



# Arkansas Department of Human Services

## Division of County Operations

Donaghey Plaza South  
P.O. Box 1437  
Little Rock, Arkansas 72203-1437  
TDD (501) 682-8275

016.20.99--022

The Honorable Sharon Priest  
Secretary of State  
State Capitol Room 017  
Little Rock, AR 72201-1094

Re: Emergency Promulgation – MSP 3323.7, Substantial Gainful Activity

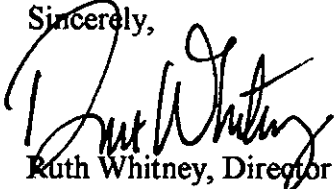
Dear Ms. Priest:

Pursuant to Ark. Code Ann. 25-15-201, et Seq., we are requesting an emergency promulgation of the attached rule that revises the guidelines for determining when earnings demonstrate the ability to engage in substantial gainful activity (SGA).

The new federal guidelines were to take effect on July 1, 1999, but were not received by the Division of County Operations in time to revise policy, receive approval by our internal review committee and follow the regular Administrative Procedures Act promulgation for the policy to be effective on that date. Therefore, the policy is being promulgated under the emergency provisions of the Administrative Procedures Act.

Although we do not anticipate very many persons will become eligible due to this revision, it is possible that someone could lose Medicaid benefits due to failure to immediately implement these new guidelines.

Sincerely,

  
Ruth Whitney, Director

RW:RK:LG:JT/ad

Attachments

cc: Files

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ALL REGISTER DIV.  
59 OCT 25 PM 4:00  
BY \_\_\_\_\_  
STATE OF ARKANSAS

# ARKANSAS REGISTER

## Transmittal Sheet



Sharon Priest  
Secretary of State  
State Capitol Rm. 026  
Little Rock, Arkansas 72201-1094

For Office  
Use Only:

Effective Date 10/25/99 Code Number 016.20.99-022

Name of Agency Department of Human Services

Department Division of County Operations

Contact Person Roy D. Kindle, Jr. 501-682-8251

AR Code Ann. 20-76-201 et Seq., AR Code Ann. 20-15-201 et Seq,  
Statutory Authority for Promulgating Rules 20 CFR 404.1574, 20 CFR 416.974

Date

Intended Effective Date

☒ Emergency

Legal Notice Published . . . . .

☐ 10 Days After Filing

Final Date for Public Comment . . . . .

☐ Other

Reviewed by Legislative Council . . . . .

10-25-99

Adopted by State Agency . . . . . 7-1-99

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with Act 434 of 1967 As Amended.

Signature

Director, Division of County Operations

Phone Number

501-682-8375

Title

10/11/99  
Date

BY

SECRETARY OF STATE  
STATE OF ARKANSAS

99 OCT 25 PM 4:00

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# MANUAL TRANSMITTAL

## Arkansas Department of Human Services

### Division of County Operations

☒ Policy ☐ Form ☐ Policy Directive

Issuance Number MS 99-A

Medical Services Policy Manual

Issuance Date 11-01-99

From: Ruth Whitney, Director

Expiration Date Until  
Superseded

Subj: Revised Policy

<u>Pages to be Deleted</u>	<u>Dated</u>	<u>Pages to be Added</u>	<u>Dated</u>
MS 3322.4 - 3323.1	10/01/97	MS 3322.4 - 3323.1	10/01/97 <sup>9</sup>
MS 3323.1 - 3323.3	10/01/97	MS 3323.1 - 3323.3	11/01/99
MS 3323.4 - 3323.7	10/01/97	MS 3323.4-3323.7	11/01/99
MS 3323.7	10/01/97	MS 3323.7	11/01/99

#### Summary of Changes

Effective July 1, 1999, the guidelines for determining when earnings demonstrate the ability to engage in substantial gainful activity (SGA) have been revised. The average monthly earnings guideline used to determine SGA has been raised from \$500 to \$700.

If an applicant reports earnings of more than \$700 per month, the county office worker may deny the application without making a referral to MRT.

Inquiries to: Jack Tiner, 501-682-8259  
Diana Teal, 501-682-1562

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STATE OF ARKANSAS  
BY \_\_\_\_\_

The pay status code series beginning with "N"s are the denial codes on WTPY. A brief description of the denial code is included on the query response.

### 3322.5                    Dual Applications

When an individual applies for both Medicaid and Social Security Disability or SSI, and the application with SSA is still pending, the county should initiate an MRT determination of disability if the individual appears to meet all other eligibility requirements. The Agency will have 90 days from the date of Medicaid application to make this determination. While an MRT decision is pending, the county office worker should check the Social Security Disability or SSI status of the applicant 30 days after the Medicaid application has been made, and again at certification, if found eligible by MRT. If MRT finds that the individual meets the disability requirements and SSA has not yet made a decision, the county may certify the case for Medicaid. To verify that no SSA decision has been made, the WASM screen will be checked, if appropriate, and the individual or authorized representative will be contacted by mail or telephone prior to certification.

