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Department of Human Services, Self-Sufficiency Programs 461

To become effective 10/01/2015 Rulemaking Notice was published in the August 2015 Oregon Bulletin.

## RUI F CAPTION

## Amending rules relating to medical and public assistance programs

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

## RULEMAKING ACTION

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

## **ADOPT:**

461-145-0089, 461-145-0252, 461-145-0915, 461-150-0095

**AMEND:**

461-001-0000, 461-115-0230, 461-115-0700, 461-120-0310, 461-140-0020, 461-140-0040, 461-145-0010, 461-145-0088, 461-145-0120, 461-145-0130, 461-145-0250, 461-145-0440, 461-145-0600, 461-145-0910, 461-145-0920, 461-150-0090, 461-195-0310

## **REPEAL:**

**RENUMBER:**

## **AMEND AND RENUMBER:**

## **Statutory Authority:**

ORS 409.050, 410.720, 411.060, 411.070, 411.083, 411.400, 411.404, 411.706, 411.750, 413.033, 413.042, 413.085, 414.685

**Other Authority:**

7 USC 2014, 42 USC 1396a(a)(25), 42 USC 1396k(a), 20 CFR 416.1111, 20 CFR 404.1003 - 1007, 42 CFR 302.51, 42 CFR 433.145, 42 CFR 433.154, Oregon State Plan Attachment 2.6 A.6

## **Statutes Implemented:**

ORS 409.010, 409.050, 410.720, 411.060, 411.070, 411.083, 411.404, 411.706, 411.750, 413.033, 413.042, 413.085, 414.231, 414.685, 414.839

## RULE SUMMARY

The Department of Human Services, Office of Self Sufficiency Programs, is adopting, amending, and repealing rules in chapter 461 to align with federal policy regarding how income and resources are treated and budgeted in Aging and People with Disabilities (APD) programs and update policy regarding submitting required notices to the Department's Personal Injury Liens Unit. Specifically:

OAR 461-001-0000 about definitions is being amended to change the definition of income-producing property to make a clearer distinction between income producing property, property used in self-employment, and various other property types that previously could be addressed in more than one rule (such as animals or rooms or buildings for rent which are part of the home).

OAR 461-115-0230 about interviews is being amended to clarify that interviews are required for APD medical programs at initial application for assumed eligible individuals. The current rule suggests that no interview is needed for this population at either initial application or annual redetermination. This corrects a previous amendment which was effective July 1, 2014. The rule is also being amended to allow REF and REFM interviews to be conducted by telephone or home visit when the applicant has a hardship.

OAR 461-115-0700 about required verification in the GA, GAM, OSIP, OSIPM, and QMB programs is being amended to state that verification

of liquid resources is not required, unless questionable, if the reported value is less than \$400 and that, for purposes of the rule, the cash surrender value of a life insurance policy is not considered a liquid resource.

OAR 461-120-0310 about assignment of support rights in all programs except the SNAP program is being amended to correct an inaccuracy in the current rule. The rule currently states that a refund process occurs annually; instead, expenditures should be reconciled 12 months after benefits are terminated. Division of Child Support revenue should be retained for the duration of assignment of support rights, similar to administration in other states and IV-E administration.

OAR 461-140-0020 about determining availability of resources is being amended to address situations in which resources (including an individual's ownership interest in a corporation or business entity) may not be sold or liquidated due to legal barriers or restrictions.

OAR 461-140-0040 about availability of income is being amended to clarify how certain types of earned income (such as teachers' wages) are budgeted when it is received in a different period of time than when it is earned. The income of certain teachers was considered contract income in the past and addressed in the self-employment budgeting rule, which was confusing. These types of employment arrangements are not self-employment and teachers are not outside contractors; they are paid wages by an employer under a contractual arrangement. These amendments make that clarification.

OAR 461-145-0010 about animals is being amended to clarify when animals can be considered income-producing property and align with federal regulations about their treatment.

OAR 461-145-0088 about income and resources of corporations and business entities is being amended to remove APD medical programs from this rule. Income and resources of corporations and business entities will be addressed in a new rule, OAR 461-145-0089, which is being adopted to align with federal policy regarding how income and resources of corporations and business entities are treated in the OSIP, OSIPM, and QMB programs. Individuals who incorporate businesses will not be considered self-employed; furthermore, other types of business arrangements will now be clearly addressed, including when owning a business constitutes self-employment and how to count income and resources when it does not.

OAR 461-145-0120 about defining earned income is being amended to include non-business expenditures paid by an individual's business or corporation as earned income.

OAR 461-145-0130 about the treatment of earned income is being amended to comply with federal regulations which allow net losses from self-employment to be excluded from other sources of earned income. It also aligns the Department with federal regulations regarding how income earned from an individual's corporation is counted, namely that it cannot be considered self-employment income.

OAR 461-145-0250 about income-producing property is being amended to remove APD medical programs as it will be addressed in a new rule, OAR 461-145-0252, which is being adopted to clarify what constitutes income-producing property in the OSIP, OSIPM, and QMB programs and how it should be treated. This new rule will create a much clearer distinction between income-producing property and work-related assets, which is not present in the current versions of these rules.

OAR 461-145-0440 about reimbursements is being amended to add a reference to a proposed new rule, OAR 461-145-0915, described below, relating to self-employment income in APD medical programs.

OAR 461-145-0600 about work-related capital assets, equipment, and inventory is being amended to align with federal policy, which excludes these items.

OAR 461-145-0910 about self-employment income generally is being amended to remove APD medical programs as they will now be addressed in a new rule, OAR 461-145-0915 which is being adopted to align Department policy with federal policy regarding how self-employment is recognized and treated and to clarify that those who own or form corporations are not self-employed.

OAR 461-145-0920 about costs that are excluded to determine countable income is being amended to align with federal policy regarding excludable self-employment costs, namely that all costs listed on the IRS Schedule C are allowed.

OAR 461-150-0090 about prospective budgeting of self-employment income is being amended to remove APD medical programs as they will be addressed in a new rule, OAR 461-150-0095, which is being adopted to align with federal policy regarding how self-employment income is budgeted. The budgeting sections formerly found in 461-145-0910 have been moved to this new rule. Also, the association between self-employment and contract income has been removed as it has caused confusion in the past. An individual is either self-employed or working for another as an employee; there is no third category just because the employment may be contractual.

OAR 461-195-0310 about notices of claim or action by an applicant or recipient of assistance is being amended to: clarify that statutory notices under ORS 416.530 may be combined into one notice and sent to the Personal Injury Liens Unit; add "personal representative" as an

individual required to provide notice of a claim or action; delete "prepaid managed care health services organization" as having a right to sue a recipient or applicant for failure to provide timely notice of a claim or action; and to make technical corrections

In addition, non-substantive edits were made to the rules above 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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## Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

- (1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services means the Department of Human Services (DHS), except --
  - (a) The rule in which reference occurs only regulates programs covered by [OAR chapter 461-of the Oregon Administrative Rules](#).
  - (b) OCCS medical program eligibility rules are in [OAR chapter 410](#), division [410-200-of Oregon Administrative Rules](#).
- (2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of *domestic violence* (see section (25) of this rule), sexual assault, or stalking.
- (3) "Adjusted income" means the amount determined by subtracting income deductions from *countable* (see section (18) of this rule) income (see OAR 461-140-0010). Specific rules on the deductions are in [OAR chapter 461](#), division [461-160-of Oregon Administrative Rules](#).
- (4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. "Adoption assistance" may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.
- (5) "Assets" mean income and resources.
- (6) "Basic decision notice" means a *decision notice* (see section (21) of this rule) mailed no later than the date of action given in the notice.
- (7) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.
- (8) "Budgeting" means the process of calculating the benefit level.

- (9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine *eligibility* (see section (28) of this rule) and benefit level for the *payment month* (see section (50) of this rule).
- (10) "Cafeteria plan" means a written benefit plan offered by an employer in which:
  - (a) All participants are employees; and
  - (b) Participants may choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Service does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:
    - (A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);
    - (B) Group term life insurance plans (up to \$50,000);
    - (C) Dependent care assistance plans; and
    - (D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).
- (11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a *microenterprise* (see section (43) of this rule), either directly or indirectly. A "capital asset" generally has a useful life of over one year and a value, alone or in combination, of \$100 or more.
- (12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a *child* (see section (15) of this rule). The status of "caretaker" ends once the individual no longer exercises care, control, and supervision of the *child* for 30 days.
- (13) "Caretaker relative" means:
  - (a) In the Pre-TANF, SFPSS, and TANF programs, a dependent child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece who lives in a residence maintained by one or more of the relatives as the child's or the relative's own home.
  - (b) In all programs not covered under subsection (a) of this section, a *caretaker* (see section (12) of this rule) who meets the requirements of one of the following paragraphs:
    - (A) Is one of the following relatives of the *dependent child* (see section (23) of this rule):

