are not made.
- (e) Certain Rental Income.
 - 1. Food Stamps Only. If an owner of rental property is actively engaged in the rental, maintenance, management of property at least 20 hours per week, the income from the property is earned. If he/she is actively engaged less than 20 hours per week, the income is unearned. In either case costs of doing business are deducted from gross income and the remainder is counted.
 - 2. AFDC Only. Rental income is considered unearned if the individual is not actively engaged in producing the income. Income derived from rental property is considered as earned income if the individual(s) is/are actively engaged in producing such income. The amount of time the individual spends in producing such income is not a criterion for determining whether or not the income is earned or unearned. To be considered earned income, the individual must bear some responsibility in earning the income. This responsibility may include managerial. However, if the individual carries no specific responsibility in earning the income, such as where rental properties are in the hands of rental agencies, and the check is forwarded to the individual or where an individual rents farm land to others and receives a money payment, the income would not be classified as earned income. The cost of doing business is an allowable deduction regardless of whether the income is earned or unearned.
- (f) Interest payments, dividends, royalties, interest and all other direct money payments which can be constructed to be a gain or benefit are considered income. If such payments are received on a weekly, bi-weekly, semi-monthly or monthly basis, they will be converted to monthly amounts and considered as currently available regular income. If such payments are received quarterly, they will be prorated over three months; semi-annually, prorated over six months; annually, prorated over 12 months AFDC/Food Stamps.
- (g) Assistance Payment.
 - 1. Food Stamps/Cash Assistance. AFDC (or its successor program(s)) payments, general assistance payments, SSI payments, pensions and/or other assistance payments based on need which are not excluded are considered unearned income.
 - 2. Cash Assistance Only. AFDC (or its successor program(s)) payments and SSI benefits are not considered as income.

(Rule 1240-01-04-.14, continued)

3. Food Stamps Only. When a Federal, state, or local needs-based payment is reduced because of a household member's intentional failure to comply with the requirements of that program, for the duration of that benefit reduction the household may not receive an increase in food stamp benefits because of their decrease in income.
 - (i) The food stamp allotment of the household shall be reduced by 20 percent so long as the needs-based program's reduction is in effect.
- (h) Rehabilitation Payments. AFDC Only - Payments for rehabilitation made under Services to the Blind or Vocational Rehabilitation or other such programs are unearned income. Costs directly associated with a rehabilitation program and borne by a client are deducted from the gross payment and the remainder is income.
- (i) Pensions and Benefits. Food Stamps/AFDC - Annuities, pensions, retirement, veterans, or disability benefits, Social Security benefits, military or Job Corps allotment and other such pensions and benefits are counted as unearned income.
- (j) Support and Alimony. Food Stamps/AFDC - Support or alimony payments from non-household members made directly to the household and not transferred to the IV-D agency are considered as unearned income.
- (k) Contributions.
 1. Food Stamps Only - Any regular cash contribution made to the household is unearned income.
 2. AFDC Only - Any regular cash contribution, other than from an absent parent, made to the assistance unit and not used for a designated expense of the contributing person is unearned income.
- (l) Monies from Trust Funds.
 1. Food Stamps Only. Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under 1240-01-04-.15 are considered as income. Such trust withdrawals shall be considered income in the month received, unless otherwise exempt under the provisions of 1240-01-04-.15 of this section. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt under the provisions of 1240-01-04-.15 of this section.
 2. AFDC Only. Money withdrawn from the body of a trust or interest/dividends paid to an A/R are considered unearned income. Such monies are treated as regular income, annualized income, or lump sums as appropriate, depending upon frequency of receipt.
- (m) Income of Excluded Household Members. The following procedures shall be used to determine the amount of earned or unearned income of an excluded household member which is attributed to the remaining household members:
 1. Ineligible aliens. Individuals whose Citizenship is Questionable, and Individuals Disqualified for Failure to Comply with the Enumeration Requirements. The earned and unearned income of such excluded household members shall

(Rule 1240-01-04-.14, continued)

continue to be counted as income to the remaining household members, less a prorata for the excluded individual.

2. Individuals Disqualified for Intentional Program Violation. The earned and unearned income of such excluded individuals shall continued to be attributed in its entirety to the remaining household members.
- (n) Foster Care Payments. Food Stamps Only - Foster care payments for children or adults are counted as income. Foster care services fees to the provider of foster care are also income.
 - (o) Severance Pay. Food Stamps Only - Severance pay is considered unearned income when received subsequent termination of employment.
 - (p) Payments under Title I (VISTA, University Year for Action, etc.) of the Domestic Volunteer Service Act of 1973 (PL 93-113 Stat. as amended) shall be considered earned income and subject to the earned income deduction excluding payments made to those households specified in paragraph (h) of this section.

Authority: TCA §§14-1-105, 14-8-104, 14-8-106, 14-27-104 and 14-27-106; PL 97-35 and 99-198 §1583; 7 CFR §273.8(e)(15)(h)(1)(iv), 273.9(b)(1)(v), 273.9(b)(2)(iv), 273.11(c); 45 CFR §233.20.

Administrative History: Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed August 17, 1982; effective September 16, 1982. Amendment filed May 17, 1983; effective June 16, 1983. Amendment filed December 2, 1983; effective January 1, 1984. Amendment filed September 19, 1985; effective December 14, 1985. Amendment filed November 6, 1987; effective February 28, 1988. Amendment filed February 12, 1988; effective May 29, 1988. Amendment filed April 4, 1997; effective June 18, 1997.

1240-01-04-.15 PAYMENTS/BENEFITS EXCLUDED IN ELIGIBILITY DETERMINATION. Certain payments and benefits which might ordinarily be considered income are excluded under federal law/regulations from consideration as income for eligibility purposes. The following sections lists such exclusions.

- (1) Food Stamps/AFDC. The following exclusions apply in both programs unless otherwise indicated.
 - (a) Relocation Assistance Payments. Relocation payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.
 - (b) Any funds distributed per capita to or held in trust for members of any Indian tribe under PL 92-254, PL 93-134 or PL 94-540.
 - (c) Payments received under the Alaska Native Claim Settlement Act (PL 92-203, §21a); Payments by the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (PL 95-443). Payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Main Indian Claims Settlement Act of 1980 (PL 96-420, §5). Payments of relocation assistance to members of the Navajo and Hopi Indian Tribes (PL 93-531).
 - (d) Receipts distributed to members of certain Indian tribes referred to in section (b), PL 94-114.
 - (e) Benefits received from programs under the Older Americans Act of 1965 as follows:

(Rule 1240-01-04-.15, continued)

1. Food Stamps Only. Payments from the Senior Citizen Community Service Employment Programs (Title V).
 2. Food Stamps/AFDC. Payments from the Nutrition Program for the Elderly (Title VII).
- (f) The value of supplemental food assistance received under the Child Nutrition Act of 1966 (WIC) as amended and the special food service program for children under the National School Lunch Act as amended.
- (g) Payments for supporting services and reimbursements of out-of-pocket expenses made to individual volunteers serving as health aides, senior companions or in SCORE or ACE and any other programs under Titles II and III pursuant to section 418 of PL 93-113.
- (h) Payments Under the Domestic Volunteer Service Act of 1973.
1. Food Stamps Only.
 - (i) Payments to volunteers under Title I of the Domestic Volunteer Service Act of 1973 (PL 93-113 as amended) will be excluded when the volunteers meet either of the following conditions:
 - (I) The individuals were receiving Food Stamps or AFDC at the time they joined the Title I program; or
 - (II) The individuals were receiving the Title I subsistence allowance prior to March 1, 1979. This exclusion will apply for the length of the volunteer contract in effect as of March 1, 1979.
 - (ii) Payments to volunteers under Title II of the Domestic Volunteer Service Act of 1973 (PL 93-113 as amended) will be excluded.
 2. AFDC Only. VISTA payments will be excluded when the amount is less than the minimum wage as determined by the Director of ACTION for all hours worked.
- (i) Job Training Partnership Act (JTPA) Income.
1. Food Stamps Only
 - (i) JTPA On-the-Job Training Programs.

Earnings from JTPA on-the-job training programs are excluded only for individuals under age nineteen (19) who are under parental control of another adult household member.
 - (ii) Other JTPA Programs.

All income from other JTPA Programs, earned or unearned is excluded.
 2. AFDC Only.
 - (i) JTPA Payments for Child Recipients.
 - (I) Earned (JTPA) income is excluded for child recipients up to 6 months in each calendar year. The payment is not counted at either

(Rule 1240-01-04-.15, continued)

the gross test step or in calculation of the grant. This provision does not apply to caretakers under 18.

- (II) All unearned JTPA income payments are excluded for child recipients.
- (ii) JTPA Payments for Recipients Other Than Child Recipients.
 - (I) Unearned payments are excluded at all steps of the budget calculation if paid for one of the following reasons:
 - Reimbursement for expenses. This cannot be for basic living expenses and must be specified as a reimbursement by the JTPA agency.
 - Assistance payments for needs other than the AFDC grant amount. This means the JTPA payment is meeting a basic need which the AFDC grant cannot cover due to our ratably reduced standards or because it was not covered in our needs study.
 - Incentive and training allowance for training purposes. The payments will be identified by the JTPA agency.
 - (II) Earned JTPA payments are counted as any other earnings and the appropriate disregards are applied.
- (j) Experimental Housing. Allowance program payments made under Annual Contribution Contracts entered into prior to January 1, 1975 under §23 of the US Housing Act of 1973 as amended.
- (k) Educational loans on which payment is deferred, grants, scholarships, fellowships, and veteran educational benefits are excluded to the following extent:

1. Food Stamps Only.

- (i) *Federal Educational Assistance Programs funded under Title IV of the Higher Education Act* include, but are not limited to, the Pell Grant Program, the Supplemental Educational Opportunity Grant (SEOG) Program, the State Student Incentive Grant (SSIG) Program, the PLUS Program, the College Work Study Program, the National Direct Student Loan (NDSL) Program, and the Byrd Honor Scholarship Program. Exclude the following expenses from income received from these programs only for persons who are attending an institution of post secondary education at least half time:

tuition;

mandatory fees;

originator fees and insurance fees charged by financial institutions for educational loans.

Also exclude the following expenses from such educational funds, when the household provides information to document the amounts claimed. (Note: the claimed expenses may not exceed the amount of the grant or loan from which they are to be paid):

(Rule 1240-01-04-.15, continued)

books and supplies;

materials;

equipment;

transportation; and

miscellaneous personal expenses (not including room, board, and/or dependent care expenses).

- (ii) Exclude the expenses listed below from *other federal educational income* (such as veterans' benefits or federal grants and loans that are *not* funded under Title IV of the Higher Education Act) *only* for institutions of post secondary education or schools at any level for the physically or mentally handicapped:

tuition;

mandatory fees;

origination fees and insurance fees charged by financial institutions for educational loans.

- (iii) Exclude the expenses listed below from *non-federal* educational income (such as loans, grants, scholarships, and fellowships) *only* for institutions of post secondary education or schools at any level for the physically or mentally handicapped:

tuition;

mandatory fees;

origination fees and insurance fees charged by financial institutions for educational loans.

Also exclude non-federal educational funds for post secondary education that are *earmarked by the grantor* for educational expenses, such as:

books and supplies;

materials,

equipment;

transportation; and

miscellaneous personal expenses.

Do *not* exclude monies earmarked for normal living expenses, such as food eaten at home, clothing, and rent or mortgage.

