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Department of Human Services, Self-Sufficiency Programs 461

Agency and Division

Administrative Rules Chapter Number

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To become effective 07/01/2015 Rulemaking Notice was published in the June 2015 Oregon Bulletin.

RULE CAPTION

Amending rules relating to overpayments in the SNAP, TANF, and TA-DVS programs

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:

461-165-0010, 461-195-0501, 461-195-0521, 461-195-0601, 461-195-0621

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.014, 412.049

Other Authority:

42 USC 608(a)(12)

Statutes Implemented:

ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.117, 411.404, 411.620, 411.640, 411.690, 411.816, 411.837, 411.892, 412.001, 412.006, 412.014, 412.049, 412.151, 414.025, 416.350

RULE SUMMARY

Federal law requires every state to implement policies and practices to prevent access to Temporary Assistance for Needy Families (TANF) cash assistance through any Electronic Benefit Transfer (EBT) transaction in an Automated Teller Machine (ATM) or Point-of-Sale (POS) device located in any liquor store; any casino, gambling casino, or gaming establishment; and in any retail establishment that provides adult oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. (See Middle Class Tax Relief and Job Creation Act of 2012.) As part of implementing policies and practices required by federal law, a workgroup of Department staff and stakeholders recommended that administrative rules be updated to treat use and access of TANF cash benefits in an EBT transaction at a prohibited location as a client error overpayment. To support the workgroup's recommendation, administrative rules are being changed as follows:

- OAR 461-165-0010 about the legal status of benefit payments is being changed to add the purpose of REF (Refugee), SFPSS and TANF program benefits.
- OAR 461-195-0501 about definitions and categories of overpayments is being changed to add that use or access of REF, SFPSS, or TANF benefits in an EBT transaction in a prohibited location is a client error overpayment and there is no overpayment threshold for these overpayments. In addition, language is being added to this rule to state there is a rebuttable presumption that the full amount of REF, SFPSS, or TANF benefits accessed in a prohibited location was spent in violation of OAR 461-165-0010.

- OAR 461-195-0521 about calculation of overpayments is being changed to add that in the REF, SFPSS, and TANF programs, the amount of the overpayment is the amount of TANF cash benefits used or accessed in a prohibited location.

OAR 461-195-0501 about definitions and categories of overpayments, OAR 461-195-0601 about Intentional Program Violation (IPV) definitions, and OAR 461-195-0621 about penalties and liability for overpayments are being amended to remove the IPV requirement to establish an overpayment in the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program. Specifically, OAR 461-195-0501 is being amended to allow an overpayment in the TA-DVS program when an individual intentionally and knowingly, without intimidation or coercion by an abuser, makes false or misleading statements or withholds information for the purpose of establishing eligibility, unless the overpayment would put the client at a greater risk of domestic violence, in which case the overpayment is waived. OAR 461-195-0601 and 461-195-0621 are being amended to remove reference to the TA-DVS program.

OAR 461-195-0521 is being amended to clarify that when calculating the overpayment in the SNAP program, the earned income deduction is allowed only to the extent sources of income were timely reported.

In addition, non-substantive edits were made to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; remove unnecessary language; improve ease of reading; and clarify Department rules and processes.

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Legal Status of Benefit Payments

