

**District of Columbia  
Office of Administrative Hearings**

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E\_\_\_\_\_ S. N\_\_\_\_\_  
Petitioner,

v.

DISTRICT OF COLUMBIA DEPARTMENT  
OF HUMAN SERVICES

and

DISTRICT OF COLUMBIA OFFICE OF THE  
STATE SUPERINTENDENT OF  
EDUCATION  
Respondents.

Case Nos.: 2011-DHS- 00600

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**AMENDED ORDER<sup>1</sup>**

**I. Introduction**

This Order requires the parties to file additional information that is necessary for a proper decision in this case.

**II. Procedural Background**

On October 26, 2011, E\_\_\_\_\_ S. N\_\_\_\_ filed a hearing request to challenge the termination of her child care subsidy, effective November 9, 2011, by the Department of Human Services (DHS). The termination notice stated DHS's action was based on a determination that Ms. N\_\_\_\_ was over-income for the child care subsidy program.

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<sup>1</sup> This Order changes the Order previously issued by using a correct hearing date on page 2.

I held a hearing on November 17, 2011. Ms. N\_\_\_\_ represented herself at the hearing and Eric Calhoun, Social Services Representative, represented DHS.

### **III. Findings of Fact**

Ms. N\_\_\_\_ applied for subsidized child care on May 20, 2011. Petitioner's Exhibit ("PX") 101 at 4. She claimed a household size of 2, including her 8-month old daughter, G\_\_ S. N\_\_\_\_. *Id.* at 1. Additionally, she claimed a bi-weekly income of \$1,367.19. *Id.* at 2. Ms. N\_\_\_\_ disclosed that she was not, at the time of application, receiving child support but that she had applied for it. *Id.* On June 6, 2011, DHS determined that Ms. N\_\_\_\_'s annual gross income was \$35,547.00 and that she was eligible for a child care voucher with a co-payment amount of \$13.08 per day. *Id.* at 4.

When she applied, a DHS worker advised Ms. N\_\_\_\_ that she was "right on the edge" of eligibility and that she should be careful not to earn any more money lest her voucher be terminated. In keeping with this concern, Ms. N\_\_\_\_ contacted DHS on September 22, 2011, to discuss a cost of living increase she anticipated receiving from her job. She spoke with Toya Y. Thompson, Child Care Eligibility Monitor with the District of Columbia Office of State Superintendent of Education. During the conversation, Ms. N\_\_\_\_ disclosed that she had started to receive child support payments. Those payments amount to \$582 per month. PX 100.

Combining her \$1,367.19 bi-weekly income with the \$582 monthly child support payments, DHS re-calculated Ms. N\_\_\_\_'s annual income and determined it was \$42,530.94. As a result, DHS terminated Ms. N\_\_\_\_'s child care benefits.

#### IV. Conclusions of Law

District-subsidized child care services are available to families with incomes equal to or less than 250 percent of the 2009 federal poverty guidelines or 85 percent of the District of Columbia's median income, whichever is lower. 29 DCMR §380.2; *see* §380.13 (defining "federal poverty guidelines"). Families with incomes greater than 50 percent of the poverty guidelines must pay a daily co-payment based on a sliding scale. 29 DCMR §380.5. For these reasons, defining income is central to both eligibility and co-payment determinations. The regulation defines income as follows:

**Income** - the combined total adjusted gross income of the parent(s) with primary responsibility for the child, declared in the joint and/or individual annual federal income tax filing for the most recent calendar year; or in the event such filing is not required with the federal government, other appropriate documentation to establish the total annual income of the parent(s). Examples of income sources include, but are not limited to revenues from: wages, salaries, tips, partnership income, interest, dividends, capital gains, fringe benefits, IRA distributions, pensions, annuities, royalties, trusts, rental income, S corporations, farm income, alimony, child support, Social Security, unemployment compensation, and disability compensation.

29 DCMR §380.13.

The definition establishes two different methods of calculating income. If Ms. N\_\_\_\_\_ was required to file a federal income tax return for 2010, the "most recent calendar year" for which a return would have been required, then DHS was required to use the adjusted gross income reported on that return. If she was not required to file a return, DHS had to use "other appropriate documentation" to establish her "total annual income."

The definition of "income" presents two significant interpretative problems. First, for what year must DHS determine Ms. N\_\_\_\_\_ 's "total annual income" if she did not file a tax return

for 2010? If DHS must rely upon a filed income tax return for the “most recent calendar year”, it would seem that the “total annual income” referred to in the definition should be the annual income for the same year. In this case, that year is 2010. Second, the definition lists several income sources that are not considered part of adjusted gross income for federal income tax purposes. Most notably for this case, child support is not considered income for federal income tax purposes.<sup>2</sup> Based upon the regulation’s definition of “income,” it would appear that the amount of income considered in determining eligibility could depend upon whether or not a parent had to file an income tax return for the previous year. If so, child support would not be considered; if not, then it would be.

In order to decide these issues in this case, additional information from the parties is necessary. A schedule for them to file that information is established below.

Therefore, it is, this **12<sup>th</sup>** day of **December**, 2011:

**ORDERED**, that, on or before December 22, 2011, Ms. N\_\_\_\_ shall send to the Office of Administrative Hearings (OAH) a copy of any federal income tax return that she filed for 2010. I remind Ms. N\_\_\_\_ that any such return would have been filed in 2011. If she did not file a federal income tax return for 2010, she shall file a statement saying so. Ms. N\_\_\_\_ shall send to the DHS and OSSE representatives listed on the certificate of service a copy of anything she sends to OAH; and it is further

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<sup>2</sup> U.S. Treasury Department, Internal Revenue Service. “Alimony, Child Support, Court Awards, Damages.” available at: <http://www.irs.gov/faqs/faq/0,,id=199747,00.html>. (last visited December, 2, 2011).

**ORDERED**, that, on or before January 6, 2012, DHS and/or OSSE shall file, and shall send to Ms. N\_\_\_\_, a response to the following questions:

1. Should Ms. N\_\_\_\_'s eligibility for a child care subsidy be based on the adjusted gross income reported on any 2010 tax return?
2. If Ms. N\_\_\_\_'s eligibility for a child care subsidy is not based upon the adjusted gross income reported on her 2010 tax return, should her "total annual income" be calculated for 2010 or 2011?
3. Why should child support income be counted in "total annual income" when it is not counted as part of "adjusted gross income"? It is further

**ORDERED**, that after reviewing the parties' filings, I will issue a further Order as appropriate.

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John P. Dean  
Principal Administrative Law Judge