

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF HUMAN SERVICES  
APPEALS OFFICE  
57 Howard Avenue  
Cranston, Rhode Island 02920  
(401) 462-2132/Fax# (401) 462-0458  
TDD# (401) 462-3363

Docket # 14-1158  
Hearing Date: September 10, 2014

Date: November 26, 2014

**ADMINISTRATIVE HEARING DECISION**

The Administrative Hearing that you requested has been decided against you. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

**THE DHS PROVIDER MANUAL: Medical Assistance**  
**SECTION: 0336 FLEXIBLE TEST OF INCOME**  
**0362.05 Income Standards - Individual/Couple**

The facts of your case, the Agency policy, and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the Appellant), Julie Neuman, RI Works Eligibility Technician as the agency representative, Donna Yeadon RI Works & SNAP Supervisor, and the Policy Unit.

Present at the hearing were: [REDACTED] (the Appellant), Julie Neuman RI Works ET as the agency representative, Donna Yeadon RI Works & SNAP Supervisor.

**ISSUE:** Is the Appellant ineligible for Medical Assistance due to over-income?

**DHS POLICIES:**

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Department of Human Services Policy and Provider Manuals.

**APPEAL RIGHTS:**

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

**DISCUSSION OF THE EVIDENCE:****The Agency Representatives testified:**

- The Appellant's case was being re-certified for Medical Assistance and Cash Assistance, which he receives \$327 per month on behalf of his grandson and Medical Assistance (MA). The Agency established that the Appellant was over income for Medical Assistance.
- On June 19, 2014 the Agency issued a Notice to the Appellant informing him that his Medical Assistance will end due to being over income.
- The Appellant was found to have a countable monthly income of \$3,171.00, which exceeds the MA family-related monthly income standard of \$900.00, per DHS Policy § 0330.05.
- Based on the Flexible Test of income policy (§ 0336), the six month income of \$19,026.00 is over the six (6) month medically needy limit from June 1, 2014 through November 30, 2014 so that the Appellant has excess income of \$13,626.00.
- The Appellant has a...
 

Gross Income	$\$3261.00 \times 6$	=	\$19566.00
Income disregard	$90.00 \times 6$	=	540.00
MA family Countable income	$3171.00 \times 6$	=	19026.00
Flexible test of income standard	$900.00 \times 6$	=	5400.00
Excess income			13626.00
Medical expense credit			0.00
Balance of excess income			13626.00
- The Appellant's income is based on the Appellant's RSDI monthly payment of \$1761.00 and his monthly self-employment of \$2,000.00 that he earns from being a DJ.
- The Appellant had not previously had all that amount of monthly income and that is why this issue was never an issue earlier.

**The Appellant testified:**

- A little over seven years ago, the Appellant was asked to take custody of his grandson who was three years old at the time. The Appellant, being fifty-five years old then, knew that he would not be able to work as much as he was if he took custody of his grandson; he could no longer work at night, needed to be around to watch over the child, had to be able to take his grandson, who was being treated for lead poisoning, to the needed doctors' appointments. A Family Court Judge told the Appellant that if the Appellant made the sacrifice of cutting his hours from work to care for his grandson and take custody of the child, the State of Rhode Island would grant him full medical coverage, free of charge until the child turned eighteen years old or graduated high school and if the grandson decides to go on to college, he will still receive free medical coverage. The Appellant agreed to take custody of his grandson.

- The Appellant was never given any restrictions as to how much money that he could make, what insurance policies he could have, what would happen once he was eligible for social security.
- Appellant stated that once he turned sixty-two years old and started receiving social security, he received a letter informing him that he was no longer going to receive medical coverage and he would need to obtain his own coverage.
- The Appellant is not able to recall which RI Family Court Judge offered him this agreement regarding full medical coverage, free of charge until the child turns eighteen years old or graduates high school and if the grandson decides to go on to college, he will still receive free medical coverage.
- The Appellant does not know if he still has a copy of the Family Court Order that indicates this agreement and does not know even where to begin looking to find this court order. The Appellant feels that it would be virtually impossible for him to obtain the court order from the RI Family Court and/or DCYF.
- The Appellant has the position that the agency and/or the Appeals Office should obtain the court order from either the RI Family Court or DCYF.