- (i) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.
  - (ii) Stepfather, stepmother, stepbrother, and stepsister.
  - (iii) An individual who legally adopts the *child* and any individual related to the individual adopting the *child*, either naturally or through adoption.
- (B) Is or was a *spouse* (see section (62) of this rule) of an individual listed in paragraph (A) of this subsection.
  - (C) Met the definition of "caretaker relative" under paragraph (A) or (B) of this subsection before the *child* was adopted (notwithstanding the subsequent adoption of the *child*).
- (14) "Certification period" means the period for which an individual is certified eligible for a program.
- (15) "Child" includes natural, step, and adoptive children. The term "child" does not include an unborn.
- (a) In the ERDC program, a "child" need not have a biological or legal relationship to the *caretaker* but must be in the care and custody of the *caretaker*, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:
    - (A) Under the age of 18; or
    - (B) Under the age of 19 and in secondary school or vocational training at least half time.
  - (b) In the GA, GAM, and OSIP programs, a "child" is an individual under the age of 18.
  - (c) In the OSIPM and QMB programs, "child" means an unmarried individual living with a *parent* (see section (49) of this rule) who is:
    - (A) Under the age of 18; or
    - (B) Under the age of 22 and attending full-time secondary, postsecondary or vocational-technical training designed to prepare the individual for employment.
  - (d) In the REF and REFM programs, a "child" is:
    - (A) An individual under the age of 18; or

- (B) An individual who is 18 years of age and attending secondary school full-time or pursuing a GED full-time.
- (16) "Community based care" is any of the following:
- (a) Adult foster care - Room and board and 24 hour care and services for the elderly or for people with disabilities 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.
  - (b) Assisted living facility - A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.
  - (c) In-home Services - Individuals living in their home receiving services determined necessary by the Department.
  - (d) Residential care facility - A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.
  - (e) Specialized living facility - Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition, or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.
  - (f) Independent choices - In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).
- (17) "Continuing benefit decision notice" means a *decision notice* that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.
- (18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine *eligibility*.
- (19) "Cover Oregon" means Oregon Health Insurance Exchange Corporation.
- (20) "Custodial parents" mean parents who have physical custody of a *child*. "Custodial parents" may be receiving benefits as dependent children or as caretaker relatives for their own children.
- (21) "Decision notice" means a written notice of a decision by the Department regarding an individual's *eligibility* for benefits in a program.
- (22) "Department" means the Department of Human Services (DHS).

- (23) "Dependent child" in the TANF program means the following:
- (a) An individual who is not a *caretaker relative* (see section (13) of this rule) of a *child* in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or
  - (b) A *minor parent* (see section (44) of this rule) whose parents have chosen to apply for benefits for the *minor parent*. This does not apply to a *minor parent* who is married and living with his or her *spouse*.
- (24) "Disability" means:
- (a) In the SNAP program, see OAR 461-001-0015.
  - (b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining *eligibility*:
    - (A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or
    - (B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).
- (25) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:
- (a) Attempting to cause or intentionally, knowingly, or recklessly causing physical injury or emotional, mental, or verbal abuse.
  - (b) Intentionally, knowingly, or recklessly placing another in fear of imminent serious physical injury.
  - (c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.
  - (d) Using coercive or controlling behavior.
  - (e) As used in this section, "family members" and "household members" mean any of the following:
    - (A) *Spouse*;

- (B) Former spouse;
  - (C) Individuals related by blood, *marriage* (see section (42) of this rule), or adoption;
  - (D) Individuals who are cohabitating or have cohabited with each other;
  - (E) Individuals who have been involved in a sexually intimate or dating relationship; or
  - (F) Unmarried parents of a *child*.
- (26) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of *domestic violence*. If the facility serves other people, a portion must be used solely for victims of *domestic violence*.
- (27) "Electronic application" is an application electronically signed and submitted through the Internet.
- (28) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.
- (29) "Equity value" means *fair market value* (see section (30) of this rule) minus encumbrances.
- (30) "Fair market value" means the amount an item is worth on the open market.
- (31) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.
- (32) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by an individual, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain *family stability* (see section (31) of this rule).
- (33) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.
- (34) "Income-producing property" means:
  - (a) In all programs except OSIP, OSIPM, and QMB, any real or personal property that generates income for the *financial group* (see OAR 461-110-0530). Examples of "income-producing property" are:

- (aA) Livestock, poultry, and other animals.
  - (bB) Farmland, rental homes (including a room or other space in the home or on the property of a member of the *financial group*), vacation homes, and condominiums.
- (b) In the OSIP, OSIPM, and QMB programs, "income-producing property" means any real or personal property not used in self-employment (see OAR 461-145-0600 and 461-145-0915) that produces income for the *financial group*. "Income-producing property" includes:
- (A) Livestock, poultry, or other animals that produce marketable products sold by the *financial group*.
  - (B) Farmland not excluded under OAR 461-145-0220 that is farmed or rented out by the *financial group*.
  - (C) Real property other than the home (including vacation homes and condominiums), that is rented out.
- (c) In the OSIP, OSIPM, and QMB programs, "income-producing property" does not include:
- (A) Rooms or other space for rent in the home (see OAR 461-145-0220).
  - (B) Livestock, poultry, or other animals kept for resale (see OAR 461-145-0010).
- (35) "Initial month" of *eligibility* means any of the following:
- (a) In all programs, the first month a *benefit group* (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.
  - (b) In all programs except the SNAP program, the first month a *benefit group* is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.
  - (c) In the SNAP program:
    - (A) The first month for which the *benefit group* is certified following any period during which they were not certified to participate, except for *migrant* and *seasonal farm workers* (see OAR 461-001-0015).

- (B) For *migrant* and *seasonal farmworkers*, the first month for which the *benefit group* is certified following any period of one month or more during which they were not certified to participate.
  - (d) For a new applicant to the GA, GAM, OSIP, or OSIPM program applying for care in a *nonstandard living arrangement* (see section (45) of this rule), for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the individual would have been eligible had it not been for the disqualifying transfer of *assets* (see section (5) of this rule).
  - (e) For a current recipient of the GA, GAM, OSIP, or OSIPM program receiving or applying for care in a *nonstandard living arrangement*, for the purpose of calculating the correct divisor in OAR 461-140-0296, the later of the following:
    - (A) The month the disqualifying transfer occurred.
    - (B) The month of application for *long-term care* (see section (40) of this rule) services if the individual would have been eligible had it not been for the disqualifying transfer of *assets*.
- (36) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).
- (37) "Legally married" means a *marriage* uniting two individuals according to --
  - (a) The statutes of the state where the *marriage* occurred;
  - (b) Except in the SNAP program, the common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or
  - (c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.
- (38) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a "life estate" enables the owner of the "life estate" to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A "life estate" is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of the individual's life, certain rights to that property. In addition, a "life estate" is established when a member of the *financial group* purchases a "life estate" interest in the home of another individual.
- (39) "Lodger" means a member of the *household group* (see OAR 461-110-0210) who--
  - (a) Is not a member of the *filing group* (see OAR 461-110-0310); and

- (b) Pays the *filing group*:
- (A) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, for room and board.
  - (B) In the GA, GAM, OSIP, OSIPM, and QMB programs, for room with or without board.
- (40) "Long-term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).
- (41) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. "Lump-sum income" includes:
- (a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.
  - (b) Income from inheritance, gifts, winnings, and personal injury claims.
- (42) "Marriage" means the union of two individuals who are *legally married* (see section (37) of this rule).
- (43) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than \$35,000.
- (44) "Minor parent" in the ERDC and TANF programs means a *parent* under the age of 18.
- (45) "Nonstandard living arrangement" is defined as follows:
- (a) In the GA, GAM, OSIP, OSIPM, and QMB programs, an individual is considered to be in a "nonstandard living arrangement" when the individual is applying for or receiving services in any of the following locations:
    - (A) A nursing facility in which the individual receives *long-term care* services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.
    - (B) An intermediate care facility for the mentally retarded (ICF/MR).
    - (C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.
    - (D) A *community based care* (see section (16) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a "nonstandard living arrangement".

- (b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, "nonstandard living arrangement" means each of the following locations:
  - (A) Foster care.
  - (B) Residential Care facility.
  - (C) Drug or alcohol residential treatment facility.
  - (D) Homeless or domestic violence shelter.
  - (E) Lodging house if paying for room and board.
  - (F) Correctional facility.
  - (G) Medical institution.
- (46) "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program *eligibility* policy, community outreach, OCCS Medical Program *eligibility* determinations, and the OHA Customer Service Call Center.
- | (47) "OCCS Medical Programs" refers to programs for which *eligibility* policy can be found in [OAR chapter 410, division 410-200 of Oregon Administrative Rules](#), and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:
  - (a) MAGI Adult;
  - (b) MAGI Child;
  - (c) MAGI Parent or Other Caretaker Relative;
  - (d) MAGI Pregnant Woman; and
  - (e) MAGI CHIP.
- (48) "Ongoing month" means one of the following:
  - (a) For all programs except the SNAP program, any month following the *initial month* (see section (35) of this rule) of *eligibility*, if there is no break in the program benefit of one or more calendar months.
  - (b) For the SNAP program, any month in the *certification period* (see section (14) of this rule) following the *initial month* of *eligibility*.

