HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 12

MED-QUEST DIVISION

CHAPTER 1724.1

INCOME FOR MAGI-EXCEPTED INDIVIDUALS

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Historical Note: This chapter is based substantially upon repealed subchapters 4, 5 and 7 of chapter 17-1721 and repealed chapter 17-1724.

The source notes for subchapters 4, 5 and 7 of chapter 17-1721 are: [Eff 08/01/94; am 11/13/95; am 11/25/96; am 10/26/01; am 01/31/09; am 10/19/09; am 06/25/12; R].

The source notes for chapter 17-1724 are: [Eff 08/01/94; am 07/20/95; am 01/29/96; am 11/25/96; am 02/10/97; am 05/17/97; am 12/27/97; am 05/02/98; am 06/19/00; am 10/26/01; am 12/03/01; am 05/10/03; am 08/25/07; R].

SUBCHAPTER 1

GENERAL PROVISIONS

§17-1724.1-1 Purpose. This chapter identifies and describes the types of income which shall be considered in determining the eligibility of a MAGI-excepted individual or household in the medical assistance program. [Eff] (Auth: HRS §346-53; 42 C.F.R. §§431.10, 435.121, 435.230, 435.330, 435.520, 435.522, 435.530, 435.531, 435.540, 435.541) (Imp: HRS §346-53; 42 C.F.R. §§431.10, 435.121, 435.230, 435.330, 435.520, 435.522, 435.530, 435.531, 435.540, 435.541)

§17-1724.1-2 General requirements. The confidentiality, administrative appeal, fraud, medical assistance recovery, application, eligibility review, and adverse action provisions described in subtitle 12 shall pertain to a MAGI-excepted individual or household who applies or is eligible under this chapter. [Eff] (Auth: HRS §346-53; 42 C.F.R. §431.10) (Imp: HRS §§346-14, 346-53; 42 C.F.R. §431.10)

§§17-1724.1-3 to 17-1724.1-7 (Reserved).

SUBCHAPTER 2

AVAILABILITY OF INCOME

§17-1724.1-8 Purpose. This subchapter requires a MAGI-excepted individual to apply for and pursue available income sources for which they may be eligible, and to provide information and verification as necessary to determine eligibility. [Eff] (Auth: HRS §346-53; 42 C.F.R. §435.608) (Imp: HRS §346-29; 42 C.F.R. §435.608)

§17-1724.1-9 Availability and verification of income. (a) An individual shall apply for and develop potential sources of income when applicable.

(b) The department shall deny or terminate medical assistance when the individual fails to:

(1) Apply for, access, or develop potential sources of income;

(2) Cooperate in providing accurate and complete information or verification; or

(3) Complete any other action on the part of the individual or household that prevents a correct determination of eligibility to be made. [Eff] (Auth: HRS §§346-14, 346-29, 346-53; 42 C.F.R §§435.608, 435.945) (Imp: 42 C.F.R §§435.608, 435.945)

§§17-1724.1-10 to 17-1724.1-14 (Reserved).

SUBCHAPTER 3

LEGAL RESPONSIBILITY FOR SUPPORT

§17-1724.1-15 Purpose. The purpose of this subchapter is to describe the persons whose income shall be considered available for the support of a MAGI-excepted spouse or child applying for medical assistance. [Eff] (Auth: HRS §346-53; 42 C.F.R. 435.602) (Imp: HRS §346-29; 42 C.F.R. 435.602)

§17-1724.1-16 Availability of income of household members. (a) The income of spouses living in the same residence shall be considered available to each other.

(b) When spouses cease to live together due to the institutionalization of one spouse, only the income actually contributed from one spouse to the other shall be considered available to the receiving spouse, as of the month the spouses cease to live together.

(c) An individual receiving home and community based waiver services or hospice services shall be considered institutionalized and separated from the individual spouse, under the provisions of subsection (b).

(d) When spouses cease to live together for reasons other than the institutionalization of one spouse, only the income up to the month of separation shall be considered available to each other. After the month of separation, only the income that is actually contributed shall be considered available to the eligible spouse.

(e) When determining the eligibility of a child under eighteen years of age who is applying for or receiving medical assistance under chapter 17-1719 as a blind or disabled individual:

(1) The income of the parent or parents shall be considered available to the child if the child is residing in the same residence;

(2) Only the income that is actually contributed by the parent or parents shall be considered available to the child, the month after the child ceases to reside with a parent or parents. This provision applies even if the child returns to the residence for periodic visits.

(f) When determining the eligibility of a household with a child under nineteen years of age, who resides in the same residence as the natural, legal, or adoptive parents, their income shall be considered available to the child. However, if a child is not included as part of the household, the child's income and needs shall not be considered when determining eligibility for the remaining household members.

(g) When determining the eligibility for a non title IV-E child covered under a:

(1) State adoption assistance agreement, the income of the adoptive parent or parents shall not be considered available to the child.
(2) Kinship guardianship assistance agreement, the income of the relative legal guardian or guardians shall not be considered available to the child.
(3) State permanency assistance agreement, the income of the legal guardian or guardians or permanent custodian or custodians shall not be considered available to the child.
[Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10; 42 C.F.R. §435.602; 45 C.F.R. §433.110; 42 U.S.C. §1396r-5) (Imp: HRS §346-14; 42 C.F.R. §435.602; 45 C.F.R. §433.110; 42 U.S.C. §1396r-5)

§§17-1724.1-17 to 17-1724.1-21 (Reserved).

