United States Department of Agriculture

Food and Nutrition Service

3101 Park Center Drive

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POLICY NO: FD-118: Food Distribution Program on Indian Reservations (FDPIR)

SUBJECT: Questions and Answers Related to the FDPIR: Income Deductions & Resource Eligibility Final Rule

Following the August 27, 2013, publication of the final rule entitled, *Food Distribution Program on Indian Reservations: Income Deductions & Resource Eligibility* (78 FR 52827), several questions have been raised regarding new and revised provisions for financial eligibility, income deductions, and verification requirements. The following questions and answers are provided to assist FDPIR Indian Tribal Organizations (ITOs) and State agencies (SAs) in implementing the provisions of the final rule.

Any additional questions should be addressed to the appropriate FNS Regional Office. Regional Office staff with questions should in turn contact Barbara Lopez at (703) 305-2662.

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Director
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Attachment

Food Distribution Program on Indian Reservations (FDPIR):
Income Deductions and Resource Eligibility Final Rule
Publication Date: August 27, 2013
Effective Date: September 26, 2013

Questions & Answers

Provision: Elimination of the Household Resource Test (previously 7 CFR 253.6(d))

The final rule eliminates the resource test as a basis for household eligibility. Conforming amendments are included in the final rule to clarify that non-recurring lump-sum payments and non-monthly per capita payments are considered resources in the month received and, therefore, excluded from income eligibility determinations in FDPIR.

Q1. What are non-recurring lump-sum payments and non-monthly per capita payments? How are these payments treated in FDPIR?

Non-recurring lump-sum payments are payments received by the household *less frequently than monthly* (e.g., payments received quarterly, semi-annually, annually). Examples of non-recurring lump-sum payments include, but are not limited to: income tax refunds, Tribal per capita payments received less frequently than monthly, rebates, or credits; retroactive lump-sum Social Security, Supplemental Security Income (SSI), Public Assistance (PA), and railroad retirement pensions or other payments; retroactive lump-sum insurance settlements; or refunds of security deposits on rental property or utilities.

Non-monthly per capita payments are payments or profits from gaming or other Tribal enterprises received by the household *less frequently than monthly* (e.g., payments received quarterly, semi-annually, annually). Examples of non-monthly per capita payments include, but are not limited to, Tribal payments received on a non-monthly basis from revenue sharing, royalties, and/or settlements.

Non-recurring lump-sum payments and non-monthly per capita payments are considered resources in the month received and, therefore, excluded from income eligibility determination in FDPIR.

Q2. How are monthly per capita payments treated in FDPIR?

Per capita payments, such as profits from gaming and other Tribal enterprises paid to Tribal members on a *regular monthly basis,* are considered unearned income and are counted in the financial eligibility determination process for FDPIR (see FNS Handbook 501, Sections 4530, 4543-A, and 4640 for additional information and/or income excluded by law).

Q3. Are households that report no earned/unearned income but receive quarterly per capita payments considered zero-income households?

Yes. Per capita payments received *less frequently than monthly* (e.g., quarterly, semi-annually, annually) are excluded from consideration as income (please see Q1 above). The household would be considered a zero-income household and would be subject to shorter certification periods (see FNS Handbook 501, Section 3533 and 5112-B3 for additional information).

Q4. Are rental payments that are received once a year from rental properties considered non-recurring lump-sum payments and, therefore, excluded from financial eligibility determination?

No. Income received from rental enterprises (e.g., rents collected monthly, quarterly, annually), regardless of frequency, are considered self-employment income and calculated in the financial eligibility determination process as earned income received by the household (see FNS Handbook 501, Sections 4520 and 4721).

Provision: Medical Expense Deduction (7 CFR 253.6(e))

The final rule expands the current income deduction for Medicare Part B Medical Insurance and Part D Prescription Drug Coverage premiums to include other monthly medical expenses in excess of $35 for households with elderly and/or disabled members. This expanded medical deduction provision aligns FDPIR and the Supplemental Nutrition Assistance Program (SNAP). In addition, this provision contains a meals-related deduction for households that furnish the majority of meals to a home care attendant, similar to SNAP. See FNS Handbook 501, Section 4554, for allowable medical expense deductions.