- (49) "Parent" for all programs except the JPI and SNAP programs, means the biological or legal mother or father of an individual or unborn child. For the SNAP program, a "parent" means the biological or legal mother or father of an individual. For the JPI program, a "parent" means the biological or legal mother or father of a *child* under the age of 18.
- (a) If the mother lives with a male and either she or the male claims that he is the father of the *child* or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.
- (b) A stepparent relationship exists if:
- (A) The individual is *legally married* to the child's biological or adoptive parent; and
- (B) The *marriage* has not been terminated by legal separation, divorce, or death.
- (c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a "parent" if both of the following are true:
- (A) The *child* lives with the biological parent; and
- (B) The legal parent has given up care, control, and supervision of the *child*.
- (50) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.
- (51) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.
- (52) "Periodic income" means income received on a regular basis less often than monthly.
- (53) "Primary person" for all programs except the SNAP program, means the *filing group* member who is responsible for providing information necessary to determine *eligibility* and calculate benefits. The "primary person" for individual programs is as follows:
- (a) For the TANF program, the *parent* or *caretaker relative*.
- (b) For the ERDC program, the *caretaker*.
- (c) For SNAP, see OAR 461-001-0015.
- (d) For the GA, GAM, OSIP, OSIPM, QMB, REF, and REFM programs: the client or client's *spouse*.

- (54) "Qualified Partnership Policy" means a long-term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:
  - (a) Issued while the individual was a resident in Oregon on January 1, 2008 or later; or
  - (b) Issued in another state while the individual was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.
- (55) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as "real property".
- (56) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.
- (57) "Safe homes" mean private homes that provide a few nights lodging to victims of *domestic violence*. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.
- (58) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.
- (59) "Shelter-in-kind" means an agency or individual outside the *financial group* provides the shelter of the *financial group*, or makes a payment to a third party for some or all of the *shelter costs* (see section (58) of this rule) of the *financial group*. "Shelter-in-kind" does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.
- (60) "Sibling" means the brother or sister of an individual. "Blood-related" means they share at least one biological or adoptive parent. "Step" means they are not related by blood, but are related by the *marriage* of their parents.
- (61) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced *spouse* to a member of the *financial group*.
- (62) "Spouse" means an individual who is *legally married* to another individual.
- (63) "Stable income" means income that is the same amount each time it is received.
- (64) "Standard living arrangement" means a location that does not qualify as a *nonstandard living arrangement*.
- (65) "Teen parent" means, for TANF and JOBS, a *parent* under the age of 20 who has not completed a high school diploma or GED.

- (66) "Timely continuing benefit decision notice" means a *decision notice* that informs the individual of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.
- (67) "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.
- (68) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.
- (69) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS [409.050](#), 411.060, 411.070, 411.404, [411.706](#), 411.816, 412.006, 412.014, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), [409.050](#), 411.060, 411.070, 411.404, 411.816, [411.837](#), 412.001, 412.006, 412.014, 412.049, [413.085](#), [414.685](#)

| 461-115-0230  
Interviews

Eff. 7-1-14

Eff. 10-1-15

- | (1) In the REF, REFM, and TANF programs, the Department may conduct a required face-to-face interview by telephone or home visit if an *authorized representative* (see OAR 461-001-0000 and 461-115-0090) has not been appointed, and participating in a face-to-face interview is a *hardship* (see section (2) of this rule) for the household.
- | (2) For the purposes of this rule, "hardship" includes, but is not limited to:
  - | (a) Care of a household member;
  - | (b) A client's-An individual's age, *disability* (see OAR 461-001-0000), or illness;
  - | (c) A commute of more than two hours from the client's-individual's residence to the nearest *branch office* (see OAR 461-001-0000);
  - | (d) A conflict between the client's-individual's work or training schedule and the business hours of the *branch office*; and
  - | (e) Transportation difficulties due to prolonged severe weather or financial hardship.
- | (3) In the SNAP program:
  - | (a) An interview must be scheduled so that the filing group (see OAR 461-110-0370) has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.
    - Formatte
  - | (b) A face-to-face interview must be granted at the applicant's request.
  - | (c) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by regular mail of the missed interview.
  - | (d) An applicant who fails to attend a scheduled interview must contact the Department no later than 30 days following the *filing date* (OAR 461-115-0040) to be eligible for benefits.
  - | (e) An *adult* (see OAR 461-001-0015) in the filing group or the *authorized representative* of the filing group is interviewed once every 12 months.
    - Formatte
    - Formatte
- | (4) In the ERDC program:
  - | (a) Except as provided otherwise in subsection (c) of this section, an interview with an *adult* in the filing group (see OAR 461-110-0350) or the *authorized representative* of the filing group is required to process an initial application and a renewal of benefits.
    - Formatte
    - Formatte

- (b) A phone interview is preferred; however, a face-to-face interview must be granted at the applicant's request.
  - (c) An interview is not required when the Department has implemented the Child Care Reservation List and it is determined that a *decision notice* of ineligibility will be sent under OAR 461-115-0016.
- (5) In the OSIPM and QMB programs, except for individuals who are assumed eligible (see OAR 461-135-0010), the Department must complete an interview face-to-face in the branch office, by telephone, or during a home visit with the client at least one applicant who is 18 years of age or older or client's an applicant's authorized representative:
- (a) at-At initial application and at-
  - (b) At redetermination except individuals who are assumed eligible (see OAR 461-135-0010). The interview may be completed face-to-face in the branch office, by telephone, or during a home visit.
- Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839  
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

| 461-115-0700

Eff. 1-1-08

Eff. 10-1-15

Required Verification; GA, GAM, OSIP, OSIPM, QMB

In the GA, GAM, OSIP, OSIPM, and QMB programs:

- (1) Except as provided in section (2) of this rule, all *eligibility* (see OAR 461-001-0000) factors must be verified at initial application, when there is a change to any factor, and whenever *eligibility* for benefits becomes questionable.
- (2) If the total *countable* (see OAR 461-001-0000) reported value of gross "liquid resources" of the *financial group* (see OAR 461-110-0530) ~~do not exceed \$1,250, is less than \$400,~~ verification of the value of *the "liquid resources"* is only required if questionable. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days, ~~except that the cash surrender value of a life insurance policy is not considered a liquid resource.~~

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.042 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.085,  
414.042 414.685, 414.839

461-120-0310

Eff. 1-1-14

Eff. 10-1-15

Assignment of Support Rights; Not SNAP

In all programs except the SNAP program:

- (1) To be eligible for any program funded in whole or in part with federal grants under Title IV-A (TANF) of the Social Security Act, the filing group ([see OAR 461-110-0310](#)) must assign to the state its right to receive, from any other person, child support that accrues during any time period that the group receives assistance, not to exceed the total amount of assistance paid.
- (2) To be eligible for any program funded in whole or in part with federal grants under Title IV-E of the Social Security Act, the filing group must assign to the state its right to receive, from any other person, child support that has accrued or that accrues during any time period that the group receives assistance, not to exceed the total amount of assistance paid.
- (3) To be eligible for the OSIPM program, a filing group ([see OAR 461-110-0410](#)) must assign to the state the right of any Medicaid-eligible *child* ([see OAR 461-001-0000](#)) in the filing group to receive any cash medical support that accrues while the group receives assistance, not to exceed the total amount of assistance paid.
- (4) Cash medical support received by the Department ~~will be is~~ retained by the Department as is necessary to reimburse the Department for OSIPM program medical assistance payments made on behalf of an individual with respect to whom such assignment was executed. ~~Once yearly, the remainder of such amount retained will be paid to such individual. To allow adequate time for reporting and payment of incurred medical services, the Department initiates reconciliation 12 months after termination of OSIPM benefits and subsequently issues any resulting refund to the individual or the individual's legal guardian.~~
- (5) When the Department provides benefits or services for the support of a *child* who is in a filing group in any program funded in whole or in part with a federal grant under Title IV-A (TANF) or IV-E of the Social Security Act, the right to child support for that *child* that any individual may have is deemed to be assigned to the state by operation of law.

Stat. Auth.: ORS [409.050](#), 411.060, 411.070, 411.404, [411.706](#), 412.024, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), [409.050](#), 411.060, 411.070, 411.404, 412.001, 412.024, 412.049, [413.085](#), 414.025, [414.685](#)

461-140-0020

Eff. 7-1-14

Eff. 10-1-15

Availability of Resources

(1) Except as provided in sections (2) to (4) of this rule:

- (a) In the SNAP program, a resource owned jointly by a client and another person individual is available in its entirety to the client.
- (b) In all other programs, jointly-owned resources are available to members of a *financial group* (see OAR 461-110-0530) only to the extent they own the resource; except that in the OSIPM and QMB programs, jointly-owned "liquid resources" (including bank and other financial institution accounts) are assumed to be available in their entirety to the client. The client has the right to provide evidence rebutting the ownership assumption. For the purposes of this rule, "liquid resources" include means cash as well as other resources that can be converted to cash within 20 business days.

(2) A resource is not available to a client in each of the following situations:

- (a) The client has a legal interest in the resource, but the resource is not in the client's possession and the client is unable to gain possession of it. In the REF and REFM programs, if a resource remains in the applicant's country of origin, it is not available.
- (b) The resource is jointly owned with others not in the *financial group* who are unwilling to sell their interest in the resource, and the client's interest is not reasonably saleable.
- (c) The client verifiably lacks the competence to gain access to or use the resource and there is no legal representative available to act on the client's behalf.
- (d) The client is a victim of *domestic violence* (see OAR 461-001-0000) and:
  - (A) Attempting to use the resource would subject the client to risk of *domestic violence*; or
  - (B) The client is using the resource to avoid the abusive situation.
- (e) Except as provided in OAR 461-145-0540, the resource is included in an irrevocable or restricted trust and cannot may not be used to meet the basic monthly needs of the *financial group*.
- (f) In the OSIP, OSIPM, and QMB programs, there is a legal bar to the sale of the resource.