SUBCHAPTER 4

EARNED INCOME

§17-1724.1-22 Purpose. This subchapter identifies and describes the types of earned income which shall be considered available or exempt in determining the eligibility of a MAGI-excepted individual or household. [Eff] (Auth: HRS §346-53; 42 C.F.R. §431.10) (Imp: HRS §346-53; 42 C.F.R. §431.10)

§17-1724.1-23 Earnings. All employment-related income received shall be considered countable earned income which includes, but is not limited to:
(1) Wages, back pay, birthday pay, cost of living allowance (COLA), funeral pay, holiday pay, sick leave pay, and vacation pay;
(2) Tips, bonuses, and commissions;
(3) Dismissal and severance pay;
(4) Compensation from any on-the-job training (OJT) program;

(5) Payments under the Workforce Investment Act (WIA) except for supportive services;
(6) Compensation from public service employment (PSE);
(7) In-kind income received in lieu of cash for employment that is paid to an individual that includes perquisites, such as meals, food, shelter, utilities and medical insurance;
(8) Royalties from an individual's work or any honorarium received for services rendered; or
(9) Temporary disability insurance (TDI) benefits when an employer provides payments directly to an eligible employee for non work-related sickness or injury, including pregnancy. [Eff] (Auth: HRS §346-53; 20 C.F.R. §§404-1051, 416.1010, 416.1042; 416.1110, 416.1121, 418.3320; 42 C.F.R. §§435.601, 435.631; 42 U.S.C. 1382a(a)) (Imp: HRS §§346-14, 346-29; 346-53; 20 C.F.R. §§404-1051, 416.1010, 416.1042; 416.1110, 416.1121, 418.3320; 42 C.F.R. §§435.601, 435.631; 42 U.S.C. §1382a(a))

§17-1724.1-24 Self-employment earned income.
(a) A self-employed individual shall:
(1) Sell a service or product for a profit;
(2) Be independently responsible for obtaining or providing a service or product;
(3) Have independent costs and expenses necessary to provide a service or product;
(4) Determine independently the manner, method, and process of business operations; and
(5) Be independently responsible for the success or failure of the business operation.

(b) The income from self-employment shall be determined by deducting ordinary and necessary business expenses directly related to producing the goods or services from the amount received from the sale of goods or services.

(c) Only verified documentation of business expenses shall be deducted from the monthly gross self-employment income. Verified business expenses

include, but are not limited to, expenses that are listed on a profit and loss statement, itemized receipt, or billing statement such as the following:

(1) Costs of the product or raw materials, including shipping and storage costs;
(2) Factory overhead expenses;
(3) Employee wages; and
(4) Costs related to property used for the business, including rent, utilities, repairs, mortgage interest, taxes, and insurance.

(d) Expenses that are not allowed as deductions include, but are not limited to, the following:

(1) Depreciation and depletion;
(2) Personal business expenses such as lunches, transportation to and from work, and entertainment expenses;
(3) Purchase of capital equipment; and
(4) Payments on the principal of loans for capital assets or durable goods.

(e) An individual who does not meet the self-employment requirements specified in subsection (a), shall have the monthly gross income from the work activity counted as earned income. [Eff] (Auth: HRS §346-53; 20 C.F.R. §§416.1110, 416.1111; 42 C.F.R. §§435.601, 435.631) (Imp: HRS §§346-14, 346-29; 20 C.F.R. §§416.1110, 416.1111; 42 C.F.R. §§435.601, 435.631)

§17-1724.1-25 Entitlements to military personnel. Allowances available to military personnel on active duty identified under the entitlement section of the Leave and Earnings Statement (LES) are considered countable earned income which include, but are not limited to:

(1) Basic allowance for housing (BAH) which is housing compensation paid to military personnel not residing in government housing;
(2) Basic allowance for subsistence (BAS) which is paid to military personnel to offset the cost of their meals when residing in non-governmental housing or without access to a military mess hall;
(3) Clothing allowances (listed as BCRA, CCA, CMA, CRA, FCRA, SCRA, or UNIF) which are

provided for the replacement of required uniform items based on normal wear rate, when additional uniform items are required, or when civilian clothing is required to perform assigned duties;

(4) Continental United States cost of living allowance (CONUS COLA) which is provided to compensate military personnel stationed in certain "higher-cost" locations; and

(5) Combat pay (listed as HFP, HFP/COMBAT ZONE, HSTL, or IDP) may be treated as earned income, if elected under the earned income tax credit. [Eff] (Auth: HRS §346-53; 42 C.F.R. §§435.601, 435.631); Executive Order 13239; Executive Order 13119; Executive Order 12744; Pub. L. 106-21; Pub. L. 104-117) (Imp: HRS §§346-14, 346-29; 42 C.F.R. §§435.601, 435.631); Executive Order 13239, Executive Order 13119, Executive Order 12744; Pub. L. 106-21; Pub. L. 104-117)

§17-1724.1-26 Exempt earned income. Work-related income that is exempt as earned income includes, but is not limited to:

(1) Federal earned income tax credit that reduces the federal tax liability for certain low income working taxpayers that results in advance payments from an employer or a refund from the IRS;

(2) Federal child tax credit that is available to certain low income employed taxpayers with a dependent child and may result in a tax refund payment to the taxpayer from the IRS;

(3) Infrequent earned income of thirty dollars per calendar quarter whether from a single source, unexpected source, or from more than one source of income;

(4) Payments under the Workforce Investment Act (WIA) that are for supportive services; and

(5) Wages paid by the Census Bureau for temporary employment related to census activities. [Eff] (Auth:

HRS §346-14; 20 C.F.R. §§416.1102 to 416.1123, 416.1124 to 416.1167; 42 C.F.R. §§435.601, 435.631; Pub. L. 107-16) (Imp: HRS §§346-14, 346-29; 20 C.F.R. §§416.1102 to 416.1123, 416.1124 to 416.1167; 42 C.F.R. §§435.601, 435.631; Pub. L. 107-16)

§§17-1724.1-27 to 17-1724.1-31 (Reserved).

