

WSR 23-11-006

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed May 4, 2023, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-094.

Title of Rule and Other Identifying Information: WAC 182-509-0320 MAGI income—Noncountable income and 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws.

Hearing Location(s): On June 27, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_Y517j7-oTzq4pOEKrMh1bg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than June 28, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by June 27, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by June 16, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-509-0320 and 182-512-0860 to include the working families' tax credit under RCW 82.08.0206 as income that the agency excludes when determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health and Washington apple health SSI-related medical programs.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

May 4, 2023
Wendy Barcus
Rules Coordinator

OTS-4498.1

AMENDATORY SECTION (Amending WSR 20-17-136, filed 8/18/20, effective 9/18/20)

WAC 182-509-0320 MAGI income—Noncountable income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (see WAC 182-509-0300):

(1) Some types of income are not counted when determining eligibility for MAGI-based apple health. Under the MAGI income methodology described in WAC 182-509-0300, income is not counted if the Internal Revenue Service (IRS) permits it to be excluded or deducted for purposes of determining the tax liability of a person. (See 26 U.S.C. Sections 62(a) and 101-140.)

(2) Examples of income that are not counted include, but are not limited to:

(a) Bona fide loans, except certain student loans as specified under WAC 182-509-0335;

(b) Federal income tax refunds and earned income tax credit payments for up to (~~twelve~~) 12 months from the date received;

(c) Child support payments received by any person included in household size under WAC 182-506-0010;

(d) Nontaxable time loss benefits or other compensation received for sickness or injury, such as benefits from the department of labor and industries (L&I) or a private insurance company;

(e) Title IV-E and state foster care and adoption support maintenance payments;

(f) Veteran's benefits including, but not limited to, disability compensation and pension payments for disabilities paid to the veteran or family members; education, training and subsistence; benefits under a dependent-care assistance program for veterans, housebound allowance and aid and attendance benefits;

(g) Money withheld from a benefit to repay an overpayment from the same income source;

(h) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as Voluntary Agency (VOLAG) payments;

(i) Nontaxable income from employment and training programs;

(j) Any portion of income used to repay the cost of obtaining that income source;

(k) Insurance proceeds or other income received as a result of being a Holocaust survivor;

(l) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(m) Income from a sponsor given to a sponsored immigrant;

(n) Fringe benefits provided on a pretax basis by an employer, such as transportation benefits or moving expenses;

(o) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;

(p) Distribution of pension payments paid by the employee (such as premiums or contributions) that were previously subject to tax;

(q) Gifts as described in IRS *Publication 559: Survivors, Executors, and Administrators*;

(r) Cash or noncash inheritances, except that the agency counts income produced by an inheritance;

(s) Death benefits from life insurance and certain benefits paid for deaths that occur in the line of duty; ~~((and))~~

(t) Working families' tax credit payments under RCW 82.08.0206;
and

(u) Other payments that are excluded from income under state or federal law.

(3) Income received from other agencies or organizations as needs-based assistance is not countable income under this section.

(a) "Needs-based" means eligibility for the program is based on having limited income, or resources, or both. Examples of needs-based assistance are:

(i) Clothing;

(ii) Food;

(iii) Household supplies;

(iv) Medical supplies (nonprescription);

(v) Personal care items;

(vi) Shelter;

(vii) Transportation; and

(viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) Needs-based cash programs include, but are not limited to, the following apple health programs:

(i) Diversion cash assistance (DCA);

(ii) Temporary assistance for needy families (TANF);

(iii) State family assistance (SFA);

(iv) Pregnant women's assistance (PWA);

(v) Refugee cash assistance (RCA);

(vi) Aged, blind, disabled cash assistance (ABD); and

(vii) Supplemental security income (SSI).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-17-136, § 182-509-0320, filed 8/18/20, effective 9/18/20. Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0320, filed 12/9/13, effective 1/9/14.]

OTS-4499.1

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The Social Security Act and other federal statutes or state laws list income that the agency excludes when determining eligibility for Washington apple health (WAH) SSI-related medical programs. These exclusions include, but are not limited to:

(1) Income tax refunds;

(2) Federal earned income tax credit (EITC) payments for ~~((twelve))~~ 12 months after the month of receipt;

- (3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;
- (4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h) (1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);
- (5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;
- (6) Certain cash or in-kind payments a person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- (7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;
- (8) Assistance based on need, including:
- (a) Any federal SSI income or state supplement payment (SSP) based on financial need;
- (b) Basic Food;
- (c) State-funded cash assistance;
- (d) CEAP;
- (e) TANF; and
- (f) Bureau of Indian Affairs (BIA) general assistance.
- (9) Housing assistance from a federal program such as HUD if paid under:
- (a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);
- (b) National Housing Act (section 1701 et seq. of 12 U.S.C.);
- (c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);
- (d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.);
- (e) Section 202(h) of the Housing Act of 1959; or
- (f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations.
- (10) Energy assistance payments including:
- (a) Those to prevent fuel cutoffs; and
- (b) Those to promote energy efficiency.
- (11) Income from employment and training programs as specified in WAC 182-512-0780.
- (12) Foster grandparents program;
- (13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;
- (14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035);
- (15) Educational assistance as specified in WAC 182-512-0760;
- (16) The excluded income described in WAC 182-512-0770 and other income received by American Indians/Alaska Natives that is excluded by federal law;
- (17) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;
- (18) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;

- (19) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;
- (20) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);
- (21) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;
- (22) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);
- (23) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;
- (24) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;
- (25) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426; (~~and~~)
- (26) Any interest or dividend is excluded as income, except for the community spouse of an institutionalized person; and
- (27) Working families' tax credit payments under RCW 82.08.0206.

[Statutory Authority: RCW 41.05.021 and Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, 457 and 45 C.F.R. § 155. WSR 14-07-059, § 182-512-0860, filed 3/14/14, effective 4/14/14. WSR 11-24-018, recodified as § 182-512-0860, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-475-0860, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500, and Social Security Act as amended by P.L. 108-203. WSR 06-04-046, § 388-475-0860, filed 1/26/06, effective 2/26/06. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-005, § 388-475-0860, filed 4/7/04, effective 6/1/04.]