- (3) A resource is not considered available during the time the owner does not know he or she owns the resource.
- (4) If a resource is subject to an early withdrawal penalty, the amount of the penalty is not available.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, [411.706](#), 411.816, 412.014, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS 409.010, [409.050](#), 411.060, 411.070, 411.404, [411.706](#), 411.816, 412.014, 412.049, [413.085](#), [414.685](#), [414.839](#)

| 461-140-0040

Eff. 3-19-15

Eff. 10-1-15

Determining Availability of Income

- (1) This rule describes the date income is considered available, what amount of income is considered available, and situations in which income is considered unavailable.
- (2) Income is considered available the date it is received or the date a member of the *financial group* (see OAR 461-110-0530) has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:
  - (a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.
  - (b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion.
  - (c) An advance or draw of earned income is considered available on the date it is received.
  - (d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.
  - (e) A payment due to a member of the *financial group*, but paid to a third party for a household expense, is considered available when the third party receives the payment.
  - (f) In prospective budgeting, income is considered available in the month the income is expected to be received (see OAR 461-150-0020).
  - (g) In the OSIP, OSIPM, and QMB programs, except for self-employment (see OAR 461-145-0915), wages that are earned in one period of time but paid in another are considered available when they are received, such as a teacher who works for nine months but is paid over twelve.
- (3) The following income is considered available even if not received:
  - (a) Deemed income.
  - (b) In the ERDC, REF, REFM, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security, withheld to repay an overpayment.
  - (c) In the GA, GAM, OSIPM, and QMB programs, the portion of a payment from an assistance program (such as public assistance, unemployment compensation, or Social Security) withheld to repay an overpayment of the same source:

- (A) If withheld prior to July 1, 2014.
  - (B) If withheld on or after July 1, 2014 and:
    - (i) No member of the *financial group* was receiving GA, GAM, OSIP, OSIPM, or QMB during the period the benefit was overpaid; or
    - (ii) The withheld amount is not excluded under [section paragraph \(5\)\(e\)\(A\) of this rule](#).
  - (d) In the SNAP program, the portion of a payment from the TANF program counted as disqualifying income under OAR 461-145-0105.
- (4) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions including flexible spending accounts.
- (5) The following income is not considered available:
- (a) Wages withheld by an employer in violation of the law.
  - (b) Income received by another individual who does not pay the client his or her share.
  - (c) Income received by a member of the *financial group* after the individual has left the household.
  - (d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source unless the repayment is *countable* (see OAR 461-001-0000)--
    - (A) In the SNAP program, under OAR 461-145-0105.
    - (B) In the ERDC, REF, REFM, and TANF programs, under subsection (3)(b) of this rule.
  - (e) In the GA, GAM, OSIP, OSIPM, and QMB programs:
    - (A) The portion of a payment from an assistance program, such as public assistance, unemployment compensation, or Social Security withheld on or after July 1, 2014 to repay an overpayment from the same source if at least one member of the *financial group* was receiving GA, GAM, OSIPM, or QMB during the period the benefit was overpaid. The amount considered unavailable cannot exceed the amount of the overpaid benefit previously counted in determining *eligibility* (see OAR 461-001-0000) for GA, GAM, OSIP, OSIPM, or QMB.

- (B) Monies withheld from or returned to a source of income, when the source is not an assistance program, to repay an overpayment of the same source.
  - (f) For an individual who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.
  - (g) Income received by the *financial group* but intended and used for the care of an individual not in the *financial group* as follows:
    - (A) If the income is intended both for an individual in the *financial group* and an individual not in the *financial group*, the portion of the income intended for the care of the individual not in the *financial group* is considered unavailable.
    - (B) If the portion intended for the care of the individual not in the *financial group* cannot readily be identified, the income is prorated evenly among the individuals for whom the income is intended. The prorated share intended for the care of the individual not in the *financial group* is then considered unavailable.
  - (h) In the ERDC, REF, REFM, SNAP, and TANF programs, income controlled by the client's abuser if the client is a victim of *domestic violence* (see OAR 461-001-0000), the client's abuser controls the income and will not make the money available to the *filing group* (see OAR 461-110-0310), and the abuser is not in the client's *filing group*.
  - (i) In the OSIP, OSIPM, and QMB programs, unearned income not received because a payment was reduced to cover expenses incurred by a member of the *financial group* to secure the payment. For example, if a retroactive check is received from a benefit program other than SSI, legal fees connected with the claim are subtracted. Or, if payment is received for damages received as a result of an accident the amount of legal, medical, or other expenses incurred by a member of the *financial group* to secure the payment are subtracted.
  - (j) In the REFM program, any income used for medical or medical-related purposes.
- (6) The availability of *lump-sum income* (see OAR 461-001-0000) is covered in OAR 461-140-0120.

Stat. Auth.: ORS 409.050, 411.060, [411.070](#), 411.404, 411.816, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), 409.050, 411.060, [411.070](#), 411.117, 411.404, 411.706, 411.816, 412.049, [413.085](#), [414.685](#), [414.839](#)

461-145-0010  
Animals

Eff. 4-1-07

Eff. 10-1-15

- (1) Animals that are kept as pets or raised as food for the *filing group* (OAR 461-110-0310) are excluded.
- (2) The treatment of an ~~income-producing~~ animal considered income-producing property (see OAR 461-001-0000) is covered by the *income-producing property* rules (see OAR 461-145-0250 and 461-145-0252), ~~except that an animal is excluded as a resource if raised as food for the filing group.~~
- (3) In the OSIP, OSIPM, and QMB programs:
- (a) The *fair market value* (see OAR 461-001-0000) of animals that are kept or retained for sale or resale is a *countable* (see OAR 461-001-0000) resource.
- (b) If an animal is a source of both food and income for the *filing group*:
- (A) The *fair market value* of the animal remains excluded.
- (B) The proceeds of any sales of the animal or its products are counted as unearned income.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685 418.100

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.049, 411.700, 413.085, 414.685, 414.839 411.816, 418.100

461-145-0088

Eff. 4-1-15

Eff. 10-1-15

Corporations and Business Entities; Income and Resources; Not OSIP, OSIPM, or QMB

- (1) The value of stocks or other ownership interest in a corporation is a resource.
- (2) Assets of the corporation essential to the employment of an individual are excluded. For instance, if the corporation owns equipment used by the individual to produce income for the corporation, the equipment is an excluded resource. If an individual must own stock in the corporation as a condition of working for the corporation, the stock is an excluded resource.
- (3) Except as provided in OAR 461-140-0040(2) and section (4) of this rule, income of a corporation is not income of an individual with an ownership interest in the corporation until the income is distributed to the individual.
- (4) In the OSIP, OSIPM, REF, REFM, QMB, and SNAP programs:
  - (a) An expenditure by a business entity or corporation that benefits a *principal* (see subsection (b) of this section) -- such as a car or housing payment -- is considered available when the expenditure is made.
  - (b) For purposes of this rule, a "principal" means an individual with significant authority in a business entity or corporation, including a sole proprietor, a self-employed person (see OAR 461-145-0910), a partner in a partnership, a member or manager of a limited liability company, and an officer or principal stockholder of a closely held corporation.
  - (c) See OAR 461-145-0130, 461-145-0280, and 461-145-0470 for the treatment of earned in-kind income.
- (5) In the SNAP program:
  - (a) Income from business entities and corporations is treated as follows:
    - (A) If an individual is actively working in a corporation, the income is treated as earned income.
    - (B) If an individual is actively working in an unincorporated business entity, refer to OAR 461-145-0910 to determine if the income is treated as earned or as self-employment.
    - (C) If an individual is no longer actively working to produce the income, the income is treated as unearned.
  - (b) Income from a limited liability company is treated as follows:

- (A) If an individual is a member or a manager member, the income is treated as self-employment income.
- (B) If an individual is a manager but not a member, the income is treated as earned income.

Stat. Auth.: ORS [409.050](#), 411.060, [411.070](#), [411.404](#), 411.816, 412.049

Stats. Implemented: ORS [409.010](#), [409.050](#), 411.060, [411.070](#), [411.404](#), [411.706](#), 411.816, 412.049

461-145-0089

Adopted 10-1-15

Corporations and Other Business Entities; Income and Resources, Not Self-Employment; OSIP, OSIPM, QMB

THIS IS A NEW RULE

(1) For purposes of this rule:

- (a) "Business entity" includes a sole proprietorship, a partnership, and an unincorporated limited liability company.
- (b) "Principal" means an individual with significant authority in and responsibility for the success or failure of a corporation or "business entity" (see subsection (a) of this section), including:
  - (A) A sole proprietor.
  - (B) A general partner in a partnership.
  - (C) A member or manager of a limited liability company.
  - (D) An officer or stockholder with controlling shares in a closely-held corporation.

(2) This rule applies to an individual who has an ownership interest in:

- (a) A corporation; or
- (b) A *business entity*, but is not considered self-employed (see OAR 461-145-0915).

