

**Proposed New Rule 5123:2-3-11**  
**(Licensed Residential Facilities - Room and Board)**  
**Clearance Period: July 27 - August 10, 2016**  
**Comments Received with Department's Responses**

Question/Comment	By Whom	Department's Response
Will there be an impact on this rule due to moving to a 1634 state/Miller trust?	Nancy Richards, Executive Director, Clearwater Council of Governments	We do not anticipate an impact. The special income limit for Medicaid eligibility for people enrolled in waivers is \$2,199 per month, the same as the income threshold under Section 1634 of the Social Security Act (Determination of Medicaid Eligibility).
<b>(B)(12):</b> Add definition of "individual-specific expenses" from 5123:2-9-02 (B)(9) and language from 5123:2-9-02 (F)(3)(i) so that there is not a conflict between the two rules.	Nancy Richards, Executive Director, Clearwater Council of Governments	The examples of individual-specific expenses set forth in paragraph (B)(12)(a) of proposed new rule 5123:2-3-11 align with the definition of individual-specific expenses in rule 5123:2-9-02. We do not believe the rules are in conflict.
<b>(B)(12)(a):</b> Add cost of personal long distance calls, specialty services through television such as Netflix, movie purchases.	Nancy Richards, Executive Director, Clearwater Council of Governments	Local and long distance telephone service is included in paragraph (B)(12)(b)(ii); television and internet services are included in paragraph (B)(12)(b)(iii).
<b>(B)(12)(b):</b> Add does not include, for example, costs associated with purchasing new house or moving expenses related to purchase.	Nancy Richards, Executive Director, Clearwater Council of Governments	We reviewed paragraph (B)(12)(b) and believe that stipulating this exclusion as you suggest is unnecessary.
<b>(B)(12)(b)(iii):</b> Suggest adding "basic" to television and internet.	Nancy Richards, Executive Director, Clearwater Council of Governments	Paragraph (B)(12)(b)(iii) was revised as indicated to incorporate your suggestion: The cost of <u>basic</u> television and internet services provided for the benefit of residents.

Question/Comment	By Whom	Department's Response
<p><b>(B)(12)(b)(v):</b> Suggest revising as indicated:</p> <p>Rental or lease costs <del>from non-related parties</del> for building and land, <del>rental or lease costs from related parties</del> limited to the lesser of <del>related parties'</del> actual cost or fair market value; <u>when provider owned building depreciation (excluding the value of the land) using the straight line method of depreciation over forty years and interest expense as incurred, real property taxes, and insurance on contents and property. Excludes amortization expense over the life of state property grants received by the licensee for renovations.</u></p> <p><b>OR</b> - Just have (v) based on fair market value and remove all the detail in above.</p>	<p>Nancy Richards, Executive Director, Clearwater Council of Governments</p>	<p>Paragraph (B)(12)(b)(v) was revised and split into two paragraphs as indicated in accordance with your suggestions:</p> <p>(v) Rental or lease costs <del>from non-related parties</del> for building and land, <del>rental or lease costs from related parties</del> limited to the lesser of <del>related parties'</del> actual cost or fair market value, <u>building depreciation and insurance on contents.</u></p> <p><u>(vi) Depreciation for a residential facility owned by the licensee</u> (excluding the value of the land) using the straight line method of depreciation over forty years and interest expense as incurred, real property taxes, and insurance on contents and property. Excludes amortization expense over the life of state property grants received by the licensee for renovations.</p>
<p><b>(B):</b> Add definition of "rent" from 5123:2-9-02 (B)(16) and language from 5123:2-9-02 (F)(3)(h) so that there is not a conflict between the two rules.</p>	<p>Nancy Richards, Executive Director, Clearwater Council of Governments</p>	<p>We do not believe the two rules are in conflict nor that it is necessary to define "rent" in a rule about Room and Board.</p>
<p><b>(C)(2):</b> Change "personal funds" to "personal allowance." As it is currently used, conflicts and causes confusion with the use of the term "personal funds" in (E)(1) and (E)(2).</p>	<p>Nancy Richards, Executive Director, Clearwater Council of Governments</p>	<p>Thank you for bringing this to our attention. "Personal funds," as defined in paragraph (B)(10) of the rule, means income retained by an individual after satisfying his or her obligations. For that reason, we maintained "personal funds" in paragraph (C)(2)—now paragraph (D)—which sets forth the amount of income to be retained by the individual and instead reworded paragraphs (E)(1) and (E)(2)—now paragraphs (F)(1) and (F)(2)—to eliminate use of "personal funds."</p>

