

Minnesota Department of Human Services

ORDER ADOPTING RULES

Adoption of Rules Governing the Child Care Assistance Program, Minnesota Rules, Parts 3400.0010 through 3400.0235; Revisor's ID Number 4560; OAH docket number 82-9029-35572

BACKGROUND INFORMATION

1. The Department of Human Services has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law.
2. The Department received written comments on the rules from three people representing different organizations and three individuals. Four persons requested a public hearing. Therefore, there are not 25 or more requests for a public hearing. The agency did not receive any requests for notice of submission to the Office of Administrative Hearings.
3. Part 3400.0020, subpart 11a of the proposed rules has been amended to read:

Subp. 11a. **Child in an at-risk population.** "Child in an at-risk population" means a child with environmental or familial factors that may create barriers to the child's optimal achievement, such as a federal or state disaster, limited English proficiency in a family, a history of abuse or neglect, a determination that the child is at risk of abuse or neglect, family violence, homelessness, the age of the child's mother, the level of maternal education, mental illness, a developmental disability, parental chemical dependency, or a history of other substance abuse.

The Department received two comments on this definition. Commenters felt that the definition implied personal shortcoming of families participating in the child care assistance program (CCAP) and did not acknowledge the systematic barriers that families of low incomes often face. The definition is necessary to allow higher payments to child care providers who offer specialized services to better meet the needs of children with risk factors (see proposed rules, part 3400.0130, subp. 3b). Adding "may" is a reasonable change to this definition because it addresses the concern that not *all* children who face these situations are automatically deemed at-risk, but rather that children in these situations *may* be at-risk, while still allowing children in potential situations of risk to access specialized services from a child care provider. This change does not change the intent of this subpart, and is a logical outgrowth of the notice of intent to adopt rules and the comments submitted in response. Therefore, it does not make the rules substantially different.

4. Part 3400.0020, subpart 12b of the proposed rules has been amended to read:

Subp. 12b. **Child care assistance program.** "Child care assistance program" means financial assistance for child care costs.

The child care assistance program supports a parentally responsible individual with a low income who is employed, engaged in a job search, or engaged in education. The child care assistance program ensures that children of parentally responsible individuals have access to child care and are prepared to enter school thrive as successful learners.

This change better aligns the definition with the intent of the Minnesota Department of Education's "Successful Learners Equation." The approach to shift away from "school readiness" is centered in equity and recognizes that kindergartens start school with a wide range of skills, knowledge, and experiences from a variety of settings, and that all age-eligible students should be welcomed to start school, regardless of specific skills or behaviors (see Minnesota Department of Education's "Kindergarten Eligibility and Enrollment Brief" dated 6/29/21, available on the MDE website at <https://education.mn.gov/mde/dse/kind/>). This change is necessary and reasonable as it is inclusive of all children receiving child care assistance by supporting a child's development and well-being, and not solely focusing on school readiness. It does not change the intent of this subpart and is a logical outgrowth of the notice of intent to adopt rules, which states that the rules "focus on providing equal access to stable child care for low-income children." Therefore, it does not make the rules substantially different.

5. Part 3400.0110, subpart 9, item H, subitem 3 of the proposed rules has been amended to read:

(3) The exemption may begin on the first day of the child's illness, but not more than ~~30~~90 days prior to the date that the CCAP agency receives documentation of the child's illness.

Thirty days is not always adequate time for a family to obtain documentation from a medical professional. During the pandemic, this became even more apparent. This change is necessary and reasonable because delay in documentation could result in a family accruing absent days over the 25 day calendar year limit, incurring a large bill for child care expenses, and a child no longer be allowed to attend care with a provider. Allowing 90 days is also consistent with the time frames for temporarily ineligibility under proposed rules, part 3400.0040, subp. 17. Furthermore, Minnesota Statutes, section 119B.13, subd. 7(b) gives the commissioner authority to set timelines for families and child care providers to submit documentation of medical conditions that cause a child to have more frequent absences from child care. This change does not change the intent of this subpart, it is beneficial to the regulated parties, and it is a logical outgrowth of the notice of intent to adopt rules, which states that the "amendments address . . . reporting responsibilities for participants." Therefore, it does not make the rules substantially different.