- (1) Under Oregon law, cash benefits are not subject to assignment, transfer, garnishment, levy, or execution, as long as they can be identified as program payments and are separate from other money in the client's possession.
- (2) A cash payment, once issued to or on behalf of the client, becomes vested in the client.
- (3) Except for electronic benefit transfer (EBT), the Department considers a benefit issued if the check has been handed to the client in the branch office, or mailed to the client. The Department considers a benefit issued, and received by the client, when a direct check deposit is made to the client's bank account.
- (4) For EBT, the Department considers benefits issued and received when an EBT card and personal identification number (PIN) have been issued in person to the client, or the EBT card and PIN have been received by the client in the mail during conversion, and the benefits have been deposited to the client's EBT account.
- (5) SNAP program benefits issued by EBT remain available for client access for 12 calendar months from the date of issuance. The EBT system expunges unused benefits after 12 calendar months.
- (6) Benefits, once issued, are unrestricted and do not require accountability for individual expenditures or amounts, unless limited elsewhere in rule.
- (7) In the TA-DVS program, a payment issued on behalf of a client as a vendor or dual payee payment or directly to the client becomes vested in the client when issued. The Department considers the benefit to be issued if the Department has mailed the payment to the vendor or has hand delivered or mailed a dual payee check to the client. Benefits in the TA-DVS program are restricted to uses outlined in OAR 461-135-1230.
- (8) In the REF program:
 - (a) Cash benefits are provided to help meet the basic needs of low-income refugees and may not be used in any electronic benefit transfer transaction (see section (10) of this rule) in--
 - (A) Any liquor store;
 - (B) Any casino, gambling casino, or gaming establishment; or
 - (C) Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

(b) The Department will take steps to ensure clients have adequate access to their cash benefits.

(89) In the ~~REF~~, SFPSS, and TANF programs:

(a) Cash benefits are provided to help meet the basic needs of low-income families with dependent children (see OAR 461-001-0000) and may not be used in any electronic benefit transfer transaction in--

(A) Any liquor store;

(B) Any casino, gambling casino, or gaming establishment; or

(C) Any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

(b) The Department will take steps to ensure clients have adequate access to their cash benefits.

(910) For purposes of sections (8) and (9) of this rule:

(a) The term "liquor store" means any retail establishment which sells exclusively or primarily intoxicating liquor. Such term does not include a grocery store which sells both intoxicating liquor and groceries including staple foods (within the meaning of section 3(r) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(r))).

(b) The terms "casino", "gambling casino", and "gaming establishment" do not include--

(A) A grocery store which sells groceries including such staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or

(B) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.

(c) The term "electronic benefit transfer transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.014, 412.049, 414.042

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.117, 411.816, 412.014, 412.049, 412.151, 414.042

Definitions and Categories of Overpayments

This rule applies to benefits and services delivered under chapters 410, 411, and 461 of the Oregon Administrative Rules.

- (1) "Overpayment" means:
 - (a) A benefit or service received by or on behalf of a client, or a payment made by the Department on behalf of a client, that exceeds the amount for which the client is eligible.
 - (b) A payment made by the Department and designated for a specific purpose which is spent by a person on an expense not approved by the Department.
 - (A) In the REF program, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(8)(a) when cash benefits are used or accessed in:
 - (i) Any liquor store;
 - (ii) Any casino, gambling casino, or gaming establishment; or
 - (iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.
 - (B) In the SFPSS and TANF programs, there is a rebuttable presumption that the full amount of cash benefits was improperly spent in violation of OAR 461-165-0010(9)(a) when cash benefits are used or accessed in:
 - (i) Any liquor store;
 - (ii) Any casino, gambling casino, or gaming establishment; or
 - (iii) Any retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.
 - (c) A payment for child care made by the Department to, or on behalf of, a client that:
 - (A) Is paid to an ineligible provider;
 - (B) Exceeds the amount for which a provider is eligible;
 - (C) Is paid when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401);