- (iv) After the excluded charges have been subtracted from loans, scholarships, etc., the remaining amount is considered unearned income. The income is prorated over the months of the school term it is intended to cover. If the

(Rule 1240-01-04-.15, continued)

total yearly amount is known at certification, then the yearly amount is divided by the number of months in the school year. If only one quarter or semester amount is known at the time of certification, the amount is prorated over the number of months in the quarter or semester.

- (v) Tuition, mandatory fees, and other educational expenses paid from earnings, resources, or any sources other than educational income such as grants, deferred loans, etc., are *not* excluded.
- (l) Youth Employment and Demonstration Act. Payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and Youth Employment Training Programs under Title IV of Comprehensive Training Act; Amendments of 1978 PL 95-524.
- (m) Energy Assistance Payments.
 - 1. Food Stamps Only: Payments or allowances made under any federal law for the purpose of energy assistance.
 - 2. AFDC Only: Payments or allowances made by any federal, state, local agency or charitable organization to meet energy assistance needs.
- (2) Food Stamps Only.
 - (a) Cash Items.
 - 1. Earnings of Children. Earned income of a household member who is under 18 years of age is not counted when:
 - (i) that child is a student at least half-time in elementary or high school, or in classes to obtain a General Equivalency Diploma (GED); and
 - (ii) lives with a natural or adoptive parent or stepparent, or
 - (iii) is under the control of a household member other than a parent, or
 - (iv) is certified as a separate Food Stamp household but lives with a natural or adoptive parent or stepparent.
 - 2. Costs of producing self-employment income. Allowable costs of producing self-employment income include, but are not limited to: (see 1240-01-04-.24)
 - (i) Identifiable costs of labor (salaries, employers share of SS, insurance, etc.)
 - (ii) Stock, raw materials, seed and fertilizer, feed for livestock
 - (iii) Rent and costs of building maintenance
 - (iv) Business telephone costs
 - 3. Irregular Income. Any income which is received too infrequently or irregularly to be reasonably anticipated, as long as the amount does not exceed \$30 in a three (3) month period, shall be excluded.

(Rule 1240-01-04-.15, continued)

4. Loans. All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred, are excluded.
5. Income of Non-household members.
 - (i) The income of non-household members who have not been disqualified, including SSI recipients in cash-out states, students, roomers, boarders (who have not been requested to be considered household members by the household providing boarder services), and live in attendants shall not be considered available.
 - (ii) Monies Received for Third Parties. Monies received and used for the care and maintenance of a third party who is not an HH member. If the intended beneficiaries of a single payment are both HH and non-HH members, any identifiable portion of the payment intended and used for the care and maintenance of the non-HH member other than a legally responsible relative shall be excluded. If the non-HH member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the non-HH member's pro rata share or the amount actually used for the non-HH member's care and maintenance, whichever is less.
6. Non-recurring Lump Sum Payments - Money received in the form of a non-recurring lump sum payment, including but not limited to income tax refunds, rebates, or credits; retroactive lump sum Social Security, SSI, AFDC, railroad retirement pension or other payment; retroactive lump sum insurance settlements; or refunds of security deposits on rental property or utilities are not considered income. These payments shall be counted as resources in the month received, unless specifically excluded from consideration as a resource by other Federal laws.
7. Recoupments.
 - (i) Monies withheld by a provider from any income or returned to the provider by the recipient, in order to repay a prior overpayment are not counted except as provided in (ii) below.
 - (ii) Counted as income are any monies withheld from assistance payments by a federal, state, or local welfare program in order to repay an overpayment resulting from an intentional failure to comply with such program's requirements. The program must be means-tested and must distribute publicly funded benefits.
8. Reimbursements.
 - (i) Definition of Excluded Reimbursements. Reimbursement for past or future expenses other than normal living costs are excluded to the extent they do not exceed actual expenses and do not represent a gain or benefit to the HH. No portion of benefits provided under Title IV-A of the Social Security Act to the extent such benefit is attributed an adjustment for work related or child care expenses shall be considered excludable under this provision. When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursements cover normal living expenses. Reimbursement for normal living expenses of the HH or legally responsible

(Rule 1240-01-04-.15, continued)

relative, such as rent or mortgage, personal clothing or food eaten at home, are a gain or benefit and therefore are not excluded. To be excluded these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended.

- (I) Reserved for future use.
 - (II) Reimbursed for out of pocket expenses of volunteers incurred in the course of their work.
 - (III) Medical or dependent care reimbursements.
 - (IV) Non-federal reimbursements or allowances to students for specific education expenses, such as travel or books, or for miscellaneous personal expenses, but not allowances for room and board. Portions of a general grant, loan, or scholarship must be specifically *earmarked by the grantor* for education expenses or for miscellaneous personal expenses, rather than room and board, to be excluded as a reimbursement.
- (ii) Definition of Non-Excluded Reimbursements. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses unless the provider or the HH/AG indicates the amount is excessive. It will not be necessary to verify whether the amount is excessive, unless the HH/AG claims the amount is excessive.
9. Support payments - Support payments received by a household but transferred to the IV-agency.
10. Vendor Payments - Money payments that are not payable directly to a HH but paid to a third party for HH expenses are vendor payments and are excluded as follows:
- (i) Definition and Examples of Normal Vendor Payments. A payment made on behalf of HH shall be considered a Vendor payment, whenever a person or organization outside of a HH uses its own funds to make a direct payment to either HH creditors or a person or organization providing goods or services to the household or aid group.
 - (ii) HUD Vendor Payments.
 - (I) Payments to Landlords. Rent or Mortgage payments paid to a landlord or mortgages by the Department of Housing and Urban Development or by State or local housing authorities are excluded as vendor payments.
 - (II) Payments Directly to Household. Payments in money that are not made to a third party, but are made directly to an HH for rent or utilities are counted as income. This includes payments made directly to the household under section 8 of the US Housing Act.
 - (iii) Exception to Vendor Payment Exclusion Rule - Legally Obligated Payments. Monies that are legally obligated and otherwise payable to the household but which are diverted by the provider of the payment to a third

(Rule 1240-01-04-.15, continued)

party for a household expense are counted as income and not excluded vendor payments. The distinction is whether the person or organization making the payment on behalf of a household is using funds that otherwise would have to be paid to the household. These funds include any wages earned by a household member, support and alimony payments which legally must be paid to a household, educational loans on which payment is deferred, grants, scholarships, etc., which are paid to a third party for living expenses. If any employer, agency, former spouse or other person makes payments for household expenses to a third party from funds that are not owed to the household, these payments are excluded as vendor payments.

- (b) Non-cash item. Any gain or benefit not in the form of money payable directly to an HH are excluded, such as:
 - 1. Goods and services provided directly to an HH.
 - 2. Goods and services provided for an HH by a person/agency/organization who is not an HH/AG member by payment directly to the provider of the goods/services.
- (3) AFDC Only - Non-Income - Certain benefits and payments are not defined as income for AFDC eligibility purposes as follows:
 - (a) Cash items.
 - 1. Business Costs of producing self employment income such as but not limited to:
 - (i) Wages, salaries, benefits paid to/for employees
 - (ii) Inventories and supplies
 - (iii) Seeds, fertilizers, pesticides, herbicides, etc.
 - (iv) Utilities at place of business
 - 2. Clothing Allowance for Disabled Veterans - The clothing allowance for disabled veterans for additional clothing needs resulting from the use of prosthetic or orthopedic devices.
 - 3. That portion of educational loans, grants, scholarships, fellowships, benefits, etc., which are direct costs of education borne by the student beneficiary or which are not within the direct control of the student beneficiary.
 - 4. Foster Care Board Payments - Foster care board payments made to foster parents for the care of a foster child by DHS and/or other child placing agencies are not income to the foster parents. Any service fee paid to the foster parents is income.
 - 5. Legally obligated payments otherwise payable to an aid group which are diverted by the provider to a third party unless this arrangement is made at the request of an aid group member or responsible relative of an aid group member.
 - 6. Loans which represent an obligation and not a benefit such as chattel mortgages, personal notes. Such loans may be provided by an individual or commercial lending institution.

(Rule 1240-01-04-.15, continued)

7. Monies received from a source outside the AFDC home which are used for the care and maintenance of a person who is not an aid group member or a responsible relative of an aid group member living in the home with an aid group member are not income for the aid group. Payments for multiple beneficiaries are to be prorated evenly among the intended beneficiaries to determine individual shares. If intended beneficiaries include both aid group and non-aid group members, the individual shares of the aid group members (their responsible relatives) will be considered income to the aid group relative.
 8. Income belonging to non-aid group household members unless they are responsible relatives or stepparents of aid group members.
 9. Reimbursement paid by an agency/employer/individual for out-of-pocket expenses incurred (or to be incurred) by a volunteer and/or an employee.
 10. Retroactive AFDC and SSI payments.
 11. Payments that are made either directly to AFDC recipients or to a third party for rent or utilities under section 8 of the US Housing Act.
 12. Payments for utilities made to or on behalf of AFDC recipients through the Low-Income Energy Assistance Program or other energy assistance plan.
 13. Support payments (child and/or spousal support) received by an aid group but transferred to the IV-D agency as assigned support.
 14. That portion of payments made by a vocational rehabilitation agency which represents a direct cost to a client for participation in the program.
- (b) Non cash items:
1. Goods and services provided directly to an aid group (aid group member).
 2. Goods and services provided for an aid group (member) by a person/agency/organization who is not an aid group member by payment directly to a provider of the goods/services.
 3. Rent or mortgage payments paid to a landlord or mortgage holder by HUD or state or local housing authorities or under section 8 of the Housing Act.
 4. Value of housing provided by a state or local housing authority or another agency/individual.
 5. Value of Food Stamps.
 6. Value of Surplus Commodities.
 7. Value of food provided under any other food or nutritional assistance program.

Authority: TCA §§4-5-202, 71-1-105, 71-3-157, 71-3-158; PL 104-193; 7 CFR 273.9. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Amendment filed December 3, 1980; effective January 19, 1981. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed August 17, 1982; effective September 16, 1982. Amendment filed November 9, 1982; effective December 9, 1982. Amendment filed May 17, 1982; effective June 16, 1982. Amendment filed October 14, 1983; effective November 14, 1983. Amendment filed December 2, 1983; effective January 1, 1984. Amendment filed April 30, 1985; effective May 30, 1985. Amendment filed

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April 30, 1985; effective July 14, 1985. Amendment filed August 5, 1986; effective November 29, 1986. Amendment filed November 28, 1986; effective February 28, 1987. Amendment filed May 8, 1987; effective August 29, 1987. Amendment filed November 6, 1987; effective February 28, 1988. Amendment filed February 12, 1988; effective May 29, 1988. Amendment filed May 23, 1988; effective August 29, 1988. Amendment filed April 4, 1997; effective June 18, 1997.

1240-01-04-.16 INCOME TO BE INCLUDED IN ELIGIBILITY DETERMINATION. Except for the payments/ benefits specifically excluded above, all other payments received by HH/AG members (and in AFDC only, payments received by legally responsible relatives any by step-parents) are treated as income in the determination of eligibility and level of benefits in the Food Stamp and AFDC Programs.

Authority: TCA §§14-8-104, 14-8-106, 14-27-104; 7 CFR 273.9, 45 CFR 233.20; PL 97-35.
Administrative History: Original rule filed August 15, 1980; effective September 29, 1980. Amendment filed November 6, 1980; effective December 22, 1980. Amendment filed March 16, 1981; effective June 29, 1981. Repeal and new rule filed December 10, 1981; effective January 25, 1982.

1240-01-04-.17 DETERMINATION OF AVAILABLE INCOME. The amount of income available to meet food/ maintenance needs is to be determined in establishing eligibility for benefits in accordance with definitions given previously and in accordance with the instructions given in sections 1240-01-04-.17(1) through 1240-01-04-.27. Currently available income as defined (except that specifically excluded, disregarded, or deducted) is considered in the determination of eligibility and level of benefits in both programs.