SUBCHAPTER 5

UNEARNED INCOME

§17-1724.1-32 Purpose. This subchapter identifies and describes the types of unearned income considered available or exempt when determining the eligibility of a MAGI-excepted individual or household. [Eff] (Auth: HRS §346-53; 42 C. F.R. §431.10) (Imp: HRS §346-53; 42 C. F.R. §431.10)

§17-1724.1-33 Veteran's benefits. All Veterans Administration (VA) benefits available to an individual who served in the Army, Navy, Marine Corps, Coast Guard, or Air Force or to their dependents; a spouse, child, or a dependent parent of a living veteran, a widow or a widower, child, or surviving dependent parent of a deceased veteran prior to any deductions are considered countable unearned income which include, but are not limited to:

(1) Service-connected disability benefits;

(2) Pension benefits for a veteran who is a:

(A) Permanently and totally disabled individual who served ninety or more days of active military service to include a minimum of one day during a period of war not sustaining a service-connected disability;

(B) Sixty-five years of age or older individual with limited income who served twenty or more years of active duty, full-time National guard duty, or satisfactory service as a reservist; or

(C) Recipient of the medal of honor. [Eff] (Auth: HRS §346-53; 20 C.F.R. §§416.1103(a)(7), 416.1121(a), 416.1124(c)(12); 42 C.F.R. §§435.601, 435.631; 38 U.S.C. §3203; Pub. L. 110-245) (Imp: HRS §346-29; 20 C.F.R. §§416.1103(a)(7), 416.1121(a), 416.1124(c)(12); 42 C.F.R. §§435.601, 435.631; 38 U.S.C. §3203; Pub. L. 110-245)

§17-1724.1-34 Legal settlements, inheritance, insurance settlements, and compensation. (a) Money received to settle any insurance, legal, or inheritance claim, personal injury awards and compensation for pain and suffering shall be considered unearned income, if not excluded under section 17-1724.1-46.

(b) Any expense paid or incurred which is related to the settlement or award shall be deducted from the total amount awarded.

(c) Allowable expense deductions include, but are not limited to, legal fees, medical payments, motor vehicle replacement, or replacement of personal property damaged or lost if proof of allowable expenses paid is provided to the department within ten calendar days from the date the settlement, inheritance, or award is received. Absent the submission of proof, the gross settlement, inheritance or award amount shall be considered unearned income. [Eff] (Auth: HRS §346-53; 20 C.F.R. §416.1121; 42 C.F.R. §§435.601, 435.631) (Imp: HRS §346-29; 20 C.F.R. §416.1121; 42 C.F.R. §§435.601, 435.631)

§17-1724.1-35 Educational loans, grants, scholarships, and benefits. (a) Any educational loans, grants, or scholarships, if not excluded under section 17-1724.1-46, obtained and used under conditions that preclude their use for current living expenses shall not be counted as unearned income.

(b) Any educational loans, grants, or scholarships not excluded under section 17-1724.1-46, which are obtained and used for current living expenses, shall be counted as unearned income.

(c) Educational grants or scholarships received by the student used for expenses which include, but are not limited to tuition, books, fees, equipment, transportation for school purposes, or child care services necessary for school attendance, shall not be counted as unearned income.

(1) Expenses specified in this subsection shall be deducted first from the scholarships, loans or educational benefits specifically excluded under section 17-1724.1-46.

(2) Expenses specified in this subsection which exceed the excluded benefits under section 17-1724.1-46 shall then be deducted from any non-excluded scholarship or educational benefits.

(d) Educational loans, grants, and scholarships that are received in a lump sum and not excluded by other rules shall be prorated over the period intended by the income to determine the monthly amount that shall be budgeted. The expenses specified in subsection (c) shall be deducted from the lump sum prior to the proration. Any allowable expenses incurred after the proration shall be deducted from the monthly prorated amount for the month the expense is paid. [Eff] (Auth: HRS §346-53; 20 C.F.R. §416.1124; 42 C.F.R. §§435.601, 435.631) (Imp: HRS §346-29; 20 C.F.R. §416.1124; 42 C.F.R. §§435.601, 435.631)

§17-1724.1-36 Lump sum benefits. (a) When financial assistance benefits are terminated due to receipt of lump sum income:

(1) The lump sum amount and any other income for the month are prorated by the standard of need for a household of applicable size to determine the period of ineligibility for financial assistance; and

(2) The prorated amount is budgeted as unearned income for the number of months equal to the financial assistance period of ineligibility to determine eligibility for the medical assistance program.

(b) Any other lump sum cash benefit, which is not considered to be earned income and not exempt in subchapter 6, shall be considered unearned income in the month of receipt. [Eff] (Auth: HRS §346-53; 42 C.F.R. §§435.601, 435.631; 45 C.F.R.

§233.20) (Imp: HRS §346-29; 42 C.F.R. §§435.601, 435.631; 45 C.F.R. §233.20)

§17-1724.1-37 Income of the sponsor of a non-citizen. (a) The sponsor of a non-citizen who executed an affidavit of support pursuant to section 213A of the Immigration and Nationality Act on or after December 19, 1997, shall have their income and their spouse's income deemed as available to a non-citizen requesting medical assistance.

(b) The income of a non-citizen’s sponsor and the sponsor’s spouse shall be deemed available to the non-citizen until such time as the non-citizen:

(1) Achieves United States citizenship through naturalization pursuant to chapter 2 of Title III of the INA; or

(2) Has worked forty qualifying quarters of coverage as defined under Title II of the Social Security Act or can be credited with such qualifying quarters as provided under 8 U.S.C. §1645. In the case of any such qualifying quarter beginning after December 31, 1996, the non-citizen must not have received any Federal means-tested public benefit during any such period.

(c) The non-citizen's failure to provide information and verification regarding the income of their sponsor and the sponsor’s spouse as applicable shall disqualify the non-citizen from receiving medical assistance.

(d) The income of a non-citizen’s sponsor and the sponsor’s spouse shall not be deemed available to a non-citizen for coverage of emergency medical assistance as described in chapter 17-1723.1.

(e) Special provisions shall apply in the case of an indigent non-citizen. The deeming of income in subsection (a) shall not be applicable for a twelve-month period from the date a non-citizen is determined to be indigent.

(1) The department may determine a non-citizen to be indigent when the non-citizen is

unable to obtain food and shelter because the non-citizen’s own income plus any cash, food, housing, or other assistance provided by other individuals, including the sponsor and the sponsor’s spouse does not exceed one hundred thirty per cent of the poverty income guideline for the non-citizen’s household size;

(2) The department will only consider the actual amount contributed by the sponsor and the sponsor’s spouse for a twelve month period, which begins on the date of such determination and ends twelve months after such date;

(3) Each period of indigence is renewable for additional twelve month periods; and

(4) The department must notify the federal Attorney General of each such determination, including the names of the sponsor and the sponsored non-citizen involved.