Q5. How do we apply monthly and non-monthly medical expenses to this deduction?

Both monthly and one-time medical expenses count towards the deduction. This deduction is based on information reported and verified at the time of certification and/or recertification. Any anticipated changes that can be reasonably expected during the certification period, based on verified information, may be included.

Q6. Some elderly-only households have fluctuating medical expenses. How do certification staff determine their total medical expenses? Does this affect the length of their certification period? Are such households required to report changes to their medical expenses during their certification period?

Households in which all adult members are elderly and/or disabled may continue to be certified for up to 24 months. The medical expense deduction is determined at the time of certification and/or recertification. Any anticipated medical expenses that can be reasonably expected during the certification period (e.g., monthly, quarterly, one-time), based on verified information, may be included. Medical expenses that cannot be reasonably anticipated at the time of certification must be excluded.

Consistent with program requirements, households assigned certification periods longer than 12 months must by contacted by the Indian Tribal Organization/State agency at least once every 12 months to determine if the household wishes to continue to participate in the program and if there are any changes in household circumstances, such as medical expenses, that would warrant a redetermination of eligibility (see FNS Handbook 501, Section 5112 for additional information). There is no requirement to re-verify medical expenses prior to that point.

For fluctuating/one-time medical expenses anticipated within a multiple-month certification period (e.g., 12 months), the Indian Tribal Organization/State agency must allow households to average the cost of medical expenses. An anticipated one-time medical expense cannot be counted multiple times (e.g., double- or triple-counted). The medical expense should be averaged within the certification period, and as stated above, must be based on verified information. Please note, one-time medical expenses incurred in the past or outside the certification period cannot be counted towards this deduction.

Example: A household composed of two members (one disabled) is being interviewed. The household is assigned a 12-month certification period. The disabled member provides the following documentation: (1) Social Security Disability Income (SSDI) award letter indicating $104.90 is deducted monthly for Medicare Part B; (2) receipts totaling $70 for *monthly* prescription drugs; and (3) a receipt totaling $600 for an eye exam and new eye glasses. All expenses are verified as out-of-pocket expenses. To determine the monthly excess medical expense deduction, you would first divide the $600 by 12 to get a monthly amount ($50). Next, you would add up the monthly medical expenses ($104.90 + $70 + $50 = $224.90). Finally, you would subtract $35 from the total ($224.90) to determine the total amount of the allowable monthly deduction. In this example, the medical expense deduction for the household is $189.90.

Q7. Do households with elderly or disabled members that receive Supplemental Security Income (SSI) qualify for the medical expense deduction?

Yes. Persons receiving SSI benefits, including persons receiving emergency SSI benefits based on presumptive eligibility, qualify for this deduction. However, spouses or other persons receiving benefits as a dependent of SSI or disability and blindness recipient are not eligible to receive this deduction.

Q8. Is there a cap on medical expense deductions?

No. Households receive an income deduction for all allowable medical expenses in excess of $35 per month incurred by an elderly or disabled household member. For example, an elderly or disabled individual provides verification of four allowable, out-of-pocket, monthly medical expenses totaling $300. This individual would be allowed a $265 deduction ($300 - $35). Please note, to receive the medical expense deduction, only out-of-pocket expenses are allowed (see FNS Handbook 501, Section 4554 for a list of allowable medical expenses).

Q9. Please define "elderly".

"Elderly member" means a member of a household who is sixty years of age or older (see FNS Handbook 501, Section 1110, for additional definitions including the definition for "disabled member").

Q10. I have households with both elderly and non-elderly members. How do I apply the medical expense deduction if all members have allowable medical expenses?

The medical expense deduction applies only to elderly and/or disabled household members. Medical expenses incurred by all other household members are not allowable medical expenses. Any medical expense/cost incurred by or contributable to household members who are not elderly and/or disabled must be excluded and may not be counted towards this deduction.

Q11. Do households that have a child with a disability qualify for the medical deduction?

Yes. There is no age requirement for household members that qualify as a "disabled member" (see FNS Handbook 501, Section 1110, for definitions including the definition for "disabled member").

Q12. Can only Medicare premiums be deducted? What is the medical deduction amount?