- (1) Projecting Income - In both the Food Stamp and the AFDC programs a prospective method of determining eligibility is used. At the time of case action a decision is made as to the amount of income to be considered available for a future period. To the extent possible, any fluctuations in income are to be handled to permit the longest Food Stamp certification period permissible. The worker anticipates monthly income an HH/AU will have in the coming months and uses this figure to calculate the amount of benefits for Food Stamps and for AFDC.
 - (a) Anticipating Income - Food Stamps/AFDC. At the time of application/redetermination an HH/AU may expect changes in circumstances to occur in the future; in particular, changes relating to the receipt of income. However, only currently available income will be used to project the amount of ongoing available income *unless* the amount and date of receipt of expected income is known with reasonable certainty or unless some change has occurred. If the exact amount/month of receipt of the income is not known, only that portion of it which can be reasonable anticipated shall be considered as income.

When any change in the HH/AU circumstances is expected, including a change in income, the client will be required to report the change within 10 days of the change.

1. Counting Anticipated Income in Month Received - Food Stamps/AFDC. Income anticipated with reasonable certainty during the period under consideration shall be counted as income only in the month it is expected to be received, unless the income is averaged or prorated.
2. Income in Past 60 Days - Food Stamps/AFDC. Income received during the past 60 days shall be used as an indicator of anticipated income. However, past income shall not be used for any month in which a change in income has occurred or can be anticipated. If income fluctuates to the extent that a sixty (60) day period alone cannot provide an accurate indication of anticipated income, the worker and the HH/AG may use a longer period of past time if it will provide accurate indication of anticipated fluctuations in future income. Similarly, if the family's income fluctuates seasonally, it may be appropriate to use the most

(Rule 1240-01-04-.17, continued)

- recent season comparable to the certification period (Food Stamps) or time of year (AFDC), rather than the last sixty (60) days, as one indicator of income for the certification period (Food Stamps) or time of year (AFDC). In no event shall the worker automatically attribute to the household the amounts of any past income except when lump sum income is prorated in AFDC. Past income shall not be used as an indicator of anticipated income when changes in income have occurred or can be anticipated during the Food Stamp certification period.
3. **Cases of Steady Employment - Food Stamps/AFDC.** In cases where the wage earner is steadily employed, income from previous months is usually a good indicator of the amount of income that can be anticipated in the month of application and subsequent months. If information supplied by the household or a collateral contact indicates that future income will differ substantially from the previous month's income, the worker will use such information to make a reasonable estimate.
 4. **Assistance Payments - Food Stamps/AFDC.** Households receiving State or Federal Assistance payments, such as AFDC or General Assistance (GA) benefits, SSI benefits or Social Security payments, on a recurring monthly basis shall not have their monthly income from these sources varied merely because mailing cycles may cause two payments to be received in one calendar month and none in the next month.
 5. **Withheld Wages - Food Stamps/AFDC.** Wages held at the request of the employee shall be considered income to the HH/AG in the month the wages would otherwise have been paid by the employer. Wages held by the employer as a general practice, even if in violation of the law, are not counted as income to HH/AG, unless and HH/AG anticipates that it will ask for and receive an advance, or an HH/AG anticipates that it will receive income from previously withheld wages not previously counted as income. Advances on wages shall only count as income if reasonably anticipated.
- (b) **Averaging Income - Food Stamps/AFDC.** Unless a Food Stamp client specifically requests consideration of income as actually received and consequent adjustments in benefits during the certification period (variable allotments - Food Stamps) the projected average monthly income will be considered in the determination of eligibility and amount of benefit.
1. To average income, the worker shall use the HH's anticipation of income fluctuations over the certification/review period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period.
 2. When a full month's income is expected but will be received in weekly, biweekly, semi-monthly amounts, or is annual income, the income will be converted to a monthly amount.
 3. **Averaging Prohibited (Food Stamps Only).** Income must not be averaged for a destitute HH during the first certification period (month) since averaging would result in assigning to the month of application income from future periods which is not actually available to the family during that month.
- (2) **Converting Income to Monthly Amounts - Food Stamps/AFDC.** Since need determination and level of benefit calculation/payment are made on a monthly basis, income and expenses available to a HH/AG must be stated in monthly amounts. The following methods shall be used to convert income to monthly amounts:

(Rule 1240-01-04-.17, continued)

- (a) Hourly or Piece Work Wages. Estimate the amount of income to be expected as the result of a week's work based on hours/days produced. Use the weekly earnings figure to determine monthly income.
 - (b) Weekly Income. Multiply weekly income by 4.3 to determine monthly income.
 - (c) Bi-Weekly Income. Multiply amount received each two weeks by 2.15 to determine monthly income.
 - (d) Semi-Monthly Income. Add the two amounts received to determine monthly income.
 - (e) Monthly Income. When a wage earner is employed and paid on a monthly basis accept his/her verified monthly wage/salary as monthly income.
 - (f) Annual Income - Divide annual income by 12 to determine monthly income.
 - 1. Food Stamps Only. Households which, by contract or self-employment, derive their total annual income either once annually or over a period of time shorter than 1 year, shall have the income annualized over a 12-month period. That is, income will be anticipated for and averaged over the full 12 months. Such groups include farmers, certain school employees employed in a contractual basis, share croppers and other self-employed persons. This does not apply to migrants seasonal farm workers, persons who receive seasonal income on an hourly or piece work basis, or persons who are paid on a monthly basis. In these latter instances income is counted in the months received. If a person is under contract, the 12 month period should begin the 1st month the person receives payment under the contract. If the self-employment income is received once annually, the income would be averaged over a 12-month period beginning with the month the income is received.
 - 2. AFDC Only - Income which is received annually, or which is an integral part of annual income, will be totaled and prorated over twelve (12) months. Such income is usually earned income derived from a farming or other self-employment enterprise. Income which by contract or otherwise could be generally considered as annual income, but which is received in a shorter period of time will be considered as income in the months during which it is received. An estimated average income from migrant labor, seasonal farm work, other seasonal employment will be considered during the months such income is received.
- (3) Rounding Procedures.
- (a) Food Stamps Only. In calculating net income, figures will be rounded to the nearest dollar. Such rounding shall occur at all steps in calculating income and budgeting except for the computation of individual shelter and medical costs for Food Stamp purposes.
 - (b) In calculating Food Stamp income, figures will be rounded to the nearest dollar. Such rounding shall occur at all steps in calculating income and budgeting beginning with gross weekly earnings except that in the Food Stamp Program, the computation of individual shelter and medical costs will not be rounded until the monthly amount is determined.
 - (c) Income is not rounded in AFDC. If the difference between need and income is not a whole dollar amount, round to the next lower dollar in determining the AFDC payment.

(Rule 1240-01-04-.17, continued)

- (4) Income at Application.
 - (a) Income in Application Month - Food Stamps/AFDC. The eligibility and level of benefits for HH/AG's submitting an initial application will be based on circumstances for the entire calendar month which the household filed its application. In both Food Stamps and AFDC the income received during the application month (i.e., that already received by the day of application plus that which is anticipated with reasonable certainty to be received in that month) is used to determine initial eligibility and the benefit amount for that one (1) month. (In Food Stamps if income is averaged it is averaged over the entire certification period including the application month).
 - (b) Effects of Changes During the Application Processing Period - Food Stamps/AFDC. An HH/AG may be eligible in the application month based on circumstances existing in that month, but ineligible in the subsequent month because of changes which occur. The HH/AG is entitled to benefits for the application month even when the processing of the application results in benefits being issued/paid in the subsequent month. An HH/AG may be ineligible in the application month based on circumstances existing in that month, but eligible in the subsequent month because of changes which occur. A new application is not required. On going income from any and all sources is considered available to meet maintenance needs until such time as the client reports, or the agency discovers, a change.
- (5) Anticipated Changes and Benefit Amounts.
 - (a) Food Stamps Only. As a result of anticipating changes, the household's Food Stamp allotment for the month of application may differ from its allotment in subsequent months. The certification period established by the worker should be for the longest possible period over which changes in the household circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques. If the client elects to average income, a change back to monthly adjustments cannot be made during a certification period.
 - (b) AFDC Only. Adjustments in an AFDC grant are made on the basis of reported (discovered) changes. The grant amount for the month of application will differ from the grant amount in subsequent months. If a change in income is reported and the change is ongoing, the new amount is to be used to project future ongoing income. If income fluctuates, an estimated average monthly income will be established and this amount will be considered in the determination of eligibility and the amount of payment. However, if great fluctuations in income occur and are reported and it is not possible to arrive at an average income, this income will be considered in the months received.
- (6) Income at Recertification or Redetermination.
 - (a) Food Stamps eligibility and the level of benefits for recertification shall be based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. If an application for recertification is not received until after the current certification period has expired, the month of application shall be the month in which the application was filed, as for an initial application.
 - (b) AFDC eligibility and amount of payment at the time of redetermination will be based on circumstances which prevail at that time. Currently available income will be used to project the average amount of income to be available in the coming months.

(Rule 1240-01-04-.17, continued)

- (7) Consideration of Income Belonging to Particular Individuals - Food Stamps/AFDC. The income of all persons who share a living arrangement must be explored, but all individuals' incomes may or may not be considered in the determination of eligibility and level of benefit as described in the following sections:

(a) Food Stamps.

1. Individuals Whose Income Must be Considered.

- (i) Household Members. The non-excluded income of any member of the household must be considered totally available to the household in the determination of eligibility and level of benefit. None of it may be diverted to ineligible individuals in the household or outside of the household.
- (ii) Excluded Household Members.
 - (I) Ineligible Aliens, Individuals Whose Citizenship is Questionable, and Individuals Disqualified for Failure to Provide or Apply for the SSN. The earned and/or unearned income of these household members shall continue to be counted as income to the remaining household members, less pro rata share is calculated by first subtracting the allowable exclusions from the excluded member's income and dividing the income evenly among the household members, including the excluded members. All but the excluded member's share is counted as income from the remaining household members.
 - (II) Individuals Disqualified for Intentional Program Violation or for Failure to Comply with Program Work Requirements. The earned and unearned income of these individuals shall continue to count in its entirety to the remaining household members.

2. Individuals Whose Income is Not to be Counted.

- (i) Ineligible Students. The income of individuals who are not eligible because of student eligibility criteria.
- (ii) Individuals Living Outside the Household. The income of any individual who does not actually live with the household, regardless of legal relationship to members of the household.
- (iii) Earned Income of a household member who is under age 18 when:
 - (I) that child is a student at least half-time in elementary or high school, or in classes to obtain a GED; and
 - (II) lives with a natural or adoptive parent or stepparent, or
 - (III) is under the control of a household member other than a parent, or
 - (IV) is certified as a separate Food Stamp household but lives with a natural or adoptive parent or stepparent.
- (iv) Boarders. Only the amount paid for room/board shall be considered as income to the household unless the household has requested the boarder to be considered as a household member.

(Rule 1240-01-04-.17, continued)

(b) AFDC.