(f) Special provisions for a battered spouse and child. Non-deeming of income of the sponsor and the sponsor's spouse described in subsection (a) if the sponsor and the sponsor's spouse are the batterer and the spouse of the batterer, applies only for the period the non-citizen is not residing in the same residence of the batterer not to exceed twelve months.

(1) This provision applies to:

(A) A non-citizen who was battered or subjected to extreme cruelty in the U.S. by a spouse or a parent, or by a member of the spouse's or parent’s family residing in the same residence as the non-citizen and the spouse or parent consented to or acquiesced to such battery or cruelty;

(B) A non-citizen whose child was battered or subjected to extreme cruelty in the U.S. by the spouse or parent of the non-citizen who did not actively participate in such battery or cruelty or by a member of the spouse's or

parent’s family residing in the same residence as the non-citizen when the spouse or parent consented or acquiesced to such battery or cruelty; or

(C) A non-citizen child who was residing with the parent who was battered or subjected to extreme cruelty in the U.S. by that parent’s spouse or by a member of the spouse's family residing in the same residence as the parent and the spouse consented to, or acquiesced in such battery or cruelty described in any of the paragraphs under this subsection.

(2) The department shall determine whether the battery or cruelty is substantially connected to the need for public benefits which means that without the support of the batterer, the non-citizen is unable to obtain food and shelter because the non-citizen’s own income plus any cash, food, housing, or assistance provided by other individuals including the sponsor, does not exceed one hundred thirty per cent of the poverty income guideline for the non-citizen’s household size.

(3) After the twelve month period ends, the department shall continue to exempt the batterer’s income when the battery or cruelty is recognized in an order of a judge or administrative law judge or a prior determination of the USCIS, and the department determines that such battery or cruelty still has a substantial connection to the need for benefits.

[Eff] (Auth: HRS §346-53; 42 C.F.R. §§435.631, 435.831; 8 U.S.C. §§1631, 1632, 1645) (Imp: HRS §346-29; 42 C.F.R. §§435.631, 435.831; 8 U.S.C. §§1631, 1632, 1645)

§17-1724.1-38 Other unearned income. All non-work related income prior to any deductions shall be considered countable unearned income that includes, but is not limited to:

(1) Social security benefits that may include, but are not limited to:
   (A) Early retirement benefits at age sixty-two years or full retirement benefits at age sixty-five years or older;
   (B) Disability benefits to an individual certified as unable to work because of a physical and or mental handicap;
   (C) Survivor's benefits to a spouse of a deceased wage earner; or
   (D) Benefits for children of a deceased or disabled parent.
(2) Amount of Social Security benefits being recovered due to an overpayment that occurred when an individual was not receiving Medicaid.
(3) Temporary disability insurance payments that are paid more than six consecutive months after work stopped because of a sickness or disability which are not paid by the employer if the individual is no longer an employee of the company.
(4) Pension and retirement benefits, administered by the federal, state or city governments, unions, private corporations, insurance or trust companies, and other entities, prior to any deductions, may also be available to children and spouses of retired employees.
(5) Unemployment insurance benefits received under a state or federal unemployment law or additional amounts paid by unions or employers as unemployment benefits.
(6) SSI benefits of an institutionalized individual for whom the post-eligibility treatment of income applies.
(7) Worker's compensation benefits, prior to any deductions, or weekly benefits provided to a surviving spouse or dependent children of a deceased employee due to a work-related death to compensate them for the loss of financial support.

(8) Railroad retirement board (RRB) benefits, prior to any deductions, when available to an individual who worked for a U.S. railroad company.
(9) Strike benefits, prior to any deductions.
(10) Alimony and spousal support payments received.
(11) Child support payments received, including child support arrearage payments.
(12) Regular cash contributions.
(13) Occasional gifts and contributions in excess of $20 per household per month.
(14) The dollar value of dividends and interest as returns on capital investments or interest paid on dividends from life insurance, or other sources that are received by an individual, set aside for an individual's use, or credited to an account of an individual from any financial institution, insurance company, or other sources. [Eff] (Auth: HRS §346-53; 20 C.F.R. §§404.1051, 416.1110, 416.1112, 416.1121, 416.1123, 416.1124; 42 C.F.R. §§431.10, 435.601, 435.631, 435.733, 435.735) (Imp: HRS §§346-53; 386 (Part II); 20 C.F.R. §§404.1051, 416.1110, 416.1112, 416.1121, 416.1123, 416.1124; 42 C.F.R. §§431.10, 435.601, 435.631, 435.733, 435.735)

§17-1724.1-39 Exempt unearned income. All non-work related income that is exempt includes, but is not limited to the:
(1) Amount of Social Security benefits being recovered due to an overpayment that occurred when an individual was receiving Medicaid.
(2) Amount withheld from unemployment insurance benefit payments to recover overpayments or to pay child support obligations.
(3) Assistance provided by any public or private agency or organization if no duplication exists between such other assistance and that provided by the department. Non-duplication of assistance shall be assured by:

(A) The different purpose for which the other agency grants aid such as vocational rehabilitation; or

(B) The provision of goods and services that are not included in the department's standard of assistance.

(4) VA benefits that are:

(A) Reduced to $90 for a veteran with no spouse or child and residing in a nursing facility or receiving domiciliary care services furnished by the VA;

(B) For aid and attendance allowance, housebound allowance; and

(C) Increased or an extra VA payment resulting from unusual medical expenses. [Eff] (Auth: HRS §346-29; 20 C.F.R. §§416.1121, 416.1121(a), 416.1124; 42 C.F.R. §§435.601, 435.631); 45 C.F.R. §233.20) (Imp: HRS §346-29; 20 C.F.R. §§416.1121, 416.1121(a), 416.1124; 42 C.F.R. §§435.601, 435.631); 45 C.F.R. §233.20)

§§17-1724.1-40 to 17-1724.1-44 (Reserved).