No. The medical expense deduction includes all health and hospitalization insurance policy premiums paid for by the household, including Medicare premiums. There is no separate deduction for Medicare premiums. There is no deduction limit for verified, allowable medical expenses. However, a household may only deduct out-of-pocket medical expenses in excess of $35 per month incurred by an elderly or disabled household member (see FNS Handbook 501, Section 4554 for a list of allowable medical expenses).

Q13. Are life insurance premiums an allowable cost to receive the medical expense deduction?

No. Payments and/or premiums for health and accident policies, such as those payable in lump sum settlements for death or dismemberment, or income maintenance policies, such as those that continue mortgage or loan payments while the beneficiary is disabled, are not allowable medical costs and do not qualify as expenses for this deduction.

Q14. Some of my working clients auto-deduct the cost of their medical premium from their paycheck. Do they still qualify for the medical expense deduction?

Yes. The Indian Tribal Organization/State agency must verify that the allowable expense is for a household member that is elderly and/or disabled.

Q15. The list of allowable medical expenses includes the cost associated with securing and maintaining a seeing eye or hearing dog. Do other "assistance animals" qualify under this medical expense?

Yes. The costs associated with any animal specially trained to serve the needs of disabled household members are an allowable medical expense. This allowable expense would be added to all other monthly allowable medical expenses for elderly and/or disabled household members used to calculate the total medical expense deduction.

Q16. What is the home care meals-related deduction?

The home care meals-related deduction is a deduction allowed for households that furnish the majority of an attendant's meals. The cost associated with furnishing the majority of an attendant's meals is considered a medical expense and would be used in the calculation of the total medical expense deduction. The amount of the meal-related deduction is based on the maximum SNAP allotment for a one-person household (see Exhibit M).

Q17. What type of verification is acceptable to receive the home care meals-related deduction?

FDPIR regulations do not specify the type of documentation needed to verify costs associated with a home care attendant. However, regulations do require all medical expenses, including expenses associated with a home care attendant, to be verified. The Indian Tribal Organization/State agency must accept any reasonable documentary evidence (e.g., associated bills, signed service agreements) provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application. If the documentary evidence is insufficient a collateral contact or home visit must be made.

Q18. Are wages paid by the household to maintain a home care attendant an allowable cost for the medical expense deduction?

Yes. Expenses to maintain an attendant, homemaker, home health aide, child care service, or housekeeper due to age infirmity or illness qualify as medical expenses for this deduction.

Q19. Are elderly and/or disabled household members allowed to claim the "reasonable cost" of transportation and lodging to obtain medical treatment or services as an allowable excess medical expense deduction?

Yes. Allowable medical costs include the reasonable cost of transportation and lodging to obtain medical treatment or services. It is to the discretion of the Indian Tribal Organization/State agency to determine what is reasonable. Any policy used by the Indian Tribal

Organization/State agency to determine the reasonableness of the allowable cost must be applied consistently and equally to all applicable individuals/households.

An Indian Tribal Organization/State agency might select one of the following methods to determine and document the "reasonable cost" of privately owned vehicle (POV) transportation and lodging:

- Gas and lodging receipts;
- Current year Internal Revenue Service (IRS) mileage rate for the use of a car (also vans, pickups or panel trucks) driven for medical purposes and lodging receipts;
- Current year General Services Administration (GSA) POV mileage rate and lodging receipts; or
- Another method that determines and documents reasonable cost, including using a collateral contact, where applicable.

Note, the cost of transportation by other means (bus, plane, etc.) also requires verification.

Provision: Shelter and Utility Expense Deduction (7 CFR 253.6(e))

The final rule establishes a new region-specific standard deduction for shelter and utility expenses. This new standard income deduction is allowed for any household that incurs the cost of at least one allowable shelter or utility expense on a monthly basis. See FNS Handbook 501, Section 4555 for a list of allowable shelter and utility expenses.

Q20. Where can I find the region-specific deduction amounts for the shelter and utility expense deduction?

Please reference FNS Handbook 501, Exhibit M.

Q21. Do households need to show verification of all of their shelter and/or utility expenses to qualify for the shelter/utility deduction?

