

SIGIS: Special Interest Group for IAS Standards™
Eligible Product List Criteria
Supplemental Criteria as provided by IRS July 2009 Guidance

Dated July 22, 2009

This document provides additional supplemental information to the SIGIS Eligible Product List Criteria document. This document and the SIGIS Eligibility Product List Criteria document should be used in conjunction with each other for guidance on determination of Eligible Product List eligibility.

OTC Items:	Discussion:	IRS Guidance
1. Acne Treatments, including skin washes, skin toners and multi-step systems (e.g., Pro-Activ)	Acne is considered a disease, and products marketed for the treatment of acne are generally recognized as constituting eligible expenses. <i>See</i> the Federal FSA Guide, which lists acne treatments, including Proactiv, as eligible expenses. Acne treatments that are part of an ongoing program should automatically qualify as a medical expense.	Medical expense
2. Anti-arthritis (e.g., Glucosamine, Joint Free)	Arthritis is a disease, and prescription medication for arthritis treatment constitutes a qualifying expense. The Federal FSA Guide lists over-the-counter anti-arthritis such as chondroitin and glucosamine as eligible expenses for arthritis treatment. Chondroitin and glucosamine products marketed for arthritis treatment should automatically qualify as a medical expense.	Medical expense as long as products marketed for arthritis treatment (as opposed to mere prevention).
3. Diabetic supplies (e.g., hose, socks)	Other supplies for diabetics have been approved by the Service as qualifying expenses (e.g., blood sugar test kits are “diagnostic items” under Treas. Reg. Section 1.213-1(e)(1)(ii) and Rev. Rul. 2003-58, 2003-22 I.R.B. 959; Insulin 213(b)). Specialty garments used for treatment of a specific condition already qualify in some instances (e.g., mastectomy-related bras would qualify under Rev. Rul. 2003-57, 2003-22 I.R.B. 959). Hose and socks designed specifically for treatment of diabetic conditions or for circulatory problems should automatically qualify as medical expenses.	Excess cost over regular hose and socks
4. Compression hose	Similar to hose and socks for diabetics (see #3), compression hose are used for the treatment of vein and other circulatory problems. Compression hose designed for treatment of circulatory problems are most	Excess cost over regular hose and socks

	likely purchased primarily for this purpose and therefore should automatically qualify as a medical expense.	
5. Fluoride rinses	Fluoridation rinses and pills are commonly recommended to prevent tooth decay, and products such as Act and Colgate Phos-flur are recognized as a medical expense in the Federal FSA Guide. Fluoride rinses should automatically qualify as a medical expense.	Personal use component; but/for test must be established. Dual Purpose.
6. Food thickeners	The cost for food thickeners marketed for dysphagia and other swallowing disorders ought to be qualifying expense because they are most likely purchased primarily for these purposes. Generally, specialty foods prescribed by a medical practitioner constitute a medical expense, although in those cases the qualifying amount is that by which the cost of the specialty food (e.g., gluten-free or salt-free) exceeds the cost of commonly available version of the same product. <i>See, e.g., Randolph v. Commissioner, 67 T.C. 481 (1976).</i> Food thickeners are different in that they are an additive that facilitates swallowing for impaired individuals, so the entire cost should be considered. Also, food thickeners formulated for medical use (unlike culinary food thickeners) take into account other special dietary needs of individuals, such as how much water is released from the thickened food during digestion in order to avoid dehydration. Food thickeners formulated and marketed to be used for medical purposes should automatically qualify as a medical expense.	Personal use component; but/for test must be established. Dual Purpose.
7. Abdominal support braces, back braces, ankle, elbow; foot and arch supports and insoles.	Support braces for any part of the body, like bandages and crutches (Rev. Rul. 2003-58, 2003-22 I.R.B. 959), are used to protect and facilitate use of an injured joint. Support braces for specific body parts are functionally no different than elastic bandages (although such specialized products may be easier to use or may perform better than a regular elastic bandage), which do qualify as a medical expense when purchased as part of a first aid kits. Foot and arch support and insoles are commonly used for the treatment of foot ailments such as plantar fasciitis and heel pain. The Federal FSA Guide recognizes orthotics and arch and insole supports as medical expenses. Braces for abdominal, back, ankles, and elbows, as well as foot and arch supports and insoles, are most likely purchased	Medical expense as long as products marketed for treatment (as opposed to mere prevention).

	primarily for the purpose of reinforcing a weak or injured joint and therefore should automatically qualify as medical expenses.	
8. Anti-bacterial hand sanitizer	Hand sanitizers are used to prevent the spread of infectious illnesses such as colds, flu, and other viruses and bacteria. Unlike antibacterial soaps and cleanser, which have the dual purpose of cleansing the skin, hand sanitizers have no dual-purpose other than to kill viruses and bacteria that spread illness. The Federal FSA Guide recognizes hand sanitizers such as Germ-X, Nexcare and Purell as medical expenses. Hand sanitizers should automatically qualify as a medical expense.	Personal use component; but/for test must be established. Dual Purpose.
9. Incontinence products	Although current formal and informal guidance indicate that incontinence products such as adult diapers are recognized as a medical expense only if used to relieve the effects of a particular disease (<i>see</i> PLR 8137085, June 17, 1981; IRS Publication 502 (Medical and Dental Expense; the Federal FSA Guide)), we argue that in virtually all cases that adult diapers are purchased, they are purchased for incontinence caused by a medical condition. Incontinence products should automatically qualify as a medical expense.	Medical expense
10. Dehydration relief, such as pedialyte	Unlike Gatorade and other sports drinks, certain types of dehydration relief are specially formulated to meet medical guidelines for helping prevent dehydration due to diarrhea and vomiting. Certain electrolyte replacement products such as Pedialyte are already recognized as medical expenses by the Federal FSA Guide. Products marketed as being specially formulated to relieve dehydration caused by medical conditions such as diarrhea and vomiting are most likely purchased primarily for these purposes and therefore ought to be qualifying medical expenses.	Medical expense
11. Sunscreen, Sun block, after sun lotions, sunburn relief	Several pieces of informal guidance suggest that high SPF sunscreens (<i>e.g.</i> , 30 or higher) used to prevent sunburn, as well as sunburn relief lotions and creams (<i>e.g.</i> , Aloe Vera, Solarcaine), would constitute qualifying medical expenses. <i>See</i> Joint Committee on Taxation, Present Law and Analysis Relating to the Tax Treatment of Health Savings Accounts and Other Health Expenses, JCX-27-06, at 11 (June 27, 2006) (available at http://www.house.gov/jct/x-27-06.pdf , last	Personal use component; but/for test must be established. Dual Purpose.