SUBCHAPTER 6

INCOME EXEMPTIONS

§17-1724.1-45 Purpose. This subchapter identifies and describes the types of disregarded income and income exemption as required by federal or state statutes in determining eligibility for a MAGI-excepted individual and household. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1724.1-46 Income exemptions allowed for a MAGI-excepted individual and household. (a) The following incomes shall be exempt in determining eligibility for a MAGI-excepted individual and household:

(1) The value of supplemental nutrition assistance benefits issued under the Food and Nutritional Act of 2008 (7 U.S.C. §§2011-2027);
(2) The value of the U.S. Department of Agriculture donated foods (surplus commodities);
(3) Any payment or relocation assistance received, such as reimbursement or allowances provided to an individual (or spouse) displaced by a State or county-assisted project, under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4636) to include, but not be limited to:
    (A) Moving expenses;
    (B) Reimbursement for tangible property losses;
    (C) Expenses for pursuing a business or farm;
    (D) Displacement allowances;
    (E) Amounts required to replace a dwelling exceeding the agency’s acquisition cost for a prior dwelling;
    (F) Compensation for increased interest costs, expenses for closing costs, and other debt service costs of replacement dwelling (if encumbered by a mortgage);
    (G) Rental expenses for displaced tenants;
    (H) Amounts for down-payments on replacement housing for tenants who decide to buy;
    (I) Mortgage insurance through Federal programs with waiver of requirements of age, physical condition, personal characteristics, etc., that borrowers must meet; and
    (J) Direct provision of replacement housing (as a last resort);
(4) Any grant or loan to any undergraduate or graduate student made or insured under programs administered by the U.S.

Secretary of Education, Title IV of the Higher Education Act, the Carl D. Perkins Career and Technical Education Improvement Act of 2006 (20 U.S.C. §§2301-2324), or the Bureau of Indian Affairs student assistance programs including, but not limited to:

(A) Pell Grants;
(B) Federal Supplemental Educational Opportunity Grant (FSEOG);
(C) National Direct Student Loans (NDSL);
(D) Guaranteed Student Loans (GSL);
(E) Hawaii Student Incentive Grant (HSIG);
(F) College Work Study (CWS) Program;
(G) Academic Achievement Incentive Scholarships;
(H) Byrd Scholars;
(I) Federal Educational Loans (Federal PLUS Loans, Ford Loans, Perkins Loans, Stafford Loans, etc.);
(J) Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP);
(K) Leveraging Educational Assistance Partnership (LEAP);
(L) Special Leveraging Educational Assistance Partnership (SLEAP);
(M) State Student Incentives; and
(N) Upward Bound;

(5) Any educational grant, fellowship, or scholarship from sources other than those listed in paragraph (4) that is obtained or used under conditions that preclude their use for current living expenses;

(6) Per capita payments distributed to or held in trust under 25 U.S.C.:

(A) §117b for members of the Hoopa Valley Indian Tribe and the Yurok Indian Tribe;
(B) §§459-495(d) for members of the:
(i) Bad River Band of Lake Superior Tribe of Chippewa Indians of Wisconsin;
(ii) Blackfeet Tribe;
(iii) Cherokee Nation of Oklahoma;
(iv) Cheyenne River Sioux Tribe;
(v) Crow Creek Sioux Tribe;
(vi) Lower Brule Sioux Tribe;
(vii) Devils Lake Sioux Tribe;
(viii) Fort Belknap Indian Community;

(ix) Assiniboine and Sioux Tribes;
(x) Lac Courte Oreilles Band of Lake Superior Chippewa Indians;
(xi) Keweenaw Bay Indian Community;
(xii) Minnesota Chippewa Tribe;
(xiii) Navajo Tribe;
(xiv) Oglala Sioux Tribe;
(xv) Rosebud Sioux Tribe;
(xvi) Shoshone-Bannock Tribes; and
(xvii) Standing Rock Sioux Tribe;

(C) §§609-609c-1 for members of the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation;
(D) §§640-640d for members of the Hopi and Navajo Tribes;
(E) §§687-689 for members of the Red Lake Band of Chippewa Indians;
(F) §882 for members of the Sac and Fox Tribes;
(G) §§1261-1265 for members of the Blackfeet and Gros Ventre tribes;
(H) §§1401-1407 for members of the Bois Forte Band of Chippewa Indians except for per capita shares in excess of $2,000;
(I) §1408 for members of the San Carlos Apache Indian Tribe of Arizona up to $2,000 per year derived from individual interests in trust or restricted lands;
(J) §1728(c) for members of the Passamaquoddy Tribe, the Penobscot Nation, or the Houlton Band of Maliseet Indians;
(K) §1774f for members of the Seneca Nation; and
(L) §§2301-2307 to heirs of certain deceased Indians under §8 of the Old Age Assistance Claims Settlement Act;

(7) Tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. §1626(c));
(8) Payments made to volunteers under the National and Community Service Trust Act of 1993 (42 U.S.C. §5044(f)) including the following programs under 42 U.S.C.:
(A) Volunteers in Service to America (AmeriCorps VISTA) §§4951-4960;

(B) Special Volunteer Programs §§4991-4993;
(C) Retired and Senior Volunteer Program (RSVP) §5001;
(D) Foster Grandparent Program §5011; and
(E) Senior Companion Program §5013;

(9) Payments made to volunteers including the Service Corps of Retired Executives (SCORE) and the Active Corps of Executives (ACE) to provide technical, managerial, and informational aids to small business concerns (15 U.S.C. §637);

(10) Any energy assistance received under the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. §§8621-8629);

(11) Foster care maintenance, kinship guardianship, and subsidized adoption payments to licensed caregivers for the provision of care and supervision to eligible children;

(12) Food which is raised, produced, or procured by members of the household through their own efforts;

(13) The value of medical insurance, employer's share of contributions to a pension fund, and employer's share of social security contributions;

