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<u>Department of Human Services, Self-Sufficiency Programs</u>   461

Agency and Division   Administrative Rules Chapter Number

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To become effective <u>Upon filing.</u> Rulemaking Notice was published in the <u>June 2015</u> Oregon Bulletin.

RULE CAPTION

<u>Amending rules relating to Aging and People with Disabilities (APD) programs</u>

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION
Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:
461-155-0020, 461-160-0620

REPEAL:
461-135-0825

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:
ORS 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Other Authority:
42 U.S.C. §1396r-5(d)(3); S.3106 - Spousal Impoverishment Improvement Act; 42 CFR 435.725 - 435.735

Statutes Implemented:
ORS 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

RULE SUMMARY

OAR 461-135-0825 about continued eligibility for clients under the age of 18 who no longer meet SSI disability criteria is being repealed. The class of children to which the rule applies no longer exists. (Anyone alive on August 22, 1996, would be at least 19 years old in 2015.)

OAR 461-155-0020 about prorated standards and adjusted number in household is being amended to add the TANF program back to section (4)(g)(B). On October 1, 2008, the TANF and SAC programs were inadvertently deleted from that section when other unrelated amendments were filed to this rule. This amendment adds the TANF program back to section (4)(g)(B). (All references to the SAC program were removed from chapter 461 on July 1, 2014, so that program is not being added back.)

OAR 461-160-0620 about income deductions and client liability for long-term care services or home and community-based care in the OSIPM (Oregon Supplemental Income Program Medical) program is being amended to state that if an all-inclusive rate covers items that are not allowable shelter expenses, including meals or housekeeping in an assisted living facility, or the rate includes utilities, they are deducted from the total shelter expense, to the extent that they can be distinguished, when determining the allowable shelter expense for the maintenance needs allowance of a community spouse.

OAR 461-160-0620 is also being amended to update the minimum community spouse income allowance (Minimum Monthly Maintenance Needs Allowance) which is published by the federal government each year. This amendment keeps Oregon in compliance with current federal standards for Department Medicaid programs and changes to the minimum monthly maintenance allowance under the Spousal

Impoverishment laws.

In addition, non-substantive edits were made to: ensure consistent terminology throughout self-sufficiency program rules and policies; update statutory and rule references; correct formatting and punctuation; remove unnecessary language; and improve clarity and readability.

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461-135-0825   Eff. 12-1-99   Eff. 7-1-15
Continued eligibility for Clients Under the Age of 18 Who No Longer Meet SSI Disability
Criteria; OSIPM

THIS RULE IS REPEALED

A client under the age of 18 who met the SSI disability criteria on August 22, 1996, and was
receiving or was eligible to receive SSI benefits on that date remains eligible for OSIPM as long
as he or she continues to meet all other OSIPM eligibility criteria.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 411.060

461-155-0020   Eff. 10-1-13   Eff. 7-1-15
Prorated Standards; Adjusted Number in Household

(1)   Prorated standards are used only in the no-adult tables and the non-SSI OSIP and OSIPM
        table.

(2)   In the OSIP and OSIPM programs:

        (a)   Prorated standards only apply when an individual or a couple receives free food
                and shelter from others living in the household, and the individual or couple does
                not have an ownership interest or rental liability in the residence.

        (b)   Prorated standards are not applied to cases in which a client an individual receives
                services described in OAR chapter 411, division 015.

        (c)   Shelter-in-kind (see OAR 461-145-0470) may apply when prorated standards are
                not used.

(3)   In the TANF program, the no-adult tables are used when there are no adults in the TANF
        need group (see OAR 461-110-0630).

(4)   Prorated standards are based on the number of people in the *need group*, compared to the
        adjusted number in the *household group* (see OAR 461-110-0210). The adjusted number
        in the household is determined by taking the total number of individuals in the household,
        minus the following individuals unless they are included in the *need group*:

        (a)   Unborns.

        (b)   Clients Individuals receiving *long-term care* (see OAR 461-001-0000) or *home
                and community-based care* (see OAR 461-001-0030).