6. Amendments to part 3400.0170 of the proposed rules governing the treatment of self-employment income for CCAP eligibility have been made in large part to conform to changes made to Minnesota Statutes, chapter 256P regarding self-employment policies which went into effect on May 1, 2022. The statutory changes aligned many self-employment policies for cash assistance programs, the Supplemental Nutrition Assistance Program (SNAP), and CCAP. Under previous policy, self-employment income was calculated based on a family's gross receipts less allowable operating expenses, and self-employment losses offset any other types of earned or

unearned income. Under the May 1, 2022 changes, according to Minnesota Statutes, section 256P.05, subd. 2, applicants and participants must now choose one of two income determination methods for determining self-employment income: 1) fifty percent of gross income from self-employment or 2) taxable self-employment income as determined from the Internal Revenue Service (IRS) tax form filed for the most recent year and following SNAP guidance. The following findings detail the changes to part 3400.0170, which are necessary and reasonable to align with statute, replace or remove outdated policy, and reflect the appropriate methods to determine a family's self-employment income. The changes are a logical outgrowth of the notice of intent to adopt rules, which states that the rules "address determination of income for eligibility." The changes are also reflected in statute, and are either beneficial to the regulated parties or result in little to no impact on the parties. Therefore, the rules are not substantially different.

7. Part 3400.0170, subpart 4 of the proposed rules has been amended to read:

Subp. 4. Determination of gross annual income. The income standard for determining eligibility for child care assistance is a family's gross annual income. A family's gross annual income is the sum of each family member's income sources under Minnesota Statutes, sections 119B.011, subdivision 15, and 256P.01, subdivisions 3 and 8, including earned income, self-employment income, unearned income, and lump sum payments. A CCAP agency must ~~include~~ offset negative self-employment income from one business against self-employment income from a different business in the determination of a family's gross annual income, resulting in a reduction in ~~total gross~~ annual income from self-employment. Lump sum payments that a family receives prior to participating in the child care assistance program are not included in the family's total gross annual income. If a participant's eligibility ends after receiving a lump sum and the participant reapplies for child care assistance, a CCAP agency must count the lump sum for 12 months from the date of the lump sum receipt. A CCAP agency must calculate earned income, self-employment income, unearned income, and lump sum payments separately.

Minn. Stat. § 256P.05, subd. 2 does not address business losses. Therefore, it is necessary to address business losses in rule. When the taxable income method under Minnesota Statutes, section 256P.05, subd. 2 is used to determine self-employment income, self-employment income may result in a loss. This change clarifies that if income from a self-employment business results in a loss after the calculation is completed and the family has more than one self-employment business, a CCAP agency must offset the negative income from one self-employment business from the self-employment income from other business(es). This change is reasonable because it uses negative self-employment income to offset income from other self-employment within the greater income calculation. This change is also necessary to reflect current CCAP policy and align with cash assistance and SNAP self-employment policy. This change does not change the intent of this subpart, it is a logical outgrowth of the notice of intent to adopt rules, and it results in little to no impact on the regulated parties. Therefore, the rules are not substantially different.

8. Part 3400.0170, subpart 7, and subpart 7, item A of the proposed rules have been amended to read:

Subp. 7. Earned income from self-employment. In determining a family's gross annual income for purposes of eligibility under this part, a CCAP agency must determine earned income from self-employment according to Minnesota Statutes, section 256P.05, subdivision 2. If a family provides verification for and meets income and authorized activity eligibility requirements under both income determination methods but does not choose a method, the CCAP agency must use the method that results in the lowest copayment to the family.