- (D) Is paid when the client was not eligible for child care benefits; or
 - (E) Has given an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a [child \(see OAR 461-001-0000\)](#) in or out from the provider's child care.
- (d) A misappropriated payment when a person cashes and retains the proceeds of a check from the Department on which that person is not the payee and the check has not been lawfully endorsed or assigned to the person.
- (e) A benefit or service provided for a need when that person is compensated by another source for the same need and the person fails to reimburse the Department when required to do so by law.
- (f) A cash benefit received by an individual in the GA or SFPSS programs for each month for which the client receives a retroactive SSI lump sum payment.
- (g) In the TA-DVS program, ~~only when an IPV in the TA-DVS program is established~~ [a payment made by the Department to an individual or on behalf of an individual when the individual intentionally and without intimidation or coercion by an abuser:](#)
- (A) [Makes a false or misleading statement or misrepresents, conceals, or withholds information for the purpose of establishing *eligibility* \(see OAR 461-001-0000\) for or receiving a benefit from the TA-DVS program; or](#)
 - (B) [Commits any act intended to mislead, conceal, or withhold information for the purpose of establishing *eligibility* for or receiving a benefit from the TA-DVS program.](#)
- (2) The Department may establish an *overpayment* for the *initial month* (see OAR 461-001-0000) of [eligibility](#) under circumstances including, but not limited to:
- (a) The filing group ([see OAR 461-110-0310](#)), ineligible student, or *authorized representative* (see OAR 461-115-0090) withheld information;
 - (b) The filing group, ineligible student, or *authorized representative* provided inaccurate information;
 - (c) The Department ~~fails~~ [failed](#) to use income reported as received or anticipated in determining the benefits of the filing group; or
 - (d) The error was due to an error in computation or processing by the Department.

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(3) In the OCCS Medical programs, the Department may establish an *overpayment* for the *budget month* (see OAR 410-200-0015) when OCCS medical program *household group* (see OAR 410-200-0015) or *authorized representative* (see OAR 410-200-0015) withheld or provided inaccurate information.

(4) Overpayments are categorized as follows:

(a) An administrative error *overpayment* is an *overpayment* caused by any of the following circumstances:

- (A) The Department fails to reduce, suspend, or end benefits after timely reporting by the filing group, OCCS medical program *household group*, ineligible student, or *authorized representative* (see OAR ~~461-001-0000~~ [461-115-0090](#) and 410-200-0015) of a change covered under OAR 461-170-0011 or 410-200-0235 and that reported change requires the Department to reduce, suspend, or end benefits;
- (B) The Department fails to use the correct benefit standard;
- (C) The Department fails to compute or process a payment correctly based on accurate information timely provided by the filing group, OCCS medical program *household group*, ineligible student, or *authorized representative* (see OAR ~~461-001-0000~~ and ~~410-200-0015~~);
- (D) In the GA and SFPSS programs, the Department fails to require a client to complete an interim assistance agreement; or
- (E) The Department commits a procedural error that was no fault of the filing group, OCCS medical program *household group*, ineligible student, or *authorized representative* (see OAR ~~461-001-0000~~ and ~~410-200-0015~~).

(b) A client error *overpayment* is any of the following:

- (A) An *overpayment* caused by the failure of a filing group, OCCS medical program *household group*, ineligible student, or *authorized representative* (see OAR ~~461-001-0000~~ and ~~410-200-0015~~) to declare or report information or a change in circumstances as required under OAR 461-170-0011 or 410-200-0235, including information available to the Department, that affects the client's *eligibility* to receive benefits or the amount of benefits.
- (B) A client's unreduced liability or receipt of unreduced benefits pending a contested case hearing decision or other final order favorable to the Department.
- (C) A client's failure to return a benefit known by the client to exceed the correct amount.

- (D) A client's use of a JOBS or SFPSS program support payment (see OAR 461-190-0211) for other than the intended purpose.
- (E) A payment for child care when the client was not engaged in an activity that made the client eligible for child care, such as an activity of the JOBS program (see OAR 461-001-0025 and OAR 461-190-0151 to OAR 461-190-0401).
- (F) A payment for child care when the client was not eligible for child care benefits.
- (G) The failure of a client to pay his or her entire share of the cost of services or the participant fee (see OAR 461-160-0610 and 461-160-0800) in the month in which it is due.
- (H) An *overpayment* caused by a client giving an electronic benefit transfer (EBT) card, card number, or personal identification number (PIN) to a provider for the purpose of checking a *child* in or out from the provider's child care.
- (I) In the REF, SFPSS, and TANF programs, an *overpayment* caused by the client using or accessing cash benefits in any electronic benefit transaction in any liquor store; casino, gambling or gaming establishment; or retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment (see OAR 461-165-0010).
- (c) A fraud *overpayment* is an *overpayment* determined to be an *intentional program violation* (see OAR 461-195-0601 and 461-195-0611) or substantiated through a criminal prosecution.
- (d) In the SNAP program, a provider error *overpayment* is an *overpayment* made to a drug or alcohol treatment center or residential care facility that acted as a client's *authorized representative*.
- (e) In the child care program, a provider error *overpayment* is a payment made by the Department on behalf of a client to a child care provider when:
 - (A) Paid to an ineligible provider; or
 - (B) The payment exceeds the amount for which a provider is eligible.
- (5) When an *overpayment* is caused by both an administrative and client error in the same month, the Department determines the primary cause of the *overpayment* and assigns as either an administrative or client error *overpayment*.

