

## HOW A MISPLACED MODIFIER CAN BE A COSTLY MISTAKE!!!!!!!

### 1. TDHE CONTENTION

- TDHE does not treat CHILD CARE REIMBURSEMENT as income.
- TDHE does not count reimbursed child care as a deduction.

TDHE POLICY READS: Allowable Deductions Section reads:

Child care expenses of children under 13 years of age, where necessary, to enable a family member to be gainfully employed or to further his/her education which is not reimbursed."

What is wrong with this statement?

### 2. LEGAL SERVICES RESPONSE

Thank you for your work on this, and the draft you sent me on January 8 of a recertification from Ms. Hoffay dated January 4, 2019. Here are my concerns regarding that draft:

1. Pursuant to Paragraph C, 10 of Attachment B to the Residential Occupancy Policy (p. 26), the income Ms. Bond receives towards child care should not count as income. Therefore, what she would pay if not for this assistance should be a fully deducted as a child care expense. This makes the annual expense for childcare 5,567.50 (463.96/mo on average -- see attached, which has already been provided); the adjusted annual income 35,555; and the rent 798.29, not 814.00.
2. Any change should be effective November 1, 2018, not February 1, 2019.

### 3. TDHE CONTENTION

Reimbursed child care expenses are deducted from allowable child care expenses. That would be double dipping. See example:

Total child care expenses	=	\$3,600 per year
Child care reimbursement	=	\$1,200 per year
Allowable deduction	=	\$2,400 per year

### 4. LEGAL SERVICES RESPONSE – ARGUMENT

I can see where you are coming from, but the paragraph actually says "Child care expenses of children under 13 years of age, where necessary, to enable a family member to be gainfully employed or to further his/her education which is not reimbursed." "Which is not reimbursed" modifies "education" -- not "child care expenses."

My reading is consistent with federal law, see the act itself <http://archives-financialservices.house.gov/banking/usha1937.pdf>

From <https://www.federalregister.gov/documents/2014/05/20/2014-11688/federally-mandated-exclusions-from-income-updated-listing>

(xii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

Notwithstanding any other law, the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need.

My reading doesn't let the tenant "double-dip" it lets the aid go where it was intended: to child care, not to assisting a low-rent housing authority.

As mentioned, the Tlingit and Haida amounts she receives for childcare are not listed as income on the worksheet and that is entirely consistent with Paragraph 10 on page 26. And in regards to Paragraph 3 (pg. 27), it specifically provides that "childcare expenses . . . which [are] not reimbursed" are to be considered deductions. In other words, tenants are not allowed to claim reimbursed childcare amounts as deduction as it is limited to those amounts that are out of pocket. Tenants are not permitted to "double dip" by gaining the benefit of a reimbursement/subsidy AND claiming a deduction for the reimbursed/subsidized amount. And the fact that the reimbursed amounts are not treated as deductions does not somehow convert those amounts into income. These amounts are neither income nor deductions. I have not uncovered a single affordable housing program that treats these any differently.

5. The child care expense is not limited to out of pocket expenses for child care - see paragraph 3 on p. 27 in addition to what I cited already on p. 26, paragraph 10 of the occupancy policy. Taking only the out of pocket expense as a deduction is consistent with considering the amount received in public assistance for the childcare as income -- but we are agreeing that should not be used as income.

#### 6. TDHE RESPONSE

Which provision of the Residential Occupancy Policy do you believe supports such a view? I have read the provision you cited and it doesn't address the issue other than to say that amounts received by publicly assisted programs are not to be counted as income. And nowhere on the worksheet does TDHE list such assistance as income. Childcare expenses no doubt constitute a deduction but only to the extent of the out of pocket expenses. Ms. Bond is not entitled to a deduction for amounts paid by the Ventures Program. Her actual expenses are \$1,944 and that deduction is properly reflected.

#### 7. LEGAL SERVICES RESPONSE

Yes, you are misreading my email. We are not in agreement. Her child care expenses are on average 463.96/mo. The deduction should be 5,567.50 .

#### 8. TDHE RESPONSE

I read your email as agreeing with TDHE's view on bullet #1 below. You indicate below that "the income [she] receives towards child care should not count as income" and I could not agree with that more. The amount she receives towards childcare is not counted as income. If I am misreading your email, please let me know.