        (c)   Foster children.

        (d)   Children receiving adoption assistance.

        (e)   Live-in attendants who live with the *filing group* (see OAR 461-110-0310) solely
                to provide necessary medical or housekeeping services and are paid to provide
                these services.

        (f)   Landlords and tenants. A landlord-tenant relationship exists if one person pays
                another at *fair market value* (see OAR 461-001-0000) for housing and if--

                (A)   The *filing group* lives independently from the landlord or tenant;

                (B)   The *filing group* has and uses sleeping, bathroom, and kitchen facilities
                        that are separate from the landlord or tenant; and

        (C)   If bathroom or kitchen facilities are shared, the housing must be a commercial establishment that provides either room, board, or both for *fair market value* compensation.

    (g)   In the OSIP and OSIPM programs only:

        (A)   The biological and adoptive children of either *spouse* (see OAR 461-001-0000).

        (B)   Recipients of ~~EXT,~~ GA, ~~MAA, MAF, OHP,~~ OCCS Medical Programs (see OAR 461-001-0000), OSIP, OSIPM, ~~or~~ QMB, or TANF.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.402, 411.404, 411.706, 412.049, 413.085, 414.042, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.402, 411.404, 411.706, 412.049, 413.085 414.042, 414.685

461-160-0620
Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM

In the OSIPM program:

(1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving *home and community-based care* (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the individual is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

   (a) One standard earned income deduction of $65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is $85 in the OSIPM-AB program.

   (b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

   (c) One of the following need standards:

      (A) A $60 personal needs allowance for an individual receiving long-term care services.

      (B) A $90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The $90 allowance is allowed only when the VA benefit has been reduced to $90.

      (C) For an individual who receives *home and community-based care*:

         (i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.

         (ii) For an individual who receives in-home services, the OSIPM maintenance standard plus $500.

   (d) A *community spouse* (see OAR 461-001-0030) monthly income allowance is deducted from the income of the *institutionalized spouse* (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the *community spouse*, using the following calculation.

      (A) Step 1--Determine the maintenance needs allowance. $1,967 $1,992 is added to the amount over $590 $598 that is needed to pay monthly shelter

expenses for the principal residence of the couple. This sum or $2,980.50 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420). If an all-inclusive rate covers items that are not allowable shelter expenses, including meals or housekeeping in an assisted living facility, or the rate includes utilities, to the extent they can be distinguished, these items must be deducted from the all-inclusive rate to determine allowable shelter expenses.

(B)   Step 2--Compare maintenance needs allowance with community spouse's countable income. The *countable* (see OAR 461-001-0000) income of the *community spouse* is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C)   Step 3--If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e)   A dependent income allowance as follows:

(A)   For a case with a *community spouse*, a deduction is permitted only if the monthly income of the eligible dependent is below $1,967 $1,992. To determine the income allowance of each eligible dependent:

(i)   The monthly income of the eligible dependent is deducted from $1,967 $1,992.

(ii)   One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B)   For a case with no *community spouse*:

(i)   The allowance is the TANF adjusted income standard for the individual and eligible dependents.

(ii)   The TANF standard is not reduced by the income of the dependent.

(f)   Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.

(g)   Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private

health insurance premiums of the *community spouse* and the individual's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The individual's liability is determined as follows:

(A) For an individual receiving *home and community-based care* (except an individual identified in OAR 461-160-0610(4)), the liability is the actual cost of the *home and community-based care* or the adjusted income of the individual, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for *home and community-based care*. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For an individual who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a mental health facility, there is a liability as described at OAR 461-160-0610.

(4) The deduction used to determine adjusted income for a GA and GAM client receiving long-term care services or *home and community-based care* is as follows:

(a) One standard earned income deduction of $65 is made from the earned income for an individual who is not blind; or

(b) One standard earned income deduction of $85 is made from the earned income for an individual who is blind.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.706, 413.085, 414.065, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.706, 413.085, 414.065, 414.685