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- (6) In the TANF ~~program~~ and TA-DVS programs, when an *overpayment* puts the client at greater risk of *domestic violence* (see OAR 461-001-0000), the *overpayment* is waived (see OAR 461-135-1200).
- (7) Except as provided in section (8) of this rule, the Department establishes an *overpayment* when the following thresholds are exceeded:
 - (a) Administrative error overpayments concerning --
 - (A) Cash and child care programs, when the amount is greater than \$200;
 - (B) SNAP open case, when the amount is greater than \$100; and
 - (C) SNAP closed case, when the amount is greater than \$200.
 - (b) Client error overpayments in:
 - (A) Cash and child care programs, when the amount is greater than \$200;
 - (B) SNAP open case, when the amount is greater than \$100;
 - (C) SNAP closed case, when the amount is greater than \$200;
 - (D) Medical programs, when the amount is greater than \$750.
 - (c) Provider error overpayments in:
 - (A) Cash and child care programs, when the amount is greater than \$200;
 - (B) SNAP open case, when the amount is greater than \$100;
 - (C) SNAP closed case, when the amount is greater than \$200.
- (8) There are no *overpayment* thresholds in all of the following situations:
 - (a) In SNAP program, if the *overpayment* was identified in a quality control review.
 - (b) In all programs, if the *overpayment* was caused by a client's receipt of continuing benefits in a contested case.
 - (c) In all programs, if the *overpayment* was caused by possible fraud by a client or provider.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.081, 411.404, 411.816, 412.001, 412.014, 412.049, HB 2089 (2013, Section 10)

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.081, 411.117, 411.404, 411.620, 411.640, 411.690, 411.816, 411.892, 412.001, 412.014, 412.049, 414.025, 416.350

Calculation of Overpayments

This rule specifies how the Department calculates an *overpayment* (see OAR 461-195-0501).

- (1) The Department calculates an *overpayment* by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible.
- (2) When a filing group, OCCS Medical programs *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) fails to report income, the Department calculates and determines the *overpayment* by assigning unreported income to the applicable budget month without averaging the unreported income, except:
 - (a) A client's earned income reported quarterly from the Employment Department is considered received by the client in equal amounts during the months identified in the report.
 - (b) In the ERDC, MAA, MAF, REF, SNAP, and TANF programs, a client's actual self-employment income is annualized retrospectively to calculate the *overpayment*.
 - (c) In the OCCS Medical programs, if actual income is not available for the months in which an *overpayment* occurred, a client's actual self-employment income (see OAR 410-200-0015) received during the year when an *overpayment* occurred is annualized to calculate an *overpayment*.
- (3) When using prospective budgeting (see OAR [Division 461-150](#)) and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a *client error overpayment* (see OAR 461-195-0501) only when the filing group, ineligible student, or *authorized representative* withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an *overpayment*.
- (4) When using anticipated income for the OCCS Medical programs and the actual income differs from the amount determined under OAR 410-200-0310, there may be a *client error overpayment* only when the OCCS Medical programs *household group* (see OAR 410-200-0015) or *authorized representative* (see OAR 410-200-0015) withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an *overpayment*.
- (5) When a filing group, ineligible student, or *authorized representative* fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, and 461-160-0552) is applied as follows:

- (a) In the OSIP, OSIPM, QMB, and REFM programs, the Department allows the earned income deduction.
 - (b) In the MAA, MAF, REF, and TANF programs, the Department allows the earned income deduction when *good cause* (see section (6) of this rule) exists.
 - (c) In the SNAP program, no deduction is applied to earned income if the amount or source of income was not timely reported.
- (6) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.
- (7) When support is retained:
- (a) In the TANF program, the amount of support (other than cash medical support) the Department of Justice retains as a current reimbursement each month is added to other income to determine *eligibility* (see OAR 461-001-0000). When a client is not eligible for TANF program benefits, the *overpayment* is offset by the support the Department of Justice retains as a current reimbursement.
 - (b) In the medical programs, the amount of the cash medical support the Department retains each month is excluded income and not used to determine *eligibility* for medical program benefits. When a client has incurred a medical program *overpayment*, the *overpayment* is offset by the amount of the cash medical support the Department retains during each month of the *overpayment*.
- (8) In the REF and TANF programs, when a client directly receives support used to determine *eligibility* or calculate benefits, the *overpayment* is:
- (a) If still eligible for REF or TANF program benefits, the amount of support the client received directly; or
 - (b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the client received.
- (9) When an *overpayment* occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the *overpayment* is limited to the lesser of the following:
- (a) The amount of the payment from the Department;
 - (b) Cash medical support; or

- (c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.
- (10) Benefits paid during a required *notice period* (see OAR 461-175-0050, OAR 410-200-0120) are included in the calculation of the *overpayment* when:
- (a) The filing group, OCCS Medical programs *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) failed to report a change within the reporting time frame under OAR 461-170-0011 or OAR 410-200-0235; and
 - (b) Sufficient time existed for the Department to adjust the benefits to prevent the *overpayment* if the filing group, OCCS Medical program *household group* (see OAR 410-200-0015), ineligible student, or *authorized representative* (see OAR 461-115-0090 and OAR 410-200-0015) had reported the change at any time within the reporting time frame.
- (11) In the SNAP program:
- (a) If the *benefit group* (see OAR 461-110-0750) was categorically eligible, there is no *overpayment* based on resources.
 - (b) For a *filing group* (see OAR 461-110-0370) found eligible for SNAP program benefits under OAR 461-135-0505(1)(a) to (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for SNAP program benefits as long as the *eligibility* requirement under OAR 461-135-0505(1)(d) is met. A *benefit group* of one or two individuals would be entitled to at least the minimum SNAP program benefit allotment under OAR 461-165-0060.
 - (c) For a *filing group* found eligible for SNAP program benefits only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185 percent of the Federal Poverty Level, the *filing group* is no longer categorically eligible. The *overpayment* is the amount of SNAP program benefits incorrectly received.
- (12) In the OSIP and OSIPM programs, when a client does not pay his or her share of the cost of services (see OAR 461-160-0610) or the OSIP-EPD or OSIPM-EPD program *participant fee* (see OAR 461-160-0800) in the month in which it is due, an *overpayment* is calculated as follows:
- (a) All payments made by the Department on behalf of the client during the month in question are totaled, including but not limited to any payment for:
 - (A) Capitation;
 - (B) Long term care services;

- (C) Medical expenses for the month in question;
 - (D) Medicare buy-in (when not concurrently eligible for an MSP);
 - (E) Medicare Part D;
 - (F) Mileage reimbursement;
 - (G) Special needs under OAR 461-155-0500 to 416-155-0710; and
 - (H) *Home and community-based care* (see OAR 461-001-0030), including home delivered meals and non-medical transportation.
- (b) Any partial or late liability payment made by a client receiving *home and community-based care* in-home services or *participant fee* paid by an OSIP-EPD or OSIPM-EPD program client is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the *overpayment*.
- (13) When a client's liability is unreduced pending the outcome of a contested case hearing about that liability the *overpayment* is the difference between the liability amount determined in the final order and the amount, if any, the client has repaid.
- (14) In the OCCS Medical programs, OSIPM, QMB, and REFM programs if the client was not eligible for one program, but during the period in question was eligible for another program:
- (a) With the same benefit level, there is no *overpayment*.
 - (b) With a lesser benefit level, the *overpayment* is the amount of medical program benefit payments made on behalf of the client exceeding the amount for which the client was eligible.
- (15) When an *overpayment* is caused by *administrative error* (see OAR 461-195-0501), any *overpayment* of GA, OSIP, REF, SFPSS, or TANF program benefits is not counted as income when determining *eligibility* for the GAM, OCCS Medical programs, OSIPM, and REFM programs.
- (16) Credit against an *overpayment* is allowed as follows:
- (a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the *overpayment*, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.

