

Issue Alert
14-01-02

Program Area:	Family Independence Program (FIP), Refugee Cash Assistance Program (RCA), State Disability Assistance (SDA), Child Development and Care (CDC), Food Assistance Program (FAP), and Medicaid (MA)	
Issue Summary:	Salaries paid by an S Corporation (S-Corp) or a Limited Liability Company (LLC) are considered earned income to the client, even if the client owns the organization, for all programs above except MA; for MA only, DHS is now treats such income as <i>unearned</i> income, which is contrary to federal law	
Persons Affected:	Applicants and recipients of the above stated programs who have income from an S-Corp or LLC	
Date:	January 15, 2014	
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BACKGROUND

When determining eligibility and benefit levels for most public assistance programs, DHS draws a distinction between "earned" and "unearned" income. Earned income means "income received from another person or organization or from self-employment for duties that were performed for remuneration or profit." BEM 500 p. 4. Not surprisingly, unearned income is defined as "all income that is not earned." BEM 500 p. 4. For most programs, there are disregards or deductions that apply only to earned income.

WHAT'S HAPPENING?

Effective January 1, 2014, DHS has issued confusing and contradictory policy regarding income received from an S Corporation (S-Corp) or Limited Liability Company (LLC). DHS has issued Bridges Policy Bulletin (BPB) 2014-002, which states on p.6 that for all programs except Medicaid, salaries that are disbursed by an S-Corp or Limited LLC are considered earned income attributable to the DHS applicant or recipient, even if the applicant or recipient is the owner of the business

organization. According to the BPB, this applies to FIP, RCA, SDA, CDC, and FAP only, and for Medicaid, the BPB says that any income received from an S-Corp or LLC is unearned.

In the Bridges Eligibility Manual (BEM), DHS states that "income" received from an S-Corp or LLC is treated as "wages" for FIP, RCA, SDA, CDC, and FAP. BEM 501 p. 4. DHS policy later states that wages are treated as earned income *for all types of assistance, and provides*: "Wages are the pay an employee receives from another individual organization or S-Corp/LLC. Wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance." BEM 501 p.6.

To the contrary, for MA, DHS policy now provides that "money" received from an S-Corp or LLC is budgeted as unearned income. BEM 503 p. 29. However, any DHS distinctions between earned and unearned income should not be relevant to Medicaid eligibility for non-SSI-related categories beginning January 2014, because of changes related to implementation of the Affordable Care Act. (Eligibility for MAGI-related (non-SSI-related) Medicaid categories is based on taxable income, regardless of whether it is earned or unearned. Look for an upcoming Alert regarding MAGI eligibility.)

Yet, the distinction between earned and unearned income remains important for SSI-related Medicaid categories, because DHS subtracts the first \$65 plus 50% of the remainder when budgeting earned income. BEM 540 and 541. For SSI-related Medicaid categories, DHS must use a methodology for determining income eligibility that is no more restrictive than the federal law and Social Security Administration policy that govern SSI. 42 U.S.C. 1396a(a)(10)(C)(i); 42 C.F.R. 435.601. Federal regulations are clear that wages are earned income and wages include "what you receive (before any deductions) for working as someone else's employee. Wages include salaries, commissions, bonuses, severance pay, and any other special payments received because of your employment." 20 C.F.R. 416.1110(a). For SSI, earned income also includes net income from self-employment, which is defined to include "gross income from any trade or business that you operate, less allowable deductions for that trade or business. Net earnings also include your share of profit or loss in any partnership to which you belong." 20 C.F.R. 416.1110(b). Social Security Administration policy concerning S-Corps specifies that wages/salaries paid to S-Corp owners are earned income and fees paid by S-Corps to corporate directors are self-employment income, but dividends paid to owners/shareholders are unearned. See, e.g., Program Operation Manual System (POMS), sections 00820.100 and 01802.015.

Therefore, DHS policy in BEM 503, which indicates that all money received from an S-Corp or LLC is treated as *unearned* income, conflicts with federal law and policy. By counting income paid by an S-Corp or LLC as unearned, the new policy may disqualify individuals who would be eligible for Medicaid if the income was instead treated as earned (and thus subject to the \$65 plus 50% disregard). It also may result in higher deductibles (spenddowns). This means the policy is more restrictive than the SSI methodology and violates federal Medicaid law.

CCJ is contacting the state Departments of Community Health and Human Services to seek clarification and correction of the policy, to ensure eligible individuals are not denied Medicaid or assigned an unlawfully higher spenddown.

This updated policy is announced in Bridges Policy Bulletin BPB 2014-002, and affects Bridges Eligibility Manual items 500-501, and 503. The Bulletin is available at: <http://www.mfia.state.mi.us/olmweb/ex/BP/Public/BPB/2014-002.pdf>, and the policy is available through the links at: <http://www.mfia.state.mi.us/OLMWeb/ex/BP/Public/BEM/000.pdf>.

WHAT SHOULD ADVOCATES DO?

1. Help clients designate and verify the types and the sources of their income correctly.
2. Contact CCJ if you are working with someone whose income from an S-Corp or LLC may have resulted in a denial or termination of Medicaid, or a higher Medicaid deductible.
3. Contact the Food Assistance Helpline at 800-481-4989 for questions about Food Assistance.
4. Help clients find legal advice if they feel DHS has made a mistake about their eligibility or benefit level.

WHAT SHOULD CLIENTS DO?

1. Do your best to know and verify your income and the sources of your income correctly. Ask for help from DHS if you need it.
2. If you have questions about the Food Assistance Program (FAP), contact the Food Assistance helpline toll-free at 800-481-4989.
3. Seek legal help if you feel DHS has made a mistake about your income, eligibility or benefit level.

FINDING HELP

Legal aid and legal services offices may handle these types of cases without a fee. You can locate the offices that serve your county on the Michigan Legal Help Web Site, <http://www.michiganlegalhelp.org/>, in the yellow pages under "attorneys," or by calling the toll-free lawyer referral number 800-968-0738.