(3) For an individual with an ownership interest in and actively working for a corporation:

- (a) The individual cannot be considered self-employed, regardless of whether or not the individual is a *principal* (see subsection (1)(b) of this rule). Income from actively working for the corporation is treated as earned income as provided in OAR 461-145-0130.
- (b) Dividends or profits are treated as unearned income.
- (c) Income not paid to an individual but retained by the corporation is not considered income of the individual.
- (d) Property and resources owned by the corporation are excluded.

- (e) If maintaining an ownership interest in a corporation is required for employment, the *equity value* (see OAR 461-001-0000) of the ownership interest is excluded; otherwise it is counted as provided in subsection (6)(a) of this rule.
- (f) Except as provided in OAR 461-145-0280, a non-business expenditure – including, but not limited to, a car or housing payment – paid by the corporation that benefits the individual is treated as earned income of the individual.
- (4) If the individual has an ownership interest in a *business entity*, is considered a *principal*, and is actively working in the *business entity*, the individual is considered self-employed (see OAR 461-145-0915).
- (5) If the individual has an ownership interest in a *business entity*, is not considered a *principal*, and is actively working in the *business entity*:
- (a) The individual's income, not including dividends or profit from the *business entity* is treated as earned income as provided in OAR 461-145-0130.
- (b) Dividends or profits are treated as unearned income.
- (c) If maintaining an ownership in the *business entity* is required for employment, the *equity value* of the ownership interest is excluded; otherwise it is counted in accordance with subsection (6)(a) of this rule.
- (d) Except as provided in OAR 461-145-0280, a non-business expenditure – including, but not limited to, a car or housing payment – paid by a *business entity* that benefits the individual is treated as earned income of the individual.
- (6) If the individual has an ownership interest in a corporation or *business entity*, but is not actively working in the corporation or *business entity*:
- (a) Except as provided in OAR 461-140-0020, the *equity value* of an ownership interest in a corporation or *business entity*, such as stock in the corporation, is treated as a resource. See OAR 461-145-0520 for how to treat stock.
- (b) Except as provided in OAR 461-140-0040, income of the individual from a corporation or *business entity* is treated as unearned income of the individual.
- (c) Except as provided for in OAR 461-145-0280, a non-business expenditure – including, but not limited to, a car or housing payment – paid by a corporation or *business entity* that benefits the individual is treated as unearned income of the individual.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685, 414.839

461-145-0120

Eff. 4-1-15

Eff. 10-1-15

Earned Income; Defined

Earned income is income received in exchange for an individual's physical or mental labor. Earned income includes all of the following:

- (1) Compensation for services performed, including wages, salaries, commissions, tips, sick leave, vacation pay, draws, or the sale of blood or plasma.
- (2) Income from on-the-job-training, paid job experience, JOBS Plus work experience, or Welfare-to-Work work experience.
- (3) In-kind income, when an individual is an employee of the person providing the in-kind income and the income is in exchange for work performed by the individual, or when received as compensation from self-employment.
- (4) For self-employment, gross receipts and sales, including mileage reimbursements, before costs.
- (5) In ---
  - (a) The SNAP program, *cafeteria plan* (see OAR 461-001-0000) benefits, and funds placed in a flexible spending account.
  - (b) All programs except the SNAP program, *cafeteria plan* benefits that an employee takes as cash, and funds placed in a flexible spending account.
- (6) Income from work-study.
- (7) Income from profit sharing that the individual receives monthly or periodically.
- (8) The fee for acting as an individual's representative payee, when that individual is not included in the *filing group* (see OAR 461-110-0310).
- (9) In the OSIP, OSIPM, QMB, and SNAP programs, expenditure by a business entity that substantially benefits a *principal* (see OAR 461-145-0088).
- (10) In the OSIP, OSIPM, and QMB programs, except as provided in OAR 461-145-0280, a non-business expenditure – including, but not limited to, a personal car or housing payment – paid by an individual's corporation or business entity (see OAR 461-145-0089) that benefits the individual.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

461-145-0130

Eff. 4-1-15

Eff. 10-1-15

Earned Income; Treatment

(1) Earned income (see OAR 461-145-0120) is *countable* (see OAR 461-001-0000) in determining *eligibility* (see OAR 461-001-0000) for programs, subject to the provisions in sections (2) to (910) of this rule.

(2) JOBS Plus income is earned income and is treated as follows:

(a) In the SNAP program:

(A) JOBS Plus income earned by a TANF-PLS (see OAR 461-101-0010(12)(a)) client:

(i) Is counted in determining initial SNAP program *eligibility*.

(ii) Is excluded in determining ongoing *eligibility*.

(B) JOBS Plus wages received after the individual's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(b) In the TANF program:

(A) JOBS Plus income earned by an NCP-PLS (see OAR 461-101-0010(12)(c)) client is counted in determining initial TANF *eligibility*.

(B) When determining the need for a TANF supplement for a TANF-PLS client, the income is treated as follows:

(i) It is excluded in determining the *countable* income limit and in calculating the benefit equivalency standards.

(ii) It is counted in calculating the wage supplement.

(C) JOBS Plus wages received after the individual's last month of work under a JOBS Plus agreement are counted.

(c) In the OSIPM and QMB programs, JOBS Plus wages received after the individual's last month of work under a TANF-PLS JOBS Plus agreement are counted.

(d) In all programs not covered under subsections (a) to (c) of this section, TANF-PLS income is counted as earned income.

(e) In all programs other than the TANF program, NCP-PLS income is counted as earned income.

- (f) In all programs, wages received under the Tribal TANF JOBS programs are counted as earned income.
- (3) Welfare-to-Work work experience income is treated as follows:
  - (a) In the REF, REFM, and TANF programs, the income is earned income, and the first \$260 is excluded each month.
  - (b) In the SNAP program, the income is earned income.
- (4) In the ERDC program, earned income of a *child* (see OAR 461-001-0000) is excluded.
- (5) In the OSIP, OSIPM, and QMB programs:
  - (a) Documented net losses from a self-employment business (see OAR 461-150-0095) are excluded from any other source of earned income of the financial group (see OAR 461-110-0530).
  - (b) The income a principal (see OAR 461-145-0089) earns working for a corporation is countable as earned income.
- | (56) In the REF and REFM programs:
  - (a) Income remaining after the month of receipt is a resource.
  - (b) Earned in-kind income is excluded (see OAR 461-145-0280 and 461-145-0470).
- | (57) In the TANF program:
  - (a) Earned income of the following children is excluded:
    - (A) Dependent children under the age of 19 years, and minor parents under the age of 18 years, who are full-time students in grade 12 or below (or the equivalent level of vocational training, in GED courses), or in home schooling approved by the local school district.
    - (B) Dependent children under the age of 18 years who are attending school part-time (as defined by the institution) and are not employed full-time.
    - (C) Dependent children too young to be in school.
  - (b) Income remaining after the month of receipt is a resource.
  - (c) Earned in-kind income is excluded (see OAR 461-145-0280 and 461-145-0470).

- | (78) In the SNAP program:
  - (a) If a *cafeteria plan* (see OAR 461-001-0000) benefit that the employee may not elect to receive as a cash payment is designated and used to pay for child care, medical care, or health insurance, the benefit is excluded unless it is reimbursed by the Department. If reimbursed, the Department counts it as earned income.
  - (b) The following types of income are excluded:
    - (A) The earned income of an individual under the age of 18 years who is under the parental control of another member of the household and is:
      - (i) Attending elementary or high school;
      - (ii) Attending GED classes recognized by the local school district;
      - (iii) Completing home-school elementary or high school classes recognized by the local school district; or
      - (iv) Too young to attend elementary school.
    - (B) Earned in-kind income, except as provided in section (89) of this rule.
    - (C) Deductions from base pay for future educational costs under Pub. L. No. 99-576, 100 Stat. 3248 (1986), for an individual on active military duty.
    - (D) Income remaining after the month of receipt is a resource.
  - | (89) In the SNAP program, earned in-kind income (see OAR 461-145-0280) is excluded unless it is an expenditure by a business entity that benefits a *principal* (see OAR 461-145-0088).
  - | (90) In all programs except in the OSIPM program, for an individual in a *nonstandard living arrangement* (see OAR 461-001-0000), the income of a temporary employee of the U.S. Census Bureau employed to assist in taking the census is excluded.

Stat. Auth.: ORS [409.050](#), 411.060, 411.070, 411.083, [411.400](#), [411.404](#), 411.706, 411.816, 411.892, 412.014, 412.049, [414.231](#), [414.712](#), [414.826](#) [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), [409.050](#), 411.060, 411.070, 411.083, [411.400](#), [411.404](#), 411.706, 411.816, 411.892, 412.014, 412.049, [414.231](#), [414.712](#), [414.826](#) [413.085](#), [414.685](#), [414.839](#)

461-145-0250

Eff. 1-1-14

Eff. 10-1-15

Income-Producing Property:Not OSIP, OSIPM, or QMB

(1) Income from *income producing property* (see OAR 461-001-0000) is counted as follows:

- (a) If a member of the *financial group* (see OAR 461-110-0530) actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0910, 461-145-0920, and 461-145-0930).
- (b) If a member of the *financial group* does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920. In the SNAP program, if the *financial group* owns more than one property, the exclusions for one property may not be used to offset income from a different property.