- (b) In the SNAP program, if the *overpayment* was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.
 - (c) In the SFPSS and TANF programs, if the *overpayment* is caused by reported earned income, a credit is allowed for the Post-TANF grant if the client meets *eligibility* under OAR 461-135-1250 and the client has received less than 12 months of Post-TANF program benefits.
 - (d) In all programs, for an underpayment of benefits.
- (17) In the SNAP program, in compliance with the American Recovery and Reinvestment Act of 2009, effective April 1, 2009 through September 30, 2009, the amount between the normal Thrifty Food Plan (TFP) benefit amount under this section and the increased TFP benefit amount under OAR 461-155-0190 is not counted in the *overpayment* amount unless the filing group was ineligible for SNAP program benefits.

Normal TFP for October 1, 2008 - September 30, 2009
SNAP Payment Standard (TFP)

No. in Need Group	Monthly Amount
1	\$ 176
2	323
3	463
4	588
5	698
6	838
7	926
8	1,058
Each additional individual	132

(18) In the REF program, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(8)(a), the amount of the *overpayment* is the amount of cash benefits the client used or accessed.

(19) In the SFPSS and TANF programs, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(9)(a), the amount of the *overpayment* is the amount of cash benefits the client used or accessed.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.660, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, HB 2089 (2013, Section 10)

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, 416.350

Intentional Program Violations; Defined

- (1) In the child care programs, a provider commits an *intentional program violation* (IPV) by intentionally making a false or misleading statement or misrepresenting, concealing, or withholding information related to his or her request to be eligible for a child care payment under OAR 461-165-0180 or a claim for a child care payment.
- (2) In the SNAP program:
 - (a) An individual commits an *intentional program violation* by --
 - (A) Making a false or misleading statement or misrepresenting, concealing or withholding a fact relating to the use, presentation, transfer, acquisition, receipt, possession, or *trafficking* ([see OAR 461-195-0601\(2\)\(b\)](#)) of SNAP benefits; or
 - (B) Committing any act that constitutes a violation of the Food Stamp Act, the SNAP program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, possession, or *trafficking* of SNAP benefits.
 - (b) "Trafficking" means any of the following:
 - (A) The buying, selling, stealing, or other exchange of SNAP benefits for cash or consideration other than eligible food, either directly or indirectly, in complicity or collusion with others or acting alone.
 - (B) The exchange of firearms, ammunition, explosives, or controlled substances (as defined in section 802 of title 21, United States Code), for SNAP benefits.
 - (C) Purchasing a product with SNAP benefits that has a container return deposit with the intent of obtaining cash by intentionally discarding the product and returning the container for the deposit amount.
 - (D) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by intentionally reselling the product purchased with SNAP benefits.
 - (E) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.
- (3) In the SFPSS program, an individual commits an intentional program violation by intentionally --
 - (a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining *eligibility* ([see](#)

[OAR 461-001-0000](#) for SFPSS or increasing, or preventing a reduction in, the amount of the SFPSS grant; or

- (b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining *eligibility* for SFPSS or increasing, or preventing a reduction in, the amount of the SFPSS grant.