1. Individuals whose income must be considered

- (i) The countable gross income, earned and unearned, of all assistance unit members and their responsible relatives in the home, plus the deemed income of an in-home stepparent and parent or legal guardian of a minor parent must be considered as available. The gross amount is tested against an amount equal to 185% of the appropriate consolidated need standard. If the gross amount is less than 185% of the gross income standard, the countable net income for the assistance unit is tested against the appropriate need standard to determine eligibility and level of payment. No income of parents and spouses (i.e., responsible relative) is diverted to their ineligible dependent(s) living in the home except in the deeming budgets of stepparents and parents or legal guardians of minor parents.
- (ii) Legal Spouses. The income belonging to one or both members of a legally married couple is considered available to each other as long as they are living together, except the income of a spouse who is an SSI recipient is disregarded in determining the other spouse's eligibility. If a couple presents themselves as married they are to be considered married. If they later claim to be not legally married, the burden of proof of their unmarried status will be upon the couple.
- (iii) Parents. Parents living in the home with the dependent child(ren) must be included in the assistance unit and/or their total income counted as available in its entirety, unless the parent is an SSI recipient. The income of parents excluded from the assistance unit because of a WIN or IV-D sanction is counted as totally available to the assistance unit.
- (iv) Income of Stepparents and Parents/Legal Guardians of Minor Parents. Income shall be deemed available to assistance unit members from persons listed below under the given circumstances:
 - A stepparent living in the home with stepchildren for whom assistance is requested.
 - A parent or legal guardian living in the home with a minor parent who has requested AFDC in his/her own right.

The amount of income to be deemed available to the stepchildren or minor parent shall be determined as follows:

- (I) Determine gross monthly income as defined by AFDC;
- (II) From earned income only, deduct the flat work expense amount of \$75 for full or \$74 for part-time employment;
- (III) Deduct the appropriate consolidated Need Standard for the stepparent/parent or legal guardian and his legal dependents (for IRS tax purposes) living in the home who are not included in the assistance unit. (If the stepparent, parent or legal guardian's income is not taxable, use those individuals he/she could claim under IRS rules.);

(Rule 1240-01-04-.17, continued)

- (IV) Deduct amounts actually paid to individuals not living in the home who are (or could be) claimed by the stepparent, parent or legal guardian as dependents for income tax purposes; and
 - (V) Deduct amounts actually paid for alimony or child support to individuals not living in the home other than those covered in Step (IV) above;
 - (VI) The remainder is income deemed to the stepchildren/minor parent.
- (v) **Income of Children.** Income that a “technically” ineligible child (i.e., a child who does not meet the age, deprivation, relationship requirements) has in his/her own right, including “earmarked” income such as Social Security benefits, or which is specifically designated for a particular child, such as child support, is not considered available to the assistance unit. The child’s own income is, however, considered available to his/her own children.
- (vi) **Applicant/Grantee Relatives Other Than Parents.** The income of a relative other than the parent(s) of children for whom AFDC is requested or received is counted in determining eligibility and amount of payment for the children only when the relative is included in the assistance unit. He/she cannot be included in the assistance unit unless he/she is determined to be in need, (i.e., his/her available income and resources plus his/her spouse are not in excess of AFDC standards) and he/she wishes to be in the assistance unit.
2. **Individuals Whose Income Is Not To Be Considered.**
- (i) SSI recipients
 - (ii) Ineligible relatives other than parents/stepparents as long as they are not included in the assistance unit.
 - (iii) Unrelated household members
 - (iv) Individuals living outside the household
- (8) **Deductions from Income.**
- (a) **Food Stamps Only.**
- 1. **Limitations on Allowable Deductions.** Deductible expenses include only certain costs as described in this section.
 - 2. **Types of Expenses Not Allowed as Deductions.** An expense, including medical expenses, covered by excluded reimbursements or vendor payments shall not be deductible.
 - 3. **Billed Expenses Deducted in Month Due.** Except as provided in §1240-01-04-.17 (8) (a) 4 and 5 below, a deduction is allowed in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense.
 - 4. **Averaging Expenses.** Households may elect to have fluctuating expenses averaged. Households may also elect to have expenses which are billed less

(Rule 1240-01-04-.17, continued)

often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed. Households reporting one-time only medical expenses during their certification period may elect to have a one-time deduction or to have the expense averaged over the remaining months of their certification period. Averaging would begin the month the change would become effective.

5. Anticipating Expenses. A household's expenses shall be calculated based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, changes may be anticipated during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility company estimates for the type of dwelling and utilities used by the household. Past expenses shall not be averaged (such as utility bills for the past several months) as a method of anticipating utility costs for the certification period.
6. Types of Expenses Allowed as Deductions. The following expenses will be the deductions allowed to arrive at a household's adjusted monthly income. Deductions are allowed for the following:
 - (i) Earned Income Deduction. Twenty percent of gross earned income shall be deducted. No additional deductions (i.e., taxes, pensions, union dues, and the like) except for costs of self-employment, are allowed from earned income. Excluded earned income is not subject to this deduction.
 - (ii) Standard Deduction. The appropriate standard deduction shall be applied to each household regardless of its income.
 - (iii) Excess Medical Deduction. A medical deduction is allowed for that portion of non-reimbursable medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is elderly or disabled (See definition of "elderly" or "disabled" in 1240-01-08-.01). Spouses or other persons receiving benefits as a dependent of the SSI or disability recipient are not eligible to receive this deduction but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction. Allowable medical costs are:
 - (I) Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by State Law or other qualified health professional.
 - (II) Hospitalization or out-patient treatment, nursing care, and nursing home care including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home licensed (or recognized) by the State.
 - (III) Prescription drugs when prescribed by a licensed practitioner authorized under State Law and over-the-counter medication (including insulin) when approved by a licensed practitioner or other qualified health professional; in addition, costs of medical supplies,

(Rule 1240-01-04-.17, continued)

- sick room equipment (including rental) or other prescribed equipment are deductible.
- (IV) Health and hospitalization insurance policy premiums. The costs of health and accident policies such as those payable in lump sum settlement for death or dismemberment or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are not deductible.
 - (V) Medicare premiums related to coverage under Title XVIII of the Social Security Act; any cost-sharing or spend-down expenses incurred by Medicaid recipient.
 - (VI) Dentures, hearing aids, and prosthetics.
 - (VII) Securing and maintaining a seeing eye or hearing dog including the cost of dog food and veterinarian bills.
 - (VIII) Eye glasses prescribed by a physician skilled in eye disease or by an optometrist.
 - (IX) Reasonable cost of transportation and lodging to obtain medical treatment or services.
 - (X) Maintaining an attendant, homemaker, home health aide, or child care services, housekeeper, necessary due to age, infirmity, or illness. In addition an amount equal to the one person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment for this meal related deduction shall be that in effect at the time of initial certification. The allotment amount will be updated at the next scheduled recertification. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the worker shall treat the cost as a medical expense.
- (iv) Dependent Care. Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria, (or an equivalent effort by those not subject to job search), or attend training or education preparatory to employment. Maximum amounts are established for this deduction which are subject to change annually.
 - (v) Shelter Costs
 - (I) Monthly shelter costs in an excess of 50 percent of the household's income after all deductions have been allowed. The shelter deduction shall not exceed the maximum unless the household contains a member who is elderly or disabled. (See definition of "elderly" and "disabled" in 1240-01-08-.01). These households shall receive excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all applicable deductions. The maximum shelter deduction is subject to change annually. Shelter costs shall include only the following:

(Rule 1240-01-04-.17, continued)

- I. Continuing charges for the shelter occupied by the household, including rent, mortgage or other continuing charges leading to the ownership of shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments.
 - II. Property taxes, state and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.
 - III. Charges for heating, cooling, and cooking fuel; electricity; water and sewer; garbage and trash collections fees; the standard telephone allowance; and fees charged by the utility provider for initial installation of the utility cost.
 - IV. The above shelter I and III costs for the home if not actually occupied by the household because of employment away from home, illness or abandonment of the home due to natural disaster or casualty loss. For the costs of a vacated home to be included in shelter costs, the household must intend to return to the home; the current occupants of the home, if any, must not be claiming the shelter costs during the absence of the household; and the home must not be leased or rented in the household's absence. Households claiming utility costs for unoccupied homes must verify the actual expenses; the standard utility allowance cannot be substituted.
 - V. Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies or from any other source.
- (II) Payments Not Included in Shelter Costs. Not to be included in shelter costs are:
- I. Fees charged for one time deposits on utilities.
 - II. Separate costs for insuring furniture or personal belongings.
 - III. Repairs or replacement of any appliance, well, septic tank, or any portion of the home due to wear and tear or mechanical problems.
 - IV. Any costs related to housing not actually occupied by the household, except as specified in 1240-01-04-.17 (8) (a) 6. (v) (I) above.
 - V. Down payments, closing costs, discount points, and other costs incidental to purchase and the closing of a mortgage.
 - VI. Costs of drilling a well or installing a septic tank.
 - VII. Site preparation to locate a mobile home.

(Rule 1240-01-04-.17, continued)

- (vi) Standard Allowances for Utilities.
 - (I) Standard Allowance Including All Utilities. The Standard Utility Allowance is used in calculating the shelter costs of those households which directly incur heating or cooling expenses on a regular basis separate and apart from their rent or mortgage payment, including residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering. A cooling cost is a verifiable utility expense relating to the operation of air conditioning systems or room air conditioners.
 - (II) Separate Telephone Allowance. A standard telephone allowance is to be used in calculating the shelter costs for households which incur a separate telephone expense. However, the telephone allowance is never used in conjunction with the Standard Allowance for Utilities in (I) above.
- (vii) Use of Actual Utility Expenses. Actual utility costs which exceed the standard may be deducted if the household can verify these costs and it can be reasonably anticipated that they will continue for the certification period. A household which lives in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess heating or cooling costs shall not be permitted to use the standard utility allowance which includes a heating or cooling cost component.
- (viii) Household's Option. At the time of certification the household shall be advised that it may deduct its actual utility costs rather than the standard allowance throughout the certification period if the household can verify these costs. If the household opts to have the standard utility allowance deducted, the household may switch between the standard utility allowance and actual costs at recertification.
- (ix) When the Standard Utility Allowance for all Utilities is to be Used:
 - (I) When the household is billed on a regular basis for heating or cooling expenses separately and apart from their rent or mortgage. The standard allowance includes the cost of heating and/or cooling, cooking fuel, electricity, the basic service fee for one telephone, water, sewerage, and garbage and trash collection. Only households which directly incur a heating or cooling expense on a regular basis separately and apart from their rent or mortgage are entitled to the standard utility allowance. However, a household billed less often than monthly for its heating or cooling costs, if otherwise eligible to use the standard allowance, may continue to use the standard allowance between billing months.
 - (II) When there is no rent or mortgage payment such as when there is free use of a home or mobile home, or when the home mortgage is fully paid, if the household is otherwise eligible to use the standard utility allowance.
 - (III) Reserved for further use.