(2) The *equity value* (see OAR 461-001-0000) of *income-producing property* is treated as follows:

- (a) In the EA and ERDC programs, it is excluded.
- (b) In the SNAP program, it is counted as a resource except to the extent described in each of the following situations:
  - (A) If the property produces an annual *countable* (see OAR 461-001-0000) income similar to other properties in the community with comparable market value, the *equity value* of the property is excluded.
  - (B) The property is excluded under OAR 461-145-0600.
  - (C) The *equity value* of income-producing livestock, poultry, and other animals is excluded.
  - (D) If selling the resource would produce a net gain to the *financial group* of less than \$1,500, the *equity value* is excluded.
- (c) In the GA, and GAM, OSIP, OSIPM, and QMB programs, it is counted as a resource, except:
  - (A) If the non-business income-producing property (including houses or apartments for rent and land other than the primary residence) produces an annual *countable* income of at least six percent of its *equity value*, the value of the property is excluded up to a maximum of \$6,000.
  - (B) If the annual *countable* income drops below six percent of the non-business property's *equity value* due to circumstances beyond the client's

control, the client has up to 24 months from the end of the tax year in which the earnings dropped below six percent to meet the six percent requirement.

- (C) The total *equity value* is excluded (regardless of value or rate of return) if either all the requirements of subparagraphs (i), (ii), and (iii) or subparagraph (iv) or subparagraph (v) are met:
- (i) The property is used in the trade or business of a member of the *financial group*, as evidenced by two or more of the following:
- (I) The good-faith intention of making a profit.
- (II) Its use is part of a regular occupation for a member of the *financial group*.
- (III) Holding out to others as being engaged in the selling of goods or services.
- (IV) Continuity of operations, repetition of transactions, or regularity of activities.
- (ii) The property is in current use or, if not in use for reasons beyond the control of the *financial group*, there must be a reasonable expectation that the required use will resume.
- (iii) The property is essential to the client's self-support.
- (iv) The government has issued a permit granting to the client to engage in income-producing activity on or with the property.
- (v) Personal property is used by an employee for work.
- (d) In the REF, REFM, and TANF programs, it is counted as a resource, except that in the TANF program, it is excluded for a self-employed client participating in the *microenterprise* (see OAR 461-001-0025) component of the JOBS program.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.400, 411.404, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.083, 411.400, 411.404, 411.700, 411.816, 412.049, 413.085, 414.685

THIS IS A NEW RULE

- (1) This rule does not apply to personal or real property used in self-employment. See OAR 461-145-0915 to determine what constitutes self-employment and OAR 461-145-0600 to determine how to treat real or personal property used in self-employment.
- (2) Income from *income-producing property* (see OAR 461-001-0000) is counted as follows:
  - (a) If a member of the *financial group* (see OAR 461-110-0530) actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0915, 461-145-0920, and 461-145-0930).
  - (b) If a member of the *financial group* does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920.
- (3) The *equity value* (see OAR 461-001-0000) of *income-producing property* is counted as a resource, subject to the following exceptions:
  - (a) Except as provided in OAR 461-140-0020.
  - (b) If the *income-producing property*, including houses or apartments for rent and land other than the primary residence, produces an annual *countable* (see OAR 461-001-0000) income of at least six percent of its equity value, the value of the property is excluded up to a maximum of \$6,000.
  - (c) If the annual countable income drops below six percent of the *equity value* of the *income-producing property* due to circumstances beyond the client's control, the client has up to 24 months from the end of the tax year in which the earnings dropped below six percent to meet the six percent requirement.
  - (d) The *equity value* of government permits representing authority granted by a government agency to engage in income-producing activity is excluded in its entirety.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.400, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.400, 411.404, 411.706, 413.085, 414.685

461-145-0440 Reimbursement	<u>Eff. 1-1-14</u>	<u>Eff. 10-1-15</u>
(1) For the treatment of USDA meal reimbursements, see OAR 461-145-0570.		
(2) The <i>reimbursement</i> ( <a href="#">see OAR 461-001-0000</a> ) of a business expense for an <u>individual who is</u> self-employed <u>client</u> is treated as self-employment income (see OAR 461-145-0910, <a href="#">461-145-0915</a> , and 461-145-0920).		
(3) Except as provided in sections (1) and (2) of this rule, a <i>reimbursement</i> ( <a href="#">see OAR 461-001-0000</a> ) is treated as follows:		
(a) In the ERDC program, a <i>reimbursement</i> is excluded, except that a <i>reimbursement</i> for child care from a source outside of the Department is counted as unearned income.		
(b) In the SNAP program:		
	(A) A <i>reimbursement</i> in the form of money for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.	
	(B) Any other <i>reimbursement</i> is treated as follows:	
		(i) An in-kind <i>reimbursement</i> is excluded.
		(ii) A <i>reimbursement</i> in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.
		(iii) A <i>reimbursement</i> is counted as <a href="#">periodic income</a> ( <a href="#">see OAR 461-001-0000 and 461-140-0110</a> ) or <a href="#">lump-sum income</a> ( <a href="#">see OAR 461-001-0000 461-140-0110</a> and 461-140-0120) if not used for the identified expense.
		(iv) A <i>reimbursement</i> for an item already covered by the benefits of the <i>benefit group</i> (see OAR 461-110-0750) is counted as <a href="#">periodic income</a> or <a href="#">lump-sum income</a> .
(c) In the SNAP program, an expenditure by a business entity that benefits a <i>principal</i> ( <a href="#">see OAR 461-145-0088</a> ) is counted as earned income (see OAR 461-145-0130).		
(d) In all programs except the ERDC and SNAP programs, a <i>reimbursement</i> is treated as follows:		

- (A) An in-kind *reimbursement* is excluded.
- (B) A *reimbursement* in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.
- | (C) A *reimbursement* is counted as *periodic income* or *lump-sum income* if not used for the identified expense.
- | (D) A *reimbursement* for an item already covered by the benefits of the *benefit group* is counted as *periodic income* or *lump-sum income*.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, ~~411.700~~, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, ~~411.700~~, 411.816, 412.049, 413.085, 414.685

461-145-0600

Eff. 1-1-14

Eff. 10-1-15

Work-Related Capital Assets, Equipment, and Inventory

(1) As used in this rule:

- (a) "Inventory" means goods that are in stock and available for sale to prospective customers.
- (b) "Work-related equipment" means property essential to the employment or self-employment of a *financial group* ([see OAR 461-110-0530](#)) member. Examples are a tradesman's tools, a farmer's machinery, and equipment used to maintain an income-producing vehicle.

(2) A *capital asset* (see OAR 461-001-0000), other than *work-related equipment* ([see section \(1\) of this rule](#)) and *inventory* ([see section \(1\) of this rule](#)), is treated as follows:

- (a) In ~~all programs except REF, REFM, SNAP, and TANF~~ the ERDC and GA programs, the *equity value* (see OAR 461-001-0000) of a *capital asset* is treated according to the rules for the asset.
- (b) In the SNAP program, a *capital asset* used in a business is excluded as follows:
  - (A) Non-farm assets are excluded as long as the *financial group* ([see OAR 461-110-0530](#)) is actively engaged in self-employment activities.
  - (B) Farm assets are excluded until one year after the date the ~~person-individual~~ quit self-employment as a farmer.
- (c) In the REF, REFM, and TANF programs:
  - (A) For a self-employed client participating in the *microenterprise component* ([see OAR 461-190-0197](#)) of the JOBS program, the value of a *capital asset* is excluded.
  - (B) For all other clients, the value of a *capital asset* is counted according to the rules in this division of rules.
- (d) In the OSIP, OSIPM, and QMB programs, a *capital asset* is excluded.

(3) *Work-related equipment* is treated as follows:

- (a) In the EA, ERDC, OSIP, OSIPM, QMB, and SNAP programs, the *equity value* of *work-related equipment* is excluded.

(b) In the GA, OSIP, OSIPM, and QMB programs, the value of equipment needed by a client an individual who has a disability or is blind to complete a plan for self-support (see OAR 461-135-0708) is excluded as long as the plan is in effect. For all other equipment, the *equity value* of the equipment is counted as a resource, except as provided at OAR 461-145-0250.

(c) In the REF, REFM, and TANF programs:

- (A) For a self-employed client participating in the *microenterprise component* of the JOBS program, the *equity value* of the equipment is excluded.
- (B) For all other clients, the *equity value* of the equipment is treated as a resource.

(4) *Inventory* is treated as follows:

- (a) In the EA, ERDC, OSIP, OSIPM, QMB, and SNAP programs, *inventory* is excluded as long as the client is engaged in self-employment activities.
- (b) In the GA, OSIP, OSIPM, and QMB programs, the value of *inventory* needed by a client an individual who has a disability or is blind to complete a plan for self-support is excluded, as long as the plan is in effect. For all other *inventory*, the *equity value* of the *inventory* is counted as a resource.