~~A. Earned income from self-employment is the difference between gross receipts and self-employment expenses that must not include expenses under subpart 8.~~

~~(1) A family must provide verification of self-employment income for either income determination method and provide expenses for the taxable income method document gross receipts and self-employment expenses with business records, such as charts of accounts, books, ledgers, and tax schedules.~~

Changes to this subpart incorporate changes in statute by adding a cross reference to Minnesota Statutes, section 256P.05, subd. 2, which allows for the use of one of two income determination methods. This necessary and reasonable because it follows statute, provides guidance and clarity for CCAP agencies, and results in the lowest copayment to the family, reducing a family's out of pocket cost for child care expenses. Further changes address what a family must provide to a CCAP agency to allow the CCAP agency to determine the family's self-employment income under each income determination method. These changes do not change the intent of this subpart and are a logical outgrowth of the notice of intent to adopt rules. Therefore, the rules are not substantially different.

9. Part 3400.0170, subpart 7, items A and B of the proposed rules have been amended to read:

~~(2) B. At the time of application, or redetermination, or during the 12-month eligibility period, a CCAP agency must allow a family in the start-up phase of self-employment to submit a self-attestation verifying income if financial documentation is unavailable or insufficient to accurately predict self-employment income. A family is subject to recoupment or recovery of an overpayment under part 3400.0187 and Minnesota Statutes, section 119B.11, subdivision 2a, if the commissioner or CCAP agency determines that the family's estimated income does not reflect the family's actual income.~~

This change removes language that only allows for self-attestation during the start-up phase of self-employment. When language was previously drafted, the Department did not intend to limit when a self-attestation can be accepted. Self-attestation during the start-up phase of self-employment is one example of when a family may not have appropriate financial documentation, but there may be other instances when a family would need to submit a self-attestation.

This change also removes language addressing overpayments for families if the family's estimated income as verified using a self-attestation does not reflect their actual income. Minnesota Statutes, section 119B.11, subd. 2a governs the recovery or recoupment of an overpayment from a family. Having this detail in rule provides no additional context and is unnecessary.

This change does not change the intent of this subpart, it reflects statutory changes, it is a logical outgrowth of the notice of intent to adopt rules, and it is beneficial to families. Therefore, the rules are not substantially different.

10. Part 3400.0170, subpart 7, items C through E of the proposed rules has been amended to read:

C. A family may change the method of self-employment income determination when the current income calculation does not provide the most accurate assessment of annual ongoing income available to the family. The family must meet verification requirements of the chosen method.

~~B.~~ D. Self-employment business records must be kept separate from the family's personal records.

~~C.~~ E. If the person's business is a partnership or a corporation and that person is drawing a salary, the salary must be treated as earned income.

Minnesota Statutes, section 256P.05, subd. 3 states that applicants and participants who elect to use the taxable income methods must continue to use that method until recertification. However, Minnesota Statutes, section 256P.05, subd. 1 states that participants who qualify for child care assistance under chapter 119B are exempt from subdivision 3, therefore placing no limits on how often a family's self-employment income determination method can be changed. Given this statutory exemption, this change in rule is necessary and reasonable to clarify for CCAP agencies that a family's income may be determined more frequently than at redetermination. This change also allows families to receive the maximum CCAP benefit they are eligible for. This change does not change the intent of this subpart, it is a logical outgrowth of the notice of intent to adopt rules, and it is beneficial to families. Therefore, the rules are not substantially different.

11. Part 3400.0170, subparts 8 and 9 of the proposed rules have been amended to read:

~~Subp. 8. Self-employment deductions which are not allowed. In determining eligibility under this part, self-employment expenses must be subtracted from gross receipts. However, the expenses listed in items A to L must not be subtracted from gross receipts:~~

{For text of items A to F, see Minnesota Rules}

~~G. the cost of transportation between the individual's home and his or her the individual's place of employment;~~

{For text of item H, see Minnesota Rules}

~~I. expenses not allowed by the United States Internal Revenue Code for self-employment income, unless specifically authorized in this chapter;~~

~~J. federal, state, and local income taxes;~~

~~K. employer's own share of FICA; and~~

~~L. money set aside for the self-employed person's own retirement.~~

~~Subp. 9. **Self-employment budget period.** A family must budget gross receipts from self-employment must be budgeted in the month in which they are received the family received gross receipts. Expenses must be budgeted against gross receipts in the month that the family paid the expenses are paid except for items A to C.~~