Question/Comment	By Whom	Department's Response
<p><b>(C)(2):</b> Under current rule 5123:2-3-18 paragraphs (C)(3) and (C)(4), earned and unearned income are treated differently in terms of individuals' contribution towards the contracted room and board rate. The current rule incentivizes employment by specifying that individuals retain the first \$100 earned per month and half of every dollar beyond that, whereas they contribute 100% minus \$75 of their unearned income. This incentivizes individuals to maximize their earned income by largely negating the impact on their contribution from unearned income and ensuring they retain the majority of their earned income. Proposed rule 5123:2-3-11 paragraph (C)(2) combines the individuals' earned and unearned income specifying they retain \$100 per month of the combined amount. While it is appreciated that the \$75 amount from the current rule is increased to \$100, the elimination of the separate provision for earned income will increase the total contribution for most employed residents and completely dis-incentivizes residents from engaging in employment as, typically, every dollar earned will result in them owing an additional dollar towards room and board costs. No rational person would engage in economic activity, including work, which brings no reward. In terms of those served by LADD, this impacts the 77.8% of individuals residing in our licensed facilities who have earned income (on average, \$184.40 per month per person). Governor Kasich's Executive Order (2012-05K) establishing Employment First Policy for Ohio, noted among the rationale the idea that "all Ohioans, including those with developmental disabilities, should be encouraged to take part in the workforce," and noted that individuals with developmental disabilities should have "opportunities to obtain community jobs that <b>may result in greater earnings</b>" (emphasis added). Further, guidance from the U.S. Department of Justice and Centers for Medicaid and Medicare Services is increasingly emphasizing community integration and typically specifies competitive employment as a hallmark measure of that. The recommended new rule discourages employment, discourages greater earnings, and discourages community inclusion through employment by removing the economic incentive of employment for Ohioans residing in licensed residential facilities. Therefore, we request that the provision in the existing rule incentivizing earned income be incorporated into any replacement rule.</p>	<p>Wylie Jones, Director, Quality Assurance and Programs, LADD</p>	<p>Please note that the rule has been reordered and the concepts addressed in former paragraph (C)(2) are now located in new paragraph (D).</p> <p>After consulting with the stakeholder group that helped us develop the rule, we revised the amount of income an individual may retain as personal funds in a manner that we believe strikes a compromise (i.e., \$100 of earned income <u>and</u> \$100 of unearned income).</p>

Question/Comment	By Whom	Department's Response
<b>(C)(2):</b> I do not like this proposed new rule for rent because I want to be able to spend my own money to go with my friends, buy clothes, and buy Christmas gifts for my friends and family. I also need money for vacations such as seeing my older brother and younger sister in Montana and Idaho. I need money to buy my Metro pass so I can go to places I want, such as my parents' house, grocery store, and visit my friends.	Matthew Chaffin	Please see response on page 3.
<b>(C)(2):</b> If this new proposed rule is put into effect, I will not have the money to do the things I enjoy such as going out to eat and taking trips to see my brother. I will not have the money I need to do the things I like or do the activities I like. I also will not have the money to buy birthday and Christmas gifts for my family. I do not like this new rule and I don't want it to be put into effect.	Spencer Duncan	
<b>(C)(2):</b> I do not like this proposed new rule because it won't let me keep any money I worked for so that I can buy things I like and I want to continue my Sunday paper. I also need the money so I can go on vacations with my family.	Jerry Herman	
<b>(C)(2):</b> My staff told me you are voting to take away more of my money, so I wanted to tell you why it's a bad idea. I have worked at Kroger for ten years, usually Mondays, Tuesdays, and Wednesdays. I have made friends that I probably wouldn't have made without my job. I'm saying, it's important for people to see people like me can do helpful things. My job is also important because it helps me do fun things. You get to go on vacation and I want vacations, too. Saving money from my paycheck helped me go to Florida to Disney World and Harry Potter World. It was the best vacation ever. I also use money from my job to go see movies, go to birthday dinners with my friends, and do fun things like the zoo or aquarium. I'm saying, I want to be able to go out, just like everyone else. Like, this week I used some extra money to buy the new Harry Potter book. My staff showed me how to read plays, because I wasn't sure. If you take away my extra money, you're going to mess up a lot of stuff. I love LADD and the guys I live with, but I want to be able to do things in the community, too. That takes money and that's why I work hard at bagging groceries and getting carts. Please don't change the way things are.	Margot Wayne	

September 22, 2016

Question/Comment	By Whom	Department's Response
<p><b>(C)(3)</b> OPRA has one suggested revision in underline below.</p> <p>A county board is permitted to recoup earned income and unearned income received by an individual from a non-routine event (e.g., social security back payment, tax refund, or inheritance) for payment of past room and board, not to exceed twelve months, <u>only if and/or after a burial plan is in place for the individual</u>. An individual shall not be charged for prepayment of future room and board as a result of receiving earned income or unearned income from a non-routine event.</p>	<p>Anita Allen, Vice President, Ohio Provider Resource Association</p>	<p>Please note that the rule has been reordered and former paragraph (C)(3) is now paragraph (C)(2).</p> <p>We do not think it is appropriate to require a burial plan in this manner. An individual's need to purchase a burial plan should be discussed as part of the person-centered planning process.</p>
<p><b>(E):</b> Add to responsibilities of the licensee:</p> <p>5123:2-9-02 (F)(3)(e) – and change "landlord" to "licensee;" include (i), (ii), and (iii).</p> <p>Language similar to paragraph (F)(2) for the licensee to have lease/residency agreement pursuant to 5123:2-9-02.</p>	<p>Nancy Richards, Executive Director, Clearwater Council of Governments</p>	<p>The focus of proposed new rule 5123:2-3-11 is Room and Board. Repeating language from paragraph (F)(3)(e) of rule 5132:2-9-02 is not necessary, especially given that requirements for licensees to maintain the residence, ensure ingress and egress, and keep the residence in a safe condition that meets local codes are already set forth in final-filed rule 5123:2-3-02 (which goes into effect October 1, 2016). Similarly, we do not believe it necessary to restate the requirement set forth in rule 5123:2-9-02 for a lease or residency agreement.</p>