No. Households are required to show proof of at least one allowable shelter or utility expense to qualify for this deduction (see FNS Handbook 501, Section 4555 for a list of allowable shelter and utility expenses).

Q22. Are households required to show proof of payment for shelter and utility expenses in order to qualify for this deduction?

FDPIR regulations at 7 CFR 253.7(a)(6)(i)(D) require households to incur the cost of at least one allowable shelter or utility expense on a monthly basis to receive this deduction. The Indian Tribal Organization/State agency must verify that the household has incurred and/or paid an allowable shelter or utility expense to receive this deduction. See Q23 below for verification requirements.

Q23. What type of verification is acceptable to receive the shelter and utility expense deduction?

The Indian Tribal Organization/State agency must accept any reasonable documentary evidence provided by the household that shows the expense and must be primarily concerned with how adequately the verification proves the statements on the application. Examples of documentary evidence for the shelter and utility deduction include but are not limited to: gas/heating bills, telephone billing statements for landlines or cellular service, receipts from home repairs, billing statements from garbage and trash collection, and canceled checks used to pay rent, mortgage, and/or utilities. If the documentary evidence is insufficient a collateral contact or home visit must be made.

Q24. Do shelter or utility expenses need to be in the name of a household member (e.g., head of household) in order to qualify for the shelter and utility expense deduction?

No. However, the Indian Tribal Organization/State agency must verify that the shelter or utility expense is a monthly cost incurred by the applicant household. The Indian Tribal Organization/State agency must accept any reasonable documentary evidence provided by the household and must be primarily concerned with how adequately the verification proves the statements on the application. If the documentary evidence is insufficient a collateral contact or home visit must be made.

Q25. Can only elderly and/or disabled households qualify for the shelter and utility expense deduction?

No. The shelter and utility expense deduction is for all qualifying households that incur the cost of at least one allowable shelter or utility expense.

Q26. How do we select the correct shelter and utility expense deduction for clients who live in a state that is in another Region than our central administrative office?

If the geographic boundaries of an Indian reservation extend to more than one region per the identified regional groupings listed on Exhibit M, then a qualifying household has the option to receive the appropriate shelter/utility expense deduction amount for the state in which the household resides or the state in which the State agency's central administrative office is located (see FNS Handbook 501, Exhibit M for the standard shelter and utility expense deductions by region).

For example, a qualifying household residing in the state of New Mexico, with an FDPIR central administrative office located in the state of Arizona, will have the option to receive the shelter/utility expense deduction based on the Southeast/Southwest regional grouping (e.g., household resides in the state of New Mexico) or the shelter/utility expense deduction amount based on the West regional grouping (e.g., central administrative office is located in the state of Arizona).

Q27. Do separate households residing at the same location qualify for the shelter and utility expense deduction?

Yes. Qualifying separate status households must show proof that they each have an incurred monthly cost of at least one allowable shelter or utility expense in order for each household to receive this deduction.

Q28. Are costs associated with a telephone, including cellular service, an allowable expense to receive the shelter and utility expense deduction?

Yes. All fees required to provide service for one telephone device, including traditional land-line service, cellular service, and VoIP (Voice over Internet Protocol) are allowable expenses to receive this deduction (see FNS Handbook 501, Section 4555-A3 for a list of allowable expenses associated with telephone services).

With regard to cellular telephone service, monthly fees or pre-paid cards associated with a specific mobile device are allowable expenses. The cost of pay phones and phone cards, however, that are not associated with a specific device are not considered a monthly utility expense and are excluded as an allowable cost to receive this deduction.

With regard to VoIP, only the cost of VoIP is an allowable expense. Other charges, like internet connectivity fees, monthly cable television/satellite fees, and internet access fees are not allowable expenses to receive this deduction.

Q29. Can households that only have shelter or utility expenses part of the year qualify for the shelter and utility expense deduction?

Yes. Households may receive the shelter and utility expense deduction during months that they have an incurred allowable cost. FDPIR regulations at 7 CFR 253.7(c)(1) require households to report when they no longer incur a monthly shelter or utility expense. The Indian Tribal Organization/State agency should adjust the certification period accordingly based on any anticipated changes known by the household.