(14) Housing and Urban Development (HUD) retroactive tax and utility cost subsidy payments issued pursuant to Underwood v. Harris, (Civil No. 76-0469 D.D.C.) against HUD to applicants and recipients of financial assistance shall be disregarded as income in the month received;

(15) Supplemental Security Income and State Supplementary Payment benefits of non-institutionalized individuals for whom the post-eligibility treatment of income does not apply;

(16) Reparation payments provided to certain individuals of Japanese ancestry and Aleuts for losses suffered as a result of evacuation, relocation, and internment during World War II under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act;

(17) Effective January 1, 1989, all Agent Orange Settlement payments to include payments from the Agent Orange Settlement Fund or

any other fund established pursuant to the settlement of the In re Agent Orange Product Liability Litigation;

(18) The income of the sponsor of a non-citizen and the sponsor's spouse when determining eligibility of a non-citizen when an affidavit of support was executed before December 19, 1997;

(19) Bona fide loans from any source including but not limited to educational loans, when defined as a debt that the borrower has an obligation to repay;

(20) Effective August 1, 1994, payments made to victims of Nazi persecution under the Victims of Nazi Persecution Act;

(21) VA benefits for an increase or an extra payment due to unusual medical expenses (UME);

(22) VA benefits that are reduced to $90 for veterans without a spouse or child in a State veterans nursing facility for which VA makes per diem payments pursuant to 38 U.S.C. §1741(a);

(23) Payments received under the Radiation Exposure Compensation Trust Fund established under the Radiation Exposure Compensation Act (RECA) to compensate an individual for injuries or death resulting from the exposure to radiation from nuclear testing or uranium mining under the National Defense Authorization Act for Fiscal Year 1991 and the Radiation Exposure Compensation Act Amendments of 2000 and succeeding amendments;

(24) Assistance payments received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or under any Federal statute as a result of a catastrophe which is declared by the President of the United States, state or local government agency or disaster assistance organizations;

(25) Crime Victim Compensation payments issued pursuant to the Victims of Crime Act of 1984 to victims of certain crimes or dependents of deceased victims to include, but shall not be limited to, compensation paid by Hawaii’s Crime Victim Compensation Commission;

(26) Payments received from any fund as a result of the settlement in the case of Susan Walker v. Bayer Corporation, et al., to compensate an individual who contracted the human immunodeficiency virus (H.I.V.) from contaminated blood products pursuant to Title IV, section 4735 of the Balanced Budget Act of 1997 (Pub. L. 105-33);

(27) Payments received from the Ricky Ray Hemophilia Relief Fund Act of 1998 under Pub. L. 105-369 to compensate an individual with a hemophilia-clotting disorder who was treated with blood-clotting agents and contracted the H.I.V.;

(28) Any gift to, or for the benefit of, an individual who has not attained eighteen years of age and who has a life-threatening condition, from an organization described under §501(c)(3) of the Code;

(29) VA benefits received by or on behalf of certain natural children of:

(A) Vietnam veterans and Korean service veterans born with spina bifida under §421 of Pub. L. 104-204 and §102 of Pub. L. 108-183, respectively; and

(B) Women Vietnam veterans born with certain birth defects that results in permanent physical or mental disability under §401 of Pub. L. 106-419;

(30) Payments made to certain individuals under:

(A) §606 of Pub. L. 105-78 who were captured and interned by North Vietnam; or

(B) §657(d)(2) of Pub. L. 104-201 who were captured and incarcerated by the Democratic Republic of Vietnam after entering Vietnam under OPLAN 34A, or Laos under OPLAN 35, pursuant to certain Vietnamese commando operations;

(31) State annuities paid to a certain individual or the individual’s spouse on the basis that the individual is an aged, blind, or disabled veteran under §202 of P.L. 110-245;

(32) Payment issued to eligible Filipino veterans who aided American troops during World War II that were established by the Filipino Veterans Equity Compensation Fund (FVECF)

under the American Recovery and Reinvestment Act of 2009. Filipino veterans who are U.S. citizens are entitled to a one-time payment of $15,000 while non-U.S. citizen veterans are entitled to a one-time payment of $9,000. Surviving widows of Filipino veterans who filed for the FVECF payments prior to the Filipino veteran’s death may also receive these payments on their spouse's behalf;

(33) Judgment funds distributed per capita to or made available for members of the:
- (A) Grand River Band of Ottawa Indians;
- (B) Delaware Tribe of Indians and the absentee Delaware Tribe of Western Oklahoma;
- (C) Wyandot Tribe of Indians of Oklahoma;
- (D) Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma and the Cherokee Band of Shawnee descendants);
- (E) Miami Tribe of Oklahoma and the Miami Indians of Indiana;
- (F) Clallam Tribe of Indians of the State of Washington (Port Gamble Indian Community, Lower Elwha Tribal Community and the Jamestown Band of Clallam Indians);
- (G) Pembina Chippewa Indians (Turtle Mountain Band of Chippewa Indians, Chippewa Cree Tribe of Rocky Boy’s Reservation, Minnesota Chippewa Tribe, Little Shell Band of the Chippewa Indians of Montana, and the nonmember Pembina descendants);
- (H) Assiniboine Tribe of Fort Belknap Indian Community and the Papago Tribe of Arizona under §§6 and 8(d) of Pub. L. 97-408;
- (I) Confederated Tribes of the Warm Springs Reservation up to $2,000 each;
- (J) Red Lake Band of Chippewa Indians;
- (K) Assiniboine Tribe of Fort Belknap Indian Community of Montana and the Assiniboine Tribe of the Fort Peck Indian Reservation of Montana or family interest payments;
- (L) Shoalwater Bay Indian Tribe;

(M) Wyandotte Tribe of Oklahoma and the Absentee Wyandottes;
(N) Chippewas of Lake Superior and the Chippewas of the Mississippi under §4 of Pub. L. 99-377;
(O) White Earth Band of Chippewa Indians as allottees, or their heirs;
(P) Saginaw Chippewa Indian Tribe of Michigan;
(Q) Chippewas of Lake Superior and the Chippewas of the Mississippi under §6 of Pub. L. 99-146;
(R) Cow Creek Band of Umpqua Tribe of Louisiana;
(S) Wisconsin Band of Potawatomi (Hannahville Indian Community and Forest County Potawatomi;
(T) Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida and the independent Seminole Indians of Florida;
(U) Catawba Indian Tribe of South Carolina;
(V) Confederated Tribes of the Colville Reservation; or under the Michigan Indian Land Claims Settlement Act or Cowlitz Indian Tribe Distribution of Judgment Funds Act;