#### 9. LEGAL SERVICES RESPONSE

Thanks for the utility bill. By using the net what she pays out of pocket for utilities you are effectively recognizing the assistance she receives as income.

#### 10. LEGAL SERVICES CONTINUED RESPONSE

Thank you for your work on this, and the draft you sent me on January 8 of a recertification from Ms. Hoffay dated January 4, 2019. Here are my concerns regarding that draft:

1. Pursuant to Paragraph C, 10 of Attachment B to the Residential Occupancy Policy (p. 26), the income Ms. Bond receives towards child care should not count as income. Therefore what she would pay if not for this assistance should be a fully deducted as a child care expense. This makes the annual expense for childcare 5,567.50 (463.96/mo on average -- see attached, which has already been provided); the adjusted annual income 35,555; and the rent 798.29, not 814.00.

The amount Ms. Bond receives towards childcare is not counted as income which of course is consistent with Para. C.10 of Attachment B to the Residential Occupancy Policy. In fact, her child care expenses (totaling \$1,944.00) are properly listed as a deduction on the worksheet which is entirely in line with the last paragraph (para. 3) of Attachment B under "Deductions." There is no basis for the claim that "what she would pay if not for this assistance should be a fully deducted as a child care expense."

2. Any change should be effective November 1, 2018, not February 1, 2019.

To be discussed

I haven't heard anything from you regarding Ms. Bond's utility calculations other than that there is no utility calculation to be provided because the charges are simply straight pass-thrus and her \$75 utility allowance is reflected in the rent calculation. It is unclear to me if this \$75 is based on a City and Borough of Sitka's 2018 subsidy amount under its "Utility Cost Subsidization Program." Ms. Bond received notice that for the 2019 calendar year, she should receive a \$65-per-month subsidy towards her utilities under this program.

In addition to this subsidy, Ms. Bond should have AHFC's published rates credited to her utility charges so that she is only then charged the amount in excess of these Utility Allowances (see paragraph IX of her lease agreement on p. 4). The current AHFC published rates for Sitka are attached.

Ms. Bond's cooking is electric and her hot water and heating are propane/gas. This means she should be receiving a credit of \$96 towards her electric bill (77 + 19 for a three bedroom unit); a credit of \$279 towards her propane/gas (113 + 166 for a three bedroom); a credit of \$102 for her water & sewer bill; and \$56 towards her trash collection. Only the cost of her usage above these amounts should then be passed through. We need to reconcile what she has been charged for utilities in light of these Utility Allowances that she should have been receiving. To this end, please provide the utility bills her charges have been based on so that we can re-calculate what, if any, amount is now due on her account for both rent and utilities.

We are looking into this matter and I expect to have a detailed response to you within the next several days.

Lastly, while it is true that Ms. Bond had a check bounce in September and in November of this past year, she was consequently charged a \$25 fee for each bounced check. **Requiring her to now indefinitely provide cashier checks seems both overly-punitive and not reflective of TDHE's actual across-the-board policy and procedure.** Aside from the headache in having to get a cashier's check and hand-deliver it, requiring her to do so causes her to pay an additional amount of at least \$3.15 per check. While this may not seem like much, everything adds up.

To be discussed although I will say that this is pretty standard practice in most settings/situations.

The proposed change in her TTP Percent from 25 to 30% would cause her rent to increase drastically disproportionately to her income: Her adjusted annual income increased by 20% (an increase of \$5,253 from 26,678 to 31,931.5), but her rent would be increasing by 66% (an increase of \$317 from her rent prior to Nov. 1 of 481 being changed to 798). The reality of this is that as someone who already falls into the very low-income

category, she is being asked to pay approximately half of her take-home pay towards rent and utilities. Please reconsider whether it is fair for her TTP Percentage to change from 25% to 30% and whether it is fair for her to now be required to make future payments indefinitely in the form of a cashier's check. I would like to set her up so that she can pay rent by automatic transfer once we figure out what her rent should be as of November 1, 2018 and have her account reconciled in light of the utility charge discrepancies identified above.

As for the 25% to 30% increase, this is dictated by the Residential Occupancy Policy. Under the definition of "Gross Monthly Charge – Rental Project" (pg. 3), it sets forth that a household's monthly income is to be multiplied by 30%. To the extent that your client received the 25% accommodation for several years (which is reserved for the "near elderly"), that was done in error.