(Rule 1240-01-04-.17, continued)

- (IV) When two or more households share a common residence and contribute to the common utility expense for that residence, the household that receives the actual bill is entitled to its own standard utility allowance for its household size or the actual amount the household contributes, whichever is more. The household which is not billed, but contributes to payment on the bill, is entitled to a deduction in the actual amount of the contribution, not to exceed the standard.
- (x) When the Standard Allowance for Utilities is Not to be Used. The standard allowance for utilities will not be used in the following:
 - (I) When the household has no utility expense such as when all utilities are furnished as an in-kind benefit.
 - (II) When the household wishes to claim expenses for an unoccupied home.
 - (III) Households are only charged for water, garbage and trash, sewerage, telephone, cooking fuel, or any combination of these expenses. To be eligible for the standard allowance, the household must be directly billed on a regular basis for its heating and cooling costs.
 - (IV) A household lives in a public housing unit, or other rental housing unit which has central utility meters and charges the household only for excess utility costs.
 - (V) Multiple households live in the same residence and share common utility costs. These households are only entitled to their prorated share of the standard utility allowance.
- (xi) Eligibility for the standard utility allowance for households receiving Energy Assistance or other vendor payments for utilities.
 - (I) Low Income Energy Assistance Program (LIHEAP). LIHEAP payments made directly to the household or energy provider do not affect the household's eligibility for the S.U.A. The S.U.A. will remain applicable if the household is otherwise eligible to claim it.
 - (II) State and Local Energy Assistance and Other Vendor Payments. Energy assistance payments made directly to the household do not affect the household's eligibility for the S.U.A., if the household is otherwise eligible to claim it. Energy assistance payments (other than LIHEAP), made directly to the utility company (including checks payable jointly to the household and the utility company) are considered vendor payments. A household receiving such vendor payments is eligible for the S.U.A. if it has out of pocket energy costs remaining after prorating the vendor payment over the period it is intended to cover.
- (b) Types of Expenses Allowed for Excluded Household Members - Food Stamps Only.
 1. Ineligible Aliens, Individuals Whose Citizenship is Questionable, and Individuals Disqualified Failure to Provide or Apply for the SSN. That portion of the excluded individual's earned income which is attributed to the household shall have the

(Rule 1240-01-04-.17, continued)

20% earned income deduction applied. That portion of the household's allowable shelter and dependent care expense which are either paid by or billed to excluded members shall be divided evenly among the household members including the excluded members. All but the excluded member(s) share is counted as a deductible shelter expense for the remaining household members.

2. Individuals Disqualified for International Program Violation. The entire household's allowable earned income deduction, medical, dependent care, and excess shelter deductions shall continue to apply to the remaining household members.

(c) AFDC Only.

1. The only deductions from gross income which are permitted in determining net income are:
 - (i) Earned income disregards when applicable, i.e., flat work expense allowance, child care, and incentive disregards.
 - (ii) Amounts diverted to ineligible legal dependents in the home are deducted according to specified procedure.
2. Income which has been excluded from consideration or disregard will not be taken into account in determining need and amount of assistance for any other individual. Income will be applied first to maintenance needs.

Authority: TCA §§4-5-202, 71-1-105, 71-3-157, 71-3-158; PL 104-193, 7 CFR 273.9. **Administrative History.** Original rule filed August 15, 1980; effective September 29, 1980. Amendment filed November 6, 1980; effective 22, 1980. Amendment filed December 3, 1980; effective January 19, 1981. Repeal and new rule filed December 10, 1981, effective January 25, 1982. Amendment filed August 17, 1982; effective September 16, 1982. Amendment filed March 3, 1983; effective April 4, 1983. Amendment filed May 17, 1983; effective June 16, 1983. Amendment filed October 14, 1983; effective November 14, 1983. Amendment filed March 12, 1984; effective June 12, 1984. Amendment filed January 7, 1985; effective February 6, 1985. Amendment filed September 19, 1985; effective October 19, 1985. Amendment filed April 15, 1986; effective July 14, 1986. Amendment filed September 29, 1986; effective December 29, 1986. Amendment filed May 8, 1987; effective August 31, 1987. Amendment filed July 23, 1987; effective October 28, 1987. Amendment filed March 1, 1991; effective April 13, 1991. Amendment filed April 4, 1997; effective June 18, 1997.

1240-01-04-.18 TREATMENT OF UNEARNED INCOME - FOOD STAMPS/AFDC. Unearned income is money which is received for reasons other than the current work efforts of an individual. No earned income exclusions or work expense deductions may be applied to unearned income as defined. In the Food Stamp Program the standard deductions and dependent care, shelter, and medical deductions are to be applied to unearned income as appropriate [see §1240-01-04-.17(8)]. Unearned income is considered available to meet food/maintenance needs as described in previous sections.

Authority: TCA §§14-8-106, 14-27-104; 7 CFR 273.9, 273.10; 45 CFR 233.20; PL 97-35. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982.

1240-01-04-.19 TREATMENT OF EARNED INCOME.

- (1) Earned income is defined as that total income which an HH/AG earns by its own work efforts, either salary, wages or commissions paid to the HH/AG as an employee, or profits from self-employment in an enterprise (including farming) which it may carry on independently or jointly with another person or persons. It includes earnings over a period of time from which

(Rule 1240-01-04-.19, continued)

- settlement is made at one given time. (For AFDC purposes, this would include earned income tax credits.) It includes paid annual leave, vacation time, sick leave, pay while on maternity leave, and bonuses when they are subject to Income Tax and FICA. It also includes income from rental property for food stamps when a member of the HH/AG is actively engaged in the management of the property at least an average of 20 hours per week, and for AFDC when the aid group member is actively engaged in producing such income regardless of the amount of time spent in earning that income. It does not include and income such as pensions or benefits accruing as compensation or reward for service or compensation for lack of employment; for example, RSDI benefits, VA benefits, Unemployment Compensation, etc., nor Military Allotments, allotments from Job Corps participants, or return from capital investments.
- (2) Food Stamps Only. All gross income, which is received or expected to be received, (during a food stamp certification period) is considered available in relation to the appropriate maximum income level for food stamp purposes, with three exceptions:
- (a) When income is excluded or disregarded as defined:
 - (b) When income is so infrequent or irregular that it cannot reasonably be anticipated, but not in excess of \$30 per quarter; and
 - (c) When a household contains a member who is 60 years of age or over, or a member who receives Supplemental Income (SSI) benefits under Title XVI, of the Social Security Act, or disability or blindness payments under Titles I, II, X, XIV or XVI of the Social Security Act.
- (3) AFDC Only. All gross earned income, received or anticipated for members of the assistance unit and their responsible relatives is considered available in relation to the gross income standard with two exceptions:
- (a) Only the deemed income of a stepparent or of a parent/legal guardian of a minor parent considered available;
 - (b) Job Training Partnership Act earnings of a child recipient or other type earnings of a full-time student during the six month exclusion period *are not* considered available.

Authority: TCA §§14-8-106, 14-27-104; 7 CFR 273.9; 45 CFR 233.20; PL 97-35, PL 98-369 §2640.
Administrative History: Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982.

1240-01-04-.20 POLICIES REGARDING DETERMINATION OF NET INCOME - FOOD STAMPS ONLY. Net income determines the amount of allotment per household size.

- (1) Generally, net earned income is considered to be gross earnings minus an 18% earned income deduction, and, if income is from self-employment, minus costs of doing business.
- (2) Adjusted monthly income is gross earned and unearned income less all appropriate deductions.
- (3) Work Expense Deduction. Expenses directly attributable to costs of employment are considered as a deduction from earned income as described in the following sections:
 - (a) A standard allowance of 18% of gross earnings is deducted from gross income as work expense allowance. No additional deductions (i.e., taxes, union dues, transportation, etc.) except for dependent care, can be allowed as work expenses.

(Rule 1240-01-04-.20, continued)

- (b) Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria, (or an equivalent effort by those not subject to job search), or attend training or education preparatory to employment, are allowed in addition to the 18% earned income deduction. However, the dependent care deduction cannot exceed the maximum allowable amount or in combination with shelter cost deductions. The dependent care deduction may be made from any income as long as the care is required for reasons listed above.

Authority: TCA §§14-8-106, 14-27-104; PL 97-35; 7 CFR 273.9; 45 CFR 233.20. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982.

1240-01-04-.21 POLICIES REGARDING DETERMINATION OF NET INCOME - AFDC ONLY.

- (1) Determining net income in AFDC involves a series of steps. Certain types of income are not counted under certain circumstances. This section outlines the steps involved in determining net income and explains criteria for excluding or disregarding income. The application of sanctions in income penalty situations is also described.

Exclusion of income means the income is not counted (excluded) in determining financial eligibility based on the Gross Income Standard (GIS) test or in computing the grant amount. Examples of excluded income include relocation assistance payments, WIC benefits, reimbursements for other than basic living expenses, etc. Exclusion of a child recipient's earnings for six months in a calendar year is an example of a temporary exclusion. Certain student status may be required for this exclusion (See §1240-01-03-.19 (1) 2 (i)).

Disregards are only applied to earned income. Certain types of disregards are applied only after a budgeting test or a technical factor is met.

- (a) Disregard of earnings of a child recipient who is a full-time student or part-time student and not employed full-time if the GIS test is met. The child's earnings plus the family's gross countable income are computed in this test.
- (b) Earned income disregards of the work allowance and child/dependent care.
- (c) \$30 disregard from each individual's earnings for 12 consecutive months if the individual is an active recipient or an applicant whose net income meets the Consolidated Need Standard (CNS) test or who has received AFDC in one of the preceding four months, and
- (d) One third (1/3) Disregard of the remainder from each individual's earnings for four consecutive months if the same criteria is met as given for the \$30 Disregard.

The following is an outline of steps used in determining net income. The requirements in each step must be met before progressing to the next step.

Steps in Determining Net Income - AFDC Only

- Step 1 - Exclude "Excludable Income" (See Section 1240-01-04-.15).
- Step 2 - Compare total countable gross income (earned and unearned) to the GIS (185 % of CNS) for the assistance unit size.
- Step 3 - Disregard earnings of a child recipient with student status (full-time student or part-time student not employed full-time).

(Rule 1240-01-04-.21, continued)

- Step 4 - Apply applicable disregards to earnings of *each* individual in this order:
- Work Allowance of \$75 for full or part-time employment.
 - Child/Dependent Care deduction up to \$160 per child/dependent per month.
- Step 5 - For *applicants*, compare net earnings plus other income to the CNS for assistance unit size.
- Step 6 - For *recipients and applicants* (meeting the criteria in Step 5 or who received assistance in at least one of the four preceding months) and are entitled according to the consecutive month rules and the 12 month rules, disregard from each individual's earnings:
- \$30 of net earnings for up to 12 consecutive months and
 - 1/3 of the remainder for up to 4 consecutive months
- Step 7 - Add net earned income to total countable unearned income for all members of the assistance unit.
- (2) Criteria for the \$30 Disregard and the 1/3 Disregard. The \$30 and/or 1/3 are two different disregards. There are two different lengths of time for applying them but other criteria are the same for both.
- (a) Consecutive Months Rule for \$30 Disregard. The \$30 disregard is applied to the earnings of each eligible individual for a maximum of twelve (12) consecutive months.
 - (b) Consecutive Months Rule for 1/3 Disregard. The 1/3 disregard is applied to the remainder (after the \$30 disregard) of each eligible individual's earnings for a maximum of four (4) consecutive months.
 - (c) Interruption of the receipt of the \$30 and/or 1/3 disregards starts the count of the consecutive months again except:
 - 1. In penalty situations whereby the disregard(s) is/are not applied but counts as one of the consecutive months (See Penalties in following section) or
 - 2. In suspension of grant in non-penalty situations. The suspension does not interrupt accumulation of the consecutive months, nor does it count as one of the consecutive months.
 - (d) Twelve Month Rule. An individual who has received the appropriate number of consecutive months of the \$30 and/or 1/3 disregards can not receive the disregard(s) again until she/he has been off AFDC or AFDC-MO for twelve (12) consecutive months.
 - (e) *Applicants*. The \$30 and 1/3 disregards can be applied to the earnings of an applicant if:
 - 1. She/he was an AFDC recipient (including AFDC-MO) in at least one of the four months preceding the month of application and is eligible for the disregard according to consecutive months rules and the twelve month rule in (a) through (d) above; or

(Rule 1240-01-04-.21, continued)

2. The assistance unit's income *without* the disregard is less than the consolidated standard and he/she is eligible for the disregard based on the criteria for the \$30 disregard and the 1/3 disregard.
- (3) For applicants/recipients receiving earned income from regular employment or on-the-job training through WIN (Section 432(b)(1) of the Act), the earned income disregards are applied in the same amounts and in the same order as for other applicants/recipients.
- (4) Earned Income Penalties. Deem the \$30 and/or 1/3 disregards as received the first month a change could be made effective if timely reported whenever one of the conditions listed below occurs. The \$30 and/or 1/3 disregards as one of the twelve/four consecutive months. The following are penalty situations during an individual's receipt of AFDC or AFDC-MO (due to the \$10 limitation):
 - (a) The individual, without good cause, reduced earnings or terminated or refused employment. Good cause includes, but is not limited to, unsafe or unhealthily working conditions, pay at less than the federal minimum wage, lack of adequate child care, lack of transportation, etc.
 - (b) The individual failed, without good cause, to make a timely report of income causing an overpayment. Good cause circumstances are instances such as severe illness, accident, hospitalization, natural disaster, etc. which prevent the client from making a timely report.
 - (c) The individual voluntarily requests termination of assistance for the primary purpose of avoiding receipt of the \$30 and/or 1/3 disregards for the appropriate number of consecutive months.
- (5) A deduction for payments for dependent care cannot be made when care is provided by:
 - (a) The parent, stepparent, or guardian of a child;
 - (b) A person who is a member of the assistance unit of which the dependent is a member; or
 - (c) The spouse of the dependent.