(34) Receipts derived from lands held in trust and distributed to members of:
(A) Certain Indian tribes under 25 U.S.C. §459e;
(B) The Pueblo of Santa Ana under §6 of Pub. L. 95-498; and
(C) The Pueblo of Zia of New Mexico under §6 of Pub. L. 95-499;

(35) Earned income of a blind or disabled individual student under age twenty-two, up to $1,730 in a calendar month with an overall limit of $6,960 per calendar year;

(36) The value of meals provided to a senior citizen, such as congregate meals, or home delivered meals funded by the Older American Act of 1965 (42 U.S.C. §§2001-3057);

(37) Amount of RSDI cost of living allowance for recipients who lose SSI benefits for any reason;

(38) The increase in OASDI disability benefits for a widow and widower age 60 to 64 resulting in the loss of SSI/SSP benefits due to mandatory receipt of widow's or widower's OASDI disability benefits;

(39) The amount of RSDI cost of living allowance for recipients resulting in the loss of SSI/SSP benefits as a result of RSDI cost of living increases received after April 1977 as required by §503 of Pub. L. 94-566 (also know as the "Pickle Amendment");

(40) The amount of RSDI increase for a disabled widow's or widower's benefits due to the elimination of the additional reduction factor (ARF) required by Pub. L. 98-21, §134 (42 U.S.C. §1383c(b)), resulting in the loss of SSI/SSP benefits were it not for the amount of that increase and subsequent cost of living adjustments; and

(41) Austrian social insurance payments granted exclusively under paragraphs 500 to 506 of the Austrian General Social Insurance Act.

(b) The following incomes are not considered available in the post-eligibility process:

(1) Restitution payments made under Pub. L. 100-383 for the evacuation, relocation, and internment to an eligible Japanese-American citizen or permanent resident non-citizen of Japanese ancestry under §105 of the Civil Liberties Act of 1988 and to an eligible Aleut under §206 of the Aleutian and Pribilof Islands Restitution Act;

(2) Reparation payments made under Pub. L. 103-286 by the Netherlands' Act on Benefits for Victims of Persecution 1940-1945, to a persecuted victim during the Nazi occupation of the Netherlands and the Dutch East Indies during World War II;

(3) Payments made under Pub. L. 101-239 from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.); and

(4) Compensation payments made under Pub. L. 101-239 from the Radiation Exposure

Compensation Trust Fund to an individual exposed to radiation during nuclear testing from 1944 to 1972 or exposed to radon while employed in uranium mines or mills from 1942 to 1971, and to atomic veterans who contracted specified cancers and other specified diseases as a direct result of exposure. The Radiation Exposure Compensation Act expanded benefits also to an on-site participant in atmospheric nuclear tests. [Eff] (Auth: HRS §346-14; 20 C.F.R. §416.1124; 42 C.F.R. §§431.10, 435.121, 435.135, 435.137, 435.138, 435.726, 435.733, 435.735, 435.831, 435.832; 8 U.S.C. §§1631, 1632; 38 U.S.C. §5503; 42 U.S.C. §§1315, 1383c(b), 1396a(r), 1396r-5; Pub. L. No. 97-248, Pub. L. No. 108-203) (Imp: 20 C.F.R. §416.1124; 42 C.F.R. §§435.121, 435.135, 435.137, 435.138, 435.726, 435.733, 435.735, 435.831, 435.832; 8 U.S.C. §§1631, 1632; 38 U.S.C. §5503; 42 U.S.C. §§1315, 1383c(b), 1396a(r), 1396r-5; Pub. L. No. 97-248, Pub. L. No. 108-203)

§§17-1724.1-47 to 17-1724.1-51 (Reserved).

SUBCHAPTER 7

DETERMINATION OF FINANCIAL ELIGIBILITY

§17-1724.1-52 Purpose. The purpose of this subchapter describes how financial eligibility is determined for a MAGI-excepted individual. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1724.1-53 Rounding of income. There are no provisions for the rounding of income to a whole dollar amount when determining eligibility for a MAGI-excepted individual or household. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1724.1-54 General eligibility provisions. (a) Determination of financial eligibility for a MAGI-excepted individual shall be based upon the income standards established by the department.

(b) Medical assistance shall be provided to a MAGI-excepted individual whose income:

(1) Is equal to or less than the medical assistance standards of the coverage group under the provisions of chapter 17-1719; or

(2) Exceeds the appropriate standard of assistance in chapter 17-1719, and meets the appropriate standard of assistance for the medically needy after the deduction of incurred medical expenses according to chapter 17-1730.1.

(c) Medically needy individuals disenrolled from a health plan for being two months in arrears of the payment of their enrollment fee are excluded from coverage under this chapter until their arrearage responsibility is met. [Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10, 435.119, 435.814, 435.831) (Imp: HRS §346-53(e); 42 C.F.R. §§435.119, 435.814, 435.831)

§17-1724.1-55 Determining monthly income. (a) The determination of monthly income for a MAGI-excepted individual and household is dependent on the period for which assistance is being requested and the circumstances involved. The following methods shall be used when determining income for:

(1) The month prior to the current month, the actual income received within that month shall be considered income for that month.

(2) The current month, income already received and any income anticipated to be received within the current month, shall be considered income for that month.

(3) A future month income anticipated shall be calculated by one of the following methods:

(A) Weekly income shall be multiplied by 4.3333 to convert to monthly income;

(B) Bi-weekly income shall be multiplied by 2.1667 to convert to monthly income;

(C) The income received in the month immediately prior to the current month can be used for the projection, when no

significant fluctuation is anticipated; or

(D) An average of the immediately prior three months income can be utilized in the absence of any factors which will significantly fluctuate income within the period to be certified.