Additional case action is indicated as follows:

If application for Social Security Disability is approved first:

- . Notify MRT
- . Approve Medicaid application (if all other requirements have been met)

If application for SSI is approved first:

- . Notify MRT
- . Deny Medicaid application, except for LTC, which may be approved for facility payment on WNHU (if all other requirements have been met)

If SSA determines the applicant is NOT disabled:

- . Notify MRT
- . Deny Medicaid application

If the county certifies a case based on an MRT disability decision and later learns the individual has been denied by SSA, the Medicaid case will be closed after appropriate notice, unless the recipient appeals the closure. If the appeal is made within the 10-day time frame, the Medicaid case will remain open pending the outcome of the DHS appeals process. In no case, will the Medicaid case remain open pending the outcome of the SSA appeals process if the recipient has appealed the SSA decision. If an approved Medicaid recipient is approved for SSI, the system will automatically convert the Medicaid case to an SSI category and no further action will be required of the county, except to notify MRT that no future reexamination is required, if appropriate.

### 3323                    Procedure for Verification by Medical Review Team

The following procedures will be followed for verification of blindness or disability through the Medical Review Team.

#### 3323.1                    For Blindness

1. The county office worker will give the applicant or his representative a DCO-701, Report on Eye Examination, for completion by the ophthalmologist or optometrist who is to conduct the eye examination. In addition, a self-addressed envelope with the County Office address will be provided for return of the DCO - 701 after completion.

2. Upon receipt of the completed DCO-701, the county office worker will check it to assure that all items of identifying information are completed. If necessary, the worker will complete the name, address, race, sex, and date of birth blanks on the form before forwarding to MRT. In addition to checking the DCO-701 for completeness, the worker will complete the DCO-108 and attach it to the DCO-701 and forward it to MRT. A notation of the date that the forms are forwarded to MRT will be made in the case narrative.

### 3323.2 For Disability

- \* 1. Determine if the individual is engaged in a substantial gainful activity (SGA), following the guidelines at MS 3323.7.

If the individual is found to be engaged in SGA, deny the application, using action reason 070, denied due to employment. Do not send the application to MRT.

2. If the applicant has been a patient in a private or state hospital, a VA hospital, or the University of Arkansas for Medical Sciences within the past year (the past five years for the Arkansas State Hospital), complete Form DHS-81 (Consent for Release of Information). The Medical Review Team will request medical information from these institutions. A separate DHS-81 must be completed for each institution.
3. If the applicant has not been hospitalized within the past year and does not regularly see a physician, Form DCO-107 must be completed. If the applicant has been hospitalized within the past year, Form DCO-107 may also be completed if the applicant chooses to supply medical information in addition to that which can be obtained from the institution by DHS-81. If an applicant goes to a physician regularly, in lieu of another physical examination, a DHS-81 may be used to obtain copies of the records from the physician (no DCO-107 needed).

The county office worker will complete Part 1 of Form DCO-107, when the form is needed. The applicant must sign and date the form in Part 2. The form will then be given to the applicant to take to the medical practitioner of his or her choice. A stamped envelope addressed to the county office will be provided with the DCO-107. The medical practitioner will complete Part 3 of the form and return the form to the county office.

If an applicant states he or she does not have the funds for payment of a physician's examination, the applicant should be informed that MRT can arrange and pay for an examination. If the applicant wishes MRT to do this, the county office worker should report this on the DCO-108 Social Report.

4. Complete Forms DCO-106 and DCO-108 (Social Report). These must be completed for all cases submitted to the Medical Review Team.
5. Attach the following to the completed DCO-108 and DCO-106: DCO-107 and/or DHS-81, and any other medical information which the applicant wishes to provide or which is available in the county office files. Send these to the Medical Review Team.

### 3323.3 Medical Review Team (MRT) Decision

The Medical Review Team (MRT) will report the decision regarding physical or mental incapacity to the county office on Form DCO-109.

If MRT finds that the medical information is not adequate to make a decision, further medical/psychiatric/psychological examinations may be recommended by MRT at the expense of the Agency.

Arrangements for such evaluations will be made by MRT only. When medical and social evidence has been resubmitted on questioned cases, the Medical Review Team will make a decision as to disability and notify the county office on Form DCO-109. This decision of MRT will be final, subject to the regular appeal process, unless a later decision by SSA finds the individual not disabled.

**3323.4                    Reapplication Due to Mental or Physical Incapacity**

If a reapplication is filed and the case has been closed within the past five years for reasons other than disability and the last Form DCO-109 stated, "Reexamination not necessary" or the date for reexamination has not yet been reached, new medical and social information will not be submitted to MRT. If the case has been closed for more than five years, new medical and social information must be submitted. In all cases of reapplication, a DCO-106 will be completed to determine the applicant's SSA disability status.

**3323.5                    Reexamination of Disability by the Medical Review Team (MRT)**

When medical and social information indicates that an individual may recover in a year or more and/or be rehabilitated to the point where he/she could meet substantial gainful employment, MRT will require reexamination. Whether or not required by MRT, reexamination may be requested by the county office at any time for the aforementioned reasons.