Authority: TCA §§14-8-106, 14-27-104; 7 CFR 273.99; 45 CFR 233.20; PL 97-35, PL 98-369 §§2622, 2623, 2642. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed January 7, 1985; effective February 6, 1985.

1240-01-04-.22 CALCULATING NET INCOME AND BENEFIT LEVELS - FOOD STAMPS.

- (1) Net Monthly Income. To determine a household's net monthly income, the following method and sequence will be used:
 - (a) Add the gross monthly income earned by all household members minus earned income exclusions to determine the household's total gross earned income.
 - (b) Multiply the total gross earned income by 18% and subtract that amount to determine the net monthly earned income.
 - (c) Add to net monthly earned income the total monthly unearned income of all household members, minus income exclusions.

(Rule 1240-01-04-.22, continued)

- (d) Subtract the standard deduction.
 - (e) If the household is entitled to an excess medical deduction, determine if total medical expenses exceed \$35 per month. If so, subtract that portion which exceeds \$35.
 - (f) Subtract monthly dependent care expenses, if any, up to the maximum amount allowed.
 - (g) Total the allowable shelter expenses to determine shelter costs. Subtract from total shelter costs 50% of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to paragraph (h) of this section.
 - (h) Subtract the excess shelter cost up to the maximum amount allowed (unless the household is entitled to the full amount of its excess shelter expenses) from the household's monthly income after all other applicable deductions. Households not subject to the shelter standard shall have the full amount exceeding 50% of the net income subtracted. The household's net monthly income has been determined.
 - (i) If the initial month's benefits calculated to be less than \$10.00 (before or after proration) for any household, no benefits will be issued in the initial month.
- (2) Prorating Initial Month's Benefits. The amount of the household's benefits for the initial month of certification will be based on the day of the month it applies for benefits. The following procedures shall be used to determine the amount of initial benefits:
- (a) A household's benefit level for the initial month of certification will be based on the day of the month it applies for benefits. Using a 30-day calendar month households shall receive benefits prorated from the day of application to the end of the month. A household applying on the 31st of a month will be treated as though it applied on the 30th day of the month. The term initial month means the first month for which the household is certified for participation in the Food Stamp Program or the first month following any period during which the household was not certified for participation. If the prorated benefits for the initial month of certification are computed to be less than \$10.00, no benefits will be issued for the initial month.
 - (b) Reserved for future use.
 - (c) Those households which are certified using the expedited service procedures and which apply for benefits after the 15th of the month shall be certified for benefits prorated from the day of application to the end of the application month and also for the following month with no proration of benefits. However, the benefits for the month following the month of application shall not be issued until all necessary verification, not already provided, has been provided. The second month's benefits shall be issued not later than the fifth working day from the date the verification was provided by the household or the first of the second month, whichever is later.
 - (d) If an application for recertification is submitted after the household's certification period has expired, that application shall be considered an initial application and benefits for that month prorated.
 - (e) Eligible households which are entitled to no benefits shall be denied on the basis that its net income exceeds the level below which benefits are issued.

(Rule 1240-01-04-.22, continued)

Authority: TCA §§14-27-104, 14-27-105, 14-27-106; PL 99-198; 7 CFR 273.7, 273.8, 273.9 and 273.10.
Administrative History: Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed March 28, 1983; effective April 27, 1983. Amendment filed April 15, 1986; effective July 14, 1986.

1240-01-04-.23 CALCULATING NET INCOME AND BENEFIT LEVELS - AFDC ONLY.

- (1) Reserved for future use.
- (2) Reserved for future use.
- (3) Reserved for future use.
- (4) The Department has developed a consolidated standard of need based on the size of the aid group for subsistence items including food, clothing, fuel, lights, household operations, personal incidentals, medical incidentals and shelter. This standard does not necessarily represent actual costs for these items, nor does not standard include all items which might be considered "needs." It is a standard amount used for the following purposes:
 - (a) To determine a non-responsible relative's eligibility to be included in an assistance unit; and
 - (b) As the basis for determining the gross income standard and the standard payment amount.
- (5) The AFDC payment does not meet 100% of need as defined by the consolidated need standard. A percentage of need is met dependent on available state and federal funds. Income available to the assistance unit (after all appropriate disregards and deductions have been applied) is subtracted from the consolidated need standard. Payment is the lesser of the resulting deficit or the percentage of the consolidated need standard currently being met.
- (6) If an assistance unit's available income equals or exceeds the assistance unit's consolidated need, the assistance unit is not eligible for an AFDC grant. If there is a deficit of \$1.00 to \$9.99, no payment can be made, but the assistance unit is deemed to be AFDC recipients for other purposes, including Medicaid coverage, as long as all other points of eligibility continue to be met. If the deficit is \$10.00 or more and other eligibility requirements are met, payment will be made.
- (7) Payments
 - (a) AFDC payments are issued on a monthly basis and are paid for the current month.
 - (b) Initial payments are made beginning with the date of application, if all other eligibility factors are met at that time, or at the first of the month in which eligibility is achieved, whichever is later.
 - (c)
 1. The deficit between the consolidated need standard and any countable income but not less than \$10.00 per month; or
 2. A standard payment amount for each family size, which is the percentage of the consolidated need standard for the family size which is currently being met.
- (8) Reserved for future use.

(Rule 1240-01-04-.23, continued)

Authority: TCA §§14-8-106; PC 640, Public Acts of 1986; PL 97-35; 45 CFR 233.20; P.C. 918.

Administrative History: Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed March 3, 1983; effective April 4, 1983. Amendment filed September 4, 1984; effective October 4, 1984. Amendment filed September 29, 1986; effective December 29, 1986.

1240-01-04-.24 TREATMENT OF INCOME FROM SELF-EMPLOYMENT. When the HH/AG includes a person(s) who receives income from self-employment, instructions in the following sections should be used to arrive at the monthly amount of gross profit which is used to calculate countable income. These sections shall also deal with the determination of gross profit from self-employment, i.e., the deductions and exclusions that are applicable only to income from self-employment.

(1) Determining Self-Employment Income.

(a) Situations for Averaging Income - Food Stamps.

1. When Income Is For A Year. Self-employment income which represents an annual support shall be annualized over a 12-month period, even if the income is received in only a short period of time. If self-employment income is intended to support the person on an annual basis, this self-employment income shall be annualized even if the HH receives income from other sources in addition to self-employment. If self-employment income is received once annually, the income would be averaged over a 12-month period beginning with the month the income is received. If self-employment income is received more often than once a year, the 12-month period should begin in the month the latest income was received. If a person is under contract, the 12-month period should begin the first month the person receives payment under the contract. If the averaged amount does not accurately reflect the household's actual circumstances because of a substantial increases or decreases in business, the income determination will be based on anticipated earnings.
2. When Self-Employment Income Is Received Monthly. Self-employment income which is received on a monthly basis but which represents a HH's annual support shall normally be averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual circumstances because the HH has experienced a substantial increase or decrease in business, self-employment income shall be calculated based on anticipated earnings.
3. When Self-Employment Income Is Only Part of Total Income. Self-employment income which is intended to meet the HH's needs for only part of the year shall be averaged over the period of time the income is intended to cover.
4. Cases of New Businesses. If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise shall be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year. If the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for food stamps for less than a year until the business has been in operation long enough to base a longer projection.

(b) Determining Self-Employment Income - AFDC.

1. Annual Income. Income which is received annually, and/or which is an integral part of annual income, will be totaled and prorated over 12 months, even if the

(Rule 1240-01-04-.24, continued)

income is received only once or over a period of time shorter than 12 months. Such income is usually derived from farming but may also apply to other self-employment enterprises. Annual income will be prorated over 12 months even if a person has income from sources other than self-employment. Income received once annually will be prorated over 12 months beginning with the month the income is received. Income which represents annual income but which is received periodically during a year will be totaled and averaged over 12 months. This average figure will be used to project future income (if all other factors remain relatively constant). If a self-employed person is under contract, the 12-month period begins the first month the person receives payment under the contract.

2. Income From Migrant Labor, Seasonal Work. An estimated average monthly income from migrant labor, seasonal farm work and other seasonal employment will be considered during the months it is received.
3. Monthly Self-Employment Income. When self-employment income is received monthly, the average monthly income will be estimated based on past income and substantial changes in circumstances which have occurred, such as an increase or decrease in business.
4. Self-Employment As Part of Total Income. Self-employment income which is obtained only for a specific period of time will be averaged over the months it is received.
5. Income From A New Business. When a self-employment enterprise has been in operation less than a year, the AFDC grant payment will be based on current income and a change will be made at the time a client reports income on which a more reasonable projection can be made, or when a pattern of average income is discovered.

(2) Special Income Consideration.

(a) Rental Property.

1. Food Stamps Only. Income derived from rental property is considered earned income for the 18% earned income deduction/work expense allowance. Income from rental property always has the cost of doing business deducted.
2. AFDC Only. Income derived from rental property is considered as earned income if the individual(s) is actively engaged in producing such income. The amount of time the individual spends in producing such income is not a criterion for determining whether or not the income is earned or unearned. To be considered earned income the individual must bear some responsibility in earning the income. This responsibility may include managerial activities. However, if the individual carries no specific responsibility in earning the income, such as where rental properties are in the hands of rental agencies and the check is forwarded to the individual or where an individual rents farm land to others and receives a money payment, the income would not be classified as earned income. The costs of doing business is an allowable deduction regardless of whether the income is earned or unearned.

- (b) Capital Gains Are Income. The proceeds from the sale of capital goods or equipment are calculated in the same manner as a capital gain for federal income tax purposes. Even if only 50% of the proceeds from the sale of capital goods or equipment is taxed

(Rule 1240-01-04-.24, continued)

for federal income tax purposes, the worker shall count the full amount of the capital gain as income.

(c) Reserved for future use.

(3) Costs of Producing Self-Employment Income.

(a) When a member of the HH receives income from self-employment, he/she shall be required to keep a record of expenses incurred in the production of this income.

(b) Expenses.

1. Allowable costs of producing self-employment income include, but are not limited to:

- (i) Identifiable costs of labor (salaries, employers share of SS, insurance, etc.)
- (ii) Stock, raw materials, seed and fertilizer, feed for livestock
- (iii) Rent and cost of building maintenance
- (iv) Business telephone costs
- (v) Costs of operating a motor vehicle when required in connection with the operation of the business.
- (vi) Interest paid to purchase income producing property.
- (vii) Insurance premiums and taxes paid on income producing property.
- (viii) Costs of feed for work stock.
- (ix) Costs of meals and equipment for children for whom day care is provided in the A/R's home.