(b) A prospective period of not more than six months shall be used to compute monthly income of a MAGI-excepted individual or household.

(c) For the availability of income of relatives, refer to section 17-1724.1-21. [Eff] (Auth: HRS §346-14; 42 C.F.R. §435.831) (Imp: 42 C.F.R. §435.831)

§17-1724.1-56 Determining monthly net income. Monthly net income used in determining eligibility for a MAGI-excepted individual or household shall be determined in the following order:

(1) Determine unearned income according to subchapter 5;

(2) Determine earned income according to subchapter 4;

(3) Deduct $20, first from unearned income and any remainder from earned income;

(4) If employed and aged, blind, or disabled, deduct $65 from the gross earned income.

(5) Exclude impairment-related work expenses (IRWE) from the earned income of a disabled, but not blind, individual who is under age sixty-five years or who received SSI disability benefits prior to attaining age sixty-five years, if the items or services are required to enable a disabled individual to work. The IRWE must be:

(A) Paid in the same month of the earned income in which the services were received or item used;

(B) Reasonable in cost, paid by the disabled individual, and is not reimbursable from another source; and

(C) Necessary and not covered by Medicare or Medicaid to include but not limited to the costs of:

(i) Attendant care services;

(ii) Drugs and medical devices;

(iii) Expendable medical supplies;

(iv) Guide dog;
(v) Durable medical equipment;
(vi) Other work-related items and services;
(vii) Physical therapy;
(viii) Prosthetic and orthotic appliances;
(ix) Structural modifications to the individual's home to create a work space or to allow the individual to get to and from work;
(x) Training to use an impairment related item attributable to work;
(xi) Transportation to and from work; and
(xii) Vehicle modification.

(6) Exclude blind work expenses (BWE) in any amount attributable to employment paid by a blind individual who is under age sixty-five years or who received SSI benefits due to blindness prior to attaining age sixty-five years. The amount of expenses excluded shall not exceed the earnings of the blind recipient for the month. The BWE shall be excluded in addition to those excluded as an IRWE and are related to:
(A) Federal, state and local income taxes and Social Security and Medicare taxes;
(B) Licenses, professional association or union dues;
(C) Mandatory pension contributions attributable to earning income; and
(D) Actual value of meals consumed during work hours;

(7) If employed and age sixty-five years or older, blind or disabled, deduct one-half of the remainder of the earned income;

(8) If blind or disabled, exclude any income if needed to fulfill a plan to achieve self support (PASS). This exclusion applies to any income remaining after applying all other income exclusions for the month. The PASS must be approved by SSI or approved by MQD if developed by the department's vocational rehabilitation services.

[Eff] (Auth: HRS §346-14; 42 C.F.R. §431.10, 435.831) (Imp: 42 C.F.R. §435.831)

§§17-1724.1-57 to 17-1724.1-61 (Reserved).

SUBCHAPTER 8

FINANCIAL ELIGIBILITY AND LIABILITY OF MAGI-EXCEPTED INDIVIDUALS RECEIVING LONG-TERM CARE SERVICES

§17-1724.1-62 Purpose. The purpose of this subchapter is to describe the financial eligibility and liability of a MAGI-excepted institutionalized individual requesting coverage of long-term care services. [Eff] (Auth: HRS §346-14) (Imp: HRS §346-14)

§17-1724.1-63 Post-eligibility treatment of income for a MAGI-excepted institutionalized individual. (a) An institutionalized individual determined eligible to receive long-term care services on the basis of income, shall have their income applied toward their cost share of long-term care and other medical care costs. A cost share is applicable to the following:

(1) Medically needy individuals residing in a nursing facility or a medical facility and provided nursing facility level of care services; and

(2) Medically needy individuals residing in the community receiving home and community based services under 42 C.F.R. §435.217.

(b) An institutionalized individual's cost share is determined by deducting the following from the institutionalized individual's income:

(1) A personal needs allowance of:

(A) $50 for an individual residing in a nursing facility or medical facility receiving nursing facility level of care;

(B) One hundred percent of the FPL for a household of one for an individual residing in their home in the community

receiving home and community based services; or

(C) The medically needy standard of assistance for a household of one residing in a community care foster family home or extended adult residential care home receiving home and community based services.

(2) Amounts for the maintenance needs of the institutionalized individual's community spouse and dependent family member shall be deducted from the institutionalized individual's income as follows:

(A) The contribution from the institutionalized spouse to the community spouse shall not exceed the difference between the maximum monthly maintenance needs allowance and the gross monthly income of the community spouse. The maximum maintenance needs allowance for the community spouse is defined by federal statutes or regulations and is subject to increases by means of indexing, court order, or fair hearing decree;

(B) The dependent allowance for each dependent family member residing with the community spouse, shall be equal to one third the amount of the spousal allowance in subparagraph (A) which exceeds the gross monthly income of that family member; or

(C) The family allowance for any or all dependent family members residing in the home of the institutionalized individual without the community spouse, shall be equal to the medically needy standard of assistance for a household of equal size and the total monthly gross income of all dependent family members.

(3) Any incurred medical expenses as provided in chapter 17-1730.1, that are not covered by the medical assistance program excluding any unpaid portion of long-term care costs that were not payable by medical assistance during a penalty period for the transfer of assets for less than fair market value that was established under the provisions of chapter 1725.1.

(c) Any income remaining, which shall be rounded down to the whole dollar following the procedures of subsection (b), represents the amount of the individual's cost share. [Eff] (Auth: HRS §346-14; 42 C.F.R. §§435.217, 435.726, 435.733, 435.735, 435.831, 435.832; 38 U.S.C. §5503; 42 U.S.C. §§1315, 1396a(r), 1396r-5) (Imp: 42 C.F.R. §§435.217, 435.726, 435.733, 435.735, 435.831, 435.832; 38 U.S.C. §5503; 42 U.S.C. §§1315, 1396a(r), 1396r-5)

§§17-1724.1-64 to 17-1724.1-68 (Reserved).