~~(4) In the TA DVS program, an individual commits an IPV by intentionally and without intimidation or coercion by an abuser—~~

~~(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing eligibility for or receiving a benefit from the TA DVS program; or~~

~~(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing eligibility for or receiving a benefit from the TA DVS program.~~

(54) In the TANF program, an individual commits an *intentional program violation* by intentionally---

(a) Making a false or misleading statement or misrepresenting, concealing, or withholding a fact for the purpose of establishing or maintaining *eligibility* for TANF or increasing, or preventing a reduction in, the amount of the TANF grant; or

(b) Committing any act intended to mislead or to conceal or withhold information for the purpose of establishing or maintaining *eligibility* for TANF or increasing, or preventing a reduction in, the amount of the TANF grant.

Stat. Auth.: ORS 411.060, 411.660, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.630, 411.635, 411.660, 411.816, 412.014, 412.049

Intentional Program Violations; Penalties and Liability for Overpayments

- (1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. A person may be subject to disqualification for an IPV only if the person was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state or established in the Food Distribution Program on Indian Reservations continues in effect in Oregon.
- (2) In the ERDC program, if an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that person is liable for repayment to the Department of the full amount of overpayment the Department has established. The amount of restitution to the Department ordered by a court as part of a criminal proceeding does not lower the amount owed to the Department. Payments of restitution to the Department are credited against the amount owed. A client is not subject to an IPV disqualification but is still required to repay overpayment amounts.
- (3) A child care provider found to have committed an intentional program violation (IPV) is ineligible for payment for child care as follows:
 - (a) A child care provider with an IPV established between April 1, 2001 and September 30, 2005 is permanently disqualified to receive payment.
 - (b) A child care provider who has incurred an *overpayment* established as an IPV claim after September 30, 2005 is ineligible for payment---
 - (A) For six months and until the full amount of the overpayment is paid; or
 - (B) Permanently, if the Child Care Program Manager finds that such ineligibility is in the public interest. The following is a non-exclusive list of reasons that support a determination of permanent ineligibility: safety concerns; or, the likelihood of future violations; or, the degree of egregiousness of any of the established IPV's; or, the degree of primary involvement in the violation by the provider.
- (4) In the SNAP and TANF programs, when an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:
 - (a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court.
 - (b) Except as otherwise set forth in this section, the client is disqualified from receiving benefits in the program in which the IPV was committed for a period of 12 calendar months for the first IPV, 24 calendar months for the second IPV, and permanently for the third IPV.

- (c) A person found by a federal, state, or local court to have traded a controlled substance for SNAP benefits is disqualified from participation in the SNAP program as follows:
 - (A) For a period of two years upon the first occasion.
 - (B) Permanently upon the second occasion.
- (d) A person found by a federal, state, or local court to have traded firearms, ammunition, or explosives for SNAP benefits is permanently disqualified from participation in the SNAP program.
- (e) A person convicted of *trafficking* (see OAR 461-195-0601) benefits for a value of \$500 or more is permanently disqualified from participation in the SNAP program.
- (f) A person is disqualified for a 10-year period, except if permanently disqualified under subsection (b) of this section, from receiving benefits in the program in which the person committed fraud if the person --
 - (A) In TANF program:
 - (i) Is convicted in state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under programs that are funded under Title IV or XIX of the Social Security Act; or
 - (ii) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or more states.
 - (B) In the SNAP program, is found to have or admits to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously.
- (5) If the TANF grant is affected by the IPV penalty imposed under this rule, eligibility for and the level of SNAP benefits are determined in accordance with OAR 461-145-0105.
- ~~(6) In the TA-DVS program, when an IPV is established against a person through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:~~

~~(a) That person is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court. The Department will seek repayment from the client only if seeking repayment would not place the client at greater risk of domestic violence.~~

~~(b) Subsequent applications for TA-DVS that meet the eligibility criteria set forth in OAR 461-135-1215 and 461-135-1225 must be staffed with the Department's central office.~~

(76) The Department issues notice of disqualification in accordance with OAR 461-175-0220. The disqualification provided for in this rule begins the first of the month following the month in which the notice period ends.

(87) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the eligibility of the filing group of the disqualified person.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.816, 412.049