The record of Hearing was held open for five weeks from the date of the Hearing for both the agency and the Appellant to obtain a copy of a RI Family Court Order that had issued roughly seven years ago that granted the Appellant free Medical Assistance. The record of Hearing was scheduled to close at the end of business October 15, 2014. An e-mail was received by the agency representative by this Hearing Officer and it indicated that the agency representative was not able to obtain the DCYF record.

On October 17, 2014, the Appellant called this Hearing Officer and stated that he has obtained the services of Susan Pires, Esq. to assist him with obtaining a copy of the RI Family Court Order which grants him free State medical for taking custody of his grandson. The Appellant's request was granted and it was agreed to keep the record of Hearing open until October 31, 2014.

On October 31, 2014, both the Appellant and attorney Susan Pires' office called and stated that they may have located the needed Family Court Order but a few days are need to have the recording of the RI Family Court Hearing transcribed. The record of Hearing was agreed to be kept open until November 14, 2014.

#### **FINDINGS OF FACT:**

- The Appellant Medical Assistance and Cash Assistance cases were up for re-certification, he was receiving \$327 per month on behalf of his grandson for Cash Assistance. The Agency established that the Appellant was over income for Medical Assistance.
- On June 19, 2014 the Agency issued a Notice to the Appellant informing him that his Medical Assistance will end due to being over income.
- The Appellant was found to have a countable monthly income of \$3,171.00, which exceeds the MA family-related monthly income standard of \$900.00, per DHS Policy § 0330.05.

- Based on the Flexible Test of income policy (§ 0336), the six month income of \$19,026.00 is over the six (6) month medically needy limit from June 1, 2014 through November 30, 2014 so that the Appellant has excess income of \$13,626.00.
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Flexible test of income standard	900.00 x 6	=	5400.00
Excess income			13626.00
Medical expense credit			0.00
Balance of excess income			13626.00
- The Appellant's income is based on the Appellant's RSDI monthly payment of \$1761.00 and his monthly self-employment of \$2,000.00 that he earns from being a DJ.
- The Appellant believes that he is in a special category due to agreement that he entered into with the RI Family Court approximately seven years ago that if he took custody of his grandchild, who was roughly three years old at the time, that the Appellant would be allowed to have free state medical until the grandchild turned 18 years old or graduated high school, whichever came last and if the grandchild pursued post high school studies, the Appellant would continue to receive free state medical until graduation from that institution.
- The Appellant does not recall which RI Family Court Judge made this offer or when this agreement was made part of an Order other than seven years ago but does recall DCYF and possibly Ms. Susan Pires, Esq. being there. The Appellant doesn't have a copy of the Family Court Order with states this agreement and believes that it would be virtually impossible to locate in the DCYF/RI Family Court file.

The Record of Hearing was held open at the end of the Hearing on September 10, 2014 until October 15, 2014 to allow both the agency and the Appellant to obtain a copy of the RI Family Court Order that states that the Appellant would receive free state medical assistance for taking custody of his three year old grandson roughly seven years ago.

The agency contacted the Appeals Office and indicated that they were not successful in obtaining a copy of the Family Court Order in question and on October 10, 2014 a letter issued to the Appellant informing him of the situation.

On October 17, 2014 the Appellant contact this Hearing Office indicating that he now has Susan Pires, Esq. assisting him in locating the Family Court Order in question. The Appellant was granted an additional two weeks to submit this court order and the record would close on October 31, 2014.

Shortly before close of business time on October 31, 2014, the Appellant calls and spoke with this Hearing Officer and indicated that with the help of Susan Pires, Esq., they may have located the RI Family Court Order but need additional time to order the

transcript of the Family Court Hearing. It was agreed that the Record of Hearing would remain open until the close of business day November 14, 2014.