(c) In the REF, REFM, and TANF programs:

- (A) For a self-employed client participating in the *microenterprise component* of the JOBS program, the wholesale value of *inventory* remaining at the end of the semi-annual period covered in each income statement (see OAR 461-190-0197), less encumbrances, is counted as a resource.
- (B) For all other clients, the wholesale value of *inventory* remaining at the end of a month, less encumbrances, is counted as a resource.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.700, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.117, 411.404, 411.700, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

461-145-0910

Eff. 4-1-15

Eff. 10-1-15

Self-Employment; General; Not OSIP, OSIPM, or QMB

- (1) Self-employment income is income resulting from an individual's business, trade, or profession, rather than from a salary or wage paid by an employer. An individual is considered self-employed if the individual meets the criteria in sections (2) or (3) of this rule. Except as noted in section (3) of this rule, for all programs except SNAP, when an individual has established a corporation, determine if the individual is self-employed according to section (2) of this rule. If the individual has more than one self-employment business, trade, or profession, the income from each is determined separately.
- (2) Except as provided in OAR 461-145-0250(1), an individual is self-employed for the purposes of this division of rules if the individual:
  - (a) Is considered an independent contractor by the business that employs the individual; or
  - (b) Meets at least four of the following criteria:
    - (A) Is engaged in an enterprise for the purpose of producing income.
    - (B) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.
    - (C) ~~Has~~Is principally responsible for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.
    - (D) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.
    - (E) Is not covered under an employer's liability or workers' compensation insurance policy.
- (3) Notwithstanding section (2) of this rule:
  - (a) Homecare Workers (see OAR 411-031-0020) paid by the Department are not self-employed.
  - (b) Child care providers (see OAR 461-165-0180) paid by the Department, adult foster home providers (see OAR 411-050-0602) paid by the Department, realty agents, and individuals who sell plasma, redeem beverage containers, pick

mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

- (4) In the ERDC, REF, SNAP, and TANF programs, self-employment income, including income from a *microenterprise* (see OAR 461-001-0000), is counted prospectively to determine *eligibility* (see OAR 461-001-0000) as follows:
  - (a) Self-employment income is annualized when it is:
    - (A) Received during less than a 12-month period but is intended as a full year's income.
    - (B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.
  - (b) Self-employment income is treated as anticipated income when a *financial group* (see OAR 461-110-0530) begins self-employment and is unable to determine what the income and costs will be during the budget month.
- | (5) In the GA,~~OSIP, OSIPM, and QMB~~ programs, self-employment income is considered available upon receipt by a member of the *financial group*, except it is prorated over the period of work if the duration of the work exceeds one month.
- (6) In the REFM program:
  - (a) Self-employment income is counted only if received in the month of application.
  - (b) If self-employment income counted in the month of application puts the applicant over the income limits for REFM, the income is calculated according to section (4) of this rule.
- (7) When determining the amount of *countable* (see OAR 461-001-0000) self-employment income, use gross receipts and sales, including mileage reimbursements, before costs.

Stat. Auth.: ORS [409.050](#), 411.060, [411.070](#), 411.404, 411.816, 412.006, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), [409.050](#), 411.060, [411.070](#), 411.404, 411.816, 412.006, 412.049, [413.085](#), [414.685](#)

THIS IS A NEW RULE

(1) For purposes of this rule:

- (a) "Business entity" includes a sole proprietorship, a partnership, and an unincorporated limited liability company.
- (b) "Principal" means an individual with significant authority in a "business entity" (see subsection (a) of this section), including a sole proprietor, a general partner in a partnership, or a member or manager of an unincorporated limited liability company.

(2) Notwithstanding any other sections of this rule:

- (a) Homecare workers (see OAR 411-031-0020) paid by the Department are not self-employed.
- (b) Child care providers (see OAR 461-165-0180) paid by the Department, adult foster home providers (see OAR 411-050-0602) paid by the Department, realty agents, and individuals who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered self-employed.
- (c) Self-employment does not include non-business activities such as property rentals (see OAR 461-145-0252) or renting a room out of the financial group's primary residence (see OAR 461-145-0340).
- (3) Self-employment means active engagement in one's own business, trade, or profession, rather than earning a salary or wage paid by an employer or maintaining a passive ownership interest in a *business entity*. An individual is considered self-employed if the individual meets the criteria in subsection (2)(b) or section (5) of this rule.
- (4) For a *principal* (see subsection (1)(b) of this rule) of a corporation or incorporated limited liability company, payments for working or performing services for the corporation or holding corporate office are considered wages and counted as earned income (see OAR 461-145-0089 and 461-145-0130).
- (5) Except as provided in OAR 461-145-0089(3), an individual is self-employed for the purposes of this division of rules if the individual:
  - (a) Is considered an independent contractor by the business that employs him or her; or

- (b) Meets at least four of the following criteria:
- (A) Is engaged in an enterprise for the purpose of producing income.
  - (B) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.
  - (C) Has significant responsibility for the success or failure of the business operation and has the authority to hire and fire employees to perform the labor or services.
  - (D) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.
  - (E) Is not covered under an employer's liability or workers' compensation insurance policy.
- (6) For a *principal* or any individual with an ownership interest in a *business entity* who cannot be considered self-employed using the criteria in this rule:
- (a) See OAR 461-145-0089 for individuals who are not actively working in the *business entity* to determine how to treat income and resources.
  - (b) See OAR 461-145-0130 for individuals who are actively working for the *business entity* but do not have significant authority or responsibility for its success or failure to determine how to treat income and OAR 461-145-0089 to determine how to treat resources.
- (7) For an individual who is considered self-employed:
- (a) See OAR 461-145-0920 and 461-145-0930 to determine how to treat income from self-employment.
  - (b) See OAR 461-145-0600 to determine how to treat resources used in self-employment.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 411.404, 411.706, 413.085, 414.685, 414.839

461-145-0920

Eff. 1-1-14

Eff. 10-1-15

Self-Employment; Costs That Are Excluded To Determine Countable Income

- (1) This rule explains how to determine which costs are excluded from gross self-employment income.<sup>[KS11]</sup>
- (2) In all programs except the OSIP, OSIPM, and QMB programs, Unless prohibited by section (34) of this rule, and subject to the provisions of sections (46) and (57) of this rule and OAR 461-145-0930, the necessary costs of producing self-employment income are excluded from gross sales and receipts<sup>5</sup> including<sup>6</sup> but not limited to:
  - (a) Labor (wages paid to an employee or work contracted out).
  - (b) Materials used to make a product.
  - (c) In the SNAP program -- principal and interest paid to purchase *income-producing property* (see OAR 461-001-0000), such as real property, equipment, or capital assets. In all other programs, interest paid to purchase *income-producing property*, such as equipment or capital assets.
  - (d) Insurance premiums, taxes, assessments, and utilities paid on *income-producing property*.
  - (e) Service, repair, and rental of business equipment<sup>1</sup> (including motor vehicles<sup>2</sup>), and property that is owned, leased<sup>3</sup>, or rented.
  - (f) Advertisement and business supplies.
  - (g) Licenses, permits, legal, or professional fees.
  - (h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not part of the business expense.
  - (i) Charges for telephone service that are a necessary cost for self-employment.
  - (j) Meals and snacks provided by family day care providers for children in their care<sup>4</sup> (except the provider's own children). The actual cost of the meals is used if the provider can document the cost. If the provider cannot document the actual cost, the USDA meal reimbursement rates are used.
  - (k) Materials purchased for resale, such as cosmetic products.
  - (l) For newspaper carriers, the cost of newspapers, bags, and rubber bands.

- (3) In the OSIP, OSIPM, and QMB programs, unless prohibited by section (5) of this rule, and subject [KS12] to the provisions of sections (6) and (7) of this rule and OAR 461-145-0930, the necessary costs of producing self-employment income are excluded from gross sales and receipts including, but not limited to:
- (a) Advertising.
  - (b) Car and truck expenses.
  - (c) Commissions and fees.
  - (d) Contract labor.
  - (e) Depletion.
  - (f) Depreciation.
  - (g) Employee benefit programs.
  - (h) Insurance, other than health.
  - (i) Mortgage interest.
  - (j) Legal and professional services.
  - (k) Office expenses.
  - (L) Pension and profit-sharing plans.
  - (m) Rent or lease of vehicles, machinery, equipment, and other business property.
  - (n) Repairs and maintenance.
  - (o) Supplies.
  - (p) Taxes and licenses.
  - (q) Travel, meals, and entertainment.
  - (r) Utilities.
  - (s) Wages, less employment credits.
  - (t) Meals and snacks provided by family day care providers for children in their care, except the provider's own children. The actual cost of the meals is used if the

provider is able to document the cost. If the provider is unable to document the actual cost, the USDA meal reimbursement rates are used.

- (u) Materials purchased for resale, such as cosmetic products.
- (v) For newspaper carriers, the cost of newspapers, bags, and rubber bands.

| (34) The In all programs except the OSIP, OSIPM, and QMB programs, the following costs are not excluded from gross sales and receipts:

- (a) Business losses from previous months.
- (b) Except in the SNAP program, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods.
- (c) Federal, state, and local income taxes, draws or salaries paid to any financial group member, money set aside for personal retirement, and other work-related personal expenses, (such as transportation, personal business, and entertainment expenses).
- (d) Depreciation. For purposes of this section, "Depreciation" is means a prorated lessening of value assigned to a capital asset (see OAR 461-001-0000) based on its useful life expectancy and initial cost.
- (e) Costs related to traveling to another area to seek business when there is no reasonable possibility of deriving income from the trip.
- (f) Interest or fees on personal credit cards.
- (g) Personal telephone charges.
- (h) Shelter or utility costs associated with the client's-individual's home, except as authorized by section (46) of this rule.