	visited November 10, 2008); The Federal FSA Guide. Sunscreens with SPF 30 or higher, as well as products formulated to relieve symptoms of sunburn, are most likely purchased primarily for these purposes and therefore should automatically qualify as medical expenses.	
12. Nasal strips such as Breathe Right	Sinus and cold medications are widely accepted as qualifying medical expenses (<i>e.g.</i> , see IRS Notice 2006-69, the example in part III.B). Nasal strips are commonly used to relieve nasal congestion caused by allergies, colds, and other ailments, as well as to alleviate snoring. The Federal FSA Guide recognizes products such as Breathe Right and Snorezz as constituting qualifying medical expenses, even when used for snoring. Nasal strips, like cold and sinus medication, should automatically qualify as a medical expense.	Personal use component; but/for test must be established. Dual Purpose.
13. Skin moisturizers, lotions, creams and body washes for skin conditions such as psoriasis, eczema and diabetes, including "crack creme" remedies	Several other types of lotions and balms used for specific medical conditions are qualifying medical expenses. For example: anti-itch creams such as Benadryl, Cortaid and Ivarest; cold sore medicines such as Abreva and Herpecin; and diaper rash creams such as Balmex and Desitin have all been cited as qualifying medical expenses in the Federal FSA Guide. Lotions, ointments and washes specifically formulated for the treatment of other medical conditions that can affect the skin, such as psoriasis, eczema and diabetes are most likely purchased primarily for these purposes and therefore should likewise constitute a qualifying medical expense.	Medical expense, as long as sole intended purpose is for the treatment (as opposed to mere prevention) of the medical condition.
14. Orthopedic shoes and inserts, orthotics	Currently, custom shoes are eligible medical expenses, but only for the cost difference between the custom-made shoe and a regular comparable shoe. The Federal FSA Guide categorizes both custom-made and over-the-counter orthotic inserts as eligible medical expenses. We argue that in virtually all cases where an individual purchases orthopedic shoes (whether or not such shoes are custom-made), such shoes are purchased due to a medical condition and should automatically qualify as a medical expense along with orthotic inserts.	Excess cost over regular shoes. Orthotics deemed a medical expense.
15. Petroleum jelly	Several types of lotions and balms used for specific medical conditions are qualifying expenses (see # 13 above), as well as a number	Personal use component; but/for test must be established. Dual Purpose.

	of “first aid” type items. For example, the Federal FSA Guide lists the following “first aid” types of items as qualifying medical expenses: antiseptics; liquid bandages; peroxide; and rubbing alcohol. Petroleum jelly is frequently used as a general skin protectant and all-purposes healing ointment. Petroleum jelly should automatically qualify as a medical expense.	
16. Fiber supplements	Fiber supplements are an alternative treatment for conditions such as constipation. Laxatives, which also may be taken for constipation, would most likely constitute a qualifying expenses, not unlike and over-the-counter remedy for some other self-diagnosed ailment like the cold or flu. Because fiber supplements are generally used as a gentler and safer alternative to a product that does constitute a qualifying expense (<i>i.e.</i> , laxatives), they should automatically qualify as a medical expense.	Fiber supplements: Personal use component; but/for test must be established. Dual Purpose. Bulk forming fiber laxatives: Medical expense.
17. Probiotics	Probiotics are often used as an alternative treatment for gas, bloating and stomach upset. Products treating these symptoms, such as antacids, already constitute qualifying medical expenses (<i>e.g.</i> , <i>see</i> IRS Notice 2006-69, the example in part III.B). Like fiber supplements, probiotics are often used as an alternative to products that constitute a qualifying expense, and consequently should likewise constitute a qualifying medical expense.	Personal use component; but/for test must be established. Dual Purpose.
18. Wheelchair accessories (<i>e.g.</i> , cushions)	Wheelchairs already constitute a qualifying medical expense (<i>see</i> Treas. Reg. § 1.213-1(e)1(iii)). We argue that expenditures made for the operation or maintenance of a wheel chair are likewise qualifying medical expenses, and that accessories such as cushions are necessary items for wheel chair operation. Accordingly, cushions and other accessories that constitute part of the wheelchair and that need replacement from time to time should automatically qualify as a medical expense.	Medical expense.
19. Medical grade face masks	As communicable diseases become more of a threat (<i>e.g.</i> , swine flu), it is more common to see the use of face masks in public places such as airports, train stations, and on other modes of public transit. Medical grade face masks are designed to prevent the spread or infection of various diseases, as well to prevent inhalation of matter that may be damaging to one’s health. Face masks of medical grade are most	Personal use component; but/for test must be established. Dual Purpose.

	likely purchased primarily for this purpose and therefore should automatically qualify as a medical expense	
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