~~A. The purchase cost of inventory items, including materials that are processed or manufactured, must be deducted as an expense at the time that a family receives payment is received for the sale of those inventory items, processed materials, or manufactured items, regardless of when those costs are incurred or paid.~~

~~B. Expenses and other costs that are commonly paid at least annually, but less often than monthly, must be prorated forward as deductions from gross receipts over the period they are intended to cover, beginning with the month in which the payment for these items is made.~~

~~C. Gross receipts from self-employment must be prorated forward to equal the period of time during which the expenses were incurred. However, gross receipts must not be prorated over a period that exceeds 12 months. This provision applies only when gross receipts are not received monthly but expenses are incurred on an ongoing monthly basis.~~

These subparts as originally proposed no longer align with Minnesota Statutes, section 256P.05, subd. 2. This change, which deletes these subparts in their entirety, does not change the intent of this rule part, it is a logical outgrowth of the notice of intent to adopt rules, it simplifies

the rule, and it is necessary to comply with statute. Therefore, the rules are not substantially different.

12. Part 3400.0170, subpart 10 of the proposed rules has been amended to read:

Subp. 10. **Determination of farm income.** Farm income must be determined for a one-year period. Farm income is determined according to Minnesota Statutes, section 256P.05, subdivision 2~~gross receipts minus operating expenses, except for expenses listed in subpart 8.~~ Gross receipts income includes items such as sales, rents, subsidies, farm-related insurance payments, soil conservation payments, production derived from livestock, and income from the sale of home-produced foods.

This change adds a cross reference to Minnesota Statutes, section 256P.05, subd. 2, which allows for the use of one of two income determination methods. The proposed change is necessary and reasonable as it reflects current policy. This change does not change the intent of this subpart, it is a logical outgrowth of the notice of intent to adopt rules, and it reflects applicable statutory changes. Therefore, the rules are not substantially different.

13. Part 3400.0170, subpart 11 of the proposed rules has been amended to read:

Subp. 11. **Determination of rental income.**

A. Income from rental property is considered self-employment earnings when the owner spends an average of 20 or more hours per week on maintenance or management of the property.

~~B. When a family lives on the rental property, the CCAP agency must divide the allowable expenses for upkeep, taxes, insurance, utilities, and interest described in this subpart by the number of units to determine the expense per unit. A CCAP agency must deduct expenses from rental income only for the number of units rented, not for units occupied by family members.~~

~~C. B. When an owner does not spend an average of 20 or more hours per week on maintenance or management of the property, income from rental property is considered unearned income.~~

~~D. C. Rental income is determined according to 256P.05, subdivision 2. The expenses described in this subpart are subtracted from gross rental receipts regardless of whether the rental income is considered earned or unearned income. Allowable expenses are:~~

~~(1) real estate tax;~~

- ~~(2) insurance;~~
- ~~(3) utilities;~~
- ~~(4) interest;~~
- ~~(5) upkeep and repairs;~~
- ~~(6) tax return preparation fees;~~
- ~~(7) license fees, franchise fees, professional fees, and professional dues;~~
- ~~(8) advertising;~~
- ~~(9) postage;~~
- ~~(10) attorney fees allowed by the Internal Revenue Code; and~~
- ~~(11) payments on the principal of the purchase price of income producing real estate.~~

The changes to this subpart remove item B, because the Internal Revenue Code accounts for allowable expenses in determining rental income and the rule language is duplicative and unnecessary. Additional changes simplify the rule by removing detail from item C and replacing it with a cross reference to Minnesota Statutes, section 256P.05, subd. 2. This change does not change the intent of this subpart, it is a logical outgrowth of the notice of intent to adopt rules, and it incorporates applicable statutory changes. Therefore, the rules are not substantially different.

14. The rules are needed and reasonable.

ORDER

The above-named rules, in the form published in the State Register on June 13, 2022, with the modifications as indicated in the Revisor's draft, file number AR4560, dated 08/24/22, are adopted under my authority in Minnesota Statutes, sections 119B.02, subdivisions 1 and 3; 119B.04, subdivision 2; and 119B.06, subdivision 2.

September 27, 2022

Date

Amy Akbay, Chief General Counsel
Department of Human Services