In either case, it is the responsibility of the county office to initiate the reexam by submitting current medical and social information (DCO-106, DCO-108A, and DCO-107 and/or DHS-81) to MRT.

**3323.6                    Reexamination Required by the Medical Review Team (MRT)**

When indicated on the DCO-109, the county office will key the appropriate date to WALR for future action. The county office will contact the individual in a timely manner that will allow all necessary medical and social information to reach MRT by the first of the month of reexamination. When the reexamination decision is not received in the county office by the end of month in which the reexamination was required, the case will remain open pending receipt of the MRT decision.

**\* 3323.7                    Substantial Gainful Activity**

Substantial gainful activity (SGA) is defined as the performance of significant physical and/or mental work activities for pay or profit, or work activities generally performed for pay or profit.

Countable monthly earnings are obtained by deducting any employer subsidy and any impairment related work expense (not payroll deductions) from the gross income (gross income includes payment in-kind for the performance of work in lieu of cash). Then, if earnings are irregular, they will be averaged over the period of months being considered to obtain countable monthly earnings.

Employer subsidy is the payment of wages that is more than the value of the actual services performed.

If the work is sheltered or if there is marked discrepancy between the amount of pay and the value of services, there exists the strong possibility of a subsidy that requires development of specific evidence.

Sheltered Employment is work performed by disabled individuals in a protected environment under an institutional program; nonsheltered employment is any work performed by individuals in an unprotected environment.

Impairment Related Work Expenses are items or services needed in order to maintain employment, such as attendant services, prostheses, or other devices. Drugs and medical services are not deductible unless it can be shown they are necessary to control the disability to enable the individual to work. Deductible expenses must be paid for by the individual, and cannot be reimbursable from any source. Legitimate expenses may include installation, repair, or maintenance. The payments may be deducted in one month or prorated over 12 months.

The expenses must be considered "reasonable," i.e., not more than Medicare would allow or than would ordinarily be charged in the individual's community.

The following SGA Earnings Guidelines provide the basis for evaluating whether an individual is engaged in SGA:

1. Countable Earnings of Less Than \$300 Per Month - When average countable monthly earnings are less than \$300 per month, an assumption may be made that the work is not SGA. This assumption may be made for both sheltered and nonsheltered employment; specific evidence does not need to be developed for either sheltered or nonsheltered employment.

\* 2. Countable Earnings of \$300 to \$700 Per Month - When average countable monthly earnings from nonsheltered employment fall within the \$300 to \$700 per month range, an assumption may be made that the work is not SGA unless:

a. The work is comparable to that of unimpaired individuals engaged in similar occupations as their means of livelihood; or

b. The work, although significantly less than that done by unimpaired individuals, is reasonably worth over \$700 per month according to pay scales in the community.

When "a." or "b." occurs in a nonsheltered employment situation (or if gross earnings include a subsidy), current medical and social information will be submitted to MRT.

When average countable monthly earnings from sheltered employment fall within the \$300 to \$700 per month range, the work is not ordinarily SGA. However, if earnings include a subsidy, current medical and social information will be submitted to MRT.

3. Countable Earnings of More Than \$700 Per Month - When average countable monthly earnings are more than \$700 per month, an assumption may be made that the work is SGA unless impairment causes the individual to quit work or reduce employment within a short time (6 months or less) under circumstances that would justify the employment being termed an unsuccessful work attempt. Specific evidence must be developed for both sheltered and nonsheltered employment.

When there is no subsidy involved in gross pay and when there is no marked discrepancy between the amount of pay and the value of the services, an assumption will be made that pay from employment is fully earned. Action will be taken to deny the application or close the case as the individual does not meet the criteria for disability (Re. 3310). Advance notice for closure will be given on the DCO-700.

\* NOTE: If an applicant reports earnings of more than \$700 per month, the county office worker may deny the application due to employment without making a referral to MRT.

DEPARTMENT of Human Services

DIVISION of County Operations

PERSON COMPLETING THIS STATEMENT Roy Kindle, Assistant Director

Office of Program Planning & Development

TELEPHONE: 682-8251

FAX NO. 682-1597

**FINANCIAL IMPACT STATEMENT**

To comply with Act 884 of 1995, please complete the following Financial Impact Statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE – Medical Services Policy MSP 3323.7, Substantial Gainful Activity

1. Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes. See attached
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain:  
N/A
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.

**1999-2000 Fiscal Year**

**2000-2001 Fiscal Year**

General Revenue \$1238.54  
Federal Funds \$3323.30  
Cash Funds  
Special Revenue  
Other  
Total \$4561.84

General Revenue \$1855.76  
Federal Funds \$4987.02  
Cash Funds  
Special Revenue  
Other  
Total \$6842.78

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?

**1999-2000 Fiscal Year**

**2000-2001 Fiscal Year**

None

None

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

**1999-2000 Fiscal Year**

**2000-2001 Fiscal Year**

\$1238.54

\$1855.76

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