### CONCLUSION:

The issue to be decided is whether the Appellant is ineligible for Medical Assistance due to over-income.

The Appellant's Medical Assistance and Cash Assistance cases were scheduled for re-certification and the agency had reviewed the Appellant's most recent application and his entire case. The Appellant receives income in the amount of \$1761.00 per month from RSDI and \$2,000.00 per month from a part-time DJ job that he has. The combined income from both resources total \$3761.00. The Appellant was given a deduction of \$500.00 per month for business expenses and a deduction of \$90.00 per month for an income disregard, leaving the Appellant with a countable earned income of \$ 3,171.00 per month.

Policy § 0362.05 Income Standard that the Medically Needy Monthly Income Limit for a two person household cannot exceed \$900.00 per month.

#### TABLE OF MEDICALLY NEEDED MONTHLY INCOME LIMITS

1 Person	\$ 858.00	5 Persons	\$ 1,417.00
<b>2 Persons</b>	<b>\$ 900.00</b>	6 Persons	\$ 1,592.00
3 Persons	\$ 1,108.00	7 Persons	\$ 1,750.00
4 Persons	\$ 1,258.00	8 Persons	\$ 1,933.00

Although the agency's position is that, since the Appellant's monthly countable income of \$3,171.00 exceeds the policy countable income standard of \$900.00 per month, the Appellant is eligible for the Flex Program for Medical Assistance. The Flex Program would allow the Appellant Medical Assistance if he paid the balance of excess income during a six month period. The Appellant's balance of excess income is \$13,626.00 for a six month period. Once the Appellant exceeds his balance of excess income (\$13,626.00), he is eligible for Medical Assistance for the remainder of that six month period.

The Appellant's position is that he is in a "special circumstance". The Appellant testified that roughly seven years ago a RI Family Court Judge offered to him that if he took custody of his three year old grandson, that he would receive free healthcare until the child graduated high school or turned eighteen years old, whatever happened last; and if the grandson decided to further his education, the Appellant would continue to receive free healthcare until the grandson graduated college. The Appellant accepted this agreement, at the time he was younger (fifty-five years old) and in better health and he was willing to make the sacrifice for his grandson. The Appellant indicated that the Family Court Judge stated that if the Appellant accepted this offer, accepting free state

medical for taking care of his grandchild, that the Appellant would also be saving the State money by keeping the grandchild "out of the system".

In the past seven years, the Appellant testified that he had tried to apply for food stamps (SNAP) but was denied and told that he is in a "special circumstance" therefore was not eligible for food stamps. Since food stamps were not part of the agreement, the Appellant understood the denial.

During the Hearing both the agency and the Appellant was asked to present a copy of the RI Family Court Order that indicated that there was an agreement that if the Appellant took custody of his grandson then the Appellant would receive free state medical assistance until the child graduated high school or turned eighteen years old, whatever happened last; and if the grandson decided to further his education. Neither party was able to present a copy. The agency indicated that they never had a copy. The Appellant indicated that he may have a copy but would not commit as to how long he would need to locate a copy of the Order. The Appellant felt that this Hearing Officer or the agency should obtain a copy. The Appellant does not remember who the Judge may have been or exactly when the Order issued, other than "roughly seven years ago". The Appellant thought that attorney Susan Pires, Esq. may have helped in this custody matter. The record of Hearing was held open one month to allow both sides to obtain a copy of the Order either through the Family Court or the Department of Children, Youth and Families (DCYF).