2. Unallowable Deductions. The following are not considered as costs of producing self-employment income, and shall not be deducted from the household's self-employment income:

- (i) Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods;
- (ii) Net losses from previous periods;
- (iii) Federal, state, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work). These expenses are accounted for by the 18% earned income deduction in food stamps and the flat work expense allowance in AFDC;
- (iv) Costs of producing home produce intended for family consumption;
- (v) Family living expenses;
- (vi) Depreciation.

(Rule 1240-01-04-.24, continued)

- (4) **Determining Monthly Income When Averaged - Food Stamps/AFDC.** For the period of time over which self-employment is determined, add all gross self-employment income (including capital gains), exclude the costs of producing the self-employment income, and divide the self-employment income by the number of months over when the income will be averaged. If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1,000 or more from the farming enterprise.
- (5) **Determining Monthly Income When Anticipated - Food Stamps/AFDC.** For those HH/AG's whose self-employment income is not averaged but is instead calculated on an anticipated basis, add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods/months during the next 12 months except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. The anticipated monthly amount of capital gains shall be added to the anticipated monthly self-employment income, and the cost of producing the self-employment income will be subtracted. Except for depreciation, the cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income. If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1,000 or more from the farming enterprises.
- (6) **Household/Aid Groups with Boarders - Food Stamps/AFDC.**
 - (a) HH/AG's that take in boarders or that operate commercial boarding houses are considered self-employed. Identifiable expenses are allowed as a cost of doing business as in any self-employment enterprise.
 - (b) **Determining Income for Household.**
 1. Reserved for future use.
 2. Reserved for future use.
 3. **Deductible Expense - Food Stamp Only.** The net income from self-employment is added to other earned income and the 18% earned income deduction is applied to the total.
 4. **Food Stamps Only.** Shelter costs the household actually incurs, even if the boarder contributed to the household for part of the household's shelter expenses, is computed to determine if the household will receive a shelter deduction. However, the shelter costs shall not include any shelter expenses directly paid by the boarder to a third party, such as the landlord or utility company.

Authority: TCA §§14-8-106, 14-27-104; 7 CFR 273.1 and 273.11; 45 CFR 233.50, 45 CFR 233.20; PL 97-35 and PL 99-198. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed August 17, 1982; effective September 16, 1982. Amendment filed August 3, 1984; effective November 13, 1984. Amendment filed April 15, 1986; effective July 14, 1986. Amendment filed September 29, 1986; effective December 29, 1986.

1240-01-04-.25 INCOME OF RESIDENT FARM LABORERS, MIGRANT HH/AG'S, SCHOOL EMPLOYEES, AND OTHER CONTRACTUAL EMPLOYEES.

- (1) Resident Farm Laborers.
 - (a) Stable Income - Single Employer.
 1. Farm laborers whose primary source of income is from regular farm employment with the same employer are normally employed for the entire year and receive a regular monthly salary.
 2. Food Stamps. When the income is regular and does not vary from month to month, the monthly income figure will be used to determine the benefit level for the entire certification period.
 3. AFDC. The regular monthly income figure will be used to determine the amount of the AFDC grant.
 - (b) Irregular Income - Single Employer.
 1. In some instances, the HH/AG is paid for work done only during the work season, but resides year round on the farm and may receive advance or deferred payments, (sometimes known as "furnish"), during the non-work season. Some difficulty may be experienced in assigning an income figure to the farm worker whose income is high during the work season and correspondingly low during the non-work season when income is only from advance or deferred payments.
 2. Food Stamps. Variation in income between work and non-work cycles may be quite substantial. Even if income is prorated unevenly over the certification period to account for variations, consideration should be given to assigning the household shorter certification periods to take into account the income actually available to the household or the household may be assigned a variable basis of issuance.
 3. AFDC. Irregular income is to be averaged over a 12-month period.
 - (c) Regular or Irregular Income - Multiple Employers. When a farm laborer works regularly for more than one employer, the total income from all employers must be determined and then it is treated in the same manner as that received from a single employer. If work for multiple employers is irregular, the food stamp certification period should reflect actual income or variable basis of issuance should be assigned.
- (2) Migrant Farm Laborers.
 - (a) Expedited Service - Food Stamps Only. Migrant farm laborers usually have little or no income when entering an area and may qualify for expedited services.
 - (b) Resources - Food Stamps/AFDC. It must be determined whether migrants have out-of-state resources or income from real property in the home base area. A migrant family is permitted one home and lot as an exemption from resources as any other HH/AG. For example, if the applicant has a home and lot in Texas and does not own a residence in Tennessee, the Texas home will be exempted as a resource. It must be determined whether out-of-state real property is being rented or is producing income. If such property is producing income, such income must be added to all other household income in determining eligibility for AFDC and eligibility and basis of issuance for food stamps.

(Rule 1240-01-04-.25, continued)

- (c) Work/WIN Registration
 - 1. Food Stamps. Employable members of migrant households who are not employed at least 30 hours a week or receiving weekly earnings equal to the federal minimum wage multiplied by 30 hours must register for and accept suitable employment in the same manner as other persons.
 - 2. AFDC Only. Migrant workers must register for WIN or be determined to be exempt from the registration requirement as any other AFDC applicant/recipient.
 - (d) Income of Children in Migrant Households - Food Stamps. The earned income of a student under 18 years of age is exempt and must be differentiated from the rest of the household's income. Unless income can be identified as being earned specifically by a student, the total income shall be prorated equally among the number of household members working and exclude that portion allotted to the student. This provision applies to students who are currently attending school and those who plan to return to school after academic breaks. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.
 - (e) Income of Children in Migrant Households - AFDC. The income of children in migrant households will be treated as that of any other child for whom eligibility is being determined. If the amount of income belonging exclusively to a child cannot be determined, prorate equally the total income of all employed household members and treat the child's prorata share as his/her own income.
- (3) School Employees.
- (a) Food Stamps.
 - 1. General Provisions for Income Averaging. HH's that derive their annual income in a period of time shorter than one year shall have that income averaged over a 12-month period, provided the income is not received on an hourly or piecework basis. This provision includes teachers and other school employees who are under a contract which is renewable on an annual basis. Such members will be considered to be receiving compensation for an entire year even though pre-determined non-work periods are involved or actual compensation is scheduled for payment during the work periods only.
 - 2. Contract Renewal. The renewal process may involve a signing of a new contract each year; be automatically renewable; or, in cases of school tenure, rehire rights may be implied and thus preclude the use of a written contract altogether.
 - 3. Work - Non-work Cycle. The fact that such a contract is in effect for an entire year does not necessarily mean that the contract will stipulate work every month of the year. There may be certain predictable non-work periods or vacations.
 - 4. Income. Income from such a contract will be considered as compensation for a full year regardless of the frequency of compensation as stipulated in the terms of the contract, as determined at the convenience of the employer, or as determined at the wish of the employee.
 - 5. Determination of Eligibility, Basis of Issuance, and Certification Periods. The annual income household members received from contractual employment described above shall be averaged over a 12-month period to determine the member's average monthly income. To determine the HH's eligibility, all other

(Rule 1240-01-04-.25, continued)

monthly income from other HH members will be added to this average monthly income and income exclusions and deductions applied in the normal manner.

6. Exception. Policy as stated in 1240-01-04-.25(3)(a)5. does not apply to recipients of emergency food stamp assistance issued under an FNS declared disaster. In case of emergency food stamp assistance, special rules apply which are dictated at the time of the emergency.
- (b) AFDC. The average monthly income of school employees will be considered available during the months it is received.
- (4) Income of Other Contractual Employees-AFDC. The average monthly income of persons employed on a contractual basis (other than school employees) will be considered as income during the period covered by the contract.
 - (5) Temporary Employment of Person Under Contract - FS/AFDC. After the appropriate earned income exclusions, disregards and deductions, income from temporary employment will be budgeted as available only in the months received. The same procedures outlined in the section below on Unemployment Compensation will be followed.
 - (6) Unemployment Compensation - FS/AFDC. Unemployment compensation is counted as income only in the months in which it is received. It is not to be annualized along with other annualized income from contractual employment. The monthly amount of the unemployment compensation benefit will be added to the monthly amount of income from employment to determine income available to meet current needs.

Authority: TCA §§14-8-106 and 14-27-104; PL 97-35; 7 CFR 273.11. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982.

1240-01-04-.26 REPEALED.

Authority: TCA §§14-8-106; PL 97-35, PL 98-369 §2640; 45 CFR 233.20; PC 918. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1982. Amendment filed September 4, 1984; effective October 4, 1984. Repeal filed January 7, 1985; effective February 6, 1985.

1240-01-04-.27 STANDARDS OF NEED/INCOME. The following tables show the income standards, food stamp coupon allotment (Thrifty Food Plan), standard income deduction, maximum shelter/dependent care deductions, and standard utility/telephone allowances to be used in the Food Stamp Program to determine eligibility and level of benefits. (Tables I through VII). Table VIII shows the maximum income level, consolidated standard of need, and the possible standard payment amounts to be used in the AFDC program to determine eligibility and level of benefits.

- (1) Food Stamp Standards.
 - (a) Food Stamp Gross Monthly Income Standards. The gross monthly income standard is used to determine whether a household is eligible; it is not used to determine the actual amount of the coupon allotment.
 1. If the household's gross monthly income (before deductions) exceeds the gross income standard for the number of persons in the household, the household is not eligible for food stamps.
 2. If the household's gross monthly income (before deductions) is equal to or less than the gross income standard for the number of persons in the household, the

(Rule 1240-01-04-.27, continued)

household may be eligible. At this point, the net income standard shall be applied to the household's net income as instructed in 1240-01-04-.27 (1)(b).

Table I

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	\$1174	\$1579	\$1984	\$2389	\$2794	\$3200	\$3605	\$4010	\$4416	\$4822

For each additional member add \$406

(b) Net Monthly Income Standards-Food Stamps. The Net Monthly Income Standard is used to determine whether a household is eligible. It is NOT used to determine the actual amount of their coupon allotment. This standard applies to all households including household containing a member who is elderly or disabled.

1. If a household's available income (after exclusions and deductions) exceeds the Net Monthly Income Standard for the number of persons in the household, a household is not eligible for Food Stamps.
2. If a household's available income (after exclusions and deductions) equals or is less than the appropriate Net Monthly Income Standard for the number of persons in the household, the household is eligible for a Food Stamp allotment.

Table II

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Maximum Net Income	\$903	\$1215	\$1526	\$1838	\$2150	\$2461	\$2773	\$3085	\$3397	\$3709

For each additional member add \$312

(c) Basis of Coupon Issuance - Value of the Thrifty Food Plan. The Thrifty Food plan shows the maximum coupon allotment that can be authorized for a household of any given size, and is used to determine the actual amount of the coupons for which the household qualifies.

1. Calculate 30% of a household's available income (after exclusions and deductions).
2. Subtract that amount from the maximum coupon allotment for the appropriate household size to determine the value of the coupon allotment. The minimum allotment for one and two person households is \$16.00 even if thirty percent of those household's net income subtracted from the Thrifty Food Plan is less than \$16.00. For all other household's sizes, the allotment is based on the actual amount derived from the preceding calculations.
3. If after using the appropriate formula the result ends in 1 through 99 cents, the amount shall be rounded down to the nearest lower whole dollar. If the computation results in an allotment of less than \$10, then no issuance shall be made for the initial month.