(5) In the OSIP, OSIPM, and QMB programs, the following costs are not excluded from gross sales and receipts:

- (a) Federal, state, and local income taxes.
- (b) Costs related to traveling to another area to seek business when there is no reasonable possibility of deriving income from the trip.
- (c) Interest or fees on personal credit cards.
- (d) Personal telephone charges.

(e) Shelter or utility costs associated with the individual's home, except as authorized by section (6) of this rule.

- (46) The exclusions for items used for both business and personal purposes, such as automobiles and a residence, ~~(including utilities)~~, are limited by the following subsections:
- (a) In the ERDC, GA, GAM, OSIP, OSIPM, and QMB programs, the portion of the expense that is for business use only is excluded.
- (b) In the SNAP program, costs are excluded for a separate office or shop located on the property used as a home, if the costs are billed separately from the residence. Costs for other items used for both business and personal use are excluded.
- (57) If no member of the *financial group* ([see OAR 461-110-0530](#)) has been self-employed for a sufficiently long period to ascertain the costs of self-employment, the costs may be estimated.
- (68) For ~~a client~~ [an individual](#) participating in the *microenterprise component* ([see OAR 461-190-0197](#)) of the JOBS program, costs are excluded according to this rule and general accounting principles, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department.

Stat. Auth.: ORS [409.050](#), 411.060, [411.070](#), 411.404, 411.816, 412.006, 412.049, [413.085](#), [414.685](#)

Stats. Implemented: ORS [409.010](#), [409.050](#), 411.060, [411.070](#), 411.404, 411.816, 412.006, 412.049, [413.085](#), [414.685](#), [414.839](#)

461-150-0090

Eff. 1-1-14

Eff. 10-1-15

Prospective Budgeting: Annualizing and Prorating Contracted or Self-employment Income; Not OSIP, OSIPM, or QMB

In all programs except the REFM program:

- (1) Income from self-employment, including contract income while self-employed, is treated in accordance with OAR 461-145-0910 unless the income meets the provisions of section (2) of this rule.
- (2) If past contract income is not representative of future income or when a substantial increase or decrease is expected in *countable* (see OAR 461-001-0000) self-employment income (see OAR 461-145-0910) in the next year, costs as allowed under OAR 461-145-0930 and anticipated income are used to determine the *countable* income.
- (3) In the ERDC, REF, SNAP, and TANF programs, contract income that does not meet the criteria of self-employment income (see OAR 461-145-0910) is treated as follows:
  - (a) Income received during a less than 12-month period but intended as a full year's income is annualized.
  - (b) Income received on an hourly or piecework basis or monthly over the term of the contract period is not annualized. It is treated as *stable income* (see OAR 461-001-0000) under OAR 461-150-0070 or *variable income* (see OAR 461-001-0000) under OAR 461-150-0080.
- (4) Contract income that is not the annual income of the *financial group* (see OAR 461-110-0530) and not paid on an hourly or piecework basis is prorated over the period the income is intended to cover.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

THIS IS A NEW RULE

- (1) Net earnings from self-employment are counted on a taxable year basis by dividing the total earnings by twelve to arrive at a monthly amount.
- (2) Only net losses from self-employment that are documented are divided over the taxable year in the same way as net earnings and excluded only from other earned income of the financial group (see OAR 461-145-0130).
- (3) When a self-employed individual is engaged in a business or trade which is neither seasonal nor has income peaks at certain parts of the year, estimate net earnings from self-employment for the current taxable year in the following sequence:
  - (a) When the individual has been conducting the same trade or business for two or more years, has had fairly constant net earnings from self-employment from year-to-year, and anticipates no change or gives no convincing explanation of why current net earnings would be substantially different from past net earnings, use the net earnings from the prior year as an estimate for the current taxable year.
  - (b) When an individual has been engaged in the same business for only the preceding taxable year, anticipates no change or gives no convincing explanation of why current net earnings would be substantially different from the previous taxable year:
    - (A) Calculate the ratio between net profit or loss and gross receipts from the last year; and
    - (B) Calculate the actual gross receipts from the individual's current records and project them for the remainder of the year; and
    - (C) Apply the gross-to-net ratio calculated in subsection (A) to the current year's projected gross calculated in subsection (B) to arrive at the estimated net earnings.
  - (c) When an individual is engaged in a new business, project the income received to date for the remainder of the year as follows:
    - (A) Calculate the net earnings from the individual's profit and loss statement or other business records for the taxable year to date; and

- (B) Average the monthly net earnings by dividing the net income received to date by the number of months that have elapsed.
- (d) Accept the individual's estimate for the net earnings when an individual is engaged in one of the following:
- (A) A new business for which there are insufficient net earnings to date;
- (B) At initial application only, an existing business for which records were not kept; or
- (C) An existing business with anticipated income that varies from past years and a convincing explanation is given for the variation.
- (4) When a self-employed individual is engaged in a trade or business that is seasonal or has income peaks at certain parts of the year, estimate net earnings from self-employment for the current taxable year in the following sequence:
- (a) When the individual has been conducting the same trade or business for at least one full taxable year, anticipates no change or gives no convincing explanation of why current net earnings would be substantially different from past net earnings, use the net earnings from the prior year as an estimate for the current taxable year.
- (b) Accept the individual's estimate for the net earnings when an individual is engaged in one of the following:
- (A) A new business;
- (B) At initial application only, an existing business for which records were not kept; or
- (C) An existing business with anticipated income that varies from past years and a convincing explanation is given for the variation.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.404, 411.706, 413.085, 414.685, 414.839

461-195-0310

Eff. 1-1-14

Eff. 10-1-15

Notice of Claim or Action by Applicant or Recipient

- (1) An *applicant* (see OAR 461-195-0301) for or *recipient* (see OAR 461-195-0301) of *assistance* (see OAR 461-195-0301) who has a *claim* (see OAR 461-195-0301) for a *personal injury* (see OAR 461-195-0301) or begins an *action* (see OAR 461-195-0301) to enforce such *claim*; -- or the attorney, personal representative (see OAR 407-014-0000), or authorized representative (see OAR 410-200-0015 and 461-115-0090) for the *applicant* or *recipient*, -- is required to must notify the Department (see OAR 461-195-0301), the prepaid managed care health services organization, and the coordinated care organization (see OAR 410-141-0000) CCO (see OAR 461-195-0301) of the *recipient*, if the *recipient* is receiving services from the organization CCO, within ten days of initiating that *claim* or *action*, unless the *action* was initiated prior to the application for *assistance*.
- (a) If the *action* was initiated prior to the application for *assistance*, the *applicant* must notify the Department at the time of application.
- (b) The notification must include ---
- (A) The names and addresses of all parties against whom the *action* is brought or *claim* is made;
- (B) A copy of each *claim* demand; and
- (C) If an *action* is brought, identification of the case number and the county where the *action* is filed.
- (c) A parent, guardian, foster parent, or caretaker relative, attorney, personal representative, or authorized representative must make the notification on behalf of a minor an individual under the age of 18 or an incompetent adult.
- (2) The reporting requirements in section (1) of this rule are mandatory reporting requirements.
- (3) Notification by an attorney or authorized representative for an applicant or recipient or other person required to provide notification under section (1) of this rule must be sent to the Personal Injury Liens Unit, Office of Payment Accuracy and Recovery, Department of Human Services, either by mail or fax facsimile (see sections (4) and (5) of this rule).
- (3) Notices required by ORS 416.530 to be sent to the Oregon Health Authority (Authority) may be consolidated with similar notices to the Department and sent to the Personal Injury Liens Unit. A consolidated notice is considered notice to the Authority if the Authority's interest or claim in the matter is identified in the notice consistent with requirements in the applicable statute. (See also OAR 943-001-0020(2)(e).)

- (4) The mailing address for the Personal Injury Liens Unit is: Personal Injury Liens Unit, PO Box 14512, Salem OR 97309-0416.
- (5) The facsimile number for the Personal Injury Liens Unit's fax number is (503) 378-2577 and the telephone number is (503) 378-4514.
- (6) If an *applicant* for or *recipient* of assistance -- or the attorney, personal representative, or authorized representative for the applicant or recipient -- fails to give the notification as required by this rule, the Department or the prepaid managed care health services organization CCO of the *recipient*, if the *recipient* is receiving services from the organization CCO, will have has a cause of action under ORS 416.610 against the *recipient* for amounts received by the *recipient* pursuant to a *judgment* (see OAR 461-195-0301), *settlement* (see OAR 461-195-0301), or *compromise* (see OAR 461-195-0301) to the extent that the Department or the prepaid managed care health services organization CCO could have had a lien against such amounts had such notice been given. At least 30 days prior to commencing an *action* under ORS 416.610, the Personal Injury Liens Unit and the prepaid managed care health services organization CCO, if any, must consult with each other.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 412.049, 413.033, 413.042, Or Laws 2013 Ch 14 section 20, 413.085, 414.685

Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070, 412.049, 413.033, 413.042, 413.085, 414.685, 416.510, 416.530, 416.610