Prior to the record of Hearing closing on October 15, 2014, the agency contacted the Appeals Office indicating that they were not successful in obtain a copy of the Family Court Order in question and the Appellant was informed. On October 17, 2014 the Appellant called this Hearing Officer and requested an addition two weeks to keep the record open since he just obtained the services of Susan Pires, Esq.; it was agreed to keep the record open until October 31, 2014. Late on October 31, 2014, the Appellant, as well as the Law Office of Susan Pires, calls the this Hearing Officer and indicates that the Family Court Order in question may have been found but transcripts need to be ordered and the Appellant would like an additional two weeks to submit and have the record remain open. It was agreed that the record of Hearing will remain open until November 14, 2014. To date of this decision being issued, neither the Appellant nor the Law Office of Susan Pires have contacted or submitted any further exhibits to this Hearing Officer or the Appeals Office with regards to this matter.

In response to the Appellant's position, the agency testified that the reason that he had been denied SNAP was not due to any "special circumstance" but due to being over income. Furthermore, the reason that the Appellant had previously been eligible for Medical Assistance was due to the Appellant not earning as much than as he in now.

In summary, the Appellant had re-applied for Medical Assistance and Cash Assistance during the re-certification period. In his application, the Appellant indicated that he earns an income of \$1,761.00 per month from RDSI and another \$2,000.00 per month from a part-time JD-ing job where he is self-employed. The agency calculated the

Appellant's income as \$3,171.00 per month after giving the Appellant the appropriate credits and deductions. The Appellant's income had not previously been as high as it is presently, so there never had been an issue. In accordance with Medical Assistance Policy § 0362.05 Income Standards - Individual/Couple, a two person house hold cannot exceed \$900.00. However, the agency did provide an option for the Appellant to be eligible for Medical Assistance and that is through the Flex Program for Medical Assistance. The Appellant's position is that he is in a "special circumstance" and entered into an agreement with a RI Family Court Judge, entitling the Appellant to free Medical Assistance. The Appellant did not present any documentation of this agreement/"special circumstance" at Hearing. Furthermore, the record of Hearing was kept open to allow the Appellant time to locate and present any copies of a Family Court Order that confirm his position. The record of Hearing was even extended twice more at the Appellant's request, allowing time for transcripts of a Family Court Order that might confirm the Appellant's position to be typed and presented as evidence on behalf of the Appellant but ultimately nothing was ever submitted on behalf of the Appellant.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the appellant is ineligible for Medical Assistance due to over income. The appellant's request for relief is therefore denied.



Thomas Bucacci  
Appeals Officer

**APPENDIX**

## RHODE ISLAND DEPARTMENT OF HUMAN SERVICES

0362.05 Income Standards - Individual/Couple

REV: April 2014

The following standards are used in the determination of an individual's or couple's income eligibility:

- \*2014 Monthly Federal Benefit Rate (FBR);
- \*Categorically Needy Income Limits;
- \*Medically Needy Monthly Income Limits;
- \*2014 Federal Poverty Level Income Guidelines (for Low Income Aged and Disabled Individuals, Qualified Medicare Beneficiaries, Specified Low Income Medicare Beneficiaries and Qualified Disabled and Working Individuals).

**2014 Monthly Federal Benefit Rate (FBR)**

Individual - Own Home	\$721.00
Couple - Own Home	\$1,082.00
Individual - Home of Another	\$480.44
Couple - Home of Another	\$721.33
<b>"DIFFERENCE BETWEEN"</b>	
Couple and Individual - Own Home	\$361.00
Couple and Individual - Home of Another	\$240.89
<b>"DOUBLE THE FBR"</b>	
Individual - Own Home	\$1,442.00
Individual - Home of Another	\$960.88
Couple - Own Home	\$2,164.00
Couple - Home of Another	\$1,442.66

**Categorically Needy Net Monthly Income Limits for Aged, Blind, or Disabled Individuals/Couples**

Income Limits	Individual	Couple
Living in a Nursing Facility or ICF-MR Facility	\$ 2,163.00 <sup>1</sup>	N/A
Living in Own Household	\$ 760.92	\$ 1,161.38
Living in Household of Another	\$ 532.36	\$ 818.63

<sup>1</sup> By federal law, to be eligible as "Categorically Needy" while living in a nursing facility, ICF-MR facility or a licensed residential care and assisted living facility, an individual's gross income cannot exceed 300% of the federal SSI level of payment for an individual.

Income Limits	Individual	Couple
Living in a residential care and assisted living facility	\$ 2,163.00	** **Treat as Individual
Institutionalized individual eligible for the federal and state Supplement	\$ 50.00	\$ 100.00

This is the FEDERAL CAP which is \$2,163 effective 01/01/ 2014.

### TABLE OF MEDICALLY NEEDY MONTHLY INCOME LIMITS

1 Person	\$ 858.00	5 Persons	\$ 1,417.00
2 Persons	\$ 900.00	6 Persons	\$ 1,592.00
3 Persons	\$ 1,108.00	7 Persons	\$ 1,750.00
4 Persons	\$ 1,258.00	8 Persons	\$ 1,933.00

### 2014 FEDERAL POVERTY LEVEL MONTHLY INCOME GUIDELINES

#### 100% of Federal Poverty Level Income Guidelines for Qualified Medicare Beneficiaries (QMB's) and Low-Income Aged and Disabled

Individual	\$ 972.50
Couple	\$ 1310.83

#### 120% of Federal Poverty Level Income Guidelines for Specified Low-Income Medicare Beneficiaries (SLMB's)

Individual	\$ 1,167.00
Couple	\$ 1,573.00

#### 135% of Federal Poverty Level Income Guidelines for Qualified Individuals (QI-1)

Individual	\$ 1,312.88
Couple	\$ 1,769.63

#### 200% of Federal Poverty Level Income Guidelines for Qualified Disabled and Working Individuals (QDWI's)

Individual	\$ 1,945.00
Couple	\$ 2,621.67

0336 FLEXIBLE TEST OF INCOME  
0336.05 USE OF EXCESS INCOME  
REV:01/2002

An applicant who meets the other eligibility requirements, but has income in excess of the Medically Needy income limits may be eligible for Medical Assistance in accordance with the Flexible Test of Income.

Flexible Test cases are determined for a six (6) month period beginning with the first day of the month in which the application is received. Eligibility as Medically Needy is not established, however, until the applicant has presented 1) RECEIPTS FOR MEDICAL SERVICES INCURRED DURING THE PERIOD OF DETERMINATION and/or 2) UNPAID BILLS incurred either during the CURRENT PERIOD of determination AND/OR PRIOR TO APPLICATION for which the individual is STILL LIABLE equal to the amount of such excess income. The only exception to the requirement of applicant liability for the medical expenses is in the case of medical expenses which are paid by or are the liability of other medical care programs that are funded 100% with State funds. For example, an applicant's medical expenses that have been paid (or are to be paid) by the RIPAE program are considered to be the liability of the applicant, and if otherwise allowable, are deducted from the spenddown liability. Medical expenses that are subject to payment by any other third party payer are not considered the liability of the applicant and are not deducted from the excess income.

In some cases, current payments ON THE PRINCIPAL BALANCES of loans to pay off old medical bills (i.e., bills incurred prior to the current budget period) are incurred health care expenses if certain conditions are met.

The Flexible Test of Income may be used to establish eligibility in a retroactive period.

If the applicant is determined eligible under a flexible test of income, the applicant is certified for SIX (6) MONTHS OR FOR THE BALANCE OF THE SIX (6) MONTH BUDGET PERIOD remaining when the excess income is absorbed.

0336.05.05 When Eligibility Begins  
REV:07/1994

The date of eligibility is the actual day of the month on which the applicant incurs a medical expense which reduces income to the income standard. THEREFORE, THE DATE OF ELIGIBILITY IS THE DAY THAT THE MEDICAL SERVICE IS PROVIDED AND NOT THE DATE OF THE BILLING, which may be a later date. The expense is incurred on the day of the service.

When an incurred medical expense is a hospital bill, the date of eligibility is the first day of hospitalization. An AP-758 is required to establish the amount of the hospital bill for which the individual is liable. The individual's liability is his/her excess income on the

first day of hospitalization, providing there is no expense subsequently incurred which reduces such excess income to a lesser amount.

If the applicant has excess income and there is no indication of medical expenses by which the excess can be absorbed, the case is rejected. However, if the applicant should present medical expenses within the same six (6) month period, the original application is used in determining whether the excess income for this same six-month period has been reduced to the income standard.

0336.05.10 Whose Expenses Are Used  
REV:07/1994

The construction of the Financial Unit provides the basis for determining the applicable Medically Needy standards for a family case and the amount of excess income, if any, to be absorbed via a spend-down. The Financial Unit may include persons who are not applying for MA. Medical expenses incurred by non-applicant members of the Financial Unit may be counted toward the applicant's spend-down liability. However, once the excess income is absorbed, only the applicant is MA eligible.

0336.10 DEDUCT LOANS TO PAY BILLS  
REV:07/1994

A loan can be an incurred health care expense and, in some circumstances, may be applied against the CURRENT spend-down liability when the applicant has a CURRENT obligation under the loan. The objective of the policy is to allow the recipient to use his or her liability to the lender in place of his or her liability to the provider. However, since the applicant may apply only the amount that would have been deducted had the provider's bill been used, the deduction of interest paid or payable on the loan is precluded.

A loan taken out in the current period or a preceding period to pay a provider's bill incurred in a PRECEDING PERIOD may be applied against current spend-down liability to the extent of any unpaid balance in certain cases. Current principal payments and any remaining unpaid principal balance on the loan may be applied against the spend-down liability to the extent that:

- The proceeds from the loan WERE actually used to pay the provider's bill (i.e., the loan payments are not deductible until after the proceeds have been paid to the provider); and,
- Neither the provider's charges nor the loan payments and the unpaid balance were previously applied against spend-down liability or deducted from income.

Loan proceeds that will not be used until after the current eligibility period may not be applied against the spend-down liability in the current period because only loan proceeds THAT HAVE BEEN USED to pay for health care expenses may be applied.

However, such proceeds could be used against any spend-down liability for the subsequent period in which they actually are used.

This policy gives the recipient the relief intended by the spend-down (i.e., application of the remaining liability for old medical expenses against the person's spend-down liability). The policy does not change the treatment of old bills that remain unpaid -- i.e., they are still deductible in the spend-down to the extent that a current liability continues to exist and the bills have not been previously deducted.

0336.15            DEDUCTING RECOGNIZED MEDICAL EXPENSES  
REV:04/1995

In establishing financial eligibility, excess income is applied toward reasonable incurred medical expenses that are not subject to payment by a third party (other than those medical expenses which are the liability of or paid for by 100% State funded medical care programs).

Recognized medical expenses include medical insurance premiums, co-payments, deductibles and certain medical and remedial care expenses recognized under state law (See section 0336.15.05 for recognized medical/remedial care expenses that are not provided within MA scope of services and which may be used to offset excess income). Incurred medical expenses may also include current payments on the principal of loans used to pay off old medical bills.

A loan that is taken out in the current eligibility period to pay a health care provider for services rendered in the same period (or, in the case of a new application, for services rendered in the month of application or within the 3 preceding months) may be applied against the spend-down liability for the current period IN PLACE of the provider's bill. (The loan expense and the provider's bill may not BOTH be applied against the spend-down liability.)

Determine the available excess income for the six (6) month period beginning with the month of application. Excess income can then be applied to recognized medical expenses incurred PRIOR to application and unpaid. If a medical expense is more than one (1) year old, it is necessary to ensure that the applicant is still liable for the payment. This can be done by presentation of a current billing. Apply the excess income to the medical expenses in the appropriate order.

Excess income is applied to the medical expenses in the following order:

FIRST:    Deduct incurred medical insurance premiums, including any enrollment fee, Medicare premiums, capitation fees for enrollment in prepaid health

care programs, and premiums for any other health insurance program which is primarily established for payment of medical costs. With the exception of Medicare premiums, the cost of such medical insurance must be actually incurred and MAY NOT BE PROJECTED over the six (6) months of the application period; Deduct any co- payments, co-insurance or deductibles under any health insurance program as they are incurred.

SECOND: Deduct necessary medical or remedial care recognized under state law but not provided within the Medical Assistance scope of services, such as chiropractic services, adult day care, respite care, or Home Health Aide/Homemaker services.

THIRD: Deduct necessary medical or remedial care provided within the Medical Assistance scope of services.

FOURTH: Deduct current payments on the principal balances of loans used to pay off medical bills incurred prior to the current budget period.

Deducting Recognized Medical/Remedial Care  
REV:04/1995

Care which is not being provided within the MA scope of services and which may be used to offset excess income includes:

- o Adult Day Care;
- o Respite Care; and,
- o Home Health Aide/Homemaker Services.

Adult Day Care  
REV:07/1994

The cost of adult day care services may be used to offset a flexible-test spenddown liability. In order to be considered a cost of "medical or remedial care", these conditions must be met:

- o The service must have been rendered by a provider agency approved by the Department of Elderly Affairs (DEA); and,
- o The service was required to assist an individual, who because of severe disability related to age or chronic illness, encountered special problems resulting in physical and/or social isolation detrimental to his/her well-being, or required close monitoring and supervision for health reasons.

0336.15.05.10      Respite Care  
REV:07/1994

The cost of respite care may be used to offset a flexible-test spend-down liability if the applicant receives overnight respite care at a licensed nursing/convalescent facility or in-home respite care as provided by the Department of Elderly Affairs (DEA).

0336.15.05.15      Home Health Aide/Homemaker Services  
REV:07/1994

The cost of Home Health Aide services or Homemaker services may be used to offset a flexible-test spend-down liability under certain circumstances. In order to be considered a cost of "medical or remedial care", the following three conditions must be met:

- The service must have been rendered by an agency licensed by the Rhode Island Department of Health, and recognized as a service provider by DHS under the Homemaker Program (see Section 0530.35 for list); and,
- At least a portion of the service provided each month MUST be for personal care services (assistance with bathing, dressing, grooming, etc.). If the client does not (or did not) receive assistance with personal care during a month, no part of that month's cost of service may be used to offset the flexible-test spend-down liability; and,
- A physician must certify the client's need for personal care services, in writing, at least once in each flexible-test period (six (6) months). The certification must indicate the patient's diagnosis(es), and the type of services required.

If the foregoing three criteria are met, eligibility staff may recognize, without further review, the cost of up to 65 hours per month in Home Health Aide/Homemaker services to offset a flexible-test spend-down liability. Deductions in excess of this amount must be approved in writing by the Nurse/Consultant for Homemaker Services located at C.O. The referral to the Nurse/Consultant is comprised of a brief cover memo prepared by the eligibility technician, a copy of the individual's Plan of Service obtained from the provider agency, and a copy of the physician's certification of need for services. The Nurse/Consultant reviews the material to determine the extent to which the costs of service in excess of 65 hours per month may be recognized as a deduction from excess income. Only the cost of substantive services may be allowed as a deduction from excess income.

0336.20           EXAMPLES  
REV:07/1994

**EXAMPLE:** The applicant has verified unpaid medical expenses for which the applicant is liable that were incurred prior to application but are still unpaid at the time of application.

If the medical expenses absorb all the excess income, the applicant is eligible and is certified for a six (6) month period beginning with the month of application. The case must be redetermined at the end of the six (6) month period.

When the excess income is not absorbed by applying it to medical expenses incurred prior to the application and unpaid, the applicant must present receipts or bills for medical expenses incurred during the six (6) month period beginning with the month of application. The excess is then applied to those expenses. When the excess income is absorbed, **ELIGIBILITY BEGINS ON THAT DAY WHICH IS THE DAY THE MEDICAL SERVICE WAS PROVIDED.**

The case is certified for the balance of that six (6) month period. At the end of this period, a new application must be submitted.

**EXAMPLE:** An applicant applies in July with countable income of \$7,200 a year (\$500 excess per year or \$250 excess for six (6) months). The applicant cannot be certified as eligible until bills or receipts for incurred medical expenses totalling \$250 are presented. If a receipt of \$50 is presented in July, and a bill for \$200 is presented in August, the applicant is then certified from the day in August that the medical service was provided, through December, the end of that six (6) month period.

If on the final day of the six (6) month period, the applicant has (1) no receipts or bills for incurred medical expenses; or (2) if the receipts and/or bills presented do not absorb the excess income; or (3) if the absorption of excess income in the exact amount of the excess income occurs on that final day, there is no eligibility.

**EXAMPLE:** An applicant applies in July with income of \$7,200 a year (\$500 excess per year or \$250 excess for six (6) months). The applicant cannot be certified as eligible until bills and/or receipts for incurred medical expenses totalling \$250 are presented. No bills or receipts for incurred medical expenses are presented.

**EXAMPLE:** An applicant applies in July with income of \$7,200 a year (\$500 excess per year or \$250 excess for six months). A receipt for \$50 is presented in July, \$100 in September, and \$50 in November - total \$200. No further bills or receipts are presented.

**EXAMPLE:** An applicant applies in July with income of \$7,200 a year (\$500 excess per year or \$250 excess for six months). A receipt for \$50 is presented in July, \$100 in September, \$50 in November, and \$50 on December 31 - total \$250. However, the

excess income is absorbed on the final day of the six (6) month period. There is no eligibility for that period since there is no medical coverage to be met.

Had the receipts and/or bills totaled more than \$250, eligibility would have existed for MA coverage of the amount of any unpaid bills over \$250. Also, had the applicant been hospitalized on December 31, eligibility would have existed for any expenses on December 31 which exceeded \$250.

0336.25 CERT OF FLEXIBLE TEST CASES  
REV:07/1994

Each individual determined to be ineligible for MA will receive notice of the basis of ineligibility. Those individuals ineligible on the basis of excess income will be informed of the amount of his/her spenddown liability.

When a recipient's case is discontinued on the basis of income exceeding the Medically Needy income standard, a review of the recipient's situation is completed under the Flex Test policy.

Such recipient is advised of the amount of excess income and the eligibility period during which such excess must be absorbed.

When such applicant/recipient presents unpaid bills (for which the individual remains liable) incurred at any time through the final day of the six (6) month period and/or receipts for bills incurred during the period for which eligibility is being determined which total or exceed the amount of the excess income, eligibility exists for the balance of the six (6) month period. A new application is not needed for that six (6) month period.

Any case certified, whether for a full six (6) month period or a balance of even only one (1) month, needs a new application at the end of each six (6) month period. The InRHODES system will trigger the mailing of a redetermination packet by sending a notice to the field office. Each six (6) month period is determined separately.

Medical bills recognized in a previous Flexible Test period to reduce excess income must not be applied to reduce the excess income for the new application period. However, if the bills did not establish eligibility, then they were not used for spend-down and can be considered in a subsequent six (6) month period.

To certify a case where the recipient and Medical Assistance must share the expense, the InRHODES eligibility system will notify MMIS of the bills that were used to meet the spend-down. These bills will not be paid by MMIS and are the applicant's responsibility.

0336.25.05      Controlling Flexible Test Cases  
REV:07/1994

The InRHODES on-line redetermination report lists all cases due for redetermination with flex-test cases highlighted. The system notifies workers two months before the month that certification ends that re-determination packets need to be sent out.

Flex-test cases by their nature are ineligible at the end of the certification period and will automatically close, and eligibility must be redetermined. The redetermination activities should be completed by the end of the six-month (or less) flex- test period.

**NOTICE OF APPELLATE RIGHTS**

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.