(Rule 1240-01-04-.27, continued)

Table III

No. of Persons in Household	1	2	3	4	5	6	7	8	9	10
Maximum Coupon Allotment	\$200	\$367	\$526	\$668	\$793	\$952	\$1052	\$1202	\$1352	\$1502

For each additional member add \$150

(Rule 1240-01-04-.27, continued)

(d)

Table IV-A
Standard Deduction

Household Size	1	2	3	4	5	6+
Standard Deduction	\$142	\$142	\$142	\$153	\$179	\$205

Table IV-B
Food Stamp Deductions

Maximum Dependent Care	No Limit
Maximum Shelter Deduction for Non-Elderly/Disabled Households	\$458
Maximum Shelter Deduction for Elderly/Disabled Households	No Maximum

(e)

TABLE V-A
Food Stamp Standard Utility Allowance

Household Size	1	2	3	4	5	6	7	8	9	10 or more
Standard Utility Allowance	\$314	\$326	\$338	\$350	\$360	\$372	\$384	\$396	\$408	\$419

Table V-B
Food Stamp Basic Utility Allowance

Household Size	1	2	3	4	5	6	7	8	9	10 or More
Basic Utility Allowance	\$126	\$126	\$126	\$126	\$126	\$126	\$126	\$126	\$126	\$126

The Basic Utility Allowance is to be used for households who are not eligible for the Standard Utility Allowance because they do not incur a major heating or cooling expense, but who do incur utility costs such as electricity for lighting, gas for cooking, water/sewerage, or garbage pickup.

(f)

TABLE VI
Food Stamp Standard Telephone Allowance

Household Size	1	2	3	4	5	6	7	8	9	10 or More
Telephone Standard	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25	\$25

(g) The Homeless Shelter Standard may be used in determining eligibility and amount of benefits. It is intended to offset such expenses as may reasonably be expected to be incurred for households in which all members are homeless individuals but are not receiving free shelter throughout the month.

TABLE VII
Homeless Household Shelter Allowance

Household Size	1	2	3	4	5	6	7	8	9	10 or
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(Rule 1240-01-04-.27, continued)

										more
Homeless Shelter Standard	143	143	143	143	143	143	143	143	143	143

1. A homeless individual is an individual who lacks a fixed and regular nighttime residence, or an individual who has a primary nighttime residence that is:
 - (i) a supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - (ii) an institution that provides a temporary residence for individuals intended to be institutionalized;
 - (iii) a temporary accommodation in the residence of another individual if the accommodation in the residence is for no more than 90 days; or
 - (iv) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) AFDC Standards.

- (a) Consolidated Need Standard (CNS). The Department has developed a consolidated standard of need based on size of the assistance unit, which indicates the amount of income the assistance group would need to meet subsistence living costs according to allowances set by the state for items including food, clothing, fuel, lights, household operations, personal incidentals and shelter. The CNS which determines a non-responsible relative's eligibility to be included in an assistance unit, also is used as a basis for determining the gross income standard and the standard payment amount.
- (b) Gross Income Standard. This standard is set by federal law at 185% of the consolidated standard of need. If the gross countable income of an assistance unit exceeds this standard, then the assistance unit is not eligible for AFDC.
- (c) Standard Payment Amount. Tennessee does not meet 100% of need as defined by the Consolidated Need Standard. Rather, a maximum payment by family size, dependent on funds available, is paid. An assistance payment is determined as follows:
 1. If the assistance unit's net income (after allowable exclusions and deductions) equals or exceeds their consolidated need, then the assistance unit is not eligible for AFDC.
 2. If the assistance unit's net income is less than their consolidated need, then the monthly grant amount is the smaller of a maximum by family size (standard payment amount) or the deficit if it is \$10 or more. If the deficit is \$1 - \$9, the assistance unit is eligible for Medicaid Only, and is deemed to be an AFDC recipient group.
 3. The minimum monthly grant which can be paid is \$10. Assistance units otherwise eligible for grant less than \$10 are eligible for Medicaid benefits as deemed AFDC recipients.
- (d) AFDC Need/Payment - Standards.

(Rule 1240-01-04-.27, continued)

Table VIII

	Number of Persons in Assistance Unit									
	1	2	3	4	5	6	7	8	9	10
Gross Income Standard	777	1110	1252	1289	1489	1507	1633	1655	1838	1875
Consolidated Need Standard	420	600	677	697	805	815	883	895	994	1014
Standard Payment Amount	95	142	185	226	264	305	345	386	425	467
Minimum AFDC Payment \$10 per month for any assistance unit.										

	Number of Persons in Assistance Unit									
	11	12	13	14	15	16	17	18	19	20
Gross Income Standard	1929	1977	2020	2055	2083	2109	2131	2149	2162	2173
Consolidated Need Standard	1043	1069	1092	1111	1126	1140	1152	1162	1169	1175
Standard Payment Amount	508	549	589	630	670	711	750	790	831	871
Minimum AFDC Payment \$10 per month for any assistance unit.										

The AFDC standard payment for an assistance unit of three (3) persons represents 37.0% of the consolidated need for an assistance unit of that size. The payments for units composed of different numbers of recipients represent an upward or downward adjustment of the percentage in the preceding sentence which is necessary to maintain the payment at a level not more or less than that paid in fiscal Year 1993-1994.

(e) Reserved.

Authority: T.C.A. §§4-5-201 et seq., 4-5-202, 71-1-105 and 71-5-304; 7 U.S.C.A. §2014 and 2017(a), 7 CFR §§272.9, 273.9 and 273.10, and PL 110-246, Title IV §§ 4102, 4103, and 4107 June 18, 2008 and PL 111-5, Division A, Title I §101, February 17, 2009. **Administrative History:** Original rule filed August 15, 1980; effective September 29, 1980. Repeal and new rule filed December 10, 1981; effective January 25, 1981. Amendment filed August 17, 1982; effective September 16, 1982. Amendment filed November 9, 1982; effective December 9, 1982. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed March 3, 1983; effective April 4, 1983. Amendment filed March 28, 1983; effective April 27, 1983. Amendment filed August 19, 1983; effective September 19, 1983. Amendment filed December 6, 1983; effective January 5, 1984. Amendment filed September 4, 1984; effective October 4, 1984. Amendment filed September 28, 1984; effective December 14, 1984. Amendment filed December 27, 1985; effective March 16, 1985. Amendment filed October 29, 1985; effective January, 14, 1986. Amendment filed November 21, 1985; effective February 12, 1986. Amendment filed December 31, 1985; effective March 17, 1986. Amendment filed April 15, 1986; effective July 14, 1986. Amendment filed July 23, 1986; effective October 29, 1986. Amendment filed November 28, 1986; effective February 28, 1987. Amendment filed April 7, 1987; effective July 29, 1987. Amendment filed February 9, 1988; effective May 29, 1988. Amendment filed February, 12, 1988; effective April 29, 1988. Amendment filed July 23, 1992; effective October 28, 1992. Amendment filed September 29, 1994; effective December 14, 1994. Amendment filed November 18, 1996; effective February 1, 1997. Amendment filed April 4, 1997; effective June 18, 1997. Amendment filed September 18, 2001; effective December 2, 2001. Amendment August 28, 2002; effective November 11, 2002. Amendment filed December 11, 2002; effective February 24, 2003. Amendment filed February 27, 2004; effective May 12, 2004. Amendments filed December 9, 2004; effective February 22, 2005. Amendments filed December 5, 2005; effective

(Rule 1240-01-04-.27, continued)

February 18, 2006. Amendment filed December 11, 2006; effective February 24, 2007. Amendments filed November, 16, 2007; effective January 30, 2008. Amendments filed December 30, 2008; effective March 15, 2009. Amendment filed July 7, 2009; effective October 5, 2009. Amendment filed September 22, 2009; effective December 21, 2009. Amendments filed November 9, 2009; effective February 7, 2010. Amendment filed November 30, 2010; effective February 28, 2011.

1240-01-04-.28 TREATMENT OF LUMP SUM INCOME - AFDC ONLY.

- (1) Lump sum payments which are treated as income are those non-recurring payments, retroactive or otherwise, from sources traditionally considered and treated as income.
 - (a) Income which is subject to annualization or proration over the period of time it is intended to cover is not subject to the lump sum income provisions contained in these sections. Such income (e.g., farm income, contractual income, seasonal employment, etc.) will continue to be treated as described in rules 1240-01-04-.24 and 1240-01-04-.25.
 - (b) Lump sum payments which are totally excluded from the determination of need (counted as neither income nor resource), or which are considered resources, are not subject to these lump sum income provisions. (See rules 1240-01-04-.01 through 1240-01-04-.15).
 - (c) All lump sum payments not otherwise excluded are considered lump sum income, except that income tax refunds (not including earned income tax credit payments) are treated as a resource.
- (2) Lump sum income may create a period of ineligibility for the aid group or individual members under the circumstances given below:
 - (a) Lump sum income will result in the determination of a period of ineligibility for the entire aid group when the following conditions are met:
 1. The lump sum is received by a parent in the home, whether or not the parent is in the assistance unit, or child in the assistance unit; and
 2. The lump sum plus other countable income (appropriate disregards) exceeds the CNS for the aid group.
 - (b) The period of ineligibility is determined by dividing the net countable income (lump sum plus other income, applying any applicable deductions/disregards) by the CNS for the aid group or individual. If the lump sum is received by a parent not in the aid group, increase the CNS by one person to determine the ineligibility period.
 1. The resulting quotient is the number of months of ineligibility.
 2. Any remainder is counted as income in the first month following the period of ineligibility if application is made.
 3. The period of ineligibility begins with the month of receipt of the non-recurring lump sum income.
 4. The overpayment for any ineligible months for which assistance was paid must be recovered.
 - (c) Shortening the Period of Ineligibility.

(Rule 1240-01-04-.28, continued)

1. The period of ineligibility is recomputed for the remaining months of ineligibility in the following instances:
 - (i) A change in need standards which would have increased the amount of grant payable to assistance unit; or
 - (ii) The income has become unavailable due to circumstances beyond the assistance unit's control. Such circumstances include the following:
 - (I) Mandatory expenses are incurred and paid, resulting from natural or casualty disaster losses not covered by insurance or aid from other agencies. This includes repair or replacement of home and/or essential property damaged in civil disorder or other disruption resulting in vandalism or theft of essential household furnishings.
 - (II) Other circumstances considered life threatening by Department staff.
 - (III) The assistance unit must provide verification that the lump sum income is unavailable due to circumstances beyond its control.
 2. The ineligibility period is recomputed beginning with the initial month of ineligibility when the assistance unit pays or becomes responsible for medical expenses due to illness, injury, hospitalization, or death of a member of the immediate family, and the expenses are not covered by insurance, Medicaid, or other aid programs.
- (d) The established period of ineligibility applies to those individuals who were members of the assistance unit either as applicants or recipients in the month the lump sum was received. If application is made for another individual (such as a newborn), subsequent to the month of receipt of the lump sum, the lump sum provisions do not affect his/her eligibility. In computing eligibility and benefit amount for the new individual, none of the income used to determine the ineligibility of the original assistance unit is considered.

Authority: TCA §§14-1-105 and 14-8-106 (2); PL 97-35, PL 98-369 §2632; 45 CFR §233.20 (a) (3) (ii) (D). **Administrative History:** Original rule filed December 2, 1983; effective January 1, 1984. Amendment filed January 7, 1985, effective February 6, 1985. Amendment filed September 19, 1985; effective December 14, 1985. Amendment filed October 9, 